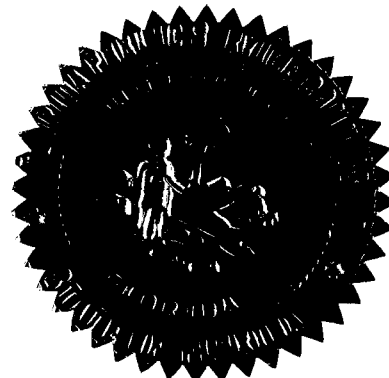


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010441-EU

In the Matter of

PETITION TO RESOLVE TERRITORIAL  
DISPUTE WITH GULF POWER COMPANY  
IN WASHINGTON COUNTY BY WEST  
FLORIDA ELECTRIC COOPERATIVE  
ASSOCIATION, INC.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER LILA A. JABER  
Prehearing Officer

DATE: Thursday, August 30, 2001

TIME: Commenced at 9:30 a.m.  
Concluded at 10:50 a.m.

PLACE: Betty Easley Conference Center  
Room 152  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: TRICIA DeMARTE  
Official FPSC Reporter  
(850) 413-6736

## 1 APPEARANCES:

2 JOHN H. HASWELL and FRANK BONDURANT, Chandler, Lang,  
3 Haswell & Cole, 211 Northeast First Street, Gainesville,  
4 Florida 32601, appearing on behalf West Florida Electric  
5 Cooperative Association (WEST FLORIDA).

6 RUSSELL A. BADDERS, Beggs & Lane, 700 Blount  
7 Building, 3 West Garden Street, Post Office Box 12950,  
8 Pensacola, Florida 32576-2950, appearing on behalf of Gulf  
9 Power Company (GULF).

10 MARLENE K. STERN, Florida Public Service Commission,  
11 Division of Legal Services, 2540 Shumard Oak Boulevard,  
12 Tallahassee, Florida 32399-0870, appearing on behalf of the  
13 Commission Staff.

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## P R O C E E D I N G S

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2 COMMISSIONER JABER: Let's go ahead and adjourn (sic)  
3 this prehearing conference. Counsel, read the notice.

4 MS. STERN: By notice dated August 9th, 2001, this  
5 time and place were set for a prehearing conference in Docket  
6 010441-EU.

7 COMMISSIONER JABER: Let's take appearances.

8 MR. HASWELL: Yes, ma'am. My name is John Haswell,  
9 and I'm with the law firm of Chandler, Lang, Haswell & Cole in  
10 Gainesville, Florida, on behalf of West Florida Electric  
11 Cooperative, Inc (sic). And with me today, also, as co-counsel  
12 is Frank Bondurant.

13 COMMISSIONER JABER: Frank?

14 MR. HASWELL: Bondurant.

15 COMMISSIONER JABER: Can you spell your last name,  
16 please.

17 MR. BONDURANT: B-O-N-D-U-R-A-N-T.

18 COMMISSIONER JABER: Thank you.

19 MR. BADDERS: I'm Russell Badders with the law firm  
20 of Beggs & Lane at the address as shown in the draft prehearing  
21 order, and I'm here representing Gulf Power.

22 COMMISSIONER JABER: Ms. Stern.

23 MS. STERN: Marlene Stern, appearing here on behalf  
24 of the Commission Staff.

25 COMMISSIONER JABER: Ms. Stern, I understand there

1 are some preliminary matters, and I understand that you may  
2 want to take a break before we adjourn the prehearing  
3 conference to iron out some of the language and the issues.  
4 Let me tell you, my preference is to go through all of the  
5 issues because I have some changes of my own that I'd like for  
6 you all to think about during the break.

7 I want everyone to be on notice that I am not  
8 inclined to find a second day for this hearing. I think that  
9 we can finish this hearing in a day. I think we can do that if  
10 we work real hard on ironing out the language of these issues,  
11 on working on stipulations and resolutions to these issues  
12 before we get to hearing. I think you have a golden  
13 opportunity that I would encourage you all to seize today.

14 Ms. Stern, preliminary matters?

15 MS. STERN: No, not right now. I think we should  
16 just go through the issues.

17 COMMISSIONER JABER: Okay. My preference is not to  
18 go page by page. The first change I had, or at least the  
19 first thing I wanted to bring to your attention is a change  
20 that we have started making to the prehearing orders on Page 4.  
21 If your witnesses have changes to their testimony, by  
22 "changes," I mean corrections to the testimony or updates that  
23 we all expect, our preference now is to have an errata sheet  
24 prepared. And that errata sheet can be entered into the record  
25 as an exhibit. And that's discussed on the bottom of Page 4.

1 Are there any changes that you had prior to Page 4?

2 MR. HASWELL: The only one, Commissioner, would be to  
3 add Mr. Bondurant under appearances.

4 COMMISSIONER JABER: Yes, I've done that. Page 5.  
5 Page 6.

6 MR. HASWELL: On Page 5, Commissioner, I will be  
7 getting back with Marlene on adding the issues, making sure  
8 we've got our issue numbers right for our witnesses, especially  
9 if we renumber any of them or delete any of them.

10 MR. BADDERS: And the same would be true for Gulf  
11 Power, if we renumber issues.

12 COMMISSIONER JABER: Okay. Thank you.

13 MR. HASWELL: On Page 6, there's a -- in West  
14 Florida's position -- how many lines down, one, two, three --

15 COMMISSIONER JABER: A typographical error?

16 MR. HASWELL: -- four, five, six, seven, eight --  
17 nine lines down it says "it is," and the word "is" is  
18 capitalized.

19 COMMISSIONER JABER: Right.

20 MR. HASWELL: And it should not be capitalized.

21 COMMISSIONER JABER: Ms. Stern, do you have that?

22 MS. STERN: Yes.

23 COMMISSIONER JABER: All right. Page 7, Issue 1.  
24 Let me tell you, I had to read that issue three or four times,  
25 and I thought that's three times too many. So I think it's

1 just the wording of the issue, Marlene. If you would -- my  
2 thought, and you all correct me if I'm wrong, rewording it say,  
3 "Pursuant to Rule 25-6.0441(1), Florida Administrative Code,  
4 what is the service area that is the subject of this  
5 territorial dispute?"

6           Isn't that what you are really trying to ask? "The  
7 boundaries of the service area" didn't make any sense to me.

8           MS. STERN: I think that that's fine. I think that  
9 says the same thing in my --

10           MR. BADDERS: I believe it says the same thing. It  
11 allows us to argue either position.

12           MR. HASWELL: That's fine.

13           COMMISSIONER JABER: All right. I don't want to  
14 change the intent of the question.

15           MS. STERN: No, I think it -- it doesn't change the  
16 intent.

17           COMMISSIONER JABER: All right. Issue 2. Again,  
18 "what conditions have caused the dispute" sounded very  
19 informational to me. I know you're trying to cover an element  
20 in the rule, Marlene. I'd asked you earlier if you would try  
21 to draft some sort of stipulation to this issue. Can you  
22 update me on that?

23           MS. STERN: Yes. Jim drafted a stipulation. We  
24 shared it with the parties yesterday afternoon, but in  
25 discussions this morning, it's my understanding that the

1 parties can agree to delete the issue entirely because the  
2 information that they would present under that issue was  
3 covered in their testimony. And they have also agreed that  
4 neither will file a motion to strike from the other's testimony  
5 any facts that pertain to this issue. And I guess I just want  
6 to ask the parties to confirm that --

7 MR. HASWELL: That's correct.

8 MR. BADDERS: We agree.

9 COMMISSIONER JABER: But help me understand the  
10 process with these territorial disputes. The Commission  
11 doesn't need to make a finding with respect to what conditions  
12 caused the dispute. I don't want to eliminate a finding, so by  
13 having the information in the testimony doesn't allow us to  
14 make a finding, if we need to.

15 MS. STERN: Yes, I think you can make a finding  
16 without it being -- specifically being an issue.

17 COMMISSIONER JABER: I don't understand that because  
18 we vote on the issues.

19 MS. STERN: Well, you can find certain facts, you  
20 know, within other issues. This information would apply to a  
21 number of different issues in this.

22 COMMISSIONER JABER: It will serve the foundation  
23 for --

24 MS. STERN: Right.

25 COMMISSIONER JABER: -- the decision on the other

1 issue.

2 MS. STERN: Right. And you can decide, well, this is  
3 how we think -- this is what we think the course of events was,  
4 this is how we see it, and therefore, we're going to decide "X"  
5 under Issue 5 or something.

6 COMMISSIONER JABER: Parties, do you agree with that?

7 MR. BADDERS: I agree. Actually, most of this  
8 information is the basis for the final outcome. I guess right  
9 now it's Issue 10, whichever way the Commission goes. I think  
10 this would be what you would find in the case background and  
11 some of the facts supporting that decision.

12 MR. HASWELL: Right. This basically would support  
13 the factual basis for the other issues. And in addition, in  
14 the posthearing briefs -- or in addition to the posthearing  
15 briefs, the parties have the opportunity to submit proposed  
16 findings and facts and conclusions of law to the Commission  
17 which could be -- you know, may or may not necessarily be the  
18 identical words of the issues.

19 COMMISSIONER JABER: Okay. Fine. Now, do we need to  
20 drop this issue without the stipulation or --

21 MS. STERN: I think we can just drop it.

22 COMMISSIONER JABER: Okay. Show Issue 2 dropped. It  
23 is not my preference, Marlene, just for the sake of not wanting  
24 confusion, to renumber the issues.

25 MS. STERN: Okay.



1 COMMISSIONER JABER: So just say, "Issue 2 dropped."

2 MS. STERN: All right. So when we go -- when we  
3 prepare the final prehearing order, it's going to go Issue 1,  
4 Issue 3?

5 COMMISSIONER JABER: No. You will have Issue 1 as  
6 stated, Issue 2 next to that will be withdrawn or dropped at  
7 the prehearing conference.

8 MS. STERN: Okay.

9 COMMISSIONER JABER: Any changes to Issue 3?

10 MR. HASWELL: No changes.

11 MS. STERN: Staff had no changes.

12 COMMISSIONER JABER: Any changes to Issue 4?

13 MS. STERN: I believe the parties were working on a  
14 stipulation. Maybe they can speak to that.

15 MR. BADDERS: Yes. Mr. Haswell and I have discussed  
16 this issue, and we would be able to stipulate to Staff's  
17 language if the number that appears, it says, "6 million," that  
18 should be "5.5," and that would reflect also that instead of  
19 two transformers that it is one transformer. And I believe  
20 Staff's in agreement with that also.

21 MS. STERN: Yes.

22 MR. HASWELL: Yes, that's our position. And one  
23 little typo up in West Florida's -- and maybe that was a typo  
24 from our disk, I'm not sure, but it's "AEC" and not "ACE."

25 MS. STERN: Well, that actually will not end up

1 appearing in the final prehearing order. It will just say,  
2 "Issue 4 stipulated," and give Staff's language as amended.

3 COMMISSIONER JABER: For the record, let's be clear.  
4 The parties have agreed to Staff's language under Staff's  
5 preliminary position with a change to -- rather than  
6 "6 million," it will be "5.5 million," rather than the  
7 reference to the two transformers, it will be one transformer.

8 And, again, Marlene, show Issue 4 stipulated; move  
9 that language to the stipulation section.

10 MS. STERN: Okay.

11 COMMISSIONER JABER: Issue 5. Issue 5, when I read  
12 this, I thought I saw agreement among the parties. Do you all  
13 disagree with that?

14 MR. HASWELL: I think the disagreement, Commissioner,  
15 is that West Florida's position includes a position that if  
16 service is provided by West Florida, that we could reasonably  
17 expect an increase in the reliability of service, as well as  
18 benefits to the Cooperative's members. My understanding is  
19 that Gulf Power does not agree with that.

20 MR. BADDERS: That is correct, we don't agree with  
21 that statement.

22 COMMISSIONER JABER: Okay. So you take the position  
23 that only if service is provided by Gulf will there be  
24 reliability of service to the existing and future customers?

25 MR. BADDERS: No. Actually, we say there will not be

1 any decline in reliability. We just cannot agree that there  
2 would be an increase if they were to receive the right to  
3 serve.

4 COMMISSIONER JABER: Mr. Haswell, the question  
5 doesn't relate to increase. Are you willing to modify your  
6 position? The question relates to whether there will be a  
7 decline in service, and certainly you can agree. One of the  
8 things I thought with respect to potential stipulation is  
9 saying something like, regardless of the utility that serves  
10 this area, there will not be a decline in reliability.

11 MR. HASWELL: We had the same discussion at our  
12 initial issues conference, and it was my understanding that we  
13 would not be precluded from arguing that there would be an  
14 increase, because I think that's part of the question. In  
15 answering the question, will there be a decrease in  
16 reliability, I think an answer can be, no, and furthermore,  
17 there will be an increase in reliability. I think the  
18 Commission needs to know that, or we have the opportunity to  
19 convince you of that.

20 MS. STERN: Or we could rephrase the issue.

21 COMMISSIONER JABER: It's not necessary.

22 MS. STERN: Okay.

23 COMMISSIONER JABER: It's not necessary. Issue 6.

24 MS. STERN: I don't believe the parties have any  
25 changes, neither does Staff.

1 COMMISSIONER JABER: What's the level of disagreement  
2 between the parties' positions on Issue 6, Mr. Haswell?

3 MR. HASWELL: We can stipulate to the Staff's  
4 position if in the second sentence of Staff's position you  
5 delete the words "a new industrial load" so that it would say,  
6 "Retail service to Station 13A," or excuse me, if you struck  
7 the words at new -- "a new industrial load at," as part of our  
8 argument is that this is not a new load.

9 COMMISSIONER JABER: Mr. Badders.

10 MR. BADDERS: I can agree to that with the  
11 understanding that we're not precluded from arguing that this  
12 is new load.

13 MR. HASWELL: We understand that.

14 MR. BADDERS: Which would fall under another issue, I  
15 believe.

16 COMMISSIONER JABER: And which issue?

17 MR. BADDERS: Let me flip back here. I believe Issue  
18 3, the existing and planned load, would allow our argument that  
19 this is new load.

20 COMMISSIONER JABER: Planned -- under the part of the  
21 issue discussing the planned load?

22 MR. BADDERS: Yes, ma'am.

23 COMMISSIONER JABER: Mr. Haswell, do you have any  
24 objection to that?

25 MR. HASWELL: I thought -- my understanding -- what

1 my understanding is what Mr. Badders is saying is that as long  
2 as they're not precluded from arguing it's a new industrial  
3 load, I have no problem with that at all. That is their  
4 position.

5 COMMISSIONER JABER: Now, Mr. Badders, does that  
6 require -- am I pronouncing your name correctly?

7 MR. BADDERS: You are.

8 COMMISSIONER JABER: Does that require Gulf to modify  
9 its position to that issue?

10 MR. BADDERS: To Issue 3?

11 COMMISSIONER JABER: Three.

12 MR. BADDERS: I do not believe it does. Let me look  
13 at this just one moment, please. It does not.

14 COMMISSIONER JABER: And if it does, we are going to  
15 take a break to make sure that you all have covered everything  
16 we need to cover, and if there are changes, when we get back on  
17 the record, you can let me know.

18 MR. BADDERS: Thank you.

19 COMMISSIONER JABER: All right. Ms. Stern, the  
20 parties have stipulated to your preliminary position on Issue  
21 6 with the exception of the words "a new industrial load at."  
22 So that sentence will read, "Retail service to Station 13A is  
23 the only present and reasonably foreseeable future requirement  
24 of the area in dispute."

25 Again, leave Issue 6 in, show it as stipulated, move

1 that language to the stipulation section.

2 Issue 7.

3 MS. STERN: Staff has no changes.

4 COMMISSIONER JABER: Parties?

5 MR. HASWELL: I think we can stipulate that one.

6 MR. BADDERS: I believe we do have a stipulation on  
7 that.

8 COMMISSIONER JABER: On Issue 7?

9 MR. BADDERS: Yes, ma'am.

10 MR. HASWELL: Yes, ma'am.

11 COMMISSIONER JABER: And do you have some generic  
12 language, or do you want to use one of the positions --

13 MR. HASWELL: Staff's fine.

14 MR. BADDERS: Staff is fine with Gulf Power.

15 COMMISSIONER JABER: All right. Ms. Stern, Issue 7,  
16 show it stipulated, move your language to the proposed  
17 stipulation section.

18 Issue 8.

19 MS. STERN: I believe that the parties were working  
20 on a stipulation to this issue.

21 MR. HASWELL: We can stipulate to that issue with  
22 Gulf Power and to Staff's position if the word -- if we struck  
23 the words "actions of" in the Staff's position and inserted  
24 "construction of the facilities identified in Issue 4 by"  
25 either West Florida, yada, yada.

1 MR. BADDERS: And Gulf Power can agree with that.

2 COMMISSIONER JABER: Read that again, Mr. Haswell.

3 MR. HASWELL: Yes, ma'am. Strike the words "actions  
4 of" and insert "construction of the facilities identified in  
5 Issue 4 by."

6 COMMISSIONER JABER: Okay.

7 MS. STERN: Could I ask a question?

8 COMMISSIONER JABER: Yes.

9 MS. STERN: What about the language in the issue  
10 statement? We want to leave that as, really, "actions of  
11 either West Florida or Gulf"?

12 COMMISSIONER JABER: You are not going to have an  
13 issue statement if they stipulate; right?

14 MS. STERN: Okay. I'm sorry. Yeah.

15 COMMISSIONER JABER: We're going to stipulate the --  
16 the language in the issue and say, "Issue 8 stipulated." Your  
17 proposed stipulation language will read, "Construction of the  
18 facilities identified in Issue 4 by either West Florida or Gulf  
19 will not cause uneconomic duplication of electric facilities  
20 with regard to serving the new retail load at Station 13A."

21 MR. HASWELL: Right. And just to make sure that  
22 we're -- we don't lose this. When Mr. Badders and I were  
23 discussing it, clearly the difference in our positions was that  
24 West Florida wanted to argue that while we understand that the  
25 construction of the facilities identified in Issue 4 will not

1 cause further uneconomic duplication, we don't want to be  
2 precluded from arguing that if Gulf Power did that by adding  
3 additional facilities not mentioned in Issue 4, there could be  
4 some duplication, but we can argue that through the testimony  
5 that's already in the record.

6 COMMISSIONER JABER: Through cross examination.

7 MR. HASWELL: Right. We just don't want to be  
8 precluded from doing that.

9 COMMISSIONER JABER: Mr. Badders, you understand  
10 that?

11 MR. BADDERS: Yes, that was our understanding.

12 COMMISSIONER JABER: Okay. Staff?

13 MS. STERN: Yes, I understand that.

14 COMMISSIONER JABER: Issue 9. I had -- I wrote down  
15 the same thing, "Are you all agreeing?"

16 MR. BADDERS: We are. We can agree to Staff's  
17 language. I believe Mr. Haswell has also --

18 MR. HASWELL: Yeah, that's correct.

19 COMMISSIONER JABER: Ms. Stern, Issue 9 is  
20 stipulated. Your preliminary position serves as the proposed  
21 stipulation.

22 Issue 10, I think, should be the last issue. Isn't  
23 that the fallout issue?

24 MS. STERN: Yes.

25 COMMISSIONER JABER: Okay. Any changes to Issue 10?



1 I need a position on Issue 10 from West Florida, don't I?

2 MR. HASWELL: Yes. We provided it to --

3 MS. STERN: Yes, it came yesterday. You might have a  
4 copy of it.

5 COMMISSIONER JABER: I do. Mr. Haswell, read it into  
6 the record, please.

7 MR. HASWELL: Yes. West Florida's position on Issue  
8 10 is: West Florida should be awarded the service area in  
9 dispute. Briefly, the service area is within West Florida's  
10 historic service area; the specific site is currently being  
11 served by West Florida; the service is an expansion of the  
12 existing customer's load; the claim that by using a third-party  
13 arranger (ECS), FGT is not the customer, is just that, a claim,  
14 when in fact this is service to an existing customer of West  
15 Florida, and West Florida can provide service adequately and  
16 reliably at no more cost than Gulf Power.

17 COMMISSIONER JABER: Thank you. Any changes to your  
18 position on Issue 10?

19 MR. BADDERS: Gulf has no changes.

20 COMMISSIONER JABER: Okay. Issue 11 can be stricken  
21 now; correct? With the --

22 MS. STERN: Yes.

23 COMMISSIONER JABER: -- stipulation to Issue 9, we  
24 don't need Issue 11?

25 MR. HASWELL: That's correct.

1           COMMISSIONER JABER: Issue 12. I know that you all  
2 are working on some language, and I encourage you to continue  
3 that. Let me give you some feedback. When I read both Issues  
4 12 and 13, I understood the distinction the parties -- who  
5 identified this issue? West Florida?

6           MR. HASWELL: Yes, ma'am.

7           COMMISSIONER JABER: The distinction you're trying to  
8 make is one of law and one of policy, and I think we can handle  
9 that with one issue. And the thought I had just looking at it  
10 briefly was, as a matter of law and policy, is it permissible  
11 for an existing customer, et cetera, et cetera. And to the  
12 degree it's a legal question, you brief it; to the degree you  
13 want some policy to come out, I'm assuming you already have  
14 witnesses that have covered that. But saying all of that, when  
15 we take a break, work on some language. And, of course, that's  
16 only if you really believe that issue belongs in this hearing.

17          MR. HASWELL: Yes, ma'am.

18          COMMISSIONER JABER: Now, correct me if I'm wrong,  
19 Marlene, but that doesn't leave very many issues left, so  
20 perhaps there are some witnesses that don't need to be present  
21 at the hearing. I don't know. You need to take some time  
22 again and let us know. I'd prefer to know today, if possible,  
23 so that we can give the Commissioners the option of stating to  
24 us whether they've got questions on those witnesses -- from  
25 those witnesses, because if they don't, we'll excuse them from

1 the hearing. If Commissioners have questions, then their  
2 presence will be required.

3 MR. HASWELL: By excusing them from the hearing,  
4 you'd mean that their testimony would go in as long as the  
5 parties had no objection?

6 COMMISSIONER JABER: That's right.

7 MR. BADDERS: That's my understanding.

8 COMMISSIONER JABER: We would insert their testimony  
9 into the record as though read, and the parties agree that that  
10 would happen without being sworn, without the witnesses being  
11 sworn.

12 Changes to the exhibit list?

13 MR. HASWELL: In the exhibit list for West Florida, I  
14 think Staff has separated out the direct exhibits and the  
15 rebuttal exhibits. And on Mr. Dunaway's Exhibits RD-8 and  
16 RD-9, those are actually part of his rebuttal. And the same  
17 with Mr. Cicchetti, excuse me, Cicchetti, his MAC-1 and  
18 Mr. Moore's MKM-1 I think are both part of the rebuttal.

19 COMMISSIONER JABER: Ms. Stern, do you have those  
20 changes?

21 MS. STERN: Yes.

22 COMMISSIONER JABER: Do we need to go ahead and  
23 discuss whether direct and rebuttal should be taken up at once?

24 MS. STERN: I think it would be beneficial to decide.

25 COMMISSIONER JABER: Is there a preference in that

1 regard? I know the -- to the degree the issues can be followed  
2 as the witnesses on the stand, you know, without causing  
3 confusion, there is a preference to take direct and rebuttal at  
4 the same time.

5 MR. HASWELL: My preference is to do them separately.

6 COMMISSIONER JABER: Okay. Mr. Badders.

7 MR. BADDERS: I actually don't have a preference. I  
8 believe either way the issues will be fairly clear.

9 COMMISSIONER JABER: All right. We will handle it  
10 separately.

11 Ms. Stern, you have all of the stipulations you need  
12 to list under proposed stipulations?

13 MS. STERN: Yes, I do.

14 COMMISSIONER JABER: All right. Let's go back to the  
15 order of witnesses; that's on Page 5. Since we're taking  
16 direct and rebuttal separately, shouldn't the order of the  
17 witnesses under rebuttal follow the order of witnesses we had  
18 under direct, or was it done this way for a reason?

19 MS. STERN: We used the order that the parties used  
20 in their prehearing statements. So, for example, I guess my  
21 question would be to Mr. Haswell. Is -- does Mr. Cicchetti go  
22 first in rebuttal, Mr. Parish go second? If you would, just  
23 take a look at the order of witnesses. Is that the order you  
24 want on rebuttal? We could think about that if we take a  
25 recess.

1 MR. HASWELL: Yeah, I'd like to consult with my  
2 clients on that one.

3 COMMISSIONER JABER: That's fine. All right. Under  
4 pending motions, Page 19, there is a pending motion to compel  
5 discovery of the contracts. With the stipulations that you all  
6 have proposed --

7 MR. HASWELL: Commissioner, I can represent at this  
8 point that I think Mr. Badders and I have about 99 percent of  
9 that cleared up, and it will be finished by probably close of  
10 business tomorrow.

11 MR. BADDERS: I would agree.

12 COMMISSIONER JABER: All right. And at that time,  
13 the motion to compel discovery can be withdrawn?

14 MR. HASWELL: Yes, ma'am.

15 COMMISSIONER JABER: Thank you. Pending  
16 confidentiality matters, there is Gulf, I suppose. You've  
17 requested some confidential classification, or at least you've  
18 given us the notice of intent. You need to specifically  
19 request confidential classification by September 5th?

20 MS. STERN: Correct.

21 MR. BADDERS: And we will do so.

22 COMMISSIONER JABER: All right. Opening statements,  
23 ten minutes. Do you all intend to make an opening statement?

24 MR. HASWELL: It probably depends on how many  
25 witnesses we can stipulate into the record. I always think an

1 opening statement is good, and I don't think ours will take ten  
2 minutes. But I think to -- at least to inform the  
3 Commissioners who may not have studied this as carefully as you  
4 have, it might be wise.

5 COMMISSIONER JABER: All right. And for summaries of  
6 testimony, your witnesses in the prehearing order, we usually  
7 allow a five-minute summary of testimony. Remind the witnesses  
8 that the Commissioners have read the testimony, and if  
9 testimony is five or six pages, we don't need five minutes of a  
10 summary.

11 MR. HASWELL: All right.

12 COMMISSIONER JABER: All right. Well, I'm going  
13 to -- 15, 20 minutes? What do you need?

14 MS. STERN: I think 20 minutes would be good, a  
15 20-minute recess.

16 COMMISSIONER JABER: Great. We'll recess for 20  
17 minutes. We'll get back on the record. We'll talk about the  
18 stipulations more if we need to. We're going to talk about  
19 stipulations as they relate to the witnesses. We're going to  
20 talk about the order of witnesses and anything else you find.  
21 Thank you.

22 (Brief recess.)

23 COMMISSIONER JABER: Let's go ahead and get back on  
24 the record. Ms. Stern, you want to apprise me of changes you  
25 all made during the break?

1 MS. STERN: Yes. There's several witnesses whose  
2 testimony can just be stipulated in because their issues were  
3 stipulated. For West Florida, Damon Morgan, James A. Brook,  
4 and James A. Brook, those two can be stipulated in. For Gulf,  
5 T. S. Anthony can be stipulated in.

6 Now, I'm looking at Part VI of the draft --

7 MR. HASWELL: Excuse me, just one minute. I don't  
8 recall stipulating on Anthony.

9 MS. STERN: Oh, sorry.

10 MR. BADDERS: I just offered -- I mean, the issues  
11 that he was testifying on are stipulated.

12 COMMISSIONER JABER: Except 10 -- well, let's start  
13 there.

14 MR. BADDERS: Except for 10, and that's the ultimate  
15 issue.

16 COMMISSIONER JABER: Okay. Let's start there,  
17 Ms. Stern. Let me make sure my list of issues left matches the  
18 parties. I have seven issues left, I'm sorry, I need to learn  
19 how to count, five issues left: 1, 3, 5, 10, and 12.

20 MR. BADDERS: That is correct.

21 COMMISSIONER JABER: 1, 3, 5, 10, 12.

22 MS. STERN: Yes, that's correct.

23 COMMISSIONER JABER: Okay. So what you're saying,  
24 Mr. Badders, is that Issue 10 is a fallout, so you don't need  
25 Mr. Anthony there --

1 MR. BADDERS: Correct.

2 COMMISSIONER JABER: -- if -- Mr. Haswell, you agree?

3 MR. HASWELL: We don't agree at this point. I'd like  
4 to get back -- since, I'm sorry, I did not hear that offer, we  
5 need to get back and look at it. If we could do that  
6 subsequent, that's --

7 COMMISSIONER JABER: That's fine. That's fine.

8 MR. HASWELL: Okay.

9 COMMISSIONER JABER: The prehearing conference does  
10 not conclude the parties' negotiations, so please feel free to  
11 get together after this. And we'll be as flexible as we can  
12 with this proceeding. I made my goal really clear. We will  
13 have one day for a hearing, so whatever you all need to do.

14 MS. STERN: Okay. So then just the West Florida  
15 witnesses, Damon Morgan and James A. Brook, are stipulated in  
16 at this point.

17 COMMISSIONER JABER: Now, what about Mr. Moore and  
18 Mr. Howell? Mr. Haswell, Mr. Moore, I have listed for Issues 8  
19 and 9, and both of those issues have been stipulated. So will  
20 you please think about that.

21 MR. HASWELL: Yes, ma'am.

22 MR. BADDERS: To that, Commissioner Jaber, we believe  
23 that at least one part of his testimony may go to some other  
24 issue, Issue 10, and some of the others. So we do have some  
25 cross examination for that witness.



1 COMMISSIONER JABER: All right. Mr. Howell.

2 MR. BADDERS: We can offer to stipulate his testimony  
3 depending on cross examination. It's a rebuttal witness.

4 MR. HASWELL: Right. We'd have some same -- the same  
5 issues, I think. We'd like to cross examine Mr. Howell at this  
6 point.

7 COMMISSIONER JABER: All right. Then let's do this,  
8 Ms. Stern. Go ahead and show Mr. Morgan and Mr. Brook as  
9 witnesses whose testimony and exhibits can be stipulated into  
10 the record without cross examination, since we have that  
11 agreement today.

12 Go ahead and ask the Commissioners' offices about  
13 those two people and whether the Commissioners have questions.

14 And, parties, I encourage you to get back to Marlene  
15 with respect to additional witnesses after you've had time to  
16 think about it. It also sounds like the issues list needs to  
17 be cleaned up a little bit.

18 MS. STERN: Yes, we were going to just do that later.

19 COMMISSIONER JABER: That's fine. All right.  
20 Anything else?

21 MS. STERN: Yeah, the order of witnesses on rebuttal.  
22 The order of the West Florida witnesses is -- will be as  
23 follows: Parish, Moore, Perry, Dunaway, and Cicchetti.

24 COMMISSIONER JABER: Thank you.

25 MS. STERN: And that leaves us with Issue 12.

1 COMMISSIONER JABER: Okay. Issue 12.

2 MS. STERN: And Staff has proposed some language  
3 that -- in an effort to just make the issue more readable, yet  
4 still preserve West Florida's intentions with the issue. And  
5 we'd like to propose our language, and then the parties can  
6 react to it. And our language is as follows: As a matter of  
7 law or policy, is it legally permissible for an existing  
8 customer of an electric utility to enter into a contract with a  
9 third party to provide, directly or indirectly, electric  
10 service to the existing customer through another electric  
11 utility?

12 COMMISSIONER JABER: Why would you need the word  
13 "legally" if you said "as a matter of law or policy"?

14 MS. STERN: I'm sorry, we don't need the word  
15 "legally."

16 COMMISSIONER JABER: All right. So read this to me  
17 one more time.

18 MS. STERN: Okay. "As a matter of law or policy, is  
19 it permissible for an existing customer of an electric utility  
20 to enter into a contract with a third party to provide,  
21 directly or indirectly, electric service to the existing  
22 customer through another electric utility?"

23 COMMISSIONER JABER: Parties, are there objections to  
24 this?

25 MR. HASWELL: West Florida is happy with that

1 language.

2 MR. BADDERS: We would be happy with that language if  
3 you remove "directly or indirectly." I believe the  
4 "indirectly" is going to open up something we're going to have  
5 to define. You're going to get into, well, what is indirectly  
6 providing electric service? And there's no -- I mean,  
7 obviously, there's no -- it's a legal issue, but I believe that  
8 goes beyond this proceeding. This is a territorial dispute,  
9 and this doesn't appear to be the thing that the Commission has  
10 looked at in the past in resolving a territorial dispute.

11 COMMISSIONER JABER: Yeah, it's not a reason not to  
12 look at it, but I see Mr. Badders' point, Staff, that you don't  
13 want to identify another -- you're not trying to identify  
14 another factual dispute. You don't want to change the nature  
15 of this question into one of, what does "directly" mean and  
16 what does "indirectly" mean.

17 MS. STERN: Yes.

18 MR. HASWELL: Our point really is this, is that  
19 that's key. That's part of the key to this, is that the  
20 provision of service, the providing of service in this case is  
21 basically power. And whether you call it "electric" or  
22 "mechanical," that's when we'd say it would be directly or  
23 indirectly. That's what's happening, and that's what we object  
24 to. The choice is critical that it say "directly or  
25 indirectly," or we just go back and say "electric service" or

1 "mechanical service."

2 COMMISSIONER JABER: But see, Mr. Haswell, that's  
3 your position --

4 MR. HASWELL: That's correct.

5 COMMISSIONER JABER: -- as opposed to the question.  
6 And perhaps the way you insert "directly or indirectly" into  
7 this is by your position.

8 MS. STERN: Well, the --

9 COMMISSIONER JABER: I think you can accommodate both  
10 parties' wishes by leaving it, "As a matter of law or policy,  
11 is it permissible for an existing customer of an electric  
12 utility to enter into a contract with a third party to provide  
13 electric service to the existing customer through another  
14 electric utility?"

15 MR. HASWELL: We can live with that with the  
16 understanding that we can argue directly or indirectly.

17 COMMISSIONER JABER: I can't limit your position. I  
18 wouldn't limit your position.

19 MR. HASWELL: Well, in some cases, if you -- we get  
20 in a trap. If you didn't make that as a statement up front or  
21 was approved, then we're going to strike it. So as long as  
22 everybody understands and we can make that argument, I don't  
23 have a problem with it.

24 COMMISSIONER JABER: Mr. Badders.

25 MR. BADDERS: Obviously, he can argue whatever the

1 facts show in this case. Obviously, there are no additional  
2 facts that can be added. The direct testimony has been filed.  
3 If he can make his case on that and he can make his factual  
4 argument for that to wrap that legal argument around, I can't  
5 object to that.

6 COMMISSIONER JABER: When can you have your position  
7 ready on this issue?

8 MR. HASWELL: I think Marlene just read it. If we --

9 COMMISSIONER JABER: No, your position.

10 MR. HASWELL: Oh, position, I'm sorry. Well, our  
11 position is, no. And we would argue that further in our  
12 posthearing briefs, I would assume.

13 COMMISSIONER JABER: Okay. Gulf.

14 MR. BADDERS: Obviously, we were objecting to the  
15 question. We don't have a position at this time, but I will  
16 get a position to all the parties by the end of this week,  
17 which will be tomorrow.

18 COMMISSIONER JABER: Mr. Haswell, with respect to  
19 your position, I guess I was expecting a modification of your  
20 position to make clear that you would raise the argument about  
21 directly or indirectly.

22 MR. HASWELL: We'll come up with a better statement  
23 than just, no.

24 MR. BADDERS: And to that, I guess, considering I'm  
25 in a hearing tomorrow here, could we make that a day early next

1 week barring -- evidently there is the holiday, but, like,  
2 maybe Tuesday or Wednesday? Would that be too late?

3 COMMISSIONER JABER: We'll talk about what all will  
4 be due to Staff, and we'll establish a date at the end.

5 MR. BADDERS: Okay. Thank you.

6 COMMISSIONER JABER: But, Staff, going back to the  
7 wording of the issue -- and Mr. Elias, if you need to jump in,  
8 please do -- do you have any concerns with taking out the words  
9 "directly or indirectly"?

10 MS. STERN: No.

11 COMMISSIONER JABER: Do you understand the new  
12 language, Marlene --

13 MS. STERN: Yes.

14 COMMISSIONER JABER: -- or do you need me to repeat  
15 it?

16 MS. STERN: Yes.

17 COMMISSIONER JABER: All right. Now, Mr. Haswell, I  
18 understand with respect to clarifying the legal concern related  
19 to that issue, and you're welcome to brief that part. With  
20 respect to policy, I note you identified this issue after all  
21 the testimony was filed. You understand that?

22 MR. HASWELL: Right.

23 COMMISSIONER JABER: All right. Marlene, the only  
24 other thing I'd like added, on Page 2 under case background,  
25 the first sentence, would you also make reference to the rule?

1 On April 10th, pursuant to Section 366, et cetera, and Rule  
2 25-6.0441, Florida Administrative Code, West Florida Electric  
3 Cooperative Association, et cetera.

4 MS. STERN: Yes, I'll add that.

5 COMMISSIONER JABER: Now, Staff, when do you want  
6 revised positions, additional stipulations?

7 MS. STERN: Well, we really have the language for the  
8 stipulations. The hearing is on September 19th. I don't -- I  
9 guess I don't see a need to, you know, expedite it excessively.  
10 I think sometime next week would be fine. I'd shoot for having  
11 a final prehearing order by Friday to the rest of the  
12 Commissioners. That would give them a little over a week  
13 before the hearing.

14 MR. HASWELL: That's Friday next week?

15 COMMISSIONER JABER: Let's do this. Give us your  
16 revised positions on Issue 12 close of business next Tuesday,  
17 September 5th?

18 MS. STERN: Yes.

19 MR. HASWELL: Fourth.

20 MS. STERN: I'm sorry.

21 COMMISSIONER JABER: Thank you. Tuesday is  
22 September 4th? Okay. And then continue to negotiate, continue  
23 to iron out which witnesses don't need to be at the hearing.  
24 Please keep Staff in the loop so that Ms. Stern can communicate  
25 with the Commissioners' offices with respect to whether they

1 have questions.

2 Does that leave anything else to discuss today?

3 MS. STERN: Well, we do have to revise the issues  
4 that the witnesses are testifying to. It's a question of  
5 renumbering, and we don't need any input from the parties to do  
6 that.

7 COMMISSIONER JABER: No, actually, you do.

8 MR. HASWELL: If we could do that by close of  
9 business next Tuesday as well?

10 COMMISSIONER JABER: Yeah, I think what Mr. Elias is  
11 concerned about, it seems like some of the issues numbers do  
12 not match the testimony, and perhaps you just need to list your  
13 witnesses on all the issues. I don't know, but work that out  
14 and get back to Staff.

15 MR. BADDERS: We will do so.

16 COMMISSIONER JABER: Anything else to discuss today,  
17 Mr. Badders?

18 MR. BADDERS: We do not have any further matters.

19 COMMISSIONER JABER: Mr. Haswell.

20 MR. HASWELL: Nothing else, ma'am.

21 COMMISSIONER JABER: All right. This prehearing is  
22 adjourned. Thank you.

23 (Prehearing concluded at 10:50 a.m.)

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1 STATE OF FLORIDA     )  
2                             :             CERTIFICATE OF REPORTER  
3 COUNTY OF LEON        )

4  
5         I, TRICIA DeMARTE, Official Commission Reporter, do hereby  
6 certify that the foregoing proceeding was heard at the time and  
7 place herein stated.

8         IT IS FURTHER CERTIFIED that I stenographically  
9 reported the said proceedings; that the same has been  
10 transcribed under my direct supervision; and that this  
11 transcript constitutes a true transcription of my notes of said  
12 proceedings.

13         I FURTHER CERTIFY that I am not a relative, employee,  
14 attorney or counsel of any of the parties, nor am I a relative  
15 or employee of any of the parties' attorneys or counsel  
16 connected with the action, nor am I financially interested in  
17 the action.

18             DATED THIS 31st DAY OF AUGUST, 2001.

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*Tricia DeMarte*

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