

DOCKET 100304-EU

REBUTTAL TESTIMONY OF

DR. MARTIN J. BLAKE

ON BEHALF OF CHOCTAWHATCHEE ELECTRIC COOPERATIVE, INC.

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is Martin J. Blake. My business address is 6001 Claymont Village
3 Drive, Suite 8, Crestwood, Kentucky 40014.

4 Q. BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?

5 A. I am a Member and Principal of The Prime Group, LLC. The Prime Group
6 provides consulting services in the areas of strategic planning, cost of service, rate
7 and regulatory support, and training for energy industry clients.

8 Professional Qualifications & Experience

9 Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

10 A. I received my Ph.D. in Agricultural Economics in 1976 from the University of
11 Missouri, Columbia. My doctoral work centered on the areas of marketing and
12 econometrics. I also hold a Master of Arts in Economics from the University of
13 Missouri, Columbia, which I received in 1972. In addition, I received a Bachelor
14 of Arts degree in Economics from Illinois Benedictine College in 1970.

15 Q. IN WHAT AREAS DOES YOUR PRACTICE CONCENTRATE?

16 A. As a member of The Prime Group, I have provided utility clients with assistance
17 regarding rate design for both wholesale and retail rates; the development of rates
18 to achieve strategic objectives; the unbundling of rates and the development of
19 menus of rate alternatives for use by customers; performance-based rate and

COM 5
APA
ECR 1
GCL 8
RAD
SSC
ADM
OPC
CLK C.F.R.P.R

1 incentive rate development; state and federal regulatory filing development,
2 testimony and support; cost of service development and support; and strategic
3 planning. I have also been involved in the development of the Midwest ISO and
4 represent Southern Illinois Power Cooperative and Hoosier Energy on the
5 Midwest ISO Transmission Owners Committee, the Transmission Owners Tariff
6 Working Group, the Finance Subcommittee and the Demand Response Working
7 Group. I served a three year term as Chairman of the Transmission Owners Tariff
8 Working Group. I have made presentations to train utility personnel in cost of
9 service, rate making, utility finance, and utility marketing. I have provided
10 marketing and marketing support services for utility clients and have assisted
11 them in assessing their marketing capabilities and processes.

12 **Q. PLEASE BRIEFLY SUMMARIZE YOUR AREAS OF PROFESSIONAL**
13 **EXPERIENCE PRIOR TO JOINING THE PRIME GROUP.**

14 A. I have professional experience as an economist and professor of economics, as a
15 utility regulator, as a utility manager and executive and as a consultant.

16 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AS AN**
17 **ECONOMIST.**

18 A. From January 1977 to December 1986, I was employed first as an Assistant
19 Professor, then as an Associate Professor, and finally as a Professor of
20 Agricultural Economics at New Mexico State University in Las Cruces, New
21 Mexico ("NMSU"). I was the head of the undergraduate program and taught
22 agricultural economics and econometrics. While at NMSU, I also worked as a
23 consultant for various clients, providing price forecasting, load forecasting, and

1 marketing services. From 1992 through 1994, I taught mathematical economics
2 and econometrics as an Adjunct Professor in the Economics Department at the
3 University of Louisville. Prior to my joining the faculty at NMSU, I served in the
4 U. S. Army as an instructor of economics, statistics, and accounting at the U. S.
5 Army Institute of Administration at Fort Benjamin Harrison, Indianapolis,
6 Indiana.

7 I also have a variety of experience with the application of economics to
8 utility public policy issues. In addition to my experience as a utility regulator and
9 executive, which I describe below, I taught retail and wholesale pricing for
10 electric utilities at the NARUC Annual Regulatory Studies Program at Michigan
11 State University for thirteen years. From May 1983 to August 1983, while on a
12 sabbatical leave from NMSU, I served as a Policy Analyst for the Assistant
13 Secretary for Land and Water at the U. S. Department of Interior.

14 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AS A**
15 **UTILITY REGULATOR.**

16 **A.** From January 1987 to November 1990, I served as a Commissioner and as the
17 Chairman of the New Mexico Public Service Commission. As a Commissioner,
18 my duties included making policy and adjudicatory decisions regarding rates,
19 terms of service, financing, certificates of public convenience and necessity, and
20 complaints for electric, natural gas, water, and sewer utilities. As Chairman, I
21 supervised a staff of 32 professionals and 16 support staff. During my tenure on
22 the New Mexico Commission, I also served as Chairman of the Western
23 Conference of Public Service Commissioners Electric Committee and as

1 Chairman of the Committee on Regional Electric Power Cooperation, a group
2 composed of state public service commissioners and representatives from the state
3 energy offices of the 13 western states.

4 As a Commissioner, I interpreted legislation, reviewed prior Commission
5 cases to determine the precedents that they provided, drafted rules and
6 regulations, wrote orders, and served as an arbitrator in alternative dispute
7 resolution proceedings. I performed adjudicatory and regulatory functions for the
8 four years that I served on the Commission.

9 **Q. AS A COMMISSIONER, DID YOU PARTICIPATE IN PROCEEDINGS**
10 **DESIGNED TO RESOLVE TERRITORIAL DISPUTES?**

11 A. Yes. While I was a Public Service Commissioner in New Mexico, utilities with
12 territorial disputes had the choice of filing a formal complaint with the
13 Commission or of submitting the territorial dispute to binding arbitration. A
14 territorial dispute that was filed as a formal complaint would take months to
15 resolve in a process similar to that in the instant case between Gulf Power and
16 CHELCO. With binding arbitration, a dispute could be resolved in a matter of
17 weeks. I served as an arbitrator in territorial dispute cases. Sometimes it was
18 possible to act more as a mediator and help the parties to reach an accommodation
19 that settled the territorial dispute. In disputes where the parties could not reach a
20 settlement, it was necessary to make a decision based on the information provided
21 in the arbitration process.

1 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AS A**
2 **UTILITY MANAGER.**

3 A. From December, 1990 to June 1996, I was employed by Louisville Gas and
4 Electric Company ("LG&E"). Initially, I served as LG&E's Director of
5 Regulatory Planning. In this position, I was responsible for coordinating all of
6 LG&E's state and federal regulatory efforts, and prepared and presented testimony
7 to regulators.

8 My areas of responsibility were expanded in April 1994 to include
9 marketing and strategic planning. As the Director, Marketing, Planning and
10 Regulatory Affairs, I was responsible for coordinating LG&E's retail gas and
11 electric marketing, strategic planning, and state and federal regulatory efforts. I
12 continued to be employed in that capacity at LG&E until June 1996, when I
13 joined the Prime Group as one of its Principals.

14 **Q. PLEASE DESCRIBE THE INDUSTRY GROUPS IN WHICH YOU HAVE**
15 **PARTICIPATED.**

16 A. I have served on several regional transmission coordination groups such as the
17 Interregional Transmission Coordination Forum, and the General Agreement on
18 Parallel Paths, as well as the following committees of the Edison Electric Institute
19 ("EEI") -- Economics and Public Policy Executive Advisory Committee, Strategic
20 Planning Executive Advisory Committee, Transmission Task Force, and Power
21 Supply Policy Technical Task Force.

1 **Q. HAVE YOU TAUGHT ANY COURSES OR SEMINARS IN THE UTILITY**
2 **AREA?**

3 A. Yes. I have taught the following courses at the NARUC Annual Regulatory
4 Studies Program at Michigan State University: 1) retail ratemaking, 2) wholesale
5 pricing, 3) rate of return regulation, 4) competitive market fundamentals, 5)
6 electric industry overview, 6) the economics of power production and delivery, 7)
7 electric system technologies, and 8) the institutions and organizations of the new
8 electric utility industry. Each year, I also teach and conduct numerous workshops
9 and programs and deliver invited presentations to utility managers and regulators
10 on a variety of subjects.

11 **Q. IN WHAT CASES HAVE YOU PREVIOUSLY TESTIFIED?**

12 A. I have testified in numerous proceedings before the Federal Energy Regulatory
13 Commission and various state regulatory bodies. Exhibit MJB-1 is a summary of
14 the testimony that I have presented in other regulatory proceedings.

15 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
16 **PROCEEDING?**

17 A. *The purpose of my testimony is to review and analyze the Direct Testimony filed*
18 *by Gulf Power in this proceeding and to provide rebuttal testimony regarding*
19 *issues where the Gulf Power Direct Testimony is inaccurate or misleading.*

20 **Q. AS BACKGROUND TO YOUR TESTIMONY, DESCRIBE THE**
21 **CHARACTERISTICS OF A NATURAL MONOPOLY.**

22 A. A natural monopoly is characterized by a production process with large fixed
23 costs that results in an average total cost curve that declines over almost the entire

1 range of output levels. A natural monopoly is able to lower its cost per unit when
2 it produces and sells a larger quantity, because the large fixed costs are spread
3 over a larger number of units sold. Thus, a single natural monopoly is able to
4 produce and supply a product or service at a lower cost than two or more firms.
5 The transmission and distribution functions of an electric utility meet this
6 definition of a natural monopoly. Almost all of the costs of providing both
7 transmission and distribution service are fixed costs, and once incurred, must be
8 recovered from customers if an electric utility is to remain financially viable. It is
9 economically inefficient for an area to be served by two or more sets of
10 distribution lines. Rather, it is in the customers' best interests to have a single
11 supplier of distribution service and allow any sales growth to reduce the per-unit
12 cost of providing distribution service. State statutes that charge regulators with
13 ensuring that there is no uneconomic duplication of facilities recognize the natural
14 monopoly characteristics of distribution service. The issue in most territorial
15 disputes, as it is in this proceeding, is which electric utility should be allowed to
16 be the natural monopoly to provide distribution service to an area.

17 **Q. WHAT IS THE FINANCIAL IMPACT ON A COMPANY OF SERVING A**
18 **HIGHER DENSITY LOAD SUCH AS FREEDOM WALK?**

19 A. The financial impact of serving a relatively high density load such as Freedom
20 Walk is generally positive for a utility. Retail electric rates are averages that
21 provide sufficient revenue to cover the expenses and support the investment
22 associated with the average customer. If a utility adds customers with load
23 characteristics that are better than the class average, the rate will generate more

1 revenue than the cost incurred in serving the customers. Similarly, new customers
2 that have worse load characteristics than the average will generate more cost than
3 it will generate revenue. As noted by Mr. Jacob on page 4 of his Direct
4 Testimony, adding such a customer provides the opportunity for a utility to spread
5 its existing fixed costs over a larger pool of customers and recognize economies
6 of scale. This would be true for both Gulf Power and for CHELCO.

7 **Q. WHAT ARE THE DIFFERENCES BETWEEN AN INVESTOR OWNED**
8 **UTILITY AND AN ELECTRIC COOPERATIVE?**

9 A. An investor owned utility is a for profit entity that generates margins that it uses
10 to pay dividends to shareholders. A cooperative is a not for profit entity that
11 returns any excess margins not needed to cover its expenses and meet
12 contingencies to its customers in the form of capital credits. The management
13 team for an investor owned utility is hired by a shareholder-elected Board of
14 Directors that represents shareholder interests. The cooperative management team
15 is hired by a member-elected Board of Directors that represents member interests.
16 In fact, to be a member-elected Director for a cooperative, the Director must be a
17 member of that cooperative and thus an end-user of the electric service provided
18 by the cooperative. An investor owned utility is regulated by the Public Service
19 Commission and must file any new rates that it desires to charge for Commission
20 approval. The rates of a cooperative are approved first by the cooperative Board
21 and then filed at the Public Service Commission for approval of the rate design.
22 The level of revenue collected through the rates is the sole jurisdiction of the
23 cooperative Board, who as customers, will pay any rate that they approve. As

1 indicated previously, if the rates result in revenues over expense, the excess is
2 returned to the members. Any such excess in revenues over expense at an investor
3 owned utility is regarded as earnings that are available for distribution to the
4 shareholders. A member served by a cooperative can exercise choice every year
5 through the election of Directors at the cooperative's annual meeting and can vote
6 out any Director who is not effectively representing member interests. I would
7 argue that a member of a cooperative has more control over the type of service
8 they are provided and the rates that they pay than a customer of an investor owned
9 utility because of this annual opportunity to vote out any Director who does not
10 adequately represent their interests.

11 **Q. WHAT MATERIALS DID YOU REVIEW IN ARRIVING AT YOUR**
12 **CONCLUSIONS?**

13 A. I reviewed the petition filed by CHELCO and Gulf's answer thereto, and the
14 direct testimony of all CHELCO and Gulf Power witnesses.

15 **Q. DO YOU AGREE WITH MR. SPANGENBERG'S CHARACTERIZATION**
16 **OF WHAT CONSTITUTES UNECONOMIC DUPLICATION?**

17 A. No. On pages 26 through 28 of his Direct Testimony, Mr. Spangenberg suggests
18 that any determination of what constitutes "uneconomic duplication" should be
19 made from the perspective of the entity making the investment. The four tests that
20 he suggests are focused on whether extending its distribution system to serve
21 Freedom Walk would be a good financial investment for Gulf Power. Because
22 Freedom Walk is a relatively large, and relatively high density load as compared
23 to the surrounding area, the answer to his four questions are yes, Freedom Walk

1 would be a good financial investment for Gulf Power. However, his analysis
2 ignores the effect of an award of the territory to Gulf Power on the existing lines,
3 facilities, and investment expectations of CHELCO, and fails to address whether
4 Gulf Power's duplication of CHELCO's existing facilities would be uneconomic
5 from CHELCO's perspective. In fact, if Mr. Spangenberg's questions were asked
6 of CHELCO, the answer to these same four questions is also yes for CHELCO.
7 Mr. Spangenberg asserts that the Commission decision in this territorial dispute
8 be based on the criteria of what is in the best financial interest of Gulf Power to
9 the exclusion of CHELCO, as he explains at length in his testimony. However,
10 because this is a dispute regarding which company should serve Freedom Walk, it
11 would be improper for the Commission to approach the problem from the
12 financial point of view of Gulf Power. Rather, it should be based on an objective
13 assessment of whether existing and adequate facilities that a utility has
14 constructed in good faith to meet its customers' needs are to be paralleled,
15 crossed, and otherwise duplicated in a manner inconsistent with the purposes and
16 intent of the coordinated grid bill.

17 **Q. MR. SPANGENBERG INTERPRETS SECTION 425.04 OF THE**
18 **FLORIDA STATUTES AS BARRING COOPERATIVES FROM SERVING**
19 **IN URBAN AREAS. DO YOU AGREE WITH HIS INTERPRETATION?**

20 A. No, I do not. As a first point however, CHELCO's position is that, because of the
21 scope of the Commission's powers and duties, the interpretation and construction
22 of Chapter 425 is not an issue for consideration in this docket. However, Gulf

1 Power has raised it and it cannot go un rebutted. Section 425.04 of the Florida
2 Statutes states as follows:

3 A cooperative shall have power to generate, manufacture,
4 purchase, acquire, accumulate and transmit electric energy, and to
5 distribute, sell, supply, and dispose of electric energy in rural areas
6 to its members, to governmental agencies and political
7 subdivisions, **and to other persons not in excess of 10 percent of**
8 **the number of its members**; to process, treat, sell, and dispose of
9 water and water rights; to purchase, construct, own and operate
10 water systems; to own and operate sanitary sewer systems; and to
11 supply water and sanitary sewer services. However, no cooperative
12 shall distribute or sell any electricity, or electric energy to any
13 person residing within any town, city or area which person is
14 receiving adequate central station service or **who at the time of**
15 **commencing such service**, or offer to serve, by a cooperative, is
16 receiving adequate central station service from any utility agency,
17 privately or municipally owned individual partnership or
18 corporation; (emphasis added)

19 Under no possible construction does this language bar cooperatives from serving
20 in urban areas as Mr. Spangenberg claims. Rather, my review leads me to
21 conclude that it confirms that uneconomic duplication should be avoided at the
22 time electric service commences. At the time that CHELCO commenced service
23 to members in the area in question in 1946, the area in dispute was clearly a rural
24 area that was not receiving central station power from any other utility. If another
25 utility was already providing central station power to the area, CHELCO's service
26 would have been uneconomic duplication, which the Commission is charged with
27 avoiding. However, at the time, there was no central station power to the area.
28 Thus, CHELCO's service to the area clearly complies with Section 425.04
29 because of the rural nature of the area "at the time of commencing service". Over
30 time, additional customers moved into the area, and in 2005, the disputed territory
31 was annexed by the City of Crestview. However, by the time this area was

1 annexed by the City of Crestview, CHELCO had been serving the area in question
2 for about 60 years and had three phase lines installed to meet its existing
3 substantial load and anticipated load growth in the area. Mr. Spangenberg would
4 have the Commission believe that, as a result of the annexation of the disputed
5 area by the City of Crestview, CHELCO can no longer provide service to
6 additional customers that are adjacent to CHELCO's existing lines that are
7 capable of providing electric service to the area. Mr. Spangenberg's tortured
8 interpretation of Section 425.04 would render any Commission consideration of
9 uneconomic duplication moot, which is exactly the result that Gulf Power needs if
10 it is to convince the Commission to award it the disputed area. Later in his Direct
11 Testimony, Mr. Spangenberg completely misinterprets the meaning of
12 uneconomic duplication, again in a way that is favorable to Gulf Power's request
13 that it be allowed to serve the disputed area.

14 In any event, what this discussion overlooks is the fact that Section
15 366.04(3)(b) never once uses the term "rural" or makes a "rural area" a
16 consideration of the Commission in a territorial dispute. Gulf's efforts to divert
17 the attention of the Commission from the actual standards enacted by the
18 legislature should be given no weight. I suggest that Section 425.04 is not a
19 model of clarity – though I believe its intent is consistent with my understanding.
20 However, it will take considerable efforts of construction and interpretation to
21 determine precisely what it means. Whatever body undertakes that construction
22 and interpretation should be charged by the legislature with jurisdiction to do so.
23 My review of Chapter 425 reveals no instance in which the legislature charged the

1 Commission with regulatory jurisdiction over that chapter. My review of the
2 grant of jurisdiction in Section 366.04 leads me to conclude that the
3 Commission's authority over cooperatives is limited to compliance with the "grid
4 bill" and a determination of:

5 the ability of the utilities to expand services within their own
6 **capabilities** and the **nature of the area involved**, including
7 population, the degree of urbanization of the area, its proximity to
8 other urban areas, and the present and reasonably foreseeable
9 future requirements of the area for other utility services. (emphasis
10 added)

11 In my experience as a regulator and as one with experience in regulatory issues, I
12 believe that to be a fairly narrow grant of authority, and certainly not one that
13 authorizes the exercise of broad powers to construe the legal scope of
14 cooperatives' service, or a comprehensive analysis of a cooperative's service area
15 to determine whether it complies over the entirety of that area with ill-defined or
16 undefined statutory terms.

17 **Q. DO YOU AGREE WITH MR. SPANGENBERG THAT CHELCO IS**
18 **LIMITED TO SERVING NO MORE THAN TEN PERCENT OF ITS**
19 **LOAD IN URBAN AREAS?**

20 A. No. Again, Mr. Spangeneberg completely misinterprets the language contained in
21 Section 425.04 in a way that is favorable to Gulf Power. Under the language of
22 425.04, CHELCO is not prohibited from serving non-members. A retail customer
23 of the cooperative becomes a member of the cooperative and has the full rights of
24 a member when the customer commences service with the cooperative. Some
25 distribution cooperatives sell wholesale power to entities that do not become
26 members of the cooperative. CHELCO has no such wholesale sales to non-

1 members. If CHELCO served Freedom Walk, all of the retail customers in the
2 subdivision would become members of the cooperative with the full rights of
3 members to vote for Directors of the Board that control the cooperative in the
4 annual elections. Mr. Spangenberg went to a lot of effort in his Testimony to
5 quantify the percentage of customers that CHELCO serves in what he
6 characterizes as urban areas. To develop his numbers, he created his own
7 definitions, and applied an unreasonably broad view of the term “person” – a view
8 that essentially requires the Commission to act as the Census Bureau, reevaluating
9 population numbers as they wax and wane during growth, economic downturns
10 and natural disasters every time it decides a territorial dispute – all with the intent
11 of getting the Commission to focus on something other than the actual service
12 currently provided to the disputed area by CHELCO. His position directs the
13 Commission to focus more on areas far removed from Freedom Walk than on the
14 area that is the subject of this dispute. Unfortunately, all of this effort leads the
15 Commission down an unproductive path, as a ten percent limit on the customers
16 served in “urban areas” was not the intent of Section 425.04 based on the clear
17 language contained in the statute.

18 **Q. IS THERE ADDITIONAL EVIDENCE IN THE RECORD THAT CHELCO**
19 **IS NOT BARRED FROM OFFERING ELECTRIC SERVICE IN URBAN**
20 **AREAS?**

21 A. Yes. Exhibit LVG-3 contains a copy of Ordinance No. 1433 which was passed
22 and adopted by the City Council of Crestview on October 26, 2009. This
23 Ordinance granted CHELCO the right and franchise to maintain and operate an

1 electric distribution system in the City and to construct, maintain, operate and
2 extend electric transmission and distribution lines in the streets and public places
3 of the City. It is unlikely that the City of Crestview would have issued this
4 Ordinance if allowing CHELCO to serve in the City and to extend service in the
5 City was contrary to Florida Statutes.

6 **Q. WHAT ARE THE POLICY IMPLICATIONS OF THE**
7 **INTERPRETATION OF FLORIDA LAW CONTAINED IN MR.**
8 **SPANGENBERG'S TESTIMONY?**

9 A. Mr. Spangenberg claims that Florida law prohibits electric cooperatives from
10 serving in "urban" areas. His concept of an urban area is expansive and would
11 include any area with a high density of customers per mile of line. By preserving
12 all areas with high density load exclusively for investor owned utilities and
13 relegating all areas with low density load to electric cooperatives, the Commission
14 would be preventing the members of electric cooperatives in rural areas from ever
15 realizing the economies of scale and benefiting from the ability to spread their
16 fixed costs over a larger customer base.

17 It is important to note that CHELCO has a long history of providing
18 electric service to people that have been underserved and ignored by Gulf Power,
19 and the Commission should not ignore that history. Historically, investor owned
20 utilities have chosen not to serve in rural areas because providing service to these
21 areas with low customer density per mile of line would have added much more to
22 cost than they would to revenue under the investor owned utility's retail electric
23 rates, thus adversely affecting the rate of dividends to its shareholders. This

1 reluctance for investor owned utilities to serve in rural areas is the whole reason
2 why electric cooperatives were formed.

3 Based on data from Platt's 2010 UDI Directory of Electric Power
4 Producers and Distributors, Gulf Power has about 57 customers per mile of
5 distribution line and CHELCO has about 12 customers per mile of distribution
6 line. Thus, Gulf Power can spread fixed costs much further than CHELCO
7 resulting in a lower per unit investment for Gulf Power. As an example, if one
8 mile of single phase distribution line cost \$30,000, the per-unit investment for
9 Gulf Power would be about \$526 per customer while it would be about \$2,500 per
10 customer for CHELCO. Gulf Power's retail rates would support the lower level of
11 investment while CHELCO's retail rates would be necessary to support the higher
12 level of investment. Gulf Power would suffer financially under its current rate
13 structure if it attempted to serve low density load such as that served by
14 CHELCO. This is the reason that, if customers in rural areas had waited until
15 investor owned utilities built service out to them, they would still be waiting.

16 After serving areas with low member density for years, it would be
17 inequitable from a practical perspective and not required from a legal perspective,
18 to strip electric cooperatives of the opportunity to take advantage of economies of
19 scale and to spread their fixed costs over a larger base of sales when one of the
20 many low density historic service areas develops into a more advantageous area
21 with higher customer density. I have seen nothing in the pleadings or testimony of
22 the parties that leads me to conclude that it is the state of Florida's policy to
23 ensure that electric rates in rural areas stay high by denying opportunities to

1 achieve economies of scale, while providing opportunities to lower rates in urban
2 areas by assigning all areas with high customer density to investor owned utilities
3 as Mr. Spangenberg suggests.

4 **Q. HOW DOES MR. SPANGENBERG'S TESTIMONY AND HIS**
5 **INTERPRETATION OF SECTION 425.04 ADDRESS THE**
6 **REQUIREMENT OF THE COMMISSION TO PREVENT UNECONOMIC**
7 **DUPLICATION OF FACILITIES?**

8 A. It doesn't. As set forth previously, Gulf Power's interpretation of uneconomic
9 duplication is determined solely by whether Gulf Power's duplication of another
10 utility's existing facilities is good for Gulf Power's bottom line, without any
11 consideration whatsoever of the economic impact on the existing provider.
12 Additionally, the approach that Mr. Spangenberg is suggesting of assigning all
13 areas with relatively high customer density to investor owned utilities as a matter
14 of course would render the legislature's desire to avoid "uneconomic duplication"
15 moot in any area in which a city has, for purposes that may be unrelated to the
16 extension of urban or municipal services, decided to annex property. Essentially,
17 Gulf Power's position, as expressed by Mr. Spangenberg, is that if Gulf Power
18 can economically justify the extension of its facilities, any and all duplication of
19 another utility's facilities is irrelevant since such duplication is not uneconomic to
20 Gulf Power. That is precisely the case here where a decision to allow Gulf Power
21 to serve Freedom Walk would result in uneconomic duplication of CHELCO's
22 facilities in a decidedly rural area that is projected to be developed to a higher
23 density area.

1 **Q. DID YOU NOTICE ANY COMMON CHARACTERISTICS OF THE**
2 **CITATIONS PROVIDED BY GULF POWER IN ITS ANSWER TO THE**
3 **PETITION AND IN ITS DIRECT TESTIMONY?**

4 A. Yes. I noticed that the majority of the cases regarding territorial disputes that were
5 cited by Gulf Power involved Gulf Power as one of the parties. This gave me the
6 impression that Gulf Power had been involved in a large number of territorial
7 disputes, and that it is Gulf Power’s strategy to go after large, high density, high
8 load factor loads in areas that are currently served by electric cooperatives. This
9 impression was reinforced when I read that one of Mr. Spangenberg’s “special
10 project” areas is territorial matters in which he provides guidance to Gulf Power’s
11 district and local management and field personnel with respect to competing for,
12 and providing service to, new customers. (Spangenberg Direct testimony, page 1).
13 Since electric distribution utilities have all of the characteristics of natural
14 monopolies and the Commission is charged with avoiding the uneconomic
15 duplication that would result from competition with regard to distribution service,
16 “competing for and providing service to new customers” sounds to me like code
17 for going after attractive loads in areas currently served by cooperatives. This
18 impression is buttressed by Gulf Power’s statement regarding its policy for
19 expanding or extending electric service that: “In a natural desire to grow its
20 business and because serving additional customers using any existing distribution
21 facilities usually reduces the cost per customer for providing service, utilities have
22 (and should) **aggressively pursue** the opportunities to serve a prospective new
23 customer.” (emphasis added, Gulf Power Response to question 9 of CHELCO’s

1 Second Request for Production of Documents, p. 360). Gulf Power goes on to
2 state that: “Because Gulf Power has generally tried to preserve as much customer
3 choice as practical, it has historically opposed the establishment of geographical
4 boundaries.” (Gulf Power Response to question 9 of CHELCO’s Second Request
5 for Production of Documents, p. 361). From these statements, it appears to me
6 that Gulf Power does not want to be reigned in by geographic boundaries that
7 would prevent it from encroaching on areas currently served by other utilities. It
8 appears that Gulf Power is willing to tolerate electric cooperatives as long as they
9 are relieving Gulf Power from any obligation to serve areas with low customer
10 density, but once the area has the potential to develop into a higher and more
11 economically advantageous density area, Gulf Power will race in as quickly as it
12 can to get the customer to “choose” Gulf Power and use that “choice” to claim the
13 load for itself.

14 **Q. IS THERE EVIDENCE IN THE RECORD THAT INDICATES THAT**
15 **GULF UNDERSTOOD IT WAS ENCROACHING ON AN AREA**
16 **CURRENTLY SERVED BY CHELCO?**

17 A. Yes. The e-mail contained in Exhibit LVG-5 supports this view. In an e-mail sent
18 to Sandra Sims on June 19, 2006, Mr. Feazell, who is a witness in this proceeding,
19 stated that “I spoke with Scott and just to let you know, CHELCO has a line
20 running through the proposed site now. Gulf would have to do additional work to
21 serve the subdivision.” When Ms. Sims received this e-mail that basically
22 admitted that Gulf Power service to the area would be duplicative of the
23 CHELCO service that was already there, Ms. Sims forwarded Mr. Feazell’s e-

1 mail to Mr. Spangenberg with the note “Please call me when you get a minute
2 about my next steps with this.” This short e-mail speaks volumes about the issues
3 in this case. It shows that Gulf Power knew that CHELCO was currently
4 providing service to the area in question, and that Gulf Power was not currently
5 providing service to the area. Mr. Spangenberg’s Testimony in this proceeding
6 that CHELCO should be barred from serving this load because the area in
7 question is evolving from a rural area to an urban area completely misses the
8 mark with regard to “uneconomic duplication” that is recognized by this e-mail.

9 **Q. WHAT IS THE PURPOSE OF DR. HARPER’S TESTIMONY?**

10 A. After reviewing Dr. Harper’s Direct Testimony, it appears that its sole purpose is
11 to expand the concept of “urban” as broadly as possible in support of Mr.
12 Spangenberg’s Testimony. I was puzzled by why Dr. Harper, as an economist,
13 was not asked to address the concept of “uneconomic duplication” in this
14 proceeding. Though not entirely a question of pure economics, it is within the
15 context of natural monopolies that uneconomic duplication has meaning for
16 regulatory agencies that routinely deal with natural gas, water and electric
17 distribution companies that have the characteristics of natural monopolies. A
18 discussion of uneconomic duplication by an economist would seem to provide
19 more pertinent and reliable information to the Commission than would the
20 discussion of Gulf Power’s desire to be economically advantaged by claiming
21 CHELCO’s historic Freedom Walk service area that was provided by Gulf
22 Power’s expert in territorial disputes, Mr. Spangenberg.

1 **Q. ARE THERE INDICATIONS THAT CHELCO HAS A SUBSTANTIAL**
2 **PRESENCE IN THE AREA AND THAT THE INCURSION BY GULF**
3 **POWER REPRESENTS UNECONOMIC DUPLICATION?**

4 A. Yes. Pages 5 through 9 of Mr. Fezell's Direct Testimony go into depth regarding
5 the upgrades that CHELCO would need to make to its three phase equipment that
6 currently serves the Freedom Walk area and the cost of these upgrades. His
7 testimony is somewhat out of date, since Mr. Avery and Ms. Sullivan both
8 acknowledge that service to meet Freedom Walk's full projected load, even if it
9 were to come on immediately, could be provided by the simple act of accelerating
10 existing, planned improvements in its Construction Work Plan. If the load is
11 phased in, as Gulf Power projects, no changes to CHELCO's existing
12 Construction Work Plan would be necessary. Mr. Fezell attributes the cost of
13 the upgrades in CHELCO's current Construction Work Plan to Freedom Walk,
14 but he glosses over the fact that CHELCO planned to make these upgrades to its
15 three phase system before it knew about the Freedom Walk development in order
16 to accommodate the already anticipated load growth that it was experiencing in
17 this area. (Sullivan Direct testimony). These planned upgrades demonstrate that
18 CHELCO is serving a substantial load in the immediate area of Freedom Walk,
19 and has made the prudent investment decision to plan ahead for reasonably
20 expected growth in its service area. Mr. Fezell is taking a clear demonstration
21 that CHELCO is serving significant load in the immediate area and attempting to
22 turn it into a negative for CHELCO in this proceeding.

1 **Q. DOES MR. FEAZELL USE ONE APPROACH FOR DETERMINING THE**
2 **COST OF FACILITIES NECESSARY FOR CHELCO TO SERVE**
3 **FREEDOM WALK AND ANOTHER FOR DETERMINING THE COST**
4 **OF FACILITIES NECESSARY FOR GULF POWER TO SERVE**
5 **FREEDOM WALK?**

6 **A.** Yes, and unsurprisingly, this difference in methodologies favors Gulf Power. Mr.
7 Feazell states that Gulf Power would only need to build four-tenths of a mile of
8 three phase line to serve the Freedom Walk development and that no other
9 changes would need to be made to the distribution equipment in the area. (Feazell
10 Direct testimony, pages 9-10). However this testimony is not consistent with Gulf
11 Power's response to question 41 of CHELCO's Second Set of Interrogatories in
12 which Gulf Power identifies significant upgrades to the Airport Road substation
13 that would be used to serve Freedom Walk costing \$1,600,000. If the substation
14 upgrades cannot be accomplished, Gulf proposes the addition of three
15 transformers solely to serve Freedom Walk. Aside from the fact that \$40,000
16 seem very low for the replacement of three single phase transformers, especially
17 given Mr. Feazell's testimony regarding the cost to CHELCO of replacing
18 transformers, the fact is that Gulf has not identified even that low figure as a cost
19 of providing service to Freedom Walk.

20 Gulf Power rationalizes its exclusion of the Airport Road substation
21 upgrades by stating that these upgrades would have been done anyway and were
22 not necessary to serve Freedom Walk. (Gulf Power response to question 39 of
23 CHELCO's Second Set of Interrogatories). However, on pages 5 through 9 of his

1 Testimony, Mr. Fezell counts as costs of serving Freedom Walk upgrades that
2 CHELCO had already planned to make to serve its substantial load in the area. It
3 is misleading for Gulf Power to include costs that CHELCO has planned to incur
4 in calculating the cost of CHELCO serving Freedom Walk while excluding such
5 costs from Gulf Power's calculation. The Commission should recognize this
6 difference and be sure that it is comparing the costs on the same basis in making
7 any decision regarding uneconomic duplication in this proceeding.

8 **Q. DO THE INTERESTS OF DEVELOPERS NECESSARILY COINCIDE**
9 **WITH THOSE OF THE CUSTOMERS WHO ULTIMATELY RESIDE IN**
10 **THE DEVELOPMENT?**

11 A. No. The difference in interests between developers and those who ultimately
12 reside in the development is widely recognized. As an example, that difference in
13 interests is one of the reasons for the incentives offered to developers in energy
14 efficiency programs. To reduce upfront costs, developers have a financial
15 incentive to install cheaper appliances that are less energy efficient than more
16 expensive, but more energy efficient appliances that might benefit the ultimate
17 resident/utility customer and that the ultimate customer might choose. The
18 incentives to install energy efficient appliances paid to developers in energy
19 efficiency programs is based on the logic that the incremental cost of a more
20 energy efficient appliance at the time of installation is generally small, while the
21 cost of purchasing a new more energy efficient appliance is something that the
22 homeowner is unlikely to pursue until the appliance wears out. On page 8 of his
23 Direct Testimony, Mr. Johnson claims that Gulf Power believes it is appropriate

1 to view the developer as the customer for purposes of requests for electric service.
2 The Commission should consider the possibility that the interests of the developer
3 and the customers who will ultimately reside in the development may differ with
4 regard to who they would prefer to provide electric service. The ultimate
5 customer may prefer a supplier such as CHELCO that is not for profit, member
6 owned, controlled through a member elected Board and that returns any excess
7 margins to members in the form of capital credits rather than receive electric
8 service from Gulf Power which is a for profit entity, owned by shareholders,
9 controlled through a shareholder elected Board and that retains any excess
10 earnings for the benefit of shareholders. The difference in interest is further
11 highlighted by the fact that the developer's interest is limited to up-front costs
12 incurred before the developer is gone from the scene, rather than the ongoing
13 costs and service characteristics that the ultimate customer will bear for the life of
14 the building.

15 **Q. WHY MIGHT A DEVELOPER PREFER TO INITIATE ELECTRIC**
16 **SERVICE WITH GULF POWER RATHER THAN WITH CHELCO?**

17 A. In a manner similar to the choice of appliances, developers are likely to prefer to
18 receive electric service from whichever company keeps the developer's upfront
19 costs the lowest. CHELCO has a line extension policy that requires the developer
20 to front the money for installing the necessary equipment, with CHELCO
21 providing a refund of the money as houses in the development initiate electric
22 service. This approach puts the development risk where it belongs, on the
23 developer, rather than on the existing members of the cooperative. Although

1 Freedom Walk may develop as planned, there are other developments in Florida
2 that have not and that were nothing more than a dream that didn't materialize. If a
3 utility requires no upfront payment for installing the necessary equipment, the risk
4 of recovering the cost of the equipment falls on the utility's existing customers as
5 these costs are recovered in rates. Unless challenged as imprudent, any
6 expenditures on distribution equipment in failed developments were borne by the
7 utility's existing customers and recovered by the utility through the rates that
8 customers pay. The Commission should consider the developers incentive to
9 minimize upfront costs and whether the developer's request is actually a good
10 surrogate for the interests of the customers who will ultimately live in the
11 development when weighing the developer's request for service in the
12 Commission's ultimate decision in resolving the territorial dispute in this
13 proceeding.

14 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

15 A. Based on my review of the Direct Testimony filed by Gulf Power witnesses,
16 particularly that of Mr. Spangenberg and Mr. Feazell, it is my opinion that
17 CHELCO has existing and currently planned facilities in the disputed area
18 capable of serving the Freedom Walk load without incurring any additional costs,
19 and already serves substantial load in that area, including within the developer's
20 designated boundary of Freedom Walk. Gulf Power's extension of three phase
21 line for four-tenths of a mile, paralleling and crossing CHELCO's lines, to serve
22 Freedom Walk would result in uneconomic duplication of service to Freedom
23 Walk. It is my opinion that because of the substantial load that CHELCO serves

1 in the area, because CHELCO already serves customers within the developer's
2 designated boundary of Freedom Walk, and because CHELCO has existing
3 facilities that are directly adjacent to Freedom Walk that are capable of serving
4 the Freedom Walk load, CHELCO should be allowed to serve the Freedom Walk
5 load.

6 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

7 **A.** Yes, it does.

Prior Testimony of Dr. Martin J. Blake

Federal Energy Regulatory Commission

- ER92-533 LG&E's open transmission access and authority to charge market-based rates for its generation.
- ER94-1380 The first comparability tariff approved by the FERC.
- ER97-4345 A market power analysis that was filed in support of OGE Energy Resources, Inc.'s request for the authority to charge market based rates.
- ER98-511 A market power analysis that was filed in support of Oklahoma Gas and Electric Co.'s request for the authority to charge market based rates.
- ER99-51 An affidavit in support of Commonwealth Edison Co.'s request for authority to charge cost based rates to its affiliates.
- ER01-1938 Testimony in support of Southern Indiana Gas and Electric Company's request for a revision in transmission and ancillary service rates including cost of capital testimony
- ER02-708 Testimony in support of Central Illinois Power Company's request for a revision in transmission and ancillary service rates including cost of capital testimony
- NJ03-2 Testimony in support of Southern Illinois Power Company's request for a revision in ancillary service rates
- EL03-53 Testimony regarding the calculation of avoided cost for a qualifying facility interconnecting with a cooperative
- EL02-111 Testimony regarding the process for developing a combined transmission service rate that would apply to the combined Midwest ISO and PJM footprint

Arkansas Public Service Commission

- 96-360-U Direct and rebuttal testimony for Oklahoma Gas and Electric regarding recovery of stranded costs by Entergy Arkansas, Inc.

California Public Utility Commission

90-12-018 Direct and rebuttal testimony for Southern California
(phase 5) Edison Company concerning the reasonableness of contracting by Southern California Edison with Integrated Energy Group ("IEG") to provide marketing services to Southern California Edison and the reasonableness of the resulting marketing services performed by IEG.

Colorado

C08-0059 Provide an independent review, assessment and recommendation concerning Public Service Company of Colorado's Application and request for the Commission to approve the Company's 2007 Colorado Resource Plan ("2007 CRP") and to review supporting testimony in this proceeding as it relates to the retirement of Cameo Units 1 and 2 and Arapahoe Units 3 and 4.

02S-594E Direct and surrebuttal testimony regarding pro forma adjustments to the revenue requirement in Aquila Networks-WPC rate case.

03S-539E Testimony regarding the use of zero intercept methodology to allocate distribution costs and determine an appropriate customer charge in an Aquila Networks-WPC rate case.

07A-447E Testimony regarding Public Service Company of Colorado's Integrated Resource Plan.

Illinois Commerce Commission

98-0013 and Testimony regarding non-discrimination with
98-0035 regard to affiliate transactions for electric utilities. I sponsored ComEd's proposed affiliate transactions rules and suggested some basic principles that the Illinois Commerce Commission should follow in developing rules and regulations for ensuring non-discrimination and non-cross subsidization in transactions with affiliated and unaffiliated alternative retail electric suppliers ("ARES").

98-0036 Testimony in a rulemaking to develop rules and regulations for assessing and assuring the reliability of the transmission and distribution systems as a part of electric utility restructuring in Illinois.

98-0147 and Testimony concerning standards of conduct and
98-0148 rules for functional separation. I sponsored ComEd's proposed standards of conduct and functional separation rules.

07-0572 Testimony in a reconciliation proceeding concerning the prudence and recovery of the costs of gas injections and withdrawals from the Hillsboro storage field.

Kentucky Public Service Commission

- 90-158 An LG&E rate case.
- 92-494 An LG&E biennial fuel adjustment clause review.
- 93-150 An application for approval of a DSM cost recovery mechanism and a set of initial programs.
- 94-332 An application for an environmental cost recovery mechanism.
- 92-494-B Testimony regarding the confidentiality of coal bid data.
- 95-455 A biannual review of the environmental cost recovery mechanism.
- 91-423 Participation in the conference with Commission staff and intervenors to review LG&E's first integrated resource plan.
- Other Several fuel adjustment clause proceedings on behalf of LG&E.
- 98-489 Testimony on behalf of Blazer Energy Corp. in an application for an adjustment in their natural gas rates.
- 99-046 Direct and rebuttal testimony regarding Return on equity in support of Delta Natural Gas Company's request for an adjustment in rates
- 04-00067 Direct testimony regarding Return on Equity in support of Delta Natural Gas Company's request for an adjustment in rates
- 07- 00089 Direct testimony regarding Return on Equity in support of Delta Natural Gas Company's request for an adjustment in rates

Nevada Public Utility Commission

- 01-10001 Direct testimony on behalf of Shareholders Association to support Nevada Power Company's request for return on equity

New Mexico Public Utility Commission

- 2797 Direct and rebuttal testimony in a general rate case for Plains Electric Generation and Transmission Cooperative, Inc.

Virginia State Corporation Commission

PUE-2008-00076 Direct and Rebuttal testimony regarding rate design for Northern Neck Electric Cooperative

U.S. District Court, District of New Mexico

CIV-08-00026 Reviewed the Expert Report filed by Gary L. Groninger and provided rebuttal testimony regarding whether a decision that was made by the Arkansas River Power Authority (ARPA) was prudent.

Oklahoma Corporation Commission

PUD 960000116 Testimony in an Oklahoma Gas and Electric Company rate case, including rebuttal of intervenor and staff proposals to disallow certain marketing, advertising, economic development and research and development expenses.

PUD 200300226 Testimony in an Oklahoma Gas and Electric Company case regarding the prudence of natural gas transportation and storage contracts

Indiana Utility Regulatory Commission

41884 Direct and rebuttal testimony to support a request by eleven gas local distribution companies for switching from a quarterly gas cost adjustment mechanism to a monthly gas cost adjustment mechanism

42027 Direct testimony in support of a transfer of functional control of transmission assets from electric utilities in Indiana to the Midwest System Operator, Inc.

Iowa District Court for Hamilton County

No. LACV025993 Testimony that net metering was not appropriate for making payments to a wind generator. When a utility sells electric energy to a customer, it is charging a retail rate that recovers the cost of distribution, transmission and generation service. When a customer sells electric energy to a utility, it is selling only generation service. The customer cannot sell distribution and transmission service to a utility, as the customer does not own these assets. Net metering is a subsidy to the wind generator that is paid by other customers of the utility and paying the customer for generation service on the basis of a retail rate that includes recovery of distribution and transmission costs is not appropriate.