



**West Florida Electric  
Cooperative Association, Inc.**

A Touchstone Energy<sup>SM</sup> Partner



ORIGINAL

P.O. Box 127  
Graceville, FL 32440-0127  
(850) 263-3231  
Toll Free Florida: 1-800-342-7400  
Web Address: www.wfeca.net

P.O. Box 37  
Bonifay, FL 32425-0037  
(850) 547-9325

P.O. Box 1100  
Sneads, FL 32460-1100  
(850) 593-6491

August 22, 2001

**RECEIVED**  
AUG 22 2001

FPSC-COMMISSION CLERK

Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

**VIA HAND DELIVERY**

RE: In Re: Territorial Dispute Between West Florida Electric Cooperative Association, Inc. and Gulf Power Company in Washington County, Florida  
Docket No.: 010441-EU

Dear Ms. Bayo:

I am enclosing herewith the originals and fifteen (15) copies of the Rebuttal Testimony of Jeff Parish, Joseph E. Perry, III, P.E., Mark A. Cicchetti, Michael K. Moore, P.E. and Russell L. Dunaway filed on behalf of West Florida Electric Cooperative Association, Inc.

I am also enclosing a copy of this letter as an acknowledgement copy and would appreciate it if you would file stamp it and return it to me in the enclosed self-addressed/stamped envelope as an acknowledgement of the date the above Rebuttals were filed. Please call me if you have any questions regarding this matter.

Very truly yours,

Gary F. Clark

10407-01 thru 10411-01

GFC/daj  
Enclosures

- cc: John H. Haswell, Esquire  
Attorney for West Florida Electric Cooperative Association, Inc.
- Frank E. Bondurant, Esquire  
Attorney for West Florida Electric Cooperative Association, Inc.
- William S. Rimes, Executive Vice President and CEO  
West Florida Electric Cooperative Association, Inc.
- Jeffrey A. Stone, Esquire  
Attorney for Gulf Power Company
- Russell A. Badders, Esquire  
Attorney for Gulf Power Company

RECEIVED & FILED

*Man*  
FPSC-BUREAU OF RECORDS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Territorial Dispute Between  
West Florida Electric Cooperative  
Association, Inc. and Gulf Power  
Company in Washington County,  
Florida.

---

Docket No.: 010441-EU

Date Filed: August \_\_\_\_\_, 2001

**REBUTTAL**

**OF**

**MARK A. CICCHETTI**

**FOR**

**WEST FLORIDA ELECTRIC  
COOPERATIVE ASSOCIATION, INC.**

DOCUMENT NUMBER - DATE

10409 AUG 22 2001

FPSC-COMMISSION CLERK

1 West Florida Electric Cooperative Association

2 Before the Florida Public Service Commission

3 Prepared Rebuttal Testimony of

4 Mark A. Cicchetti

5 Docket No. 010441-EU

6 Date of Filing: August 22, 2001

7

8 Q. Please state your name and address and on whose behalf you are  
9 testifying in this proceeding.

10 A. My name is Mark Anthony Cicchetti and my business address is  
11 2931 Kerry Forest Parkway, Suite 202, Tallahassee, Florida  
12 32309. I am testifying on behalf of the West Florida Electric  
13 Cooperative Association, Inc. ("WFEC").

14 Q. By whom are you employed and in what capacity?

15 A. I am a Senior Financial Consultant and Manager of the  
16 Tallahassee Office for C.H. Guernsey & Co. Guernsey & Co. is  
17 an engineering, architectural and consulting firm that has been in  
18 business for over 70 years. The services Guernsey provides  
19 include: cost of service and rate studies; regulatory and litigation  
20 support; economic and financial studies; valuation studies; power  
21 supply planning, solicitation, and procurement; fuel purchasing;  
22 transmission and distribution planning and facilities design;  
23 strategic planning; telecommunications and e-business  
24 applications; architectural design for headquarters and warehouse  
25 facilities; environmental assessments; security systems, and; web

1 site development and Internet applications. For ten years prior to  
2 joining C.H. Guernsey & Co., I was President of Cicchetti & Co., a  
3 financial research and consulting firm specializing in public utility  
4 finance, economics, and regulation. I also have been employed  
5 by the Florida State Board of Administration as Manager of  
6 Arbitrage Compliance and the Florida Public Service Commission  
7 as Chief of Finance. A detailed narrative description of my  
8 experience and qualifications is contained in Exhibit No. \_\_\_\_  
9 (MAC - 1).

10 Q. Have you previously testified before this Commission?

11 A. Yes, I have testified before this Commission numerous times.

12 Q. What is the purpose of your rebuttal testimony?

13 A. The purpose of my rebuttal testimony is to address the positions  
14 presented by T.S. Spangenberg, Jr. on behalf of Gulf Power  
15 regarding the issues identified in this territorial dispute docket. My  
16 rebuttal testimony will address Mr. Spangenberg's positions  
17 regarding the boundaries of the disputed area, the nature of that  
18 area, and the general character and future expectations for that  
19 area for other utility services. My rebuttal testimony also will  
20 address Mr. Spangenberg's perspective as to the implications that  
21 all the facts, issues, and conclusions should have upon the  
22 Commission's resolution of this dispute.

23 Q. Please summarize your conclusions.

24 A. Mr. Spangenberg's testimony attempts to portray this territorial  
25 dispute as a dispute over a new customer in an unserved area

1 that WFEC is unable to adequately serve. However, an analysis  
2 of the facts indicates this dispute is over an attractive new load on  
3 the site of an existing customer of WFEC that WFEC has served  
4 for 40 years in an area where WFEC historically has been the  
5 service provider. In fact, WFEC has distribution infrastructure  
6 surrounding the site and WFEC is the sole provider of electricity  
7 within 4 miles of the site. WFEC stands ready, willing, and able to  
8 provide adequate and reliable service to the site and would be  
9 were it not for the interference of Gulf Power.

10 Q. Mr. Spangenberg states the Commission should designate only  
11 the confines of the equipment comprising ECS's electric load at  
12 Station 13A as the area in dispute. (Spangenberg, pg. 2 line 20)  
13 Is this reasonable?

14 A. Absolutely not. If a utility could claim a disputed area to be  
15 anywhere it could fit some of its equipment, it would render as  
16 useless concepts such as the regulatory compact, service  
17 territory, and territorial agreement. For example, the  
18 Commission's definition of territorial agreement in Chapter 25-  
19 6.0439 of the Florida Administrative Code states: "territorial  
20 agreement" means a written agreement between two or more  
21 electric utilities which identifies the **geographical area** to be  
22 served by each utility. (emphasis added) "Territorial dispute" is  
23 defined as "a disagreement as to which utility has the right and the  
24 obligation to serve a particular **geographic area**. (emphasis  
25 added) Mr. Spangenberg's attempt to subvert the Commission's

1 historical reliance on "territory" meaning "geographical area"  
2 highlights the unreasonableness of his position. The regulatory  
3 compact is the fundamental principle underlying public utility  
4 regulation. Generally, the regulatory compact provides utilities  
5 with protection from competition from enterprises offering the  
6 same service in the same service area in return for the obligation  
7 to serve. If a precedent is set that allows a utility to claim as  
8 unserved territory, any area large enough to fit some of its  
9 equipment, the protection from competition from enterprises  
10 offering the same service in the same service area will be  
11 undermined. Such a precedent would require issues such as  
12 stranded costs, the obligation to serve, and the public interest to  
13 be addressed. In fact, these issues are in the process of being  
14 considered in Florida with regard to deregulation. However,  
15 Florida still operates under the regulatory compact and Mr.  
16 Spangenberg's position is in direct conflict to that compact, the  
17 Commission's rules, and precedent. Finally, as recognized by the  
18 Commission in Order PSC-98-0174-FOF-EU: "Chapter 366  
19 speaks to "Territory," not to customers as the Florida Supreme  
20 Court has ruled, a customer has no organic, economic or political  
21 right to chose an electric supplier merely because he deems it to  
22 be to his advantage, (Story v. Mayo, 217 So.2nd 304 (Fla 1968),  
23 Lee County v. Marks, 501 So.2nd 585 (Fla 1987).

24 Q. Mr. Spangenberg claims there is no utility currently  
25 providing service to the area comprising Station 13A.

1 (Spangenberg, pg. 3, line 16) Is his claim correct?

2 A. No. As shown on Gary F. Clark's Exhibit \_\_\_ (GC-5) , Station 13A  
3 will be located within the fenced site of Florida Gas Transmission  
4 Company which is currently receiving service from WFEC. Station  
5 13A will be immediately adjacent to, or in close proximity of, the  
6 feeder line currently provided by WFEC. Mr. Spangenberg's claim  
7 that there is no utility currently providing service to the area is  
8 misleading and based on his assertion that because construction  
9 of the additional compressor station is not complete, there is no  
10 customer there and therefore, no utility is supplying service to the  
11 area. Again, Mr. Spangenberg is attempting to replace the  
12 Commission's historical reliance on territory meaning geographical  
13 area with his own interpretation that utilities do not serve  
14 prescribed geographic areas. (Spangenberg, pg.3 line 1)

15 Q. Mr. Spangenberg contends that "To designate a "disputed area"  
16 that encompasses any area outside of Station 13A presents a  
17 potential for prematurely awarding service rights regarding an  
18 undeveloped area to one utility or the other." (Spangenberg, pg. 4  
19 line 18) Do you agree?

20 A. No. The area in dispute is essentially the area within a four-mile  
21 radius of Hinson Crossroads including the site where FGT owns  
22 and operates Station 13 and where Station 13A will be  
23 constructed. WFEC currently serves the site where Station 13A  
24 is to be constructed. WFEC has distribution infrastructure  
25 surrounding the site, and WFEC is the sole provider of electric

1 service within 4 miles of the site. WFEC has made meaningful  
2 investments to serve this area. Currently, there are no  
3 expectations for significant development of the area in the  
4 foreseeable future. In fact, Mr Spangenberg states that: "...no  
5 additional disputes in the general or larger area are reasonably  
6 foreseeable." (Spangenberg, pg 3, line 10) Additionally, Mr.  
7 Spangenberg cites Commission Order PSC-98-0174-FOF-EU (at  
8 page 10) (Spangenberg, pg. 5, line 1) which states: "...drawing  
9 lines on the ground would result in centralized planning by this  
10 Commission which is not the most economic way to determine the  
11 service areas because it does not take into account market forces  
12 which will dictate the manner in which some of the expansion of  
13 facilities is going to take place." This cite from Order PSC-98-  
14 0174-FOF-EU refers to potential development in unserved  
15 territory. The area of dispute in this docket is part of WFEC's  
16 service territory and is being served by WFEC. Consequently, Mr.  
17 Spangenberg's concerns regarding "drawing lines on the ground"  
18 are unfounded. The load at Station 13A would be beneficial to  
19 WFEC's customers. It would be unfair to WFEC not to be  
20 recognized as the historical provider of service in the disputed  
21 area.

22 Q. Mr. Spangenberg states that WFEC's petition in this docket:  
23 "...flies in the face of established precedent that honors the  
24 customer's choice of electric supplier under circumstances that do  
25 not lead to uneconomic duplication of existing electrical facilities."



1 (Spangenberg, pg. 7, line 3) Do you agree?

2 A. No. The Commission's rule regarding territorial disputes is not  
3 limited to customer choice and uneconomic duplication. As stated  
4 in Chapter 25-6.0441 (2), "In resolving territorial disputes, the  
5 Commission **may consider, but not be limited** to consideration  
6 of (a) the capability of each utility to provide reliable electric  
7 service within the disputed area with its existing facilities and the  
8 extent to which additional facilities are needed; (b) the nature of  
9 the disputed area including population and the type of utilities  
10 seeking to serve it, and degree of urbanization of the area and its  
11 proximity to other urban areas, and the present and reasonably  
12 foreseeable future requirements of the area for other utility  
13 services; (c) the cost of each utility to provide distribution and  
14 subtransmission facilities to the disputed area presently and in the  
15 future; and (d) customer preference if all other factors are  
16 substantially equal. (3) The Commission may require additional  
17 relevant information from the parties if so warranted." (emphasis  
18 added) Obviously, and contrary to Mr. Spangenberg's attempt to  
19 focus only on customer choice and uneconomic duplication, the  
20 Commission has broad latitude in resolving territorial disputes. In  
21 this docket, with regard to Chapter 25-6.0441(2)(d) and 25-  
22 6.0441(3), all other factors are not substantially equal and  
23 additional relevant information is warranted. This is not a case  
24 where two utilities with similar incremental costs of construction  
25 are vying for an unserved customer in unserved territory.  
Although both parties can provide adequate reliable service at

1 basically the same incremental cost of construction, the site in  
2 question has been served by WFEC for 40 years and the disputed  
3 area historically has been served by WFEC. The area is rural in  
4 nature and is not expected to change. Therefore, there are no  
5 reasonably foreseeable future requirements for other utility  
6 services. The added load would be very beneficial to the  
7 customers of WFEC, the historical provider of service to the  
8 disputed area.

9 Q. Mr. Spangenberg classifies the site of Station 13A as "not rural."  
10 (Spangenberg, pg. 7, line 20) Is that an accurate classification?

11 A. No. The site of Station 13A and the area within a four-mile radius  
12 is clearly rural. As pointed out by Gary Clark, there are 390  
13 services in the area. (Clark, pg. 12, line 4) There are no stores,  
14 shops, industries or businesses of any kind within 7 miles of the  
15 area with the exception of FGT, a bait and tackle shop and a  
16 junkyard. Included in the list of parameters or issues the  
17 Commission may consider pursuant to Section 26-6.0441 of the  
18 Florida Administrative Code is: "(2) the nature of the disputed area  
19 including population and the type of utilities seeking to serve it,  
20 and the degree of urbanization of the area and its proximity to  
21 other urban areas, and the present and reasonably foreseeable  
22 future requirements of the area for other utility services." I believe  
23 a reasonable person would interpret the purpose of that guideline  
24 to be to provide insight about expected load growth in the disputed  
25 area and which party to a dispute may be the best choice to

1 provide service over the long term. WFEC historically has served  
2 the site and the area and stands ready, willing and able to provide  
3 adequate reliable service to Station 13A. Currently, there are no  
4 expectations for significant development of the area in the  
5 foreseeable future. The area is rural in nature and is not expected  
6 to change. Therefore, there are no reasonably foreseeable future  
7 requirements of the area for other utility services.

8 Q. Mr. Spangenberg states: "If ECS receives service at Station 13A  
9 from WFEC, ECS will face an unusually high business risk  
10 whenever WFEC requires additional operating revenue. When  
11 such additional revenue is needed, there would be a natural  
12 temptation and tendency to place a disproportionately large  
13 amount of the increased revenue burden upon a large customer  
14 such as ECS at Station 13A. Although inappropriate by public  
15 policy norms, the only real, practical protection that ECS would  
16 have from such discriminatory rate-setting practices by WFEC  
17 would be an appeal to the management, Board of Directors, or  
18 general membership gathered in annual meeting as a single  
19 member-owner seeking relief versus the interests of the remaining  
20 24,000 member-owners not desiring any revenue increase burden  
21 at all." (Spangenberg, pg. 11, line 3) Is Mr. Spangenberg's  
22 statement correct?

23 A. No, it is not. WFEC's rates are regulated by the Florida Public  
24 Service Commission with regard to unjust or undue price  
25

1 discrimination the same as those of Gulf Power. As a practical  
2 matter, management is well aware of the potential for deregulation  
3 and the need for competitive pricing. Furthermore, an industry  
4 observer might consider ECS's chances in a price discrimination  
5 dispute to be better against WFEC than against Gulf Power.  
6 Additionally, in a price discrimination dispute against WFEC, ECS  
7 would have available the forums cited by Mr. Spangenberg that  
8 would not be available to ECS in a price discrimination dispute  
9 against Gulf Power.

10 Q. Mr. Spangenberg asserts that WFEC would have no ownership of  
11 any facilities directly used to provide electric service to Station  
12 13A (Spangenberg, pg. 13, line 19) and that WFEC would be  
13 operating as a front for AEC. (Spangenberg, pg. 14, line 4) Are  
14 Mr. Spangenberg's assertions correct?

15 A. No. It is anticipated that WFEC will own the new substation  
16 necessary to serve Station 13A - a \$1.3 million investment.  
17 Furthermore, WFEC is a member/owner of AEC (a \$1.1 billion  
18 generation and transmission electric cooperative) and should not  
19 be considered, in any way, shape, or form as a front for AEC in  
20 this territorial dispute.

21 Q. Does this conclude your rebuttal testimony?

22 A. Yes.

23

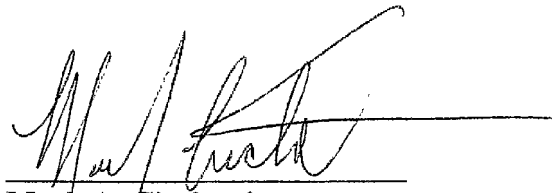
24

25


AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF LEON

BEFORE ME, the undersigned authority personally appeared MARK A. CICHETTI who being by me first duly sworn and who is personally known to me, deposed and says that the foregoing Rebuttal Testimony and Exhibits, if any, are true and correct to the best of his information, knowledge, and belief.

  
Mark A. Cicchetti

Sworn to and subscribed before me this 22 day of August, 2001.

  
Notary Public, State of Florida  
Print Name Michael R. Reid  
Commission number: 942148  
Commission Expiration Date: June 5, 2004



### **Experience and Qualifications**

I received a Bachelor of Science degree in Business Administration in 1980 and a Master of Business Administration degree in Finance in 1981, both from Florida State University. Upon graduation I accepted a planning analyst position with Flagship Banks, Inc., a bank holding company. As a planning analyst, my duties included merger and acquisition analysis, lease-buy analysis, branch feasibility analysis, and special projects. In 1983, I accepted a regulatory analyst position with the Florida Public Service Commission. As a regulatory analyst, I provided in-depth analysis of the cost of equity and required overall rate of return in numerous major and minor rate cases. I reviewed and analyzed the current and forecasted economic conditions surrounding those rate cases and applied financial integrity tests to determine the impacts of various regulatory treatments. I also co-developed an integrated spreadsheet model which links all elements of a rate case and calculates revenue requirements. I received a meritorious service award from the Florida Public Service Commission for my contributions to the development of that model.

In February 1987, I was promoted to Chief of the Bureau of Finance. In that capacity I provided expert testimony on the cost of common equity, risk and return, corporate structure, capital structure, and industry structure. I provided technical guidance to the Office of General Counsel regarding the development of financial rules and regulations. In addition, I authored the Commission's rules regarding diversification and affiliated transactions, chaired the Commission's Committee on Leveraged Buyouts, supervised the finance bureau's regulatory analysts, co-developed and presented a seminar on Exhibit No. \_\_\_\_ (MAC-1) public utility regulation to help educate the Florida Public Service Commission attorneys and provided technical expertise to the Commission in all areas public utility finance for all industries.

In February 1990, I accepted the position of Chief of Arbitrage Compliance in the Division of Bond Finance, Department of General Services. As Manager of the Arbitrage Compliance Section, I was responsible for assuring that over \$16 billion of State of Florida tax-exempt securities remained in compliance with the federal arbitrage requirements enacted by the Tax Reform Act of 1986. I provided investment advice to trust fund managers on how to maximize yields while remaining in compliance with the federal arbitrage regulations. I designed and implemented the first statewide arbitrage compliance system which included data gathering, financial reporting, and computation and analysis subsystems.

In July 1990, I founded Cicchetti & Company. Through Cicchetti & Company I provided financial research and consulting services, including the provision of expert testimony, in the areas of public utility finance, economics, and regulation. Topics I have testified on include cost of equity, capital structure, corporate structure, regulatory theory, cross-subsidization, industry structure, the overall cost of capital, incentive regulation, the establishment of the leverage formula for the water and wastewater industry, reconciling rate base and capital structure, risk and return, and the appropriate regulatory treatment of construction work in progress, used and useful property, construction cost recovery charges, and the tax gross-up associated with contributions-in-aid-of-construction.

In January 2001, I joined C.H. Guernsey & Co. as a Senior Financial Consultant and Manager of the Tallahassee, Florida Office.

In 1985, I was certified by the Florida Public Service Commission as a Class B Practitioner in the areas of finance and accounting.

In June, 1985, I published an article in Public Utilities Fortnightly titled "Reconciling Rate Base and Capital Structure: The Balance Sheet Method." In September 1986, I was awarded third place in the annual, national, Competitive Papers Session sponsored by Public Utilities Reports, Inc., in

Exhibit No. \_\_\_\_\_(MAC-1)  
West Florida Electric Cooperative Association, Inc.  
Docket No. 010441-EU  
Attachment No. 1  
Page 3 of 3

conjunction with the University of Georgia and Georgia State University, for my paper titled "The Quarterly Discounted Cash Flow Model, the Ratemaking Rate of Return, and the Determination of Revenue Requirements for Regulated Public Utilities." An updated version of that paper was published in the June 1989 edition of the National Regulatory Research Institute Quarterly Bulletin. I subsequently served twice as a referee for the Competitive Papers Sessions. On June 15, 1993, I published an article on incentive regulation in *Public Utilities Fortnightly* titled "Irregular Incentives." I am a past President and past member of the Board of Directors of the Society of Utility and Regulatory Financial Analysts (ASURFA®). I was awarded the designation Certified Rate of Return Analyst by SURFA in 1992. I am a member of the Financial Management Association International and have been listed in *Who's Who in the World* and *Who's Who in America*. I have made public utility and finance related presentations to various groups such as the Southeastern Public Utilities Conference, the National Society of Rate of Return Analysts, the National Association of State Treasurers, and the Government Finance Officers Association.