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ORIGINAL



October 9, 2001

Ms. Blanca S. Bayo, Director  
Division of the Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee FL 32399-0870

Dear Ms. Bayo:

Re: Docket No. 010441-EU

Enclosed is Gulf Power Company's Posthearing Brief and Statement of Issues and Positions in the above docket.

Sincerely,

*Susan D. Ritenour (lw)*

Susan D. Ritenour  
Assistant Secretary and Assistant Treasurer

lw

APP	_____	cc:	Beggs and Lane
CAF	_____		Jeffrey A. Stone, Esquire
CMP	_____		
COM	3 _____		
CTR	_____		
ECR	_____		
LEG	1 _____		
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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition to resolve territorial dispute  
with Gulf Power Company in Washington  
County by West Florida Electric  
Cooperative Association, Inc.

Docket No. 010441-EU  
Date Filed: October 10, 2001

**GULF POWER COMPANY'S  
POSTHEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS**

Gulf Power Company, ("Gulf Power", "Gulf", or "the Company"), by and through its undersigned attorneys, files the following as its posthearing brief and posthearing Statement of Issues and Positions in this proceeding pursuant to Order No. PSC-01-1825-PHO-EI and Rule 28-106.215, Florida Administrative Code.

**STATEMENT OF BASIC POSITION:**

Enron Compression Services Company ("ECS") has chosen Gulf Power Company to provide electric service to the new ECS electric load at Station 13A. [R. 94-5, 124] Gulf has the only source in the area capable of providing adequate service to the two 15,000 horsepower motors that will comprise the ECS electric load at Station 13A. [R. 99] Gulf's planned construction to serve this new electric load as requested by the customer does not uneconomically duplicate any facilities belonging to either West Florida Electric Cooperative or Alabama Electric Cooperative. [R. 122-24] Under the circumstances of this case, the customer's choice of Gulf Power as the electric supplier for Station 13A should be honored by this Commission and Gulf should be granted the right to provide service to this new electric load.

**GENERAL DISCUSSION:**

The relevant facts of this case are quite simple. They lead to the right of the customer in this case to choose Gulf Power as its electric supplier. The Commission should uphold the customer's choice in this case.

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FPSC-COMMISSION CLERK

Enron Compression Services Company (“ECS”) is under contract to provide a specific form of service to Florida Gas Transmission Company (“FGT”). [Exhibit 14 at 12-13, R. 91] FGT is the owner/operator of the existing and soon to be expanded natural gas pipeline system extending through northwest Florida. [R. 92] The service ECS will provide to FGT entails the delivery of mechanical energy to drive new compressors on a gas lateral that is separate and apart from the gas lateral served by existing compression facilities in Washington County. [R. 92, Exhibit 6 at 2, Exhibit 14 at 12-13] In order to fulfill its service commitment to FGT, ECS requires electric service of a character that is not presently available at the site where ECS will be providing mechanical energy to FGT. [R. 111-12] ECS chose Gulf as the electric supplier and requested Gulf to take all steps necessary to bring electric service of the character needed to the site. [R. 94-95, 124] West Florida Electric Cooperative (“WFEC”) contends that as a matter of law and policy, ECS is not entitled to make that choice or to have its request upheld by this Commission.

The agreement ECS has with FGT requires ECS to provide mechanical energy to FGT via two new and very large electric motors to be installed at a new compression station to be located in Washington County. [R. 91-92] This new compression station is known as Station 13A due to the close proximity of an existing compression station known as Station 13. [R. 91-92] The existing compression equipment at Station 13 is natural gas fired and operates on a separate pipeline lateral from that which will be served by Station 13A. [Exhibit 6 at 2, 4-5]

FGT is an existing WFEC customer at Station 13. [Exhibit 6 at 6] FGT currently takes 120/240 volt electric service from WFEC which is provided by a 25 kilovolt (“kV”) distribution

line that is part of the local distribution system in the immediate area. [Exhibit 6 at 6-7] The existing 25 kV line extends from an Alabama Electric Cooperative (“AEC”) substation located near Bonifay, Florida in neighboring Holmes County, approximately 14 miles away from the site of Station 13 and Station 13A. [Exhibit 6 at 6] The facilities of either WFEC or AEC stop at the FGT property line for Station 13. [R. 194] The metering point for WFEC’s service to FGT is at the street. [R. 194]

There are no WFEC or AEC facilities in the area capable of adequately serving this new load. The existing 25kV distribution facilities of AEC/WFEC serving FGT at Station 13 are not capable of meeting the electric service requirements of ECS at Station 13A. [Exhibit 6 at 7] ECS has specific electric service requirements for the two new electric motors that will make up the electric load at Station 13A that is at the heart of this dispute. [R. 99] The size of these motors, along with their starting and operating characteristics as well as the high reliability needs of ECS, dictates that service come from the low-side bus of a new distribution substation served from a 230,000 volt (“230kV”) source. [R. 99, 123] Gulf Power owns and operates the only 230 kV transmission lines in Washington County, with the nearest tap point only 6 miles away from Station 13A. [R. 99, 123]

Although WFEC, through AEC, can access Gulf’s 230 kV system through compliance with the terms and conditions of the Southern electric system’s Open Access Transmission Tariff with FERC, such access presents a different situation to ECS, the customer at the heart of this dispute. [R. 181] Although WFEC seeks to provide retail service to ECS, it does not presently have an approved tariff rate schedule for the character of service required by ECS. [R. 45-46,

58] In addition, WFEC is a distribution cooperative, with no transmission or generation facilities of its own. [R. 121] All of the generation and transmission services used by WFEC are provided by AEC. In this case, in order to avoid uneconomic duplication of existing facilities, AEC must obtain a portion of the transmission service necessary to serve ECS from Gulf Power. [R. 121] With Gulf, ECS is dealing directly with the owner/operator of the 230 kV source that will serve ECS at Station 13A under an FPSC approved rate schedule that provides the full bundle of electric service – distribution, transmission and generation. [R. 117] There is no middleman.

Gulf Power has been providing electric service to customers in Washington County for over 75 years. [Exhibit 6 at 2-3] In fact, Gulf's very first electric service customers when it began operating as an electric utility in 1926 were located in Washington County. [Exhibit 6 at 2-3] Gulf has served the area continuously since that beginning more than 75 years ago. [Exhibit 6 at 2-3] As part of Gulf's commitment and statutory obligation to serve customers in Washington County, Gulf began working with ECS more than 2½ years ago in an effort to bring this new electric load to Washington County. [R. 91] After more than two years of efforts and discussions, including Gulf's willingness to pre-engineer the project and begin planning right-of-way and equipment acquisition before a firm commitment to take electric service from Gulf was received, ECS selected Gulf as its electric supplier at Station 13A. [R. 91, Exhibit 6 at 6]

Under the circumstances of this case, ECS is entitled to choose Gulf as its electric supplier at Station 13A for a variety of reasons. First, ECS is a new electric service customer with new electric load not previously served by any electric utility. [R. 92, 111] Second, ECS is a separate entity from FGT, with separate ownership. [Exhibit 14 at 6, 10, 23-24] The

agreement with ECS has with FGT shifts risk associated with the electric motors at Station 13A from the owners of FGT to the owners of ECS. Third, the existing electric system serving FGT cannot be used to meet the service requirements of the two new electric motors. [R. 122]

Fourth, the proposed new substation and related 230 kV transmission line tap and other related facilities will not uneconomically duplicate any existing facilities of any electric utility. [R. 122-23] Fifth, Gulf Power has played an instrumental role in helping ECS to bring this new electric load to Washington County. [R. 91, Exhibit 6 at 6]

The fifth reason listed above, Gulf Power's role in helping to bring this new electric load to Washington County is very significant in the context of judicial precedent. In Gulf Coast Electric Cooperative v. Clark, 674 So.2d 120 (Fla., 1996) [hereinafter "Gulf Coast I"], the Florida Supreme Court upheld a new customer's right to choose its electric supplier under circumstances that did not involve the uneconomic duplication of facilities or a "race to serve" by one of the utilities. This Commission and the Florida Supreme Court each specifically noted the role that the utility chosen in that case to provide electric service had played in bringing the new electric load in question to Washington County. But for the actions of the utility chosen in that case, there would have been no new load to serve. Like the circumstances examined by the Supreme Court in Gulf Coast I, the electric load at the heart of this dispute may never have materialized had it not been for the persistent efforts of Gulf Power Company in working with the customer in this case to ensure that the new compression facility in Washington County would use electric motors rather than some form of natural gas fired compression equipment. [R. 91, Exhibit 6 at 8]

The Commission's rule for resolving territorial disputes is found in Rule 25-6.0441(2), Florida Administrative Code. In that rule, there are four specific factors spelled out for the Commission's consideration:

(2) In resolving territorial disputes, the Commission may consider, but not be limited to consideration of:

(a) the capability of each utility to provide reliable electric service within the disputed area with its existing facilities and the extent to which additional facilities are needed;

(b) the nature of the disputed area including population and the type of utilities seeking to serve it, and degree of urbanization of the area and its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services;

(c) the cost of each utility to provide distribution and subtransmission facilities to the disputed area presently and in the future; and

(d) customer preference if all other factors are substantially equal.

It is noteworthy that historical service area is not among the four specific factors listed.

Although it can be argued that the first listed factor, capability, favors Gulf Power because it is the owner/operator of the transmission facilities that will provide the 230 kV source needed to serve this customer's load, it can also be argued that this factor is a toss-up. Either utility has access to the same existing 230 kV facilities and either utility would have to construct a tap roughly equivalent to that currently planned by Gulf Power to connect the existing facilities to the new load. [R. 181, 195] The second factor, degree of urbanization, is at best (or perhaps "at worst") a toss-up. [R. 116] Both utilities serve customers in rural areas such as that involved in this case. While there is a statutory prohibition against WFEC serving certain urban areas, that prohibition is not applicable in this case. [Exhibit 8, at 23] It is significant to note that there is no statutory prohibition against Gulf Power serving rural areas. [R. 116-17] In fact, Gulf Power

has more rural customers than does WFEC. [R. 185] The third factor, cost of new facilities needed to serve the load, is clearly a toss-up since the parties have stipulated that essentially the same facilities would be used to serve this customer regardless of which utility prevails.

Therefore, under the unique circumstances of this case and the precedent established by the Florida Supreme Court in Gulf Coast I, the fourth of the factors specifically listed in the Commission's rule, customer preference, is the only truly relevant consideration.

The customer's preference for Gulf Power Company as its electric supplier is clear. Under the circumstances of this case, the Commission should honor the preference of ECS and allow Gulf Power to serve Station 13A.

**DISCUSSION OF SPECIFIC ISSUES:<sup>1</sup>**

**ISSUE 1:** Pursuant to Rule 25-6.0441(1), Florida Administrative Code, what is the service area that is the subject of this territorial dispute?

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**SUMMARY:** The only active dispute is over service to Enron Compression Services ("ECS") at Station 13A which is located adjacent to Florida Gas Transmission's existing Station 13 site in Washington County, Florida.

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**DISCUSSION:**

The Commission's determination in this docket should be limited to question of which utility will provide electric service to ECS at Station 13A which is located adjacent to Florida Gas Transmission's existing Station 13 site in Washington County, Florida. [R. 92, 110] The dispute in this case is solely over which utility is to provide electric service to ECS at Station

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<sup>1</sup> The listing of issues and position summaries that follow in this section is also intended to serve as Gulf Power's posthearing Statement of Issues and Positions required by Order No. PSC-01-1825-PHO-EI.



13A, not service to a larger geographical area. [R. 110-11] Despite its effort to enlarge this dispute to a broader geographic area than the scope of Station 13A, WFEC has failed to show that any active controversy exists over any other customer request for service at any location other than the request for electric service by ECS at Station 13A. Neither Gulf Power nor WFEC has received a request for service from any other customer in the area around Station 13A that is being disputed by the other utility. [R. 193] In the past, the Commission has wisely declined to rule on hypothetical disputes. For example, in Order No. 20892 issued March 14, 1989 in Docket No. 881262-EU, the Commission granted a motion to dismiss and ruled (at page 3):

CHELCO's Petition and Complaint should also be dismissed. CHELCO has only offered speculation as to a future fact pattern and has not alleged facts constituting a present territorial dispute. The Commission's authority to resolve such disputes stems from Section 366.04(2)(e), Florida Statutes (1987) which the Commission itself has expressly limited to "actual and real" controversies; no statutory basis for interceding in a potential dispute exists." [sic] See, Order No. 15348 issued on November 12, 1985 in Docket No. 850132-EU. Thus, CHELCO's complaint is, at best, premature. If and when Gulf actually attempts to serve a customer within CHELCO's service area, the cooperative will have a cause of action.

In Order No. 15348, the Commission rejected CHELCO's allegation that a controversy over customers or territory was "imminent" as sufficient to invoke the jurisdiction of the Commission to resolve a territorial dispute. The Commission stated that ". . . unless and until an actual and real controversy arises, no statutory basis for interceding in a potential dispute exists."

Gulf Power has assured the Commission that it does not intend to serve any present customer of WFEC. [R. 111] In addition, Gulf has assured the Commission that it will not serve any future prospective customer in the vicinity of Station 13A where such service would

constitute uneconomic duplication of WFEC's facilities. [R. 111] As a result, no additional disputes in the general area around Station 13A are reasonably foreseeable. Since no other active controversy exists or is reasonably foreseeable in the general area around Station 13A, the Commission should decline to expand the definition of disputed area in this case into an area that is not actually currently in dispute.

In the absence of an active dispute over a specific customer request, a determination regarding service rights to an area greater than the footprint of Station 13A would encompass areas that are presently undeveloped. The Commission has found such a proposition to be adverse to the public policy that seeks to avoid uneconomic duplication of facilities. [R. 112] The Commission acknowledged that expansion of areas in dispute into undeveloped areas could lead to uneconomic duplication of facilities in Order No. PSC-98-0174-FOF-EU, which was later affirmed by the Florida Supreme Court in Gulf Coast Electric Cooperative v. Johnson, 727 So. 2d 259 (Fla., 1999) [hereinafter referred to as "Gulf Coast II"]. Prematurely awarding service rights in an undeveloped area to a utility removes the Commission's ability to determine which utility is in the best economic position to extend service to that undeveloped area at such time development occurs. [R. 112] Designating an area larger than that of Station 13A would be "drawing lines on the ground" where no actual dispute exists. Again in Gulf Coast II, the Commission's decision that drawing lines on the ground in such an instance would not be the most economic way to determine service areas was upheld by the Florida Supreme Court.

The Commission has ample evidence before it to make an informed decision regarding the right to serve the limited area actively in dispute, Station 13A. As a result of the absence of

such specific information about broader areas, the Commission should decline to award either utility the right to serve other areas not currently involved in an active dispute. The only dispute is solely over which utility is to provide electric service to ECS at Station 13A.

**ISSUE 2:** There is no Issue 2. This issue was dropped at the prehearing conference.

**ISSUE 3:** What is the existing and planned load to be served in the disputed area?

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**SUMMARY:** Gulf Power has received a request for electric service from ECS to serve two 15,000 horsepower electric motors at Station 13A. No utility currently provides electric service to Station 13A and there are no customers in that area. Gulf knows of no future planned load within the disputed area.

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**DISCUSSION:**

The disputed area is the site of Station 13A. [R. 92, 110-11, 193] The load at Station 13A which ECS has requested Gulf to provide electric service will consist of two 15,000 horsepower electric motors that must be started “across the line” pursuant to the service requirements articulated by ECS. [R. 99] ECS has never received electric service from any utility in Washington County. The load in dispute at Station 13A is entirely new electric load. No customer at the location of Station 13A is currently receiving electric service from any utility, since no customers exist at Station 13A until the completion of Station 13A. [R. 92, 111]

**ISSUE 4:** What is the estimated cost for electric utility facilities to adequately and reliably serve the planned load in the disputed area?

**Stipulated:** The estimated cost of \$5.5 million for electric utility facilities is approximately the same for either utility to provide service. This amount includes a 230KV switching station, approximately 6 miles of 230 KV transmission cable and poles from the new switching station to a new substation located at Station 13A, a new substation at Station 13A, land purchases, and one transformer.

**ISSUE 5:** Are the planned electrical facility additions and other utility services to be provided within the disputed area reasonably expected to cause a decline in the reliability of service to existing and future utility customers?

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**SUMMARY:** No.

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**DISCUSSION:**

No detrimental impact on reliability or power quality to either Gulf or WFEC's existing or future customers will result from the provision of service to ECS at Station 13A. [R. 101-02] The facilities being constructed to serve ECS at Station 13A cannot be utilized to serve any other customer in the area around Station 13A. [R. 101-02, Exhibit 8 at 15-16] WFEC's witness Mr. Perry admits in his direct testimony that the new facilities to serve ECS at Station 13A are "being constructed to serve exclusively the load requirements of the new consumer" and will not cause a decline in reliability of service to existing or future customers of West Florida. [R. 80] Later, in his rebuttal testimony, Mr. Perry contradicts his own direct testimony when he argues that service would have a detrimental effect on WFEC's customers service reliability because those customers would not have access to the spare transformer dedicated to back-up service to ECS. [R. 155-56] Mr. Perry claims that an increase in reliability would accrue to WFEC's customers

through the use of the “spare” transformer that is being paid for by ECS as a backup transformer, hence the term “spare”. [R. 155-56] This whole argument fails to recognize that WFEC’s other customers would not have access to that spare transformer since it is being paid for by ECS, the customer at the heart of this dispute. The additional transformer requested by ECS is purposefully designated as a spare to be put in service only as needed for a backup to ensure the high level of reliability required by ECS at Station 13A. [Exhibit Howell Depo at 22] The spare transformer is ECS’s requirement and it cannot be utilized to serve other customers, existing or future, of any utility. [Exhibit 7 at 22-23] As a result, the facilities being constructed to serve the load at ECS’s Station 13A simply cannot be used to increase the reliability of WFEC’s electric system, nor can they be used by either utility to serve existing or future load other than that of Station 13A.

WFEC’s speculative testimony on the matter of the spare transformer is at odds with their own statement that WFEC did not know the load characteristics of Station 13A or information about the type of service requested by ECS. [R. 73-4] WFEC has inappropriately reached a conclusion that they can tie the facilities to be used to serve Station 13A into their existing system to improve reliability. Based on the actual electric service requirements sought by ECS for Station 13A, serving other existing customers in the area from the substation being built to serve Station 13A would necessarily require the addition of a substantial amount of equipment in that substation or a new separate substation. [R. 101-02] In any event, voltage levels would have to be maintained at Station 13A for reliable starting and at any new load connected at that point to prevent voltage dips. [Exhibit 8 at 15-16] The facts in the record only support that no

increase or decrease in reliability will occur regardless whether electric service is provided to Station 13A by Gulf Power or WFEC.

**ISSUE 6:** What is the nature of the disputed area with respect to its population, the type of utilities seeking to serve it, degree of urbanization, proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services?

**Stipulated:** The nature of the disputed area is rural as defined by Section 425.03(1), Florida Statutes. Retail service to Station 13A is the only present and reasonably foreseeable future requirement of the area in dispute. The general vicinity is expected to remain rural with slow residential and agricultural load growth. Station 13A is approximately 9 miles from Vernon, 12 miles from Bonifay, 10 miles from Caryville, and 18 miles from Chipley.

**ISSUE 7:** What utility does the customer prefer to serve the disputed area?

**Stipulated:** The customer, ECS, prefers retail service from Gulf.

**ISSUE 8:** Will the actions of either West Florida or Gulf cause uneconomic duplication of electric facilities with regard to serving the load in the disputed area?

**Stipulated:** The construction of the facilities identified in the stipulation to Issue 4 by either West Florida or Gulf, will not cause uneconomic duplication of electric facilities with regard to serving the new retail load at Station 13A.

**ISSUE 9:** Does West Florida have the right of access, through its wholesale power provider or otherwise, to the same transmission facilities that Gulf proposes to tie into to provide service to the disputed area?

**Stipulated:** Yes. Gulf does not have exclusive access to the existing and future electric transmission system necessary to serve the new retail load at Station 13A.

**ISSUE 10:** As a matter of law or policy, is it permissible for an existing customer of an electric utility to enter into a contract with a third party to provide electric service to the existing customer through another electric utility?

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**SUMMARY:** It is not necessary to decide this issue in order to resolve this territorial dispute. No existing customer is being or will be provided electric service by a third party regardless of the outcome of this proceeding. The only electric service to be provided in this matter is to ECS.

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**DISCUSSION:**

This issue was raised by WFEC apparently in the belief that FGT has concocted a scheme to allow it to bypass WFEC as the electric supplier to new compression facilities at Station 13A. Under WFEC's theory, the contract between FGT and ECS is merely a sham transaction intended as a subterfuge to allow FGT to have retail access to another supplier of electricity for the new electric load at station 13A. This theory ignores the fact that FGT and ECS are separate and distinct entities with different ownership. [Exhibit 14 at 6, 10, 23-24] In the context of this matter, FGT is the only existing customer of either Gulf Power or WFEC. [Exhibit 6 at 6] ECS is not an existing customer of either utility. The electric service FGT currently receives from WFEC will continue to be provided by WFEC and is unaffected by the outcome of this proceeding. [Exhibit 6 at 7]

WFEC would have the Commission believe that ECS and FGT are one in the same such that WFEC could say that FGT is the actual customer receiving electric service at Station 13A. Interestingly, WFEC offers nothing more than supposition and conjecture regarding this subject. ECS's corporate representative, Mr. Hilgert, the only individual testifying on this issue with

firsthand knowledge of the relevant facts, was deposed by WFEC about the relationship between FGT and ECS. Mr. Hilgert made it absolutely clear that ECS and FGT are not one in the same. [Exhibit 14 at 6, 10, 23-24] Indeed, the agreement between ECS and FGT expressly states that ECS is not even acting as FGT's agent. [Exhibit 14 at 23-24] The relationship between ECS and FGT is a contractual arrangement that was negotiated between them after a bid process. [Exhibit 14 at 10-12] Mr. Hilgert also indicated that ECS had bid on another compression services contract with FGT, but was not the successful bidder. [Exhibit 14 at 31] FGT and ECS treat each other as separate entities because they are separate entities. Those who deal with them should do likewise. WFEC even searched the corporate records of the State of Florida and found a listing for ECS. [Exhibit 14 at 9] The State of Florida appears to recognize ECS as a corporate entity. WFEC has made no showing and definitely has not met the burden of record evidence to support a finding to "pierce the corporate veil" and ignore the corporate structures of ECS, FGT and their parents, affiliates and subsidiaries. The only credible evidence in the record shows that ECS and FGT are not one in the same. FGT and ECS did not design a corporate entity to circumvent having to take electric service from WFEC. ECS conducts its business separate and apart from FGT as is evidenced by the fact that ECS has entered into other similar compression services contracts with other entities and has not always been successful in bidding for FGT contracts for the same. [Exhibit 14 at 11, 31] The Commission should see this issue for what it is, simply a smokescreen.

ECS does not currently receive electric service from any electric utility in Washington County. [R. 92] In the context of this matter, FGT is the only existing customer receiving



electric service and this service is to Station 13, not Station 13A. [Exhibit 6 at 6] WFEC presently provides electric service to FGT and that will not change regardless of the outcome of this proceeding. [Exhibit 6 at 7]

ECS will not, under any circumstances, be providing electric service to any entity including FGT. The service provided by ECS to FGT is compression service in the form of mechanical energy, or horsepower. [Exhibit 14 at 14] Electric energy is used by ECS to make its product or service just like any other manufacturer who uses electricity to make a product or render a service. Selling a product or service made with the use of electrical energy does not make the seller of that product a seller of electricity otherwise every restaurant that uses electricity in its kitchen would be considered a seller of electricity. ECS is under contract to provide mechanical energy to FGT that will in turn be used to drive compressors on FGT's gas pipeline. [R. 91-92] Although the mechanical energy delivered to FGT will be supplied by electric motors, it could have been provided by other means. For example, the existing compression facility at Station 13 is natural gas fired. [R. 91-92] Clearly the new compression facility at Station 13A could also have been natural gas fired, similar to the new gas turbine/compressor FGT is planning to install in Santa Rosa County at Station 12A (see page 3-151 of document RD-8 introduced as Composite Hearing Exhibit No. 11). The facts clearly show that in this case, no existing customer will be provided electric service by a third party regardless of the outcome of this proceeding. The only electric service to be provided in this matter is to ECS. Any electric service provided as a result of this case will be provided by one of the two utilities, either Gulf Power or WFEC.

Facts necessary to support any legal or policy finding under this issue are not in the record of this case. The Commission should reserve a decision on this issue until it is properly before it on the facts of a specific case. In this matter, the only electric service to be provided is to ECS for the new electric load at Station 13A. The new electric load at Station 13A does not currently exist and therefore cannot be currently receiving electric service from any electric utility including WFEC. [R. 92, 111]

**ISSUE 11:** Which utility should be awarded the service area in dispute?

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**SUMMARY:** No uneconomic duplication of facilities will occur if Gulf provides the electric service to Station 13A as requested by the customer. There are no factors that warrant overruling the customer's choice of Gulf Power as electric supplier for Station 13A. Therefore, service to Station 13A should be awarded to Gulf.

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**DISCUSSION:**

As the only public utility providing electric service in Washington County, Gulf Power does not have discretion under Section 366.03, Florida Statutes to deny ECS's request for electric service as presented in this case unless to do so would constitute the uneconomic duplication of existing electric facilities in the state. Failure to honor the customer's request for electric service pursuant to the terms and conditions approved and required by the Commission as set forth in Gulf Power Company's Tariff for Retail Electric Service would expose Gulf Power to a possible complaint by ECS regarding the public utility's failure to fulfill the statutory obligation of service.

As in the case before the Florida Supreme Court in Gulf Coast I, there has not been nor will there be any uneconomic duplication of existing facilities belonging to either WFEC or AEC if Gulf Power is allowed to honor the request for service received from ECS. [R. 122] There has not been any “race to serve” by Gulf Power. To the contrary, Gulf’s efforts to bring this load to Washington County have been through diligent and patient efforts. [R. 91, Exhibit 6 at 6] As a result of the absence of uneconomic duplication, the Customer’s preference for electric supplier should be the controlling factor to be considered by the Commission in this case as it ultimately was in the case of the new prison built in Washington County decided by the Florida Supreme Court in Gulf Coast I.

### **CONCLUSION**

Consistent with the policy against further uneconomic duplication of generation, transmission and distribution facilities, ECS has chosen the only electric supplier with existing facilities adequate to serve the Customer’s electric load in close proximity to the Customer’s site. As the only public utility providing electric service in Washington County, Gulf Power is obligated under Section 366.03, Florida Statutes to provide electric service to ECS consistent with the Customer’s request for electric service for the following reasons:

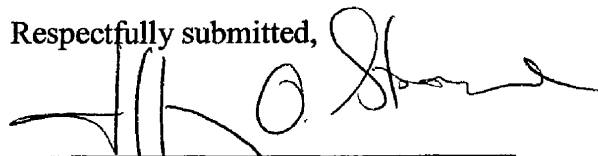
- ECS is a new customer whose electric service requirements constitutes new electric load not currently being served in Washington County, Florida;
- the reliability requirements of ECS are such that the most reasonable means of providing the requested electric service is from a new substation fed from a networked 230 kilovolt electric transmission system;

- the proposed new substation and related 230 kilovolt transmission line tap would not constitute duplication of any existing electric transmission or distribution facilities in Washington County;
- Gulf Power owns and operates the only existing 230 kilovolt transmission system in Northwest Florida, including Washington County;
- Gulf Power has worked with and continues to work with the Customer in an effort to meet its requested in-service date for the new electric service facilities.

Under the relevant case law, there has been no “race to serve” nor will there be uneconomic duplication of existing facilities; therefore, the Customer’s preference of electric supplier is controlling in this case. Given the instrumental role played by Gulf Power in facilitating ECS bringing this new electric load to Washington County, and Gulf Power’s 75 years of history providing electric service to customers within Washington County, the Commission should uphold and honor the customer’s request and authorize Gulf Power to serve ECS at Station 13A.

Dated this 9th day of October, 2001.

Respectfully submitted,



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to resolve territorial dispute )  
with Gulf Power Company in Washington ) Docket No.: 010441-EU  
County by West Florida Electric Cooperative )  
Association, Inc. )  
\_\_\_\_\_ )

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been furnished  
this 9<sup>th</sup> day of October 2001 by U.S. Mail or hand delivery to the following:

Marlene Stern, Esquire  
Staff Counsel  
FL Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee FL 32399-0863

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