





clearly intermingled, in close proximity or cross each other.

3. The position and practice of GPC in determining whether to serve a particular customer is based on whether it is economically beneficial for GPC to provide the service regardless of whether another utility is present (T-290/13-17, T-366/18-22, Exhibit 12, T-370/19-25)).

4. It is the position and practice of Gulf Power Company in this area that the duplication of the facilities by GPC of Gulf Coast Electric in the service of a customer is not "uneconomic" as long as Gulf Power determines that the economic benefit to it by serving the customer exceeds its costs to do so. (T-370/19-25). Consequently, according to GPC each extension of facilities is "economic" since GPC has decided that service of that customer or customers is beneficial to Gulf Power Company.

5. Both utilities have planned and built facilities to serve significant numbers of duplicate customers in the areas of South Washington and Bay Counties (Daniel T-110/19 to T-111/22).

6. It is not necessary to have two utilities in the same area to reliably meet the electric service requirements of a customer in the areas of South Washington and Bay Counties. (Daniel T-140/10).

7. A territorial boundary located on the ground is necessary in South Washington and Bay Counties where the electric facilities of GPC and Gulf Coast are commingled, in close proximity, or there are further uneconomic duplication of facilities. (T-26/1-14, T-63/22 to T-64/1-15, T-65/19-23, T-66/1-

23).

8. Each utility has been planning for and installing more capacity than is needed at any particular point in time for the areas of South Washington and Bay Counties and consequently are building facilities capable of serving the same load in this area. (T-111/12-22, T-76/10 to T-77/19). (See also T-474/24 and T-475/3.)

9. Gulf Power Company claims its territory as the ten county area of Northwest Florida (Holland T-190/7 and Spangenberg T-365/8-9). The position of GPC is that it has a right to serve all it determines to be economical to it within this ten county area (T-190 to T-192, T-370/19-25, T-366/18-22).

10. That the expected customer load, energy and population growth in the subject areas are as identified in Exhibit 2 (AWG-8) and Exhibit 4 (SPD-3, SPD-4 and SPD-5).

11. Both Gulf Coast and Gulf Power Company have the facilities and available capacity in place to serve the expected growth in the subject area in the next five years. [Exhibit 2 (AWG-2, AWG-5 and AWG-8), Exhibit 4 (SPD-3, SPD-4 and SPD-5), Exhibit 6 (WCW-1), and Exhibit 9 (Item 2)].

12. Both Gulf Power Company and Gulf Coast are capable of providing adequate and reliable service to all areas of South Washington and Bay Counties. (Gordon T-428/4-8; Daniel T-86 to T-89/6; Holland T-211/21-25, T-272/1, Weintritt T-289/13-15).

13. The average minutes of outage per customer for Gulf Coast in the disputed area for 1992 was 14.66. (Exhibit 17).

14. The average minutes of outage per customer for Gulf Power Company in the disputed area for 1992 was 86.39 minutes (Exhibit 7, Page 2).

15. For the Public Service Commission to establish the territorial boundary between GPC and Gulf Coast in South Washington and Bay Counties where the electric facilities are commingled and in close proximity and where further uneconomic duplication of facilities is likely to occur, the Commission should examine the exhibits furnished to it by the two utilities which include the location, type, and capacity of each utility's facilities as well as the detail maps submitted showing the location of these utility's facilities with respect to each other (Exhibits 2, 4 and 6) and then draw a territorial boundary on the ground between the utilities in the subject area in such a manner that further commingling, crossing, and construction of facilities in close proximity and where further uneconomic duplication is likely, will be avoided.

16. The methodology to be utilized by the commission in arriving at the location of this line is established by the criteria set forth at Gordon T-26/1-14, Daniel T-63/22 to T-64/1-15.

17. If boundary lines are to be drawn on the ground, according to Gulf Powers proposed methodology by Mr. Spangenberg, from six to fifty different lines would be necessary and those would need to be changed as new facilities are built. (T-342; T-229/11, T-228/18-19, T-352/17-19).

18. If boundary lines are to be drawn on the ground, Gulf Powers six level boundary proposal would allow continued crossings, parallel lines, facilities in close proximity and intermingled facilities (T-372/1-7).

19. Gulf Power Company failed or refused to show where a territorial boundary line should be drawn or established by the Commission as requested under Issue 7.

20. The territorial boundary line on the ground between these two utilities in the areas of South Washington and Bay Counties should be established as described on Exhibit 2 (AWG-4 and AWG-7).

21. A continuous boundary line between these utilities is necessary to prevent further uneconomic duplication in the identified areas where facilities are commingled, parallel, cross each other or are in close proximity or where further uneconomic duplication is likely to occur, and to reduce or eliminate future territorial disputes between these two utilities in the subject area and for the benefit of the rate payers and utilities. (T-23/11-12, T-25/1-20, T-77/22 to 78/5 and T-20/17, T-20/19-21, T-110/19 to T-111/22, T-67 to T-80/6).

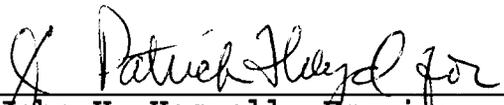
PROPOSED CONCLUSIONS OF LAW

1. The Public Service Commission has the power and jurisdiction to determine that a territorial dispute exists whether or not one of the affected utilities chooses not to recognize it and has the power to impose geographical boundary lines on the ground between these two utilities in order to prevent further

uneconomic duplication in areas where the electric facilities of each are crossing, commingled and in close proximity or where further uneconomic duplication is likely to occur. Florida Statutes 366.04(5), City Gas Co. v. Peoples Gas System, Inc., 182 So2d 429, 436 (Fla. 1965), Florida Public Service Commission v. Bryson, 539 So2d 1253, 1255 (FLA 1990), Lee County v. Marks, 501 So2d 585, 587 (Fla. 1987).

2. Chapter 366 speaks to "Territory", not to customers and as the Florida Supreme Court has ruled, a customer has no organic, economic or political right to choose an electric supplier merely because he deems it to be to his advantage, (Story v. Mayo, 217 So2d 304 (Fla 1968), Lee County v. Marks, 501 So2d 585 (Fla 1987)).

Respectfully submitted this 12th day of September, 1997.

  
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