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September 12, 1997

Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oaks Boulevard
Tallahassee, Florida 32399-0850

Via Hand Delivery

RE: Petition to Resolve Territorial Dispute with
Gulf Coast Electric Cooperative, Inc.
and Gulf Power Company
FPSC Docket Number: 93-0885-EU

Dear Ms. Bayo:

I am enclosing herewith the original and fifteen (15) copies of the Post Hearing Brief of Gulf Coast Electric Cooperative, Inc. and the Post Hearing Statement of Issues and Positions for filing.

If you have any questions regarding this matter, please do not hesitate to contact

ACK me.

AFA

APP

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JHH/lez
Enclosure
3 cc: Pat Floyd
Roy Barnes

Very truly yours,

John H. Haswell

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition to resolve territorial dispute)
with Gulf Coast Electric Cooperative,)
Inc. by Gulf Power Company)
_____)

Docket No. 930885-EU

Filed: September 12, 1997

**POST HEARING BRIEF OF
GULF COAST ELECTRIC COOPERATIVE, INC.**

Gulf Coast Electric Cooperative, Inc. ("Gulf Coast") in compliance with the Pre-hearing Order (PSC-97-0466-PHO-EU) issued on April 23, 1997, files herewith its post hearing brief. Attached to this brief is the required post hearing statement. In this brief the references to the transcript, for example, will be shown as T-51/7, meaning page 51 of the transcript at line 7. When the identity of a witness is appropriate, the witness's name will appear with the cite to the transcript, for example, (Gordon T-20/10).

*PART ONE
INTRODUCTION: SUMMARY OF ARGUMENT*

This case poses, clearly and plainly, two major questions for the Commission regarding its jurisdiction under Chapter 366.04. First, does the Commission have the jurisdiction to draw territorial/geographic boundary lines between any two or more utilities who are unable to agree on a boundary and secondly, if the Commission has that jurisdiction, is it willing to take the initiative in policing and monitoring the State's electric utilities and establish a territorial boundary between two or more utilities where their facilities are commingled, parallel, cross each other, are in close proximity and where further uneconomic duplication is likely to occur. The evidence and testimony adduced at the hearing together with the site visit provide an ample basis for answering both questions

"yes". To do otherwise will send two strong and clearly wrong messages. The first wrong message will be that the Commission does not truly have the authority to do whatever it takes to prevent, eliminate, and avoid uneconomic duplication in this state as mandated by statute, and the second wrong message will be that the Commission is willing to allow two or more utilities to essentially divide up customers on a case-by-case basis and to continue to build two sets of facilities in areas that could reasonably be served by one utility thereby allowing two or more utilities to position themselves to serve the same expected loads within a geographic area.

Chapter 366 speaks to "territory", not to customers, and as the Florida Supreme Court has long since 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 vs. Mayo, 217 So. 2d 304 (Fla. 1968)]. Gulf Power Company's ("GPC") position is that it's territory is all of northwest Florida including the ten counties west of the Appalachicola River. While it acknowledges that other utilities are present within its territory, GPC witnesses made it clear that they believe GPC has the capacity, facilities and capability of serving all customers in northwest Florida.

How GPC determines to serve a new customer is indicative of the need for a finite boundary. GPC's policy is to look at whether it is economic for the company to serve a customer, regardless of whether another utility is present in the same area. It claims that it really would not serve a customer if to do so would uneconomically duplicate service by another utility, but cast against its view that there is no uneconomic duplication existing in the area, its view that parallel lines, crossing lines, lines on both sides of the road, and alternating service by two or more utilities in a subdivision or along a road is not

uneconomic duplication, it is hard to imagine any scenario where GPC would not serve any customer if it was of economic benefit to the company to do so.

The folly of GPC's position is not unlike the folly of short term deficit budgeting by our federal government. By looking at, isolating if you will, only the immediate individual customer and the incremental costs to connect that individual customer, GPC ignores (and wants this Commission to ignore) the long term effects of short sighted expansionistic plans. The site visit was illustrative of the effects of GPC's "works well" policy, as well as the exhibits submitted showing the location of the facilities of the two utilities. The maps and the sites visited by the panel are full of facilities that are in close proximity, cross each other and parallel each other. What GPC proposes will further the intermingling of the two facilities and could ultimately result in every square inch of the area being capable of being served by either utility. GPC thinks that it is a great idea - every customer being capable of being served by two or more utilities - except for one thing. While touting customer choice, it is also clear that GPC means only a "one time" choice. It is further very clear that when GPC determines it is not economic for the company to serve a customer, it then refers the customer to Gulf Coast. Just looking at the maps submitted as exhibits (Exhibits 2 and 6) shows the results of GPC's policy. GPC has chosen to serve loads along highways, industrial parks, and planned developments like Sunny Hills, while Gulf Coast initially began serving rural areas beyond the more dense areas that GPC elected to initially serve. Now that these rural areas are subject to further development, GPC, consistent with its existing policy, wants to be able to move into any area, whether Gulf Coast has facilities there or not.

GPC made a big point about what might occur along a territorial boundary, where

one utility may be closer to a customer but for the boundary line, and uses that argument as the fundamental basis for arguing against ever drawing a territorial boundary line. By doing so GPC would have us focus only on single events, case-by-case, and be blinded to the long term effects of indiscriminate expansion. Certainly there will be areas and specific locations where but for a boundary line, it might have been less costly for one utility to extend service to a customer than it would for the other utility. The purpose of the boundary line, however, is to avoid uneconomic duplication on a much larger scale over the long term, and to allow both utilities the opportunity to prudently plan their system expansion, to control costs, to avoid costly disputes, to provide adequate and reliable service to their customers, all for the benefit of the ratepayers of both utilities.

Gulf Coast submitted a proposed territorial boundary line. GPC did not. Instead, it spent a considerable amount of time attacking and questioning the boundary line proposal by Mr. Gordon particularly focusing on the notion that there could possibly be other boundary lines drawn that would be just as reasonable as Gulf Coast's. That very well may be true, and certainly, as Mr. Daniel stated, Gulf Coast's boundary may be subject to some modification. Without the benefit of a proposed boundary line by GPC, Gulf Coast drew one where it reasonably believed was appropriate based on the location of the existing facilities and their relationship to the topography.

The Commission Staff only drew short line segments in specific discrete areas, at least recognizing the need for some boundary lines. However, as Mr. Gordon pointed out, unless there is a continuous boundary line separating the facilities of the two utilities, there is nothing to prevent either utility from going around the line segments.

Unless the Commission draws a boundary line as suggested by Mr. Gordon, or one

reasonably approximate thereto, these two utilities will very likely continue to construct facilities capable of serving the same load in the same geographic areas. The policy submitted by GPC Exhibit 5 (GEH-3 and GEH-4), particularly GEH-3, will do nothing to solve the long term goal of avoiding uneconomic duplication.

Because GPC and Gulf Coast were unable to mutually agree on the establishment of a territorial boundary in those areas of South Washington County and Bay County where their facilities are in close proximity, are co-mingled, cross, or where further uneconomic duplication may occur, the Commission therefore implemented this phase of its final order in this case, as clarified, for the purpose of establishing territorial boundaries between the two facilities in the aforesaid areas. Gulf Coast supports the Commission's directive and submitted testimony and exhibits to assist the Commission in establishing a boundary. It is Gulf Coast's position that such a boundary is necessary, in the public interest, to prevent the uneconomic duplication of facilities of these two utilities, to avoid further territorial disputes between the two utilities and to allow Gulf Coast the opportunity to rationally and prudently plan the growth of its existing system in an area where its territorial integrity is preserved. It is further Gulf Coast's position that unless the Commission does draw a finite boundary in the aforesaid areas that the rate payers of Gulf Coast will continue to be subject to the predatory practices of GPC in seeking to gain the loads of all future customers in the aforesaid areas thereby hindering Gulf Coast from opportunities to increase its density, load diversity, and to provide its customers with the lowest cost energy possible following reasonable and prudent utility practices. Without Commission intervention, both utilities will continue to plan to serve the same areas. The proposals submitted by GPC will simply guarantee further co-mingling, crossing, and uneconomic

duplication of facilities. The authority of the Commission to regulate the state's electric utilities is plenary. Not only does the Commission have the power to determine that a territorial dispute exists whether or not the affected utilities chose to recognize it, but also the Commission has the power to take whatever action is necessary to stop further uneconomic duplication from occurring. The grant of authority in Chapter 366.04(5) would be meaningless if the Commission did not have the authority to draw territorial boundaries, particularly when the failure to do so will allow the very thing the legislature intended to prevent. The powers of the Commission include those expressly given and those given by clear and necessary implication by the statutes. City Gas Co. v. Peoples Gas System, Inc., 182 So. 2d 429, 436 (Fla. 1965). The Commission has the authority to interpret the statutes that empower it, including jurisdictional statutes, and to make rules and issue orders accordingly. Florida Public Service Commission v. Bryson, 539 So. 2d 1253, 1255 (Fla. 1990). GPC urges the Commission to consider a law review article written in 1991 by two then members of the Commission's legal staff (Exhibit 5 GEH-2) which purportedly concludes that the then current system of approving territorial agreements and resolving disputes may be the "most innovative system among the alternatives....being debated" (GEH-2, p. 435). GPC fails to note that the authors referred to the system as one that developed exclusive service areas over time for the state's electric utilities (Id. at 413). The article also focuses on only one of the Commission's grant of authority - that is, the dispute resolution and approval provisions of Section 366.04(2)(d) and (e). The Commission's authority over the state's electric power grid is much more broadly stated, and includes the jurisdiction to avoid further uneconomic duplication of electric facilities. Section 366.04(5), Florida Statutes. The Florida Supreme Court has noted that it, "...repeatedly has approved

the PSC's efforts to end the economic waste and inefficiency resulting from utilities "racing to serve"....", Lee County v. Marks, 501 So. 2d 585, 587 (Fla. 1987), and has clearly defined two duties of the Commission, in this regard: one, to encourage and enforce territorial agreements for the public good, and two, "to police the planning development, and maintenance of a coordinated electric power grid throughout Florida to assure....the avoidance of further uneconomic duplication....". Id at 587. It makes no difference that there is not an immediate active dispute over an individual customer. Larger policies are at stake here, especially when it is clear that GPC will never agree to a territorial boundary establishing exclusive service territories, and that even in a dispute resolution over a customer, GPC would not regard an adverse ruling over a particular customer as one that would prevent it from attempting to serve another new customer in the same area. This is not a case under Section 366.04(2). It is clearly within the Commission's jurisdiction under Section 366.04(5).

PART TWO
ISSUES AND POSITIONS

Issue 1: What are the areas of South Washington and Bay Counties where the electric facilities of GPC and Gulf Coast are co-mingled and in close proximity?

Summary of Gulf Coast's position: Those areas identified by Mr. Gordon in Exhibit AWG-3 and AWG-6 and on the following maps: Washington County - 2218NW, 2218NE, 2218SW, 2218SE, 2220, 2221, 2320, 2321, 2322, 2418, 2419, 2420, 2421, 2518, 2519, 2520, 2521, 2618, 2619, 2620, 2717, 2718, 2719, and 2720. Bay County - 2828NW, 2828NE, 2828SW, 2828SE, 2830NW, 2830NE, 2830SW, 2731, 2733, 2632, 2633, 2634, 2533, 2534, 2433, and 2639, and those areas shown on Exhibit 6 (WCW-1).

Discussion: Mr. Gordon submitted maps showing areas where the two utilities have facilities in close proximity, parallel each other, or cross each other, Exhibit 2 (AWG-3 and AWG-6). Mr. Weintritt for GPC submitted maps as identified by Staff regarding close proximity, parallel lines, and crossings (T-268/17-23) Exhibit 6 (WCW-1). Close proximity according to GPC is anything within 1,000 feet (Weintritt T-268/23-T-269/5) which is consistent with the GPC policy statement using a 1,000 foot corridor, Exhibit 5 (GEH-3). Gulf Coast's view is that any map submitted that shows facilities of both utilities on the same map is close proximity (Gordon T-39/20). Essentially the maps speak for themselves, and the only real disagreement about this particular issue is whether the facilities that are shown to be in close proximity, parallel and crossing, constitute uneconomic duplication which is the subject of Issue 2. The commingling and close proximity of lines has been going on since 1947 (Gordon T-20/19-21).

Issue 2: What are the areas in South Washington and Bay Counties where further uneconomic duplication of electric facilities is likely to occur?

Summary of Gulf Coast's position: Those areas identified on Exhibit 2 (AWG-3 and AWG-6), together with those areas depicted on Exhibit 2 (AWG-2 and AWG-5) where the facilities of the two utilities are clearly intermingled, in close proximity, or cross each other. Future uneconomic duplication of facilities of South Washington and Bay Counties are also likely to occur in the same areas as identified in Issue 1.

Discussion: Further commingling and uneconomic duplication of electric facilities in the areas identified on Exhibit 2 (AWG-3, AWG-6, AWG-2 and AWG-5) is likely to occur as stated by Mr. Gordon (T-20/17). Uneconomic duplication has been occurring in these areas since 1947 when GPC built its line into Youngstown (T-20/19-21). GPC agrees that

some further duplication may occur on the maps identified on Exhibit 6 (WCW-1) although GPC would not say that such duplication was "uneconomic" (T-269/10-15). Consequently both parties agree that duplication of facilities is either likely or may occur. They simply disagree on whether or not it is uneconomic.

GPC's notion of uneconomic duplication is defined in such a fashion that none exists in the areas shown on Exhibits 2 and 6. Indeed, GPC notes that four or more utilities could be on one or both sides of the street and not constitute uneconomic duplication (T-194/3-8). GPC's position is that parallel lines are not necessarily uneconomic (Holland T-252/17-21). A crossing, according to GPC is also not uneconomic duplication where one utility is on one side of the road and crosses over the other utility on the other side of the road to serve a customer (Weintritt T-290/25) (see also Spangenberg T-372/1-7). Under questioning by Staff, in answer to the question, "Is it necessary to have two utilities in the same area to reliably meet the electric service requirements of a customer", GPC's position is it is not necessary but it helps a great deal (Holland T-246/19). Under questioning by Commissioner Clark, Mr. Holland, for GPC, also agreed that each utility could have lines along the same highway and then the customer should be able to choose who they want (T-247/15-20). Indeed, GPC's policy on uneconomic duplication would allow alternating service within a subdivision between two different utilities (T-248/11-21). Although Mr. Holland stated that he did not believe the Commission would let that situation happen (T-249/6-7), it poses the obvious question as to whether the Commission would even know such a situation was going on and how could the Commission prevent it? (T-249/10-11 and T-249/13-16). The answer by Mr. Holland was not responsive to the question (T-249/17-25). The obvious conclusion is that the Commission would not know what is going on

unless one of the utilities complained.

Both utilities are constructing facilities to serve significant numbers of duplicate customers (Daniel T-110/19 to T-111/22). This of course points to the likelihood of further uneconomic duplication and the rationale for establishing a territorial boundary line where each utility will have a known and finite area within to plan to serve customers without duplicating the facilities and capacity of another utility. The fact that there are two utilities in the same area that are capable of serving not only the existing load but additional load is, as Mr. Daniel stated, suggestive of the fact that both systems have planned to serve additional load in the area (T-111/12-16). Consequently, independent planning by the two utilities may result in overlapping facilities on the one hand, or underplanning facilities on the other (T-112/23-25). Lack of a territorial boundary encourages uneconomic duplication (T-134 - T-135). And as Staff also questioned Mr. Daniel regarding the necessity of having two utilities in the same area to reliably meet the needs of a customer, it is Gulf Coast's position that the answer is no (Daniel T-140/10).

GPC's plan is to serve all customers in northwest Florida (Holland T-189/22-23) and that of course is the ten county area west of the Appalachicola River (T-90/7). It is also GPC's position that territorial agreements lead to uneconomic duplication (T-199).

As part of this issue it is important to note GPC's method of deciding when to serve a particular customer, because this bears a direct relationship on whether uneconomic duplication is likely to occur. GPC's position is that it is case-by-case (T-184/8-11). The GPC fundamental position on whether to serve a particular customer is made by determining whether it is economic for the company to provide the service (T-184/16-20) regardless of whether another utility is present (T-290/13-17). Hence it is the cost to the

company (GPC) that is the key to GPC's determination (T-184/12-15, T-216/6-12, T-241/3-7 and T-243/17-23). In determining the economics to the company, and the "net cost to the utility" mentioned in GEH-4, GPC believes that any customer contribution in aid of construction should be deducted from the cost to the utility (GEH-1, page 1, line 10-11, T-235/20-25 and T-236/1-17). Mr. Pope, for GPC, also agrees that a customer ought to have the right to build a line extension to the utility of his choice (T-480/19-25 and T-481/1-14). Obviously Mr. Pope has not read Lee County v. Marks, 501 So. 2d 585 (Fla. 1987). When GPC determines that it is not economic for the company to serve a customer it refers that customer to Gulf Coast (T-188/5-10). GPC also stated that it does not build facilities in advance of forecasted load, which in areas of commingling, parallel lines and crossing may be an indication of uneconomic duplication (T-189/13). However the testimony from the first phase of this docket and the testimony of Mr. Weintritt indicate that GPC installed more capacity in its substation for service to Sunny Hills than has ever been needed since 1971, and recently changed out that transformer reducing its capacity to 12mva from 25mva (see T-283). Mr. Weintritt claims that was not speculative but was based on the projections by the developer. GPC's method of how to decide to serve a particular customer is also interrelated to Issue 6 where GPC urges that its past guidelines from the 1947 contract (WCW-3) and the FERC tariff (WCW-4) worked well and presumably aided in avoiding uneconomic duplication. Mr. Weintritt pointed out that over the years GPC has followed the 1,000 foot rule of the FERC tariff (T-280/2-10). However it is clear that GPC did not follow that rule in the Sunny Hills dispute in 1971. Again, Mr. Weintritt claimed that the installation of the 25mva transformer at Sunny Hills, and obviously other facilities, was not speculative in response to questions by Commissioner Clark (see T-307/20 to T-308/23).

To counter the obvious inconsistency, GPC produced Exhibit 10, a news article from the Panama City News Herald dated July 6, 1970 (T-304/24-25 to T-307/18). This purportedly added credibility to the developer's claims (T-305/24-25). Interestingly, however, the newspaper article was not part of the company records (T-309/17) and Mr. Weintritt only saw the news article a couple of weeks prior to the hearing (T-309/8). Mr. Weintritt also acknowledged that he was not around in 1971, and consequently there is no evidence that GPC ever considered the newspaper article to establish the "credibility" allegedly used by GPC to counter the "speculative" argument. Clearly the uneconomic duplication that has occurred and is likely to occur in the future is carefully and properly explained by Mr. Daniel in his direct testimony (T-67 to T-80/6). Mr. Pope also admitted that GPC installs more capacity than is needed at a point in time, which he regards as prudent planning (T-474/24 to T-475/3). Of course it is prudent planning, but when both utilities do it in the same area, they are building facilities capable of serving the same load (T-111/12-22, T-76/10 to T-77/19).

It is also appropriate here to discuss the concept of "territory" as seen by GPC and Gulf Coast. It's definition by GPC clearly establishes that further uneconomic duplication is likely to occur. First, GPC claims its territory as the ten county area of northwest Florida (Holland T-190/7). GPC believes that it has an obligation to serve "all we can economically serve within the ten county area" (T-190 to T-192). It is obviously GPC's view that "territory" means something different than the statutory language and its plain meaning. Although under questioning Mr. Holland agreed that the plain meaning of territory is a geographic area (T-226/3-7) it is apparent that GPC's case-by-case (customer-by-customer) method of determining whether to serve a particular customer is the rule rather

than service to a specific geographic area. By separating customers from geographic areas, GPC has defined "territory" as a collection of individual customers who are served by GPC regardless of their geographic location.

When facilities of these two utilities are in close proximity, parallel each other and cross over each other, and one utility believes that no uneconomic duplication has occurred or is likely to occur, that its territory includes all of the geographic area of northwest Florida, that it can serve all customers in northwest Florida, that it will serve any customer if its to the benefit of the company to do so, and when it believes it is a good idea for the two utilities to have facilities in the same area capable of serving the next customer who needs service, there can be little doubt that uneconomic duplication is not only likely to occur, it is inevitable.

Issue 3: What is the expected customer load, energy, and population growth in the areas identified in response to Issues 1 and 2 above?

Summary of Gulf Coast's position: The expected customer load, energy, and population growth are as identified in Exhibit 2 (AWG-8) and Exhibit 4 (SPD-3, SPD-4 and SPD-5) which are incorporated herein by reference.

Discussion:

TOTAL

<i>Year</i>	<i>No. of Customers</i>	<i>Energy Sales (KWH)</i>	<i>Demand (KW)</i>
1996	1,309	16,451,736	47,962
1997	1,370	17,969,676	51,154
1998	1,431	19,429,380	54,066
1999	1,489	20,879,058	56,849
2000	1,543	22,297,632	59,137

Issue 4: What is the location, type, and capacity of each utility's facilities in the areas identified in response to Issues 1 and 2 above?

Summary of Gulf Coast's position: In South Washington County: Gulf Coast customers in the identified areas of South Washington County are served primarily by the Crystal Lake subdivision which is located on the east side of State Road 77 near the Bay/Washington County line. This substation is 7,500kva, 115kv to 25kv. South Washington County distribution facilities are served off of the substation circuit at 25kv (preferred service) with backup service available from the north circuit of the Southport substation in Bay County.

In Bay County: Gulf Coast customers in the identified areas of Bay County are served by the following substations; Bayou George South 8,000kva, 46kv to 25kv; Bayou George North 10,000kva, 115kv to 25kv; Fountain 7,500kva, 115kv to 25kv; Southport 15,000kva, 115kv to 25kv.

Bay and South Washington County distribution facilities are served off of the main distribution feeders as shown on Exhibit 2 (AWG-2, Bay County; AWG-5, Washington County) from the substations at 25kv (preferred and/or backup service) from a flexible switching distribution system.

Discussion: It is apparent from the data submitted by both GPC and Gulf Coast for both Issue 3 and Issue 4 [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)], that both utilities have the facilities and available capacity in place to serve the expected growth in the area in the next five years. Exhibit 2 (AWG-8) provides the basic data in response to this issue (T-26/18-19). The information is also discussed by Mr. Daniel in his direct testimony (T-82/1 to T-

85/20), and in Exhibit 4 (SPD-3, SPD-4 and SPD-5).

Issue 5: Is each utility capable of providing adequate and reliable electric service to the areas identified in response to Issues 1 and 2 above?

Summary of Gulf Coast's position: Yes, both GPC and Gulf Coast are capable of providing adequate and reliable service to all areas of South Washington and Bay Counties. Notwithstanding GPC's claims that its distribution reliability is much better than Gulf Coast's, the reliability of Gulf Coast's system is just as reliable as GPC's.

Discussion: Gulf Coast is capable of providing adequate and reliable service to the areas, and Gulf Coast has no reason to believe that GPC is not also capable (Gordon T-28/4-8; Daniel T-86 to T-89/6). Although Mr. Holland and Mr. Weintritt claim or believe GPC's service is better, they have no data to prove that GPC is any more reliable than Gulf Coast (Holland T-211/21-25, T-272/1; Weintritt T-289/13-15). GPC attempted to use outage data submitted by the parties to Staff to suggest its reliability was better (Weintritt T-271/20-21) based on average outage time. However it became apparent that GPC's data was based on total outage time for its entire eastern district divided by its total customers in the district (Weintritt T-284-286) while Gulf Coast had used total outage time divided by the number of customers who were actually out of service (see T-655 to T-661/3). Exhibit 17 shows the proper apples to apples computation for Gulf Coast, that the average minutes of outage per customer in the disputed area for 1992 was 14.66. Mr. Weintritt's testimony for the eastern district of GPC was 41.4 minutes (T-271/24), and for the disputed area, it was 86.39 minutes for 1992 (Exhibit 7, page 2). Mr. Klepper opined that service by GPC was superior to Gulf Coast because Gulf Coast was "sub-optimum" in size, but he could not cite any analysis of Gulf Coast's operations that would support his evaluation (T-541/4-

7).

Issue 6: How should the Commission establish the territorial boundary between GPC and Gulf Coast in South Washington and Bay Counties where the electric facilities are co-mingled, and in close proximity and further uneconomic duplication of facilities is likely to occur?

Summary of Gulf Coast's position: The Commission should examine the Exhibits furnished to it by the two utilities which includes the location, type and capacity of each utility's facilities, as well as the detail maps submitted showing the location of each utility's facilities with respect to each other (Exhibits 2, 4 and 6). A territorial boundary should then be drawn between the two utilities in such a manner that further co-mingling, crossing, construction of facilities in close proximity, and where further uneconomic duplication is likely, will be avoided. The methodology is that as submitted by Mr. Gordon in his direct testimony and supported by Mr. Daniel, regarding the criteria to use.

Discussion: The maps submitted by the parties provide the starting point for determining how a line should be drawn. Exhibit 2 (AWG-2, AWG-3, AWG-5 and AWG-6) and Exhibit 6 (WCW-1). Next the Commission should consider the criteria set forth by Gulf Coast (Gordon t-26/1-14 and Daniel T-63/22 to T-64/1-15). Those criteria are specifically:

1. Routes along natural topographical or geographical features which of themselves tend to discourage electric facility commingling and construction in close proximity. This includes bays, rivers, creeks, swamps, etc.
2. Routes along land lines and property ownerships.
3. Routes along or between roads, streets, recorded plat subdivisions and where existing electric facilities are already commingled and/or in close

proximity.

4. Areas where historic electrical service has been established and provided.
5. Areas that will provide opportunity for additional development and electrical load growth.
6. Areas where the electrical utilities have made a choice and commitment to provide service, or declined to provide service during the past historical operating period. (T-26/1-14)

The general factors the Commission should use include the following:

- a. The avoidance of further uneconomic duplication;
- b. The assignment of the right to serve an area must recognize the historical presence of the respective competing utilities in identified area(s), including the physical location of existing facilities;
- c. Minimization of the transfers of customers and facilities, taking into account, among other things, reintegration costs and administrative costs of such transfers, whether immediate or over a transition period;
- d. The readiness, willingness, and ability of the respective utilities to serve identified area(s);
- e. The continuity of planning and operation of the respective competing systems;
- f. The continuity of service areas;
- g. Reliability;
- h. Natural physical boundaries;
- i. Resolutions of prior service area disputes; and

j. The respective utilities' cost to serve identified area(s). (T-64/1-15)

Critical amongst the factors to consider is service area integrity (T-65/11-7) due to the capital intensive nature of providing electric service, the lead times necessary for planning and construction and planning for anticipated load in a defined area (T-65/19-23, T-66/1-7). Without service area integrity, neighboring utilities may tend (and would have no constraints) to engage in service area competition (T-66/8-12). Historical presence is also an important consideration. If a utility is already present in an area capable of providing service from either existing facilities, or additions to its facilities, it is not necessary or economic for another utility to move in to compete for the same customers (T-69/11-23, T-70/1-23). (see also T-110/16-25 through T-111/12-16 and T-140/10).

GPC's position on the issue is not to draw a territorial boundary, period (T-218/19-22; see GPC's position statement to issue 6 in Prehearing Order PSC-97-0466-PHO-EU at page 12). GPC claims the manner in which disputes have arisen and have been settled over the years has "worked well" (T-272/15 to T-273/3 and T-273-275) and cites the 1947 contract between Gulf Coast and GPC [Exhibit 6 (WCW-3) and the FERC tariff, Exhibit 6 (WCW-4)] as the salutary methodology to use. While it is clear that GPC did not stick to the allocation of service provisions of WCW-3 or WCW-4 when it moved into Sunny Hills in 1971, the 1,000 foot rule and 300kva load limit nonetheless do not provide sufficient safeguards for avoiding uneconomic duplication. While there may be periods of time under these so called "works well" policies when there were not formal filed disputes, one cannot simply look at just one time frame when there were not any filed (Bohrmann T-430). Indeed, simmering territorial conflict appears to be a way of life for GPC and Gulf Coast (T-440/23-25). As previously noted, not all disputes are brought to the Commission because

of the expenses involved (T-40/17-21; T-133/5-8; T-134/13-15; T-299/7-17). Because GPC's view of territory is customer-by-customer, on a case-by-case basis, and because GPC evaluates whether it is economic for the company to service a specific customer without regard to the location of other utilities, it is obvious that its policy will not avoid further disputes and uneconomic duplication.

If there are to be boundaries, GPC offers three other proposals: (1) at least six floating load level boundaries as suggested by Mr. Spangenberg, (2) GPC's proposal as set forth in Exhibit 5 (GEH-3), and (3) the mediation proposal of Exhibit 5 (GEH-4). These proposals will do nothing to solve the continuing growth of intermingled facilities, and indeed, such policies will guarantee that further uneconomic duplication will occur. Mr. Holland for GPC agrees that following GPC's policy statement of GEH-3, which is similar to the old FERC tariff, each utility would still be able to serve customers next to customers already served by the other utility (T-230 to T-233/16). GPC's policy would allow it to extend service from any point on one side of Gulf Coast's 1,000 foot corridor to any point 1,001 feet or more on the other side of Gulf Coast's corridor (a crossing), and it would also allow for unlimited expansion outside the 1,000 foot corridors. The logical extension of this policy would result in more crossings, more parallel lines, and more intermingling, which, of course is perfectly okay as far as GPC is concerned.

Mr. Spangenberg opined that if lines were drawn, at least six would be necessary (Mr. Holland thinks it should be 50 or more)(T-342 et seq; T-229/11 and T-228/18-9). But wait. Those "lines" would need to be changed as new facilities are built (T-352/17-19).

So what value is there to Spangenberg's floating six load level boundaries? None whatsoever. Mr. Spangenberg agreed with Commissioner Clark that his six tier system

was really nothing more than a way to allocate customers and not territory (T-344/16-18 and T-345/1-10). While as Mr. Holland did, Mr. Spangenberg said the plain meaning of "territory" is a geographic representation (T-346/8-9) he sees it as sales territories that are not exclusive (T-346/11-12). Indeed, on Map 2633, part of Exhibit 11 (the representation of what six load level boundaries would look like) it is clear that either utility could serve customers anywhere in the geographic area depicted (T-353 to T-354). As far as determining what category a particular load level falls in, GPC's view is the developer or the utility would decide. By aggregating loads, service to an area could be elevated from one category to another (T-357/2-25, T-358/1-11). So here is the game to be played: assume a 300kva category load level whereby GPC's policy described in GEH-3, a utility may have some service area integrity within the 1,000 foot corridor, and a new customer comes along claiming it will be building a subdivision right under Gulf Coast's three phase line. The developer plats the subdivision of 100 lots and begins to sell them. The first new lot owner, whose load will be somewhere around 4kva, applies for service from GPC even though his lot is immediately adjacent to Gulf Coast's three phase line. GPC will argue that it has the right to serve that lot by claiming that the aggregate load for the subdivision is really 400kva even though the total load may not materialize, like Sunny Hills, for twenty or thirty years or even longer (see T-358/6-11).

Remarkably, GPC claims it could not prudently plan its systems expansion if it had a specific defined territory (T-360/2-12). GPC does agree, however, that it does do area planning, that is, it plans on serving the load that customers will put in an area (T-363/6-12) and agrees that Gulf Coast is doing the same thing (T-363/12-24). Mr. Spangenberg then stated that GPC does not plan to serve an area, just the customers (T-364/5-7). He, too,

claims northwest Florida as GPC's territory (T-365/8-9).

GPC defines uneconomic duplication as follows: "Uneconomic duplication is the duplication of one utility's facilities by another utility at a cost that is significantly above any corresponding exclusive benefit" (T-366/18-22 and Exhibit 12), and after struggling through several minutes of testimony, Mr. Spangenberg agreed that by that definition GPC means if the exclusive benefit received by GPC is significantly above its cost to serve, then GPC would not consider an extension to a customer as uneconomic duplication (T-370/19-25). Presumably this definition comes into play when another utility is in the same area. Mr. Spangenberg also explained the application of the definition where the benefit to one utility would be compared to the benefit to the other utility (T-369/5-19). Although he was not precise in his explanation to Commissioner Clark, the conclusion is clear. GPC would also claim the right to serve a customer who could be served by either of two utilities if GPC determined that the benefit to it was greater than the benefit to the other utility. It is kind of a heads I win, tails you lose proposition.

Spangenberg agreed that under his six level boundary proposal there could be continued crossings, parallel lines on opposite or the same side of streets, facilities in close proximity, and intermingled facilities (T-372/1-7) and the crossings and commingling could be done, in GPC's view, by the utility which has a higher cost to serve than the other utility, as long as it was within the cross hatched area of his overlapping service area maps (T-372/8-12 and Exhibit 12), even if the cost difference was as much as a million dollars! (T-372/17-21).

This issue included GPC's position that the PSC should not draw boundary lines at all, and that doing so will mandate uneconomic duplication (Holland T-158/18-22). GPC

cites the scenario of where but for a boundary line between two utilities, the one closer to the boundary line, but on the "wrong" side would be able to serve a customer at less cost than the host utility on the other side of the boundary who was farther away from the customer's location (see T-159). By looking at uneconomic duplication on an incremental basis, one customer at a time, with the variable "deminimus" rule thrown in, GPC casts a blind eye on the long term interest of the public, instead of looking at the "best long term interest of all customers affected...." (T-417/6-10), as Mr. Bohrmann noted. Mr. Weintritt agreed, that incremental deminimus extensions can add up (T-301/17-22), which, when added to the total GPC view of uneconomic duplication and its proposed policy, demonstrates a disregard of the long term effects of unregulated facilities expansion. There very well may be some areas where a boundary line would prevent a utility from the natural and logical expansion of its service in that specific area. There very well may also be areas where it would cost one utility more to construct facilities than the other utility because of a boundary line. To fully implement the legislative mandate to avoid further uneconomic duplication the Commission must be able to look farther down the road, farther than an area close to a boundary line, farther than the simplistic notion of incremental, case by case, determinations by a company that looks to the benefit of itself. The Commission has two choices. One is to allow the two utilities to divide up the area on a customer by customer basis [as GPC agrees should be done (T-217/1-4)] or to establish a boundary line sufficient to prevent, over the long term, continuing crossings, parallel lines, intermingling, and the resulting uneconomic duplication of entire systems. What is at stake is far broader than looking at the last piece of an incremental distribution extension (Daniel T-127/23 to T-128/2, and Daniel T-124/12 to T-125/13).

Issue 7: Where should the territorial boundary be established?

Summary of Gulf Coast's position: The territorial boundary should be established as described in Mr. Gordon's direct testimony and as detailed on Exhibit 2 (AWG-4 and AWG-7).

Discussion: With all due respect for the Commission Staff, the small line segments proposed by Mr. Bohrmann, while recognizing the need for boundary lines will not prevent a utility from going around the segment.

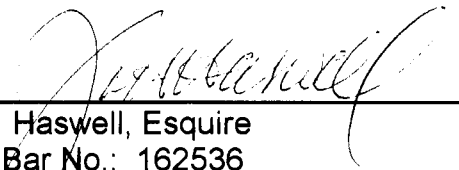
Following the general and specific criteria set forth by Mr. Daniel and Mr. Gordon, the Commission should draw a continuous line as drawn and described in Exhibit 2 (AWG-3, AWG-4, AWG-6 and AWG-7). A continuous line is necessary to prevent end runs around a line segment by either utility (T-23/11-12, T-25/1-20). (See also Daniel T-77/22 to T-78/5). The line was also drawn to minimize transfers as recommend by Mr. Daniel (T-71/4 et seq.). The rationale for the location of the line as proposed by Gulf Coast is largely explained in Gulf Coast's discussion of issues 2 and 6.

GPC will attack the line, as it did at the hearing, claiming that Gulf Coast drew the line to fence GPC in, to promote Gulf Coast's interests and to allocate more territory to Gulf Coast than to GPC. GPC will also point out specific areas where Gulf Coast has single phase facilities on its side of the line, while GPC may have three phase service on its side, etc., etc. We should be quick to recall that GPC will not agree to a line no matter where it is drawn, and furthermore, since GPC did not propose a line of its own choosing, Gulf Coast was not afforded an opportunity to consider and offer alternative proposals or modifications to its proposed territorial line. What Gulf Coast did do was exactly what the Commission asked both parties to do - submit a proposed boundary line. Hence, as Mr.

Daniel stated, considering alternatives to Mr. Gordon's line that may accomplish the same result of preventing further uneconomic duplication would simply be hypothetical. GPC's fussing at Mr. Daniel and Mr. Gordon about the line's location was nothing more than trying to get those witnesses to argue with themselves. Certainly there could be modifications to the only proposed line in evidence (T-95/20-23, T-96/17) and it is also true, but highly unlikely, that uneconomic duplication will not absolutely occur if the Commission does not adopt Gulf Coast's line (T-98/11). As has been previously discussed, there may be instances where the location of the line by Gulf Coast may prevent a utility from serving in areas that, but for the line, would be a logical and natural extension of existing facilities (T-101/25). As Mr. Daniel said, it is difficult to set up criteria that will not result in some overlap and interplay (T-109/7-11), and so it is with any rule, standard, or guideline. That should not stop the Commission from going forward with a solution to the continual crossings, paralleling, and intermingling of facilities, in the long term interests of all the affected customers of both utilities. The statute grants the Commission broad powers to resolve territorial disputes, even when the utilities refuse to recognize that disputes exist. The implementation of the state's policy of avoiding further uneconomic duplication has been handed to the Commission. That policy, and the powers behind it, both specific and those necessarily implied to make the regulatory scheme work, provide the Commission with ample authority to take the initiative now, and not sit back and wait for the inevitable squabbles to come to it. And while the waiting goes on, the territory of northwest Florida will be divided up on a customer by customer basis. The integrity of existing Commission

approved territorial agreements and the policy of avoiding range wars and encouraging territorial agreements is at stake.

Submitted by,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. mail to the following:

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