

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of	:	DOCKET NO. 930885-EU
Petition to resolve	:	
territorial dispute with	:	
Gulf Coast Electric	:	
Cooperative, Inc. by Gulf	:	
Power Company.	:	

PROCEEDINGS: **AGENDA CONFERENCE**
 ITEM NO. 52

BEFORE: CHAIRMAN JULIA L. JOHNSON
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER SUSAN F. CLARK

DATE: **Tuesday, December 16, 1997**

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

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1 **PARTICIPATING:**

2 **LESLIE PAUGH, FPSC Division of Legal**
3 **Services.**

4 **ROBERTA BASS, JIM BREMAN, FPSC Division of**
5 **Electric & Gas.**

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ITEM

PAGE NO.

CERTIFICATE OF REPORTER

44

ISSUES

ISSUE NO.

PAGE NO.

Issue No. 1
Issue No. 2
Issue No. 3
Issue No. 4
Issue No. 5
Issue No. 6
Issue No. 7
Issue No. 8
Issue No. 9

6
20
23
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41
42
43

P R O C E E D I N G S

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2 **CHAIRMAN JOHNSON:** Item 52. 52 is a panel
3 consisting of Johnson, Deason and Clark. 52.

4 **MS. BANE:** Chairman Johnson, were you going
5 to be back to Item 3, or was there a decision made
6 about that that I missed?

7 **CHAIRMAN JOHNSON:** We're not prepared -- I'm
8 sorry, Dr. Bane, we aren't prepared. We'll do that at
9 the end, after the panel items.

10 **MS. BANE:** Thank you.

11 **COMMISSIONER GARCIA:** I'm not prepared -- I
12 haven't seen the second memo.

13 **CHAIRMAN JOHNSON:** We probably won't --
14 we're going to take a break to have the reception at
15 about 3:30. We will come back after that and we may
16 have panel items left and that particular item, but we
17 are going to take a break at 3:30.

18 **MS. PAUGH:** Commissioners, Item 52 is an old
19 territorial dispute between Gulf Coast and Gulf Power.
20 It arose in 1993 over service to the Washington County
21 Correctional facility.

22 That item went to the Supreme Court with a
23 decision by the Public Service Commission that service
24 would be awarded to Gulf Power. The Supreme Court
25 overturned it and told the parties to get together to

1 negotiate a territorial boundary between them. In the
2 ensuing years the parties have been unable to do so.

3 **COMMISSIONER CLARK:** Wait a minute. They
4 overturned the assignment of --

5 **MS. PAUGH:** -- of service. Did I misstate
6 that?

7 **COMMISSIONER CLARK:** I don't think the Court
8 directed them to come up with a territorial boundary,
9 I think we did.

10 **MS. PAUGH:** Yes, that's correct. Sorry.

11 There was a hearing held in April of this
12 year regarding this territorial dispute and a number
13 of issues were discussed. The issues were what the
14 areas were in Washington and Bay Counties where
15 electric facilities are commingled, and what are the
16 areas in those counties wherein there would be further
17 uneconomic duplication. Staff has identified 27 areas
18 in both counties where that would be likely to occur.

19 Staff has also determined that the
20 utilities' respective forecast of customer load and
21 energy was reasonable, so there's no real dispute as
22 to that.

23 The issue regarding the location, purpose,
24 type and capacity of each utility's facilities is not
25 seriously in dispute. Whether each utility is capable

1 of providing adequate and reliable service is not in
2 dispute. Staff found both utilities capable. The
3 real issue is should there be a line drawn? And if
4 so, where should that line be?

5 Staff has determined, based on all of the
6 evidence adduced at hearing, that a specific line be
7 drawn to create a territorial boundary between the two
8 utilities. That line should be established as
9 detailed on Exhibit 2 in this record. I have
10 additional copies of Exhibit 2.

11 **COMMISSIONER CLARK:** I need a copy of it.
12 Was it attached to the recommendation?

13 **CHAIRMAN JOHNSON:** No. I didn't get any.

14 **COMMISSIONER CLARK:** While you're handing
15 that out, is this the same Exhibit 2 -- is it Gulf
16 Coast's Exhibit 2?

17 **MS. PAUGH:** That is correct.

18 **COMMISSIONER CLARK:** Okay. Thank you.

19 **MS. PAUGH:** The document that you have just
20 been handed is a copy of the top page of Exhibit 2 for
21 each Bay and Washington Counties, and it shows
22 generally where the line is proposed to be drawn. I
23 figured a picture was worth a thousand words so I made
24 extra copies. (Pause)

25 **COMMISSIONER CLARK:** While we're looking at

1 that, I was somewhat confused because I thought it
2 was -- you had recommended, as outlined in Exhibit 2.
3 And then if you look at Gulf Coast's proposed finding
4 of fact and conclusion of law, at least with respect
5 to 20, you recommend rejecting that as being the
6 boundary. Have I misunderstood -- I'm on Page 29 of
7 your recommendation.

8 **MS. PAUGH:** Well, for purposes of the
9 finding of fact we reject it as an opinion. It's sort
10 of a finer vagary. To the extent we're recommending
11 that that line be the line drawn, I suppose that's
12 Staff's statement of opinion as well.

13 **MR. BREMAN:** The territorial boundaries are
14 sometimes negotiated items; they are not necessarily a
15 fact that it has to be in a precise location. I think
16 the record supports the possibility of alternative
17 locations. It is not a fact as stated on Item 20.

18 **COMMISSIONER CLARK:** Maybe you ought to just
19 add that we reject it as being opinion --

20 **MS. PAUGH:** But adopt the opinion?

21 **COMMISSIONER CLARK:** But we note that we've
22 adopted it as where the line should be.

23 **MS. PAUGH:** We'll do that.

24 **CHAIRMAN JOHNSON:** Do you want to continue
25 with your statements?

1 **MS. PAUGH:** Those were my general comments.
2 If the Commissioners have specific questions about
3 items in the recommendation, we can open it up --

4 **CHAIRMAN JOHNSON:** Okay.

5 **MS. PAUGH:** -- at this time. In the
6 interest of time, I cut my presentation down to about
7 a third.

8 **COMMISSIONER CLARK:** Ms. Paugh, can you tell
9 me -- I want to know out of the sites identified, can
10 you tell me which ones we visited?

11 **MS. PAUGH:** I'll have to defer to Mr. Breman
12 for that since I was not there.

13 **MR. BREMAN:** You're talking about trying to
14 identify the sites you visited on the handout you just
15 received?

16 **COMMISSIONER CLARK:** Say that again?

17 **MR. BREMAN:** You're talking about trying to
18 identify the sites you visited on the handout you just
19 received today?

20 **COMMISSIONER CLARK:** Yes.

21 **MR. BREMAN:** The one on Bay County. If you
22 start at the bottom of the page and start going up
23 there's a little black star. That road, you visited
24 two sites along that road as it goes east to west.
25 And over there there's a star towards the upper left.

1 You didn't go all the way out that but you went out
2 there. Out there is Pottsdam Road and all of that
3 infrastructure out there. You also visited sites to
4 the north of this.

5 **COMMISSIONER CLARK:** That's what all of the
6 stars are where we visited?

7 **MR. BREMAN:** The stars are substations
8 basically.

9 **COMMISSIONER CLARK:** Oh, all right.

10 **MR. BREMAN:** You visited points to the north
11 of it, going towards the second star that is along
12 that diagonal road that goes sort of
13 northeast-southwest towards Panama City. This map
14 doesn't have sufficient detail to pinpoint every last
15 one with great specificity.

16 **COMMISSIONER CLARK:** Regarding Washington County -- and I
17 apologize for this description, but it's the double
18 yellow line with the blue line in the middle, that
19 would be County Road 279. You all visited at least
20 three locations along that road. And then on -- it
21 formed sort of a "Y" on 77, you went from that
22 intersection also northward towards the entrance of
23 Sunny Hills off of 77, as well as an additional
24 location out by the substation.

25 **COMMISSIONER CLARK:** This is not a

1 continuous line?

2 **MR. BREMAN:** Neither county, that is
3 correct. In Bay County there's a large break over a
4 swamp area and there's similar breaks in Washington
5 County.

6 **COMMISSIONER CLARK:** What are the yellow
7 lines? Are those just sections?

8 **MR. BREMAN:** The very light yellow lines,
9 that's an attempt to identify the maps that were
10 identified in Issue 1 and throughout the docket
11 hearing that we recently had. And the numbers are in
12 very small print and they have been highlighted to the
13 most extent with light yellow also.

14 The slightly darker tint of yellow or orange
15 is a presentation of Gulf Coast's proposed territorial
16 boundary.

17 **COMMISSIONER CLARK:** And that's where you
18 agree it should be drawn.

19 **MR. BREMAN:** I think the record supports to
20 that location.

21 **COMMISSIONER CLARK:** If I note, in Bay
22 County you don't recommend drawing the line to 2634
23 down through 2635 and connecting with -- it's probably
24 2638.

25 **MR. BREMAN:** No, ma'am, I don't see a need

1 to do that, especially if the Commission adopts the
2 requirements to address growth in Issue 6, that the
3 utilities formalize their growth plans into a codified
4 written form.

5 **COMMISSIONER CLARK:** You're thinking that
6 will address any potential for --

7 **MR. BREMAN:** Yes, ma'am.

8 **COMMISSIONER CLARK:** Okay. Let me just ask
9 a general question.

10 Do you think you have -- the lines that
11 you're suggesting will accomplish clarifying where
12 they are commingled and where they are potentially
13 conflicting, while not being an overly aggressive
14 description in the sense that we have the opportunity
15 to see how growth takes place to draw further lines.

16 **MR. BREMAN:** I agree with the latter part of
17 your statement. I think the existing situation there
18 is rather muddled and it will take a long time to
19 clear that up.

20 **CHAIRMAN JOHNSON:** You said you agree with
21 the latter part of the statement; that we still have
22 some flexibility even if we implement this map of
23 these territories.

24 **MR. BREMAN:** Yes, ma'am. It's my opinion
25 the territorial boundaries are always subject to

1 change and negotiation. I don't think anything is
2 written in stone permanently.

3 **CHAIRMAN JOHNSON:** So you're saying if we
4 assign the territory to one entity and another entity
5 would like to serve it, they would have to negotiate?

6 **MR. BREMAN:** Yes, ma'am.

7 **CHAIRMAN JOHNSON:** Assume they can't reach
8 resolution and then they come to us, we could then
9 look at the territories that we have previously
10 defined and change them?

11 **MR. BREMAN:** Yes, ma'am.

12 **COMMISSIONER DEASON:** See, what I don't
13 understand is how that's different from what we're
14 doing now. And if it's not different from what we're
15 doing now, why do we need to change anything?

16 **MR. BREMAN:** I don't know that we are or
17 that my recommendation recommends anything different
18 than what the Commission already practices.

19 **COMMISSIONER DEASON:** We have case history
20 as to how we decide territorial disputes that's out
21 there. Both parties know what the criteria is that
22 the Commission generally applies. It seems to me that
23 in most situations they are going to be able to work
24 out amongst themselves, between themselves, who is
25 going to serve. And there's rare instances -- the

1 last one, of course, was at the prison, which was a
2 very unique situation where you have that large of a
3 customer and that unique of a location. We had a
4 dispute. But that's been the last dispute in a long
5 time.

6 I guess I have a concern -- I'm just going
7 to go out and discuss it -- I'm having a concern
8 drawing lines on a map.

9 It seems to me there are areas where
10 facilities are in close proximity. It's obvious. We
11 were there. We saw it. Drawing a line in those areas
12 I don't think it's going to cure anything. To the
13 extent there's been any duplication of facilities,
14 it's already there. To the extent there's going to be
15 any further uneconomic investment, I don't think it's
16 going to take place. The facilities are already
17 there. The incremental cost of serving customers in
18 those areas is practically nil for either to do it.
19 And I guess in that situation it's perhaps going to be
20 customer choice, which is the bottom line thing
21 anyway.

22 In those areas where they are not in close
23 proximity, I'm uncomfortable drawing a line there. It
24 seems to me there needs to be flexibility to the
25 utilities to see, as development takes place, who is

1 in the most economic position to extend that service.
2 And that flexibility is probably going to result in
3 the least cost provisioning of service. I know that
4 just drawing lines on a map is probably not going to
5 be the least cost way of providing service. That's
6 what my concern is.

7 **MR. BREMAN:** The way I approach the problem
8 is a little bit different. I don't look at the
9 instance customer. I look at the duplicity required
10 in the utility's distribution system in order to
11 accomplish that task. You don't need two utilities in
12 any given street to serve one customer or a group of
13 customers.

14 **COMMISSIONER DEASON:** I agree. But it's
15 already there.

16 **MR. BREMAN:** Yes, sir.

17 **COMMISSIONER DEASON:** I'm not putting blame
18 on anybody. I'm not putting blame on the utilities or
19 this Commission. But the fact of the matter is it's
20 there, and drawing a line in those areas, which is
21 where you are recommending drawing the line, it's not
22 going to cure any more further uneconomic duplication.
23 The facility is already there. The incremental cost
24 of either utility serving a customer on one of those
25 streets is practically nil.

1 **MR. BREMAN:** I agree. Addressing existing
2 facilities is almost a futile attempt. I think lines
3 do address future.

4 **COMMISSIONER DEASON:** But can you assure me
5 that your lines are going to be the most economic way
6 of providing service when we don't even know what
7 development patterns are going to be in some of these
8 areas?

9 **MR. BREMAN:** No, sir.

10 **COMMISSIONER DEASON:** We don't know.

11 **CHAIRMAN JOHNSON:** And to add to that, to
12 the extent there are new customers and there is a
13 dispute, it will end up here and we will have to apply
14 our criteria.

15 To me, some of the argument that Gulf Power
16 made about looking at this on a case-by-case basis, it
17 appears as if we're going to get there anyway, and I
18 was concerned that we are limiting ourselves and
19 limiting the flexibility by drawing the lines now
20 almost in the abstract.

21 **COMMISSIONER CLARK:** I don't think it's
22 abstract at all. I mean, what has happened is you
23 have had duplications of facilities and it has been
24 uneconomic. And I would just cite to you the first
25 case and what they say about it.

1 It says "While in particular locales such
2 practices might appear to benefit a few, the ultimate
3 impact of repetition occurring many times in a
4 extensive system-wide operation could be extremely
5 harmful and expensive to the utility, its stockholders
6 and the great mass of customers."

7 What we have had here is a failure to
8 declare disputes. They've commingled their
9 facilities. There's been a duplication. And if you
10 look at the overall impact, there's been an extensive
11 duplication. And when you add it all up, there's a
12 lot of inefficient investment that has been made.

13 I share with you, however, your concern
14 about drawing the lines, and Commissioner Deason's
15 concern that we ought to be very careful because we
16 should draw it only where necessary because we can't
17 predict how growth is going to take place.

18 But what's clear from visiting those
19 facilities is you have had duplication. And I might
20 point out although Gulf has indicated that that's what
21 competition is about, is the ability to choose your
22 supplier. I haven't heard anyone talking about
23 competition in the transmission and distribution
24 system. And we, in fact, have competition in the
25 transmission and distribution area.

1 I think not only have they failed in their
2 responsibilities, but we've failed when you see the
3 kind of commingling of facilities that have taken
4 place, and that we ought to draw the line on the
5 ground absent a dispute by the utilities.

6 **COMMISSIONER DEASON:** To a degree you foster
7 competition in the generation and transmission by
8 having some customers up the question.

9 **COMMISSIONER CLARK:** Up what?

10 **COMMISSIONER DEASON:** A question, at issue,
11 as to who is going to be the most efficient provider
12 of service.

13 I think the fact remains, though, to the
14 extent a utility we regulate engages in uneconomic
15 expansion, that is something they have to take the
16 risk about. And I know this Commission has disallowed
17 investments made by Gulf Power Company.

18 Now, to the extent that Gulf Coast engages
19 in such activity, we don't have regulatory control
20 over that, but I would assume they would be
21 responsible to their member owners if their rates
22 started getting out of line because they were making
23 uneconomic investments. But that's not within our
24 jurisdiction.

25 I just don't see where drawing a line in

1 these areas that are already congested is going to
2 cure anything. And I'm uncomfortable drawing lines in
3 areas where we don't know what the expansion patterns
4 are going to be.

5 It seems to me we need to devise criteria.
6 And if our past decisions and the case law which they
7 constitute are not clear enough, perhaps we need to
8 come up with some more defined criteria and let that
9 be the guidepost. And even then I'm sure that from
10 time to time we may have a dispute and we can further
11 refine that and resolve that. But it seems to me that
12 that system has worked in the past and it will
13 continue to work.

14 Any time you get two utilities in close
15 proximity, there are going to be facilities in place
16 that are going to appear to be duplicative. But even
17 in these areas where we go and tour, this Commission
18 has never disallowed any of that investment because
19 it's not been uneconomic for Gulf Power to extend
20 those facilities. There's been a few situations where
21 there has been a dispute arisen and has been litigated
22 before the Commission, and the Commission has taken
23 corrective action.

24 I think that's incentive enough for the
25 utilities not to engage in such activity, at least for

1 the utility we regulate. And I feel confident that
2 Gulf Coast is not going to engage in any uneconomic
3 expansion of their facilities. They have to answer to
4 their member owners as well.

5 **COMMISSIONER CLARK:** Well, we obviously
6 disagree. And I think it's clear based on our
7 authority and our obligation to prevent uneconomic
8 duplication.

9 I can cite an instance of where we visited.
10 There was one instance where one house was served by
11 Gulf Coast and the next house was served -- if we draw
12 the line and say who will serve it, it means that the
13 next house and the next house, it will be clear who
14 serves that. But if we don't, you may have an
15 every-other service to that area. And that is going
16 to be, in the overall sense, uneconomic duplication.
17 And I think -- I have concerns about the broader
18 implication of it because having been involved in the
19 court cases where we assured the Court that we have
20 the responsibility to determine territories, and that
21 we actively supervise it. To the extent it will be
22 demonstrated that these lines are crossing each other
23 and there is no clear demarcation, and we, in fact,
24 decline to act, then I would say we failed and there
25 is, in fact, no active supervision and the utilities

1 are out on their own as far as defending against a
2 claim of horizontal antitrust violations.

3 **COMMISSIONER DEASON:** Well, it's obvious we
4 disagree. Perhaps we should address the issues. I
5 move Staff on Issue 1.

6 **CHAIRMAN JOHNSON:** There's a motion on Issue
7 1. Is there a second?

8 **COMMISSIONER CLARK:** Second.

9 **CHAIRMAN JOHNSON:** Show it approved
10 unanimously. Issue 2.

11 **COMMISSIONER DEASON:** I have a concern with
12 the wording on Issue 2. The general content of the
13 issue I don't really have, I guess, a concern with,
14 the areas that have been identified. But it's
15 characterized in the recommendation that these are
16 areas where -- I'm sorry, I'm looking at the wrong
17 area -- was characterized as areas where further
18 uneconomic duplication of electric facilities is
19 likely to occur. I don't agree with that. In those
20 areas where they are already commingled, the fact
21 remains that the incremental cost of extending service
22 by either utility is not going to result in an
23 uneconomic duplication. To the extent that there's
24 duplication, it's already existed and drawing that
25 line is not going to cure that.

1 And I believe that our current system does
2 the best job of trying to prevent uneconomic
3 duplication. Whereas, I don't think any system is
4 going to be 100% fail-safe. And the reason I say that
5 is anytime you draw lines and then just ignore that,
6 then there's no guarantee that that's going to be the
7 most economic providing of service either. There has
8 to be flexibility in process.

9 So to get back to Issue 2, I have a problem
10 with the wording so I can't support Staff's
11 recommendation. Just let me know where I am so we can
12 move on.

13 **COMMISSIONER CLARK:** I move Staff.

14 **CHAIRMAN JOHNSON:** So would you suggest that
15 there's not -- you would suggest that there's
16 duplication but it's not an economic --

17 **COMMISSIONER DEASON:** There's duplication
18 there but I'm -- just because that exists at this
19 point I cannot say there's going to be further
20 uneconomic duplication because it all depends on what
21 your definition of "uneconomic" is.

22 **MR. BREMAN:** Right. There's a concern about
23 taking facilities that are already shown to be
24 duplicate and institutionalizing them and building off
25 of those. If you tell the utilities it's okay to do

1 that, then you'll never ever approach the question of
2 uneconomic; you'll always be duplicating and
3 institutionalizing and always be dealing with the
4 incremental service drop rather than the
5 infrastructure required to service future customers.

6 **COMMISSIONER CLARK:** I guess that's what I
7 turn on. It's the motion that to look at it
8 incrementally is exactly what the courts are saying.
9 Each particular instance might appear to benefit the
10 few, but the ultimate impact of repetition occurring
11 many times in a extensive system-wide operation is
12 extremely harmful and expensive, and that's why we
13 have the authority to set the lines.

14 **CHAIRMAN JOHNSON:** Commissioner Deason, in
15 this particular item, would you then agree with Gulf
16 Power's assertion as how duplication should be defined
17 and it's the example of what we should look at?

18 **COMMISSIONER DEASON:** Let me read their
19 position. (Pause)

20 I'd agree with Gulf Power's position on
21 Issue 2.

22 **CHAIRMAN JOHNSON:** There's a motion that
23 fails for lack of a second. Is there another motion?

24 **COMMISSIONER DEASON:** I move that we adopt
25 Gulf Power's position on Issue 2.

1 **CHAIRMAN JOHNSON:** Second.

2 **COMMISSIONER CLARK:** There's a motion and
3 second. All this favor say "aye."
4 **CHAIRMAN JOHNSON:** Aye.
5 **COMMISSIONER DEASON:** Aye.
6 **COMMISSIONER CLARK:** Opposed, nay. Nay.
7 **COMMISSIONER DEASON:** I move Staff on
8 Issue 3.
9 **COMMISSIONER CLARK:** Second.
10 **CHAIRMAN JOHNSON:** Show it approved
11 unanimously.
12 **COMMISSIONER DEASON:** I move Staff on Issue
13 4.
14 **COMMISSIONER CLARK:** Second.
15 **CHAIRMAN JOHNSON:** Show it approved
16 unanimously.
17 **COMMISSIONER DEASON:** Move Staff on Issue 5.
18 **COMMISSIONER CLARK:** Second.
19 **CHAIRMAN JOHNSON:** Show it approved
20 unanimously.
21 **COMMISSIONER DEASON:** I guess I have a
22 question on Issue 6. I think I've stated my position
23 I'm not comfortable drawing the lines, but in Staff's
24 recommendation in part states that "the company should
25 establish procedures and guidelines addressing

1 subtransmission distribution and request for new
2 service which are enforceable with the respective
3 company." That's part of Staff's recommendation in
4 conjunction with drawing the lines. I guess this is
5 for the areas where you don't have a line to draw, or
6 even in areas where you do draw a line.

7 **MR. BREMAN:** But that part of the
8 recommendation stands regardless of whether or not
9 lines are drawn in any location.

10 **COMMISSIONER DEASON:** I guess.

11 **MR. BREMAN:** There has to be a mechanism to
12 address growth.

13 **COMMISSIONER DEASON:** I'm supportive of
14 that. I think to the extent there can be cooperation
15 and some general guidelines established, I think it
16 would be conducive in the long run. I think it's
17 going to be more likely to result in the most economic
18 provisioning of service more than lines on the ground.
19 So to that extent I support Staff's recommendation. I
20 do not support drawing any type of a line as a result
21 of this proceeding.

22 So I would move both the denial of Staff and
23 the approval of Staff as described.

24 **CHAIRMAN JOHNSON:** Let me make sure I
25 understand what was described. You wouldn't draw the

1 lines but you would continue to use our existing
2 guidelines.

3 **COMMISSIONER DEASON:** Our existing guideline
4 has been delineated through case law and through the
5 history of disputes that has been litigated before
6 this Commission. I think what Staff has got in mind
7 is a step beyond that; to get beyond that, and to have
8 a cooperative understanding as to how new growth is
9 going to be provisioned between the two utilities.

10 **MR. BREMAN:** As I understand you, you're
11 separating your decision in Issue 6 from your vote in
12 Issue 7.

13 **COMMISSIONER DEASON:** I guess Issue 7 is
14 really the question of where there should be a
15 boundry. I guess I'm addressing both in Issue 6.

16 Staff recommendation in issue --

17 **MR. BREMAN:** Staff's recommendation in Issue
18 6 is almost verbatim what you just said in policy
19 form. It does not specify where lines are to be drawn
20 or that lines should be drawn. It just says the
21 Commission should continue its policy.

22 **COMMISSIONER DEASON:** So you're saying to be
23 consistent with my description I can just move Staff
24 on Issue 6 in its entirety?

25 **MR. BREMAN:** It's a matter of

1 interpretation.

2 **COMMISSIONER DEASON:** See, I don't want -- I
3 think my position is understood. I do support the
4 establishment of guidelines to address the most
5 economic way of provisioning service to new customers.
6 I think that's a worthwhile undertaking and something
7 I would hope to be taken seriously by management in
8 both companies to try to work in a cooperative spirit,
9 which I think would result in the best interest of all
10 involved.

11 **COMMISSIONER CLARK:** I just want to be clear
12 about something. Is it -- when you are taking the
13 position that we should proceed how we have with
14 respect to territorial disputes and agreements, that
15 the Commission should not be drawing lines, it should
16 be through -- the utility should draw the lines except
17 where there is a dispute, and then we would draw the
18 line.

19 **COMMISSIONER DEASON:** Is that a question to
20 me?

21 **COMMISSIONER CLARK:** Yes.

22 **COMMISSIONER DEASON:** I endorse utilities
23 getting together and drawing lines. I think they can
24 do that much better than us sitting here in
25 Tallahassee. Of course, in this case we did go out

1 and view the area, which I thought was very helpful.

2 But to the extent the utilities can come to
3 a resolution as drawing those lines themselves, and as
4 presented here at the Commission, and our Staff
5 reviews that and does not see any concerns, I'm all
6 for approving that.

7 I think they are in the position to best be
8 able to determine the way that growth should occur.
9 And also I think that if they have that cooperative
10 spirit and are able to draw those lines, I think they
11 are also willing to work amongst themselves and come
12 before the Commission if there needs to be a change in
13 that. Where, for example, if there's a prison built
14 in the middle of nowhere and it's certainly more
15 economic for one versus the other, and they both can
16 agree on that, to have that exception on a
17 case-by-case basis is if it comes about.

18 **COMMISSIONER CLARK:** I guess my question is
19 where they can agree, then do we draw the lines?

20 **COMMISSIONER DEASON:** Where they cannot
21 agree.

22 **COMMISSIONER CLARK:** Right.

23 **COMMISSIONER DEASON:** If a dispute occurs
24 and we have to end up resolving that dispute, and if
25 the best way to resolve that dispute on a case-by-case

1 basis is draw a line within a given area, I'm not
2 opposed to doing that either.

3 But I'm not convinced that what we're doing
4 here in this -- basically carving up two counties is
5 going to result in the most economic provisioning of
6 service, that's why I'm reluctant to actually be the
7 entity drawing the lines on the map.

8 **COMMISSIONER CLARK:** Here's my confusion. I
9 think we do have a dispute, and, in fact, Gulf Coast
10 has indicated there's a dispute as to the area to be
11 served. And the evidence of that dispute is the
12 commingling. And I agree with you, the best of all
13 possible worlds is that they draw the lines and that
14 they cooperate. And my concern is we have
15 demonstrated facts, we've gone out to visit the site.
16 They are commingled. Uneconomic duplication has
17 occurred. It will occur in the future if you don't
18 draw lines.

19 I guess, Commissioner Deason my concern is
20 just that where this takes us is a conclusion can be
21 drawn that the only way lines are going to be drawn is
22 through mutual agreement of the two disputing parties,
23 and that's going to get us -- I mean, then we really
24 exercise no oversight on territories, and that's my
25 concern.

000982

1 **CHAIRMAN JOHNSON:** Let me make one
2 announcement. We're going to break after this
3 particular item to go upstairs and participate in the
4 reception. The reception has already started for
5 those of you who are interested in leaving and going
6 on up. Commissioner Kiesling is there and
7 Commissioner Garcia is headed up and they are ready
8 and willing to entertain you.

9 **COMMISSIONER DEASON:** Isn't this
10 entertainment enough? (Laughter)

11 **COMMISSIONER CLARK:** But with respect to
12 Issue No. 6, if Staff is saying that it goes forward
13 either way -- and there are areas that Staff doesn't
14 recommend drawing lines, but they divulge their plans
15 and then we look at it and then suggest lines, I mean,
16 what are we going to do?

17 **MS. BASS:** Commissioners, if I can say
18 something. I have a real concern.

19 I can understand Commissioner Deason and
20 what he believes the resolution should be. My concern
21 is that this almost takes us back to where we were for
22 the original dispute. After the original dispute when
23 the Commission decided who should serve the
24 correctional facility, we asked the utilities at that
25 time to go away and try to reach some sort of

1 territorial agreement, or some way to correct the
2 problems that were identified during the original
3 hearing out there.

4 After all of that, there was no resolution
5 and so that was when we came back and we declared that
6 this was an area of dispute and we had the second
7 hearing.

8 And my concern is there's not been a lot of
9 cooperative effort on both of the utilities to come to
10 any sort of resolution on this. And I don't foresee a
11 lot of hope in the future in them doing that,
12 especially if we're looking for them to come up with
13 some sort of lines on the ground that Gulf Coast
14 advocates and Gulf Power is very adamantly against.

15 So I don't know what sort of resolution
16 there will be. And it seems to me that we're going
17 back to the way it was before, and the only time we'll
18 deal with it is when there's a specific dispute that's
19 brought up before the Commission.

20 **CHAIRMAN JOHNSON:** See, I don't have a
21 problem with that. I was going to say that the
22 process we used with the facility was an appropriate
23 process; to look at those facts and do a very specific
24 and defined analysis of a specific and defined area
25 and that that's how we should proceed.

1 **COMMISSIONER CLARK:** What about the area
2 where one person is being served by Gulf Power and one
3 is being served by Gulf Coast? What you're saying is
4 you can continue that process all the way down. And,
5 in fact, Mr. Weintritt says that's what he intends to
6 do.

7 **MS. BASS:** And, I think, in my opinion that
8 constitutes further uneconomic duplication. I think
9 that the definition of economic duplication by one
10 utility is that if it's not uneconomical for us to
11 serve that customer, then we should serve that
12 customer. But I think what we're looking at when
13 we're trying to resolve a territorial dispute and we
14 have two utilities is whether it's uneconomic for the
15 general body of ratepayers of both utilities.

16 And I agree, if we're looking at Gulf Power
17 Company and we say they have uneconomically served
18 someone, then we can reduce their rate base by the
19 amount of the investment in those facilities. But
20 that's just looking at one side for uneconomic. And
21 when I think of uneconomic, I'm looking at it for all
22 of the ratepayers that are involved in this. And we
23 do the same with the territorial agreements. When we
24 review those we don't look at just one utility and
25 what is economical for them, we look at what is in the

1 best interest of bolt utilities and both bodies of
2 ratepayers.

3 So I think even incrementally that is
4 uneconomic duplication of facilities, and I guess
5 maybe I disagree with the Supreme Court; that I think
6 one dollar is uneconomic duplication of facilities
7 because a ratepayer is going to pay for that.

8 **COMMISSIONER DEASON:** I don't disagree with
9 what you're saying. But when you draw a line on the
10 map that doesn't mean that that's going to be the most
11 economic provisioning of service either.

12 **MS. BASS:** No, and I agree with that. And I
13 think we deal with that every time we deal with a
14 territorial agreement. When the two utilities come to
15 us and they have agreed on a boundary, we have not
16 looked at whether or not that's the most economical
17 line that can be drawn, but those utilities have
18 agreed on that. I think we try to do the best we can
19 and we rely on them to do the negotiating.

20 The problem in this particular case is we
21 have Gulf Coast who has drawn a line and laid it on
22 the ground which will prevent, in my opinion, further
23 uneconomic duplication of facilities. And yet we have
24 had nothing from the other party to give us any idea
25 whether or not it is truly economical for both

1 utilities to draw that line.

2 So I think they were given ample opportunity
3 to do that. So I think we have just one set of facts.
4 They were presented. There's nothing in the record
5 for -- to show that that line is uneconomical to the
6 other utility. So we're trying to do the best we can
7 with the evidence that's included in the record.

8 **COMMISSIONER DEASON:** What I hear you saying
9 is you're determined to draw a line -- only one party
10 drew the line, so you're going to accept their line
11 and say that's the most economic way to provide
12 service and I can't accept that.

13 **COMMISSIONER CLARK:** And the answer is yes,
14 because the other utility was given the opportunity to
15 say no. And I guess my concern is we are talking
16 about territorial boundaries. Boundaries to me mean,
17 you know, here's a line and somebody serves here and
18 somebody else serves here.

19 I guess what I'm having a hard time with is
20 the notion that how do you reconcile that with the
21 idea that there ought to be boundaries? I agree with
22 you wholeheartedly that the parties ought to decide
23 these things, and then where they can't decide we have
24 to resolve them.

25 And what we have had here is demonstration

1 by empirical facts that they have been unable to agree
2 on a boundary. They have commingled their facilities,
3 they will continue to commingle their facilities and
4 we need to draw the lines.

5 But I think Staff has done a good job of
6 being circumspect as to where those lines should be
7 drawn. What does "boundaries" mean? And what does
8 the notion of us settling disputes mean if it doesn't
9 address the issue where they have commingled their
10 facilities?

11 **CHAIRMAN JOHNSON:** How do we address the
12 issue of whether or not -- by the line that we're
13 drawing whether or not this is the most economical
14 provisioning of service? How do we make that
15 determination?

16 **COMMISSIONER CLARK:** We ask to find out. We
17 ask Gulf Coast to do that, and we ask Gulf Power to do
18 that. And Gulf Power responded by saying "We don't
19 think you should draw lines." If that's the case,
20 then we should do away with all territorial boundaries
21 that we have currently.

22 **COMMISSIONER DEASON:** Oh, absolutely not.
23 That is a great leap to say because we're rejecting to
24 draw a line in this case, we ought to, by a wave of
25 the wand, eliminate all boundaries that have

1 heretofore been created and approved.

2 **COMMISSIONER CLARK:** Well, Commissioner
3 Deason, you just said that you are not assured that by
4 drawing the lines on the ground that it, in fact, will
5 result in the most economic. And if that's the case,
6 what I'm suggesting to you is we ought not have any
7 boundaries elsewhere and let economic growth take care
8 of it because according to what you say, that would be
9 the most economic way.

10 **COMMISSIONER DEASON:** You didn't hear what I
11 said, then, or what I thought I said. I said I felt
12 like when two parties got together and agree on that,
13 that that's the best evidence; that's going to be the
14 most economic provisioning of service. They are the
15 entities with the best information. They are the
16 entities that know their system best; have the best
17 idea of what their long rang plans are and how they
18 think is going to be the most economic way for them to
19 provide service. And if they can get together and
20 agree on that, while that's no 100% guarantee it's
21 going the most economic way of providing, it's the
22 best evidence we have that's what it is.

23 **COMMISSIONER CLARK:** Then what do you do
24 when they can't agree? Does that mean you never draw
25 the line?

1 **COMMISSIONER DEASON:** No, I'm not willing to
2 say you never draw a line. I'm just convinced -- I
3 went into this case not thinking that we were going to
4 result one way or the other with lines or without
5 lines. I think some people went into this case
6 thinking the result is going to be a line, and let's
7 determine where we're going do draw the line. And I
8 don't think that was the purpose of this hearing.

9 I think the purpose of this hearing was to
10 explore this whole thing. And we had very ample
11 evidence concerning changes in the industry,
12 concerning considerations of flexibility and planning
13 and that sort of thing. And I think that we ought to
14 give our utilities some of that flexibility when they
15 cannot reach an agreement to actually draw the lines
16 on the ground.

17 I think we're in total agreement, though,
18 that if they can reach that agreement and draw the
19 lines, that that is the best evidence that is the most
20 economic way to provide service. And absent some
21 extraordinary circumstance that our Staff normally
22 reviews for, absent that, we routinely approve those
23 and we actively monitor and enforce those agreements,
24 which I think we should continue to do just as
25 forcefully as we've done in the past, irregardless of

1 what we decide here in this case.

2 **COMMISSIONER CLARK:** I guess -- I agree with
3 you that they ought -- they are in the best position
4 to determine what is economic and where the line
5 should be drawn.

6 It's apparent to me that where you have
7 facilities commingling you have duplication, and it's
8 uneconomic -- I mean I don't think there's anyone
9 indicating that there should be a duplication of
10 transmission and distribution system in whatever
11 competitive market we go to. I think the general
12 notion is that they would still remain regulated
13 because it's most economic only to have one facility.

14 I would point out in this case there is
15 empirical evidence by the fact that these facilities
16 are commingled that they were unable to reach an
17 agreement on where to draw the lines. And I would
18 also point out there's one party who wants to draw the
19 line. And it's incumbent on us then to settle that
20 dispute. And what we're saying is we will not settle
21 that dispute unless and until you agree lines will not
22 be drawn.

23 **COMMISSIONER DEASON:** I guess everybody can
24 interpret a decision the way they see fit. I think
25 that this whole case, where we got it today, was as a

1 result of a very specific dispute which we handled, I
2 think, in an appropriate way; just so happened the
3 court disagreed.

4 I think that this dispute escalated
5 primarily at the motion of the Commission to look at
6 this. And I think when you start wholesale looking at
7 two counties trying to draw lines, I think that is --
8 when you get to the point where it is almost
9 unmanageable and raises questions in my mind as to
10 whether we're trying to do centralized planning, which
11 we know is not the most economic way to do things,
12 there may be some market forces out there which are
13 going to help dictate the way some of this expansion
14 of facilities is going to take place. And that's not
15 a bad thing.

16 **CHAIRMAN JOHNSON:** I think we're back on
17 Issue 6. And Commissioner Deason your concern was
18 with the language that Staff had in its
19 recommendation.

20 **COMMISSIONER DEASON:** They are saying we
21 should draw a boundary and I can't agree with that, as
22 I've described before, in my position. So to the
23 extent that is incorporated within Issue 6, that a
24 boundary line should be drawn, in this case I can't
25 agree with that. But as far as the language

1 concerning having procedures and guidelines in place
2 to help guide the two utilities in considering how
3 they should most economically provide service, I
4 certainly think that's a worthwhile thing to do. I
5 think at least that's what the two parties should be
6 able to do; if they can't draw a line on the ground,
7 they should be able to at least agree on what the
8 rules are that should be considered when one entity
9 provides service versus another.

10 I'm sure what is going to happen, in those
11 areas where there's already close proximity, there's
12 going to be the continued appearance of uneconomic
13 duplication. But the fact of the matter is if both
14 providers are already there, have the infrastructure
15 in and the distribution lines and it's just a matter
16 of running a drop, then it's economic for either one
17 of them to provide service.

18 **CHAIRMAN JOHNSON:** And with that the second
19 part of the Staff recommendation says "the company
20 should establish procedures and guidelines addressing
21 subtransmission distribution and request for new
22 service." Then you are in agreement with that
23 particular portion?

24 **COMMISSIONER DEASON:** Yes. I think we
25 should set a deadline to have that presented to the

1 Commission. We don't have that in this docket; is
2 that correct?

3 **CHAIRMAN JOHNSON:** That is correct.

4 **MS. BASS:** That is correct. I think setting
5 a deadline is the only safe way to assure ourselves
6 that we'll actually get something from them.

7 **COMMISSIONER DEASON:** Do you have a
8 suggested date? How long do you anticipate this would
9 take?

10 **MS. BASS:** I would say probably no less than
11 three months, no more than six months. Something
12 along in there. I'm not sure how quickly they'll get
13 together and actually do it, so.

14 **CHAIRMAN JOHNSON:** Six months.

15 **MS. BASS:** I'd say no more than six months.

16 **COMMISSIONER DEASON:** That's the motion
17 then.

18 **COMMISSIONER CLARK:** I'll second. I mean I
19 don't think we're going to reach a resolution on the
20 lines.

21 I guess I can also take this opportunity
22 again to debate this with you, but I'll second it. I
23 think it should be filed. I think the lines should be
24 drawn.

25 **COMMISSIONER DEASON:** I think you're very

1 elloquenty addressing your position, and I think that
2 the parties out there know this is just a three-member
3 panel and two other Commissioners may agree with you,
4 may think they need to get some really good guidelines
5 and policies in here before lines are drawn.

6 **COMMISSIONER CLARK:** Could we go get them?

7 (Laughter)

8 **CHAIRMAN JOHNSON:** So there's a motion and a
9 second that we require the companies to work together
10 to establish detailed procedures and guidelines
11 addressing subtransmission distribution and request
12 for new service within six months and submit that to
13 the Commission.

14 All those in favor signify by saying "aye."

15 **CHAIRMAN JOHNSON:** Aye.

16 **COMMISSIONER CLARK:** Aye.

17 **COMMISSIONER DEASON:** Aye.

18 **CHAIRMAN JOHNSON:** Show it approved
19 unanimously.

20 **COMMISSIONER DEASON:** I would move we deny
21 Staff on Issue 7.

22 **CHAIRMAN JOHNSON:** There's a motion we deny
23 Staff on Issue 7. Second

24 **COMMISSIONER CLARK:** All those in favor say
25 "aye."

1 **CHAIRMAN JOHNSON:** Aye.

2 **COMMISSIONER DEASON:** Aye.

3 **COMMISSIONER CLARK:** Opposed, nay. Nay.

4 **CHAIRMAN JOHNSON:** Show it approved on
5 two-to-one vote.

6 Issue 8 are the findings of fact and
7 conclusions of law.

8 **MS. PAUGH:** Madam Chairman, Issue 8 will
9 have to be revised to the extent that it would then
10 match the ruling on Issue 2. So those modifications
11 will be made in the order.

12 **MR. ELIAS:** If we could just take a minute
13 we want to make sure --

14 **COMMISSIONER CLARK:** I'm not sure you need
15 to change anything.

16 **MR. ELIAS:** I'm not sure that we do either,
17 but --

18 **MS. PAUGH:** No. 20 will definitely be --

19 **COMMISSIONER CLARK:** You already rejected
20 it.

21 **MS. PAUGH:** That's right.

22 **COMMISSIONER DEASON:** I don't see how our
23 decision should affect any of these. Either they are
24 correct findings of fact or they aren't.

25 **MR. BREMAN:** No. The only modification I

1 would agree with is the added language to clarify on
2 No. 20.

3 **COMMISSIONER CLARK:** No, now the language is
4 not appropriate to clarify it, so it's appropriate the
5 way it is, I think. I think they are all okay.

6 **MS. PAUGH:** I agree.

7 **COMMISSIONER DEASON:** I move Staff on Issue
8 8.

9 **COMMISSIONER CLARK:** Second.

10 **CHAIRMAN JOHNSON:** Show it approved
11 unanimately.

12 **MS. PAUGH:** On Issue 9 I would recommend
13 that the docket now not be closed. I would change the
14 recommendation in order to accommodate the six months
15 filing.

16 **COMMISSIONER CLARK:** I so move.

17 **COMMISSIONER DEASON:** Second.

18 **CHAIRMAN JOHNSON:** Show it approved as
19 modified.

20 Anything else on this matter? Seeing
21 nothing, we will adjourn until 4:45.

22 (Recess taken.)

23

24

25

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

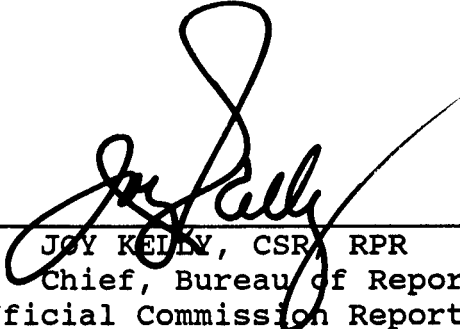
CERTIFICATE OF REPORTER

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Hearing in Docket
6 No. 930885-EU was heard by the Florida Public Service
7 Commission at the time and place herein stated; it is
8 further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed by me; and that this transcript,
12 consisting of 43 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 6th day of January, 1998.

15 
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