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TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (PAUGH) *JAP RVE*
DIVISION OF ELECTRIC AND GAS (BASS, BREMAN) *BZ CS*

RE: DOCKET NO. 930885-EU - PETITION TO RESOLVE TERRITORIAL
DISPUTE WITH GULF COAST ELECTRIC COOPERATIVE, INC. BY
GULF POWER COMPANY. *JOJ RLT*

AGENDA: 11/04/97 - REGULAR AGENDA - POST-HEARING DECISION -
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\930885.RCM

CASE BACKGROUND

On September 9, 1993, Gulf Power Company (Gulf Power) filed a petition to resolve a territorial dispute with Gulf Coast Electric Cooperative, Inc. (Gulf Coast). The issue to be resolved in that proceeding was whether electric service to the Washington County Correctional Facility should be provided by Gulf Power or Gulf Coast. A two-day hearing was held on October 19 and 20, 1994, and Order No. PSC-95-0271-FOF-EU was issued on March 1, 1995, ordering Gulf Power to provide electric service to the Washington County Correctional Facility. The decision awarding service to Gulf Power was overturned by the Florida Supreme Court on May 23, 1996. Gulf Coast Electric Cooperative v. Clark, 674 So.2d 120 (Fla. 1996). However, the Court's decision did not address the portions of Order No. PSC-95-0271-FOF-EU which directed Gulf Power and Gulf Coast "to negotiate in good faith to develop a territorial agreement to resolve duplication of facilities and establish a territorial boundary in south Washington and Bay Counties." Order No. PSC-95-0271-FOF-EU further stated that if Gulf Power and Gulf Coast "are

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unable to negotiate an agreement, then (the Commission) will conduct an additional evidentiary proceeding to resolve the continuing dispute between them."

On March 16, 1995, Gulf Power filed Exceptions to Order No. PSC-95-0271-FOF-EU and Request for Clarification. Gulf Power did not file a motion for reconsideration of the Order nor did Gulf Power ask for relief on its exceptions. Gulf Power only asked the Commission to clarify that the intent of the Order did not limit the parties' negotiations to the establishment of a territorial boundary in Washington and Bay Counties. Gulf Coast filed a Response to Gulf Power's Exceptions and Request for Clarification on March 31, 1995.

On July 27, 1995, the Commission issued its Clarifying and Amendatory Order No. PSC-95-0913-FOF-EU. The Commission stated on Page 3 that:

[O]ur Order does intend to establish a territorial boundary in the areas identified in the record where the utilities' facilities are commingled or are in close proximity, and where further territorial conflict and uneconomic duplication of facilities is likely to occur.

The Commission's belief, as stated on Page 4, is that:

[A] territorial agreement implicitly, logically, and necessarily contemplates the establishment of a territorial boundary. That is clearly what we intend the parties to do in areas of South Washington and Bay Counties where facilities are commingled or are in close proximity and where further conflict is likely. (Emphasis in the original)

A boundary is not necessarily required in areas where there is no conflict and none is reasonably foreseeable. In those areas, and in other areas of the Panhandle where there is no present conflict, we agree with Gulf Power that the utilities should be encouraged to consider a wide range of possible solutions to accommodate future growth and avoid future conflict. Also, there are numerous ways to define territorial boundaries, as the many and varied territorial agreements the Commission has approved for utilities throughout the State clearly demonstrate. We believe that with this clarification,

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Order No. PSC-95-0271-FOF-EU provides the utilities full opportunity to fashion an agreement that is "creative", practicable and beneficial to both sides, and to the public interest.

We encourage Gulf Power and Gulf Coast to consider a variety of possible solutions to avoid future conflict and accommodate future growth for two reasons. First, because there have been continuing disputes between these utilities, it is reasonable to plan to avoid further conflict in all areas where it might arise. Second, the record indicates that both utilities have demonstrated considerable interest in the future economic development of the Panhandle. We believe that Gulf Power and Gulf Coast now have a unique opportunity to work together to plan for, and contribute to, that development.

However, during the two years since the Commission issued Orders No. PSC-95-0271-FOF-EU and PSC-95-0913-FOF-EU, Gulf Power and Gulf Coast have been unable to agree on a territorial boundary. An evidentiary hearing was held on April 29 - 30, 1997, so that the Commission could determine the appropriate boundary for the utilities.

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DISCUSSION OF ISSUES

ISSUE 1: What are the areas in South Washington and Bay Counties where the electric facilities of Gulf Power and Gulf Coast are commingled and in close proximity?

RECOMMENDATION: There are at least 27 areas identified on the following maps where the electric facilities of Gulf Power and Gulf Coast are commingled and in close proximity. The map numbers are: 2218NE, 2218NW, 2218SE, 2218SW, 2220, 2221, 2320, 2321, 2322, 2518, 2519, 2618, 2533, 2534, 2632, 2633, 2634, 2639, 2731, 2733, 2828NW, 2828SW, 2828NE, 2828SE, 2830NE, 2830NW, and 2830SW. [BREMEN]

SUMMARY OF POSITIONS:

Gulf Power: Those places on the following identified maps (Composite Exhibit 6) in which one utility's facilities are within 1000 feet of the other utility's facilities: map numbers 2218NE, 2218NW, 2218SE, 2218SW, 2220, 2221, 2320, 2321, 2322, 2518, 2519, 2618, 2533, 2534, 2632, 2633, 2634, 2639, 2731, 2733, 2828NW, 2828SW, 2828NE, 2828SE, 2830NE, 2830NW, and 2830SW.

Gulf Coast: 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).

STAFF ANALYSIS: Gulf Coast identified more areas than Gulf Power. Gulf Coast's additional areas are on the following maps: 2418, 2419, 2420, 2421, 2433, 2520, 2521, 2619, 2620, 2717, 2718, 2719, 2720. [Composite Exhibits 2 and 6] The difference in the parties' positions appear to hinge on the definition of "close proximity." Gulf Power suggests a minimum distance of 1,000 feet be used to determine close proximity. However, according to Gulf Coast, "close proximity" can simply mean the ability of both

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utilities to serve a given area or the presence of facilities of both utilities on the same map.[TR 39, 109, 268, 282] After reviewing the maps, staff believes that Gulf Coast included an additional 13 maps based on a differing definition of "close proximity" as well as a desire to completely demonstrate a proposed territorial boundary between Gulf Coast and Gulf Power.[TR 24, 39]

Staff disagrees with Gulf Coast's position that close proximity is the area addressed by any given map. Each map addresses a substantial area of approximately 3.44 square miles. Therefore, a definition which covers such a wide area does not appear practical or functional. Staff is also concerned with establishing definitions which could possibly impact other utilities which are not parties to this case. However, in this instance, the exact definition of "close proximity" is not necessary to resolve the issue for two reasons. First, the parties agree that in at least 27 areas there are existing facilities which are commingled and in close proximity. Second, exclusion of the additional areas identified by Gulf Coast from the resolution of this issue does not impact the resolution of the other issues in this case.

It is clear from the record that there are multiple areas where Gulf Coast and Gulf Power have existing facilities which are commingled and in close proximity in South Washington and Bay Counties. The extent of the conflict, at a minimum, is the 27 areas both parties agree on. The map numbers identifying these areas are: 2218NE, 2218NW, 2218SE, 2218SW, 2220, 2221, 2320, 2321, 2322, 2518, 2519, 2618, 2533, 2534, 2632, 2633, 2634, 2639, 2731, 2733, 2828NW, 2828SW, 2828NE, 2828SE, 2830NE, 2830NW, and 2830SW. [Composite Exhibits 2 and 6]

Therefore, staff recommends the Commission find that there are at least 27 areas where the electric facilities of Gulf Power and Gulf Coast are commingled and in close proximity.

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

RECOMMENDATION: There are at least 27 areas identified on the following maps where further uneconomic duplication of electric facilities is likely to occur. The map numbers are: 2218NE, 2218NW, 2218SE, 2218SW, 2220, 2221, 2320, 2321, 2322, 2518, 2519, 2618, 2533, 2534, 2632, 2633, 2634, 2639, 2731, 2733, 2828NW, 2828SW, 2828NE, 2828SE, 2830NE, 2830NW, and 2830SW. [BREMAN]

SUMMARY OF POSITIONS:

Gulf Power: There are no such areas, provided that fixed boundaries are not mandated. Future uneconomic duplication of electric facilities can be easily avoided by these utilities through the application of and compliance with guidelines previously established by this Commission or through refinements such as those set forth in Composite Exhibit 5.

Gulf Coast: 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.

STAFF ANALYSIS: Issue 1 speaks to the presence of facilities by both utilities in a given area. The two parties identified at least 27 mapped locations where physical facilities were co-located. Issue 2 takes the next step. It asks where is it likely that uneconomic duplication will occur. This issue is the heart of the dispute before the Commission in this docket. If there is an expectation that future uneconomic additions will occur and if the parties will not come to an agreement, then the Commission should take action. If there is no expectation of future uneconomic duplication then Issues 1, 3, 4, 5, 6, and 7 become moot.

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The appropriate evidence to consider in determining whether uneconomic duplication will occur is the historical growth patterns of both utilities, whether these patterns are expected to continue, and the potential impacts on the general body of ratepayers. The record clearly supports the conclusion that actions of both utilities have resulted in the ability to serve many of the same customers. Gulf Coast suggests that uneconomic duplication may have occurred and is likely to continue in the areas identified in Issue 1.[TR 20] It has become a question of which company places a service drop.[TR 560] The Commission viewed an example of this along Highway 279.[TR 501, 757] This site is an example of two utilities extending lines along the same road. This is the same condition which Mr. Holland indicated that the Commission could, on its own motion, determine that a dispute existed. He also indicated that it typified a race to serve.[TR 224-225] A review of many distribution line installation dates indicates that both companies entered areas already served by the other utility.[Ex 3, 8] In light of this, staff believes the Commission can conclude that the historical patterns of these companies have probably resulted in uneconomic duplication.

Gulf Power agrees that duplication of facilities will likely occur in the identified areas. However, they maintain that the simple fact that facilities are side by side does not necessarily lead to the conclusion that facilities are or will result in uneconomic duplication. [TR 269] They argue that the amount of duplication that rises to the level of uneconomic duplication is best determined on a case-by-case basis.[216, 241, 243] When asked to evaluate their service area in South Washington and Bay Counties as required by this issue, Gulf Power failed to provide specific locations. Instead, Gulf Power responded that there will be no areas where further uneconomic duplication of electric facilities is likely to occur as long as fixed boundaries are not established and their proposed territorial policy is adopted. Gulf Power's conclusion, however, is based on its definition of "uneconomic duplication." [Ex 12] Gulf Power defines "uneconomic duplication" in terms of the costs and benefits accruing solely to Gulf Power from serving or not serving a given area, load or customer such as the incremental cost to serve, expected revenues, or other exclusive benefits.[TR 43, 290, 366, 369, 370, 564, 699, Ex 12] Benefits are defined as additional revenues in excess of the cost of building facilities to reach the customer. Gulf Power goes on to say that if a customer is willing to build, or pay Gulf Power to build the necessary facilities, this cost should not be considered in determining the cost to serve.[TR 187-8, 235-6, 244, 480]

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Staff finds Gulf Power's arguments to consider only the cost and benefits to Gulf Power contrary to Commission practice and policy in territorial disputes. The Commission has historically employed or utilized a broader definition which more appropriately considers public interest, not the interests of only one utility. To preserve the public interest, one utility or the other may be required to engage in what they may consider uneconomic. This is a fundamental difference between a competitive utility's views and the Commission's obligation. Staff recommends that this broader definition of uneconomic duplication be applied in this case.

It is intuitive that the current problematic conditions as identified in Issue 1 will only become more pronounced due to continued competition for future load in the same area by two utilities. It appears inevitable that uneconomic duplication will likely occur. This is simply the natural result of both companies continuing to serve in the same area with independent planning and independent responses to growth demands. [TR 110-112, 140, 184, 190-192, 246, 247, 282, 290, 464, 550, 640-642]

Based on the foregoing, staff recommends that further uneconomic duplication of facilities is likely to occur in the areas identified in Issue 1 by the following map numbers: 2218NE, 2218NW, 2218SE, 2218SW, 2220, 2221, 2320, 2321, 2322, 2518, 2519, 2618, 2533, 2534, 2632, 2633, 2634, 2639, 2731, 2733, 2828NW, 2828SW, 2828NE, 2828SE, 2830NE, 2830NW, and 2830SW.

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

RECOMMENDATION: The respective company forecasts of load, energy and population growth in the areas identified in response to Issues 1 and 2 are reasonable. [BREMAN]

SUMMARY OF POSITIONS:

Gulf Power: The expected customer load, energy and population

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growth on Gulf Power's system in the full portions of South Washington and Bay Counties shown on the maps identified as Composite Exhibit 6 (enumerated in Gulf's position on Issue 1 above) are as follows:

YEAR	CUSTOMER LOAD (KW) *	ENERGY (KWH) *	CUSTOMERS*
1995	15,495	28,819,654	1,371
1996	15,818	32,712,628	1,438
1997	17,112	35,269,973	1,511
1998	18,946	41,093,598	1,588
1999	20,219	43,700,186	1,668
2000	21,759	46,881,912	1,753

*All values given are determined by the customers presently served by Gulf Power with the expected growth assuming no change in the method of determining customer's affiliation.

This forecast is based on reasonable planning assumptions and does not require significant facility upgrades or additions in order for Gulf Power to provide the required electric service.

Gulf Coast: 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.

STAFF ANALYSIS: Although each party's expectation of growth is different, it appears that both companies' forecasts of load, energy and population growth in the areas identified in response to Issues 1 and 2 are reasonable or appropriate. The discussion of future load and load growth in this proceeding centered around whether or not Gulf Power was forecasting the same growth which Gulf Coast was expecting to serve.

Gulf Coast's witness, Mr. Daniel, opines that the two utilities are forecasting the same growth which is the reason establishment of respective territorial service areas is

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appropriate. However, Mr. Pope indicates that Gulf Power uses historical population growth rates and load additions to account for this in the planning process.[TR 449,467] A review of the customer load and energy forecasts suggests that Gulf Power and Gulf Coast both expect, on average, different shares of future residential, commercial and industrial customers.[Ex. 2, 4, 6] Staff agrees that it is impossible to identify the specific locations where the actual loads materialize or to accurately forecast the specific locations where growth occurs. [TR 388] However, by evaluation of past substation loads and feeder additions, the utility can reasonably estimate future load growth in a given area. [TR 363]

Both utilities project slow growth in the identified areas. [TR 448, 457, Exhibits 2 and 4] Both utilities plan to serve an expected aggregate load in an area. [TR 110-112,128,198, 361-363] Therefore, both utilities are projecting a continuation of their respective responses to future growth. This pattern increases the probability that some double counting of future customers may occur. [TR 198] Clearly, having both utilities in the same area with the same ability to serve, with facilities which are commingled and in close proximity, suggests that both companies may likely be double counting future customers to some degree.[TR 76, 77, 111, 198]

The double counting conclusion does not suggest that the forecasts are unreasonable or inappropriate. Instead, it reflects the problematic nature and additional cost to the general body of ratepayers when there are two competing electric distribution utilities developing facilities capable of serving the same customers in the same area. Therefore, based on the above discussion staff recommends that the respective company forecasts of load, energy and population growth in the areas identified in response to Issues 1 and 2 are reasonable and appropriate, given that there are no established territorial boundaries.

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

RECOMMENDATION: The descriptions of the respective distribution facilities as stated by each company are reasonable and appropriate. [BREMAN]

SUMMARY OF POSITIONS:

Gulf Power: Gulf Power's customers in the identified areas of South Washington County are served by two separate Gulf Power substations. Sunny Hills Substation is a 12 MVA, 115 KV to 25 KV substation located south of Gap Pond in Sunny Hills, Florida. Vernon Substation is an 11.5 MVA, 115 KV to 25 KV substation located south of Vernon, Florida. From each of these substations, 25 KV feeders provide the preferred and back-up sources for reliable service to the identified area. Local overhead and underground distribution lines, and transformers provide service to Gulf Power's customers as shown on the following Florida grid coordinated maps that are part of Composite Exhibit 6: map numbers 2218NE, 2218NW, 2218SE, 2218SW, 2220, 2221, 2320, 2321, 2322, 2518, 2519 and 2618.

Gulf Power's customers in the identified areas of Bay County are served by Gulf Power's Bay County Substation. Bay County Substation is a 13.75 MVA, 115 KV to 12.47 KV substation located in Bay Industrial Park, off Highway 231, north of Panama City, Florida. A 12.47 KV feeder from Bay County Substation provides the preferred source of feed with another 12.47 KV feeder from Highland City Substation providing the back-up source of feed. Local overhead and underground distribution lines, and transformers provide service to Gulf Power's customers as shown on the following Florida grid coordinated maps that are part of Composite Exhibit 6: map numbers 2533, 2534, 2632, 2633, 2634, 2639, 2731, 2733, 2828NW, 2828SW, 2828NE, 2828SE, 2830NE, 2830NW, and 2830SW.

Gulf Coast: In South Washington County: Gulf Coast customers

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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.

STAFF ANALYSIS: There is no disagreement or material question brought by staff or the parties concerning this issue. The distribution facilities are described in various formats throughout the record including those found in Exhibits 2, 3, 6, and 8. In addition, the Commission hearing was convened at various locations to review portions of the distribution facilities in question. [TR 712-776]

Staff believes all existing facilities which could be impacted by the establishment of a territorial boundary as proposed by either Mr. Gordon, Mr. Bohrmann or by a mutual agreement between the parties have been identified. Staff does not believe identification of existing facilities is required to adopt the alternatives presented by Gulf Power because of the prospective nature of their proposals. (See Issue 6)

Therefore, staff recommends that the Commission accept the descriptions of the respective distribution facilities as stated by each company as reasonable and appropriate for use in the resolution of this case.

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

RECOMMENDATION: Yes. Both utilities are capable of providing adequate and reliable electric service to the identified areas. [BREMAN]

SUMMARY OF POSITIONS:

Gulf Power: Gulf Power is fully capable and prepared to provide all aspects of adequate and reliable service to the identified areas both now and in the foreseeable future, at rates that are subject to the regulatory jurisdiction of the Commission.

Gulf Coast: 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.

STAFF ANALYSIS: Both parties state that they are able to serve the areas listed in Issue 1. To some extent this discussion is duplicative of a prior finding by the Commission in an earlier phase of this Docket and need not be repeated. [PSC-95-0271-FOF-EU]

Gulf Power maintains that their system is more reliable than Gulf Coast's. [TR 271] They also suggest that there is no assurance of reliable service with Gulf Coast because the customers of Gulf Coast have no effective means to protest the adequacy, reliability, and price of the service provided because they are not subject to the full regulatory jurisdiction of the Commission. [TR 211, 157]

In addition, Gulf Power presented data to suggest that Gulf Coast's reliability in terms of length of outages exceeded that of Gulf Power's. Gulf Coast maintains that Gulf Power's analysis of reliability using outage data is not appropriate because the basis upon which the percentages were computed was significantly different between the two utilities. Gulf Power's witness, Mr. Weintritt, relied on data for Gulf Power's entire eastern district and Gulf Coast's total system rather than the data corresponding to the areas identified in Issues 1 and 2. [TR 271, 272, 284, Ex. 6]

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Staff agrees with Gulf Coast that the analysis should be limited only to the comparable areas identified in this docket. Exhibits 7 and 17 provide appropriate comparisons on the service interruption time statistics for the two utilities. These exhibits show that in the disputed area Gulf Coast's customers experienced less outage time than Gulf Power's customers in 1991 and 1992.

Summary of Exhibits 7 and 17

	1991 Total Customers	1991 Hours of Interruption		1992 Total Customers	1992 Hours of Interruption	
		Total	Per Customer		Total	Per Customer
Gulf Power	1547	2474.45	1.6	1618	2329.63	1.4
Gulf Coast	858	155.25	0.2	1009	246.6	0.2

However, staff does not believe that service interruption time statistics for the disputed area represented in Exhibits 7 and 17 provide conclusive evidence as to which utility is more reliable. That would require a full review of substations, feeders and forecasts. The additional considerations are already addressed in Issues 3, 4, and prior Commission findings in this docket. Absent a material and substantive fact, the resolution of this issue must be consistent with the resolution of Issues 3, 4, and prior Commission findings in this docket.

Therefore, based on the preceding discussion, staff recommends that both utilities be found capable of providing adequate and reliable electric service to the areas identified in response to Issues 1 and 2.

ISSUE 6: How should the Commission establish the territorial boundary between Gulf Power and Gulf Coast in South Washington and Bay Counties where the electric facilities are commingled and in close proximity and further uneconomic duplication of facilities is likely to occur?

RECOMMENDATION: To resolve the ongoing dispute in South

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Washington and Bay Counties the Commission should establish a territorial boundary between Gulf Power and Gulf Coast consistent with prior orders in this case as well as past Commission practices in reviewing territorial agreements and settling territorial disputes. In addition, the companies should establish detailed procedures and guidelines addressing subtransmission, distribution, and requests for new services. [BREMAN]

SUMMARY OF POSITIONS:

Gulf Power: A territorial boundary should not be established in South Washington or Bay Counties. "Lines on the ground" are not in the best interests of the customers of either utility. The Commission should follow its existing guidelines for dispute resolution or one of the alternatives proposed by Gulf Power.

Gulf Coast: 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 comingling, 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.

STAFF ANALYSIS: Issues 6 and 7 address the ultimate resolution of the ongoing dispute before the Commission. It is in these issues that the parties are farthest apart. Gulf Power argues that no boundaries should be drawn at all, or if any, boundaries should be flexible and ever-changing with the ebb and flow of economics. Gulf Coast presents detailed maps showing a fixed and finite boundary between the two utilities using principles employed by the Commission in past decisions. Witness Bohrmann proposes the Commission employ aspects from both positions and establish boundaries only in the developed areas. Staff addresses the three positions individually.

Gulf Power

The various points and concerns raised by Gulf Power can be condensed into three general concepts which they have advocated throughout this docket. The nature of these basic concepts do not lend themselves well to establishing exclusive retail electric service territories and explain why Gulf Power believes that it is unnecessary, inappropriate and counterproductive to draw "lines on the ground" to delineate service territory. [TR 175, 195, 198, 218, 281, 332] Gulf Power's concepts are as follows:

- (1) Gulf Power believes that all customers should have a right to choose a service provider. [TR 116, 172, 176, 222, 326, 335, 464, 511, 550]

If the Commission agrees with this position, it must order that at least two electric distribution companies must be ready to provide service at every future instance. The result will be, as Gulf Coast points out, continual competition and uneconomic duplication of facilities. [TR 51, 128] However, Gulf Power sees no harm in having two or more utilities serve a given area and that the presence of more than one utility will encourage utilities to reduce rates and maintain high quality of service. [TR 247] While low rates and high quality of service are commendable goals, Gulf Power's arguments are self defeating on a long term basis. Eventually, rates of both companies will reflect the additional costs of installing and maintaining two distribution systems where only one was needed. In addition, the Supreme Court determined that a customer has no organic, economic or political right to choose one utility over another just because that customer deems it to be advantageous. Story v. Mayo, 217 So.2d 304 (Fla. 1968) Therefore, the Commission should continue to use customer choice as a method to resolve territorial matters only when all other things are substantially equal.

- (2) Gulf Power believes that any method to allocate retail service area should be governed by the fact that distribution systems expand incrementally. [TR 123-124, 159-160, 195, 198, 218, 244, 322, 344, 464, 495-497, 511, 512, 550]

Gulf Power appropriately points out that distribution facilities expand incrementally. Similarly, disputes are handled one at a time. The facts reviewed by the Commission in resolving disputes include site specific costs and the effects of the load at issue on the respective distribution systems and the company's plans. As in this docket, many disputes are argued as if only one load or customer is at issue. The reality is that afterward, when the necessary infrastructure for that one load is installed, all

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future loads along the route become fair game for competition in an area where there is already another utility. [TR 252, 253, 692] The incremental least cost to serve the new load does not always reflect the supporting investment in the distribution systems to arrive at the current incremental costs. [TR 399]

Gulf Power's multi-layer method tends to follow these same precepts. The multi-layered method describes service areas based on existing facilities, voltages, phases and loads. [TR 333-336] The proposal is creative. However, it is not a practical alternative for the Commission to consider because 6 to 50 boundaries would be under continual review and debate. [TR 228, 229, 342-347, 352] Each utility will still be competing to serve customers next to another utility's facilities thereby duplicating existing distribution facilities. [TR 230-233] Gulf Power's witness, Mr. Holland, stated that the multi-layered proposal is not as good as what is in the statute today in terms of resolving territorial disputes. [TR 229]

Testimony in this docket indicates dispute resolution may have been used for incremental expansion purposes. For example, after the load or customer is awarded to a company, it can then argue that all future customers along the corridor become fair game in an area already served by another utility. [TR 252, 253, 692] This is consistent with Gulf Power's objection to using historical presence in resolving this case. [TR 257-8] However, staff believes that growth using point-to-point and case-by-case disputes, without an overall exclusive territorial agreement has contributed to the present situation. If the utilities maintained strict adherence to each dispute resolution on a case-by-case basis, then the only field evidence of commingling and close proximity would be created by dedicated feeders. However, as previously stated, the field evidence is that both utilities are competing for the same customers in the same areas and have installed lines along the same roads to do so. Staff concludes that the Commission should not continue to use the narrow case-by-case concept or incremental approach with these utilities in the disputed area because it has not worked.

- (3) Gulf Power believes that uneconomic duplication is any which results in a cost to the utility significantly above any corresponding exclusive benefit. [Ex. 12, TR 123-124, 159-160, 195, 198, 218, 230-233, 244, 322, 344, 464, 495-497, 511, 512, 550]

Perhaps the most significant criteria used by Gulf Power to argue against territorial boundaries is their definition of uneconomic duplication. (See Issue 2) Restated in terms of cost

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effective additions, cost effective additions are any which do not result in costs to the utility significantly above any corresponding exclusive benefits. One can easily see how this concept supports Gulf Power's arguments to use customer choice, case-by-case expansion, their multi-layered plan, or their policy proposals. Regarding customer choice, Gulf Power's method will only encourage a race to serve. [TR 135] In the case-by-case expansion application, Gulf Power argues for a review of the incremental costs to serve the customer or load at issue. As long as the incremental cost is "de minimus" then, according to Gulf Power, no uneconomic duplication has occurred. They further argue that in commingled areas adding a new customer with only a service drop is not uneconomic duplication.

Gulf Power's views on uneconomic duplication also support their multi-layered plan with similar arguments as the case-by-case approach. The result is that existing distribution infrastructure is institutionalized, and the level of uneconomic duplication to the general body of ratepayers is continually ignored with the update to each territorial sub-layer.

Staff believes the policy proposals of Witness Holland, if implemented, will have a similar result for the same reasons. Gulf Power offers the Commission a choice of two policies to resolve this case: the "Territorial Policy Statement" (GEH-3) and a more general "Policy Statement" (GEH-4). Staff's principle concern with these policies is that they appear to incorporate Gulf Power's definition of "uneconomic duplication." As previously discussed in Issue 2, Gulf Power's definition is not sufficiently broad for the Commission's use to determine public interest. Additionally, there is a question of the Commission's ability to enforce and award damages.

Under both of Gulf Power's proposals, both utilities would have to codify guidelines and procedures to address growth because no such documentation currently exists. [TR 50, 479] Once the guidelines were established both utilities must consistently follow them. Strict adherence to general policies and informal procedures appear to have been a problem in the past. [TR 43, 139] Both utilities agree that having formal written guidelines and procedures of this type would help. [TR 50, 479, 139, 245] However, Witness Daniel disputed the value of guidelines compared to distinct boundary lines. He points out that policies require strict adherence to the agreed upon policies, and even then it still leaves many grey areas which cannot be easily resolved. He hypothesizes that the only realistic way of avoiding duplicate facilities is for utilities to engage in joint planning, which he states is very unlikely. [TR 139]

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Staff also considered the question of whether or not the recommendation would be different if Gulf Power's proposed policies were stipulated agreements between the parties in this case. Staff concludes that the recommendation would still be the same. Staff believes the proposed policies are founded on definitions which have resulted in the current ongoing dispute. Also, to make the policies work, both utilities will have to cooperatively develop the disputed area, and this is not likely to occur. [TR 112, 698] As indicated by Witness Gordon, the good intentions are not being met in practice. [TR 43, 139]

Gulf Coast

Gulf Coast believes that drawing firm and permanent boundary lines is the only way to prevent future duplication of facilities. [TR 662] To construct its proposed lines, Gulf Coast utilizes criteria which have historically been used by utilities in setting service territory boundaries. In his direct testimony, Witness Gordon lists six criteria used to draw the only boundary lines offered to the Commission for resolution of the disputed areas:

1. Natural topographical and geographical features which tend to discourage electrical facility commingling;
2. Land lines and property ownership;
3. Between existing commingled facilities;
4. Where historical service has been established and provided;
5. Areas providing additional development and load growth;
6. Areas where utilities have made a choice and/or commitment to provide (or decline to provide) service. [TR 26, 35]

Gulf Power pointed out two faults with Gulf Coast's proposal. The boundary lines limit Gulf Power to its current facilities and grants vast unserved area to Gulf Coast. [TR 496-497, 511] An additional fault according to Gulf Power is that Mr. Gordon did not use cost to serve in developing the proposed lines. Gulf Power implies that it should be because cost to serve is a criterion used in the past by the Commission. [TR 25-6, 159] Gulf Coast maintains that where facilities are commingled, there will always be a potential for uneconomic duplication, and the proper way to resolve that is to establish specific boundaries. [TR 114] Witness Gordon goes on to say that if customer choice is the controlling factor in areas where both utilities have facilities, that will result in uneconomic duplication. [TR 51] In contrast to Gulf Power's reliance on least cost determinations, Gulf Coast argues that facilities planning has long lead times and that it is incorrect to

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look simply at the cost of extending the last segment of distribution. [TR 127-8] Therefore, Witness Daniel's suggests that the Commission balance a list of factors in its determination:

- 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.
- 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.
- J. The respective utilities' cost to serve the identified areas. [TR 64-66, 69-70, 110-111, 140]

The only objection raised by Gulf Power was that historical presence should not be considered. Based on their multi-layered method, Gulf Power's position on historical presence is that each level of voltage, demand and phase should be considered different distribution facilities. Therefore, according to Gulf Power, the fact that a single phase line was sufficient to serve an area for many years should not prohibit a second company from installing three phase facilities along the same roadway to serve a new three phase customer. Staff does not agree with Gulf Power. The Commission should give weight to the fact that distribution facilities are continuous from the local substation through primary and secondary facilities. Therefore, historical presence should also be considered in resolving disputes.

Staff Witness Bohrmann

Witness Bohrmann suggests the Commission employ short, discrete territorial boundaries only in areas where facilities are in close proximity, commingled or both to ensure the future uneconomic duplication does not occur.[TR 388] The only substantial difference between Gulf Coast's list of criteria and what Witness Bohrmann proposed is that boundaries do not need to be continuous and enclose a given area if the area is not developed or reasonably expected to be. The disadvantage of this approach is

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that it does not fully address concerns of future uneconomic duplication in the undeveloped areas. This is a valid concern because the condition in the disputed area is in part due to the expansion practices of both utilities. Staff recognizes that there may be economic advantages of not setting boundaries in undeveloped areas. As stated on Page 4 of Order No. PSC-95-0913-FOF-EU: "A boundary is not necessarily required in areas where there is no conflict and none is reasonably foreseeable."

However, absent an agreement between the companies or an administered growth policy, the past practices of these utilities will continue. Future uneconomic duplication is likely to occur in the currently undeveloped areas. Staff believes that if the Commission determines that short boundary lines are appropriate, it should also require both utilities to develop and establish their respective procedures and guidelines addressing subtransmission, distribution, and requests for new services. These procedures and guidelines should be in a formal form and enforceable within the respective company. Staff believes that with these tools, Gulf Power and Gulf Coast will be better able to work together, plan and contribute to the development of the Florida Panhandle, and they will be better able to minimize future uneconomic duplication.

Summary

Therefore, based on the forgoing discussion, staff recommends that the Commission should establish a territorial boundary between Gulf Power and Gulf Coast in South Washington and Bay Counties consistent with prior orders in this case as well as past Commission practices in reviewing territorial agreements and settling disputes. In addition, the companies should establish procedures and guidelines addressing subtransmission, distribution, and requests for new services which are enforceable with the respective company.

ISSUE 7: Where should the territorial boundary be established?

RECOMMENDATION: A territorial boundary should be established between Gulf Power and Gulf Coast as detailed in Exhibit 2. No existing customers should be required to be transferred. Transfer of service will occur only upon change in customer of record or change in use. [BREMAN]

SUMMARY OF POSITIONS:

Gulf Power: A territorial boundary should not be established between these two utilities. The public interest is not served by precluding the continuation of the process of resolving territorial disputes on a case-by-case basis. See also Gulf Power's position on Issue 6, above.

Gulf Coast: 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).

STAFF ANALYSIS: Staff believes the record clearly supports the conclusion that the Commission must take action to avoid future uneconomic duplication. Staff indicates through Issue 6, that the only practical methods before the Commission to accomplish this task are presented by Gulf Coast and Witness Bohrmann. The major difference in these two methods is how the location of the territorial boundary is determined.

One method, supported by Witness Bohrmann, is establishing short boundary lines. This method has the benefit of minimizing customer transfers. Minimizing customer transfers is agreed to by both parties.[TR 99-100, 470-1] However, the record does not contain sufficient information on the placement of short boundary lines specific to Witness Bohrmann's suggestion. One could argue that the Commission could use portions of Witness Gordon's continuous boundary lines in the areas of co-location and not establish boundaries where there are no existing distribution facilities of any kind within a reasonable distance. A reasonable distance supported by the record is 1,000 feet. Absent using the boundaries provided in the record, a period of negotiations and perhaps another hearing will be required to establish the locations of each boundary segment.

While this approach appears to be a reasonable compromise between the positions of the parties, there remains a serious concern. Staff's concern is that over time the continued practices of both companies will result in future uneconomic duplication. The natural competitive actions and policies they follow should not be relied on to preserve and best serve the public interest. Staff believes that this will continue to be the case even if both companies establish formal guidelines and procedures as discussed

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in Issue 6. Therefore, staff recommends against this option.

The other viable method before the Commission is that of continuous exclusive territorial boundary lines as proposed by Witness Gordon and described in Exhibit 2. However, as discussed in Issue 6, the location of the proposed boundary lines does not address the cost to serve. It is intuitive that a determination of the cost to serve based on the location of a proposed boundary would require the cooperative efforts of both parties. This has traditionally been the case where joint petitions have been presented to the Commission. However, due to the adversarial nature of this case, staff believes that any boundary proposed by one party in this case would lack supporting data from the opposing party.

In addition, Gulf Power claims that Gulf Coast carves out excessive areas. Gulf Power could have filed a proposed boundary to accomplish the same goals but chose not to. Both companies appear competitive. Competitive policies and practices are prudent for the respective companies but do not provide assurance that the public interest is preserved.

Therefore, considering all the criteria itemized in Issue 6, staff recommends the Commission should establish the continuous territorial boundary as stated in Exhibit 2.

Customer Transfers

Traditionally, customers in an exclusive service area are served by the host utility. When a territorial agreement results in customers being assigned to another utility's service territory, those customers are transferred to their new host utility as soon as practicable. However, in this case, there is no sense of urgency, and both parties do not want the Commission to require a transfer of customers.[TR 99-100, 470-1]

Staff shares the parties' concerns due to the large number of potentially affected customers. The Commission should not require transfer of existing customers within the territorial boundary. Instead, Staff recommends that service locations only be transferred upon a change in the customer of record or a change in use. The phrase "change in use" as used here is the same as previously defined in Order No. PSC-95-0668-FOF-EU. The existing customers should be notified that they may transfer if they choose. However, because the territorial boundary establishes exclusive

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retail service areas, Gulf Power and Gulf Coast should not receive or serve any new customers within the approved territorial area served by the other utility.

ISSUE 8: How should the Commission rule on Gulf Coast Electric Cooperative, Inc.'s proposed findings of fact and conclusions of law?

RECOMMENDATION: The appropriate rulings are detailed in Attachment 1. [PAUGH]

STAFF ANALYSIS: Staff has examined the record, including all transcript cites, and the applicable law in recommending rulings on the specific findings of fact and conclusions of law. Staff's recommended rulings are consistent with the recommendations on Issues 1 through 7.

ISSUE 9: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed. [PAUGH]

STAFF ANALYSIS: Absent a timely filed Motion for Reconsideration or Notice of Appeal, no further action will be required. Therefore, the docket should be closed.

DOCKET NO. 930885-EG
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Staff makes the following recommendations with regard to the findings of fact and conclusions of law submitted by Gulf Coast Electric Cooperative, Inc.

PROPOSED FINDINGS OF FACT:

1. The areas in South Washington and Bay Counties where the electric facilities of GPC and Gulf Coast are commingled and in close proximity are identified in Exhibit 2 (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).

RECOMMENDATION: Reject. Statement of a conclusion.

2. The areas in South Washington and Bay Counties where further uneconomic duplication of electric facilities is likely to occur are those areas identified in the preceding proposed findings of fact (No. 1) together with those areas depicted in Exhibit 2 (AWG-3 and AWG-5) where the facilities of the two utilities are clearly intermingled, in close proximity or cross each other.

RECOMMENDATION: Reject. Statement of a conclusion

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)).

RECOMMENDATION: Reject. Statement of a conclusion. Transcript references simply explore Gulf Power's definition of uneconomic duplication.

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 cost 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.

RECOMMENDATION: Accept that GPC's position is as stated. Reject that GPC's practice is always as stated. The transcript citation does not support the statement of conclusion.

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).

RECOMMENDATION: Reject. Statement of an opinion.

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).

RECOMMENDATION: Accept.

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).

RECOMMENDATION: Reject. Statement of a conclusion.

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.)

RECOMMENDATION: Reject. Statement of a conclusion.

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).

RECOMMENDATION: Accept.

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).

RECOMMENDATION: Reject. Statement of an opinion.

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)].

RECOMMENDATION: Reject. Statement of an opinion and conclusion.

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).

RECOMMENDATION: Reject. Statement of an opinion and conclusion.

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

RECOMMENDATION: Accept.

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).

RECOMMENDATION: Accept.

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 detailed 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.

RECOMMENDATION: Reject. Statement of an opinion and conclusion.

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.

RECOMMENDATION: Reject. Statement of an opinion.

17. If boundary lines are to be drawn on the ground, according to Gulf Powers (sic) 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).

RECOMMENDATION: Accept.

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

RECOMMENDATION: Accept.

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.

RECOMMENDATION: Accept.

Accept that Gulf Power Company did not show

ATTACHMENT 1

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

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).

RECOMMENDATION: Reject. Statement of an opinion.

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).

RECOMMENDATION: Reject. Statement of an opinion.

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).

RECOMMENDATION: Accept.

2. Chapter 366 speaks to "Territory", not to customers 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)).

RECOMMENDATION: Accept.