

DOCKET 100304-EU

REBUTTAL TESTIMONY OF

LEIGH V. GRANTHAM

ON BEHALF OF CHOCTAWHATCHEE ELECTRIC COOPERATIVE, INC.

1 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

2 A. Leigh V. Grantham and my business address is 1350 West Baldwin
3 Avenue, DeFuniak Springs, FL 32435.

4 **Q. HAVE YOU PREFILED DIRECT TESTIMONY IN THIS DOCKET?**

5 A. Yes.

6 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

7 A. I will respond to the testimony of Mr. Jacob, Mr. Johnson, Mr. Spangenberg, and
8 Dr. Harper primarily. Mr. Matthew Avery has prepared rebuttal to address Mr.
9 Feazell, and Dr. Marty Blake will address portions of Mr. Spangenberg's
10 testimony.

11 **Q. WHAT IS YOUR GENERAL RESPONSE TO THE TESTIMONY OF THE**
12 **GULF POWER WITNESSES?**

13 A. A significant part of Gulf's testimony, particularly that of Mr. Spangenberg,
14 involves legal argument and interpretation. I do not intend to get into legal
15 argument but we do disagree with Gulf's position and I do not want his views of
16 law and policy to go un rebutted. Although they have five witnesses, several make
17 the same or similar points, often doing little more than agreeing with the
18 testimony of others, and there is some overlap as a result. I offer my rebuttal to

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1 points raised by a witness, but just because I may not refer to another witness who
2 makes a similar point does not mean I accept that second witness's position.

3 **Q. IT HAS BEEN STATED BY SEVERAL WITNESSES THAT THE**
4 **REASON FOR THIS DISPUTE IS THAT CHELCO HAS REFUSED TO**
5 **HONOR THE CUSTOMER'S REQUEST FOR SERVICE FROM GULF**
6 **POWER. DO YOU AGREE?**

7 A. No. We are in this dispute because Gulf Power has continued to make efforts to
8 serve the Freedom Walk development even though CHELCO has served this area
9 for years and currently has service to the property. Gulf Power knew in 2006 that
10 we had "a line running through the proposed site now" and that Gulf would have
11 to do additional work to serve the subdivision. (See Exhibit LVG-5). They have
12 known we have lines on the property and adjacent to the property yet they
13 continue to try to encroach into an area we serve under the pretense of customer
14 choice and free enterprise. Gulf's efforts to secure the developer's "preference"
15 was entirely consistent with the training and policy taught to Gulf employees by
16 Mr. Spangenberg, in which he seems to encourage a "race" to the developer to
17 obtain a service letter that can be used in a territorial dispute. (See Response to
18 POD 9). CHELCO filed the petition but Gulf created the dispute with its decision
19 to disregard CHELCO's existing facilities and service to the area, and instead
20 chose to engage in a race to the developer.

1 **Q. IS IT YOUR UNDERSTANDING THAT A CUSTOMER GETS TO**
2 **CHOOSE THE PROVIDER OF ELECTRIC SERVICE AS MR. JACOB**
3 **SUGGESTS?**

4 A. No. It is well established in Florida that a customer has no inherent or organic
5 right to choose their provider of electric service. Even though Mr. Jacob makes
6 reference to the “initial” choice of provider being the customer’s, that is contrary
7 to what I believe to be the law of the state-. However, I will defer to the attorneys
8 to make the legal positions. From a policy approach, what Mr. Jacob advocates
9 would make system planning and projecting extremely difficult and give rise to
10 uneconomic duplication. A utility must have some reasonable degree of certainty
11 that its provision of service to an area will be respected, not only by other utilities,
12 but by the Commission. Such certainty allows for adequate future planning, and
13 provides assurance that capital investments will not be wasted as a result of other
14 utilities “poaching” more profitable service areas and duplicating facilities to do
15 so. That concern is evident in this case where CHELCO has provided service to
16 the sparsely populated area on and around Freedom Walk for years, and has
17 planned and invested for growth in the area, only to have Gulf Power swoop into
18 this area that it historically ignored the instant a profitable development is
19 proposed. I expect if the Commission were to agree with Gulf, the Commission
20 would receive an increase in disputes at the least.

1 **Q. ONE OF THE CRITERIA THAT MAY BE VIEWED BY THE**
2 **COMMISSION IS CUSTOMER PREFERENCE. IS THAT THE SAME AS**
3 **CUSTOMER CHOICE?**

4 A. Not as I understand how Gulf is applying the term. “Customer preference” is
5 considered by the Commission only as a last resort when all else is equal. What
6 Gulf is trying to do is take something that is the last thing considered by the
7 Commission in a territorial dispute and move it to the top of the priority list under
8 the guise of free enterprise and marketplace. I think one of the reasons that
9 customer preference is the “tie breaker” if you will, is because customers in a
10 monopoly industry context do not have any inherent or organic right to select
11 their provider of electric service. In this case the application of the established
12 statutory criteria favors CHELCO. Therefore, all factors are not equal, so
13 customer preference should not be a factor.

14 **Q. WILL CHELCO SERVE ANY AND ALL POTENTIAL CUSTOMERS**
15 **RESIDING IN THE DISPUTED TERRITORY?**

16 A. Yes. CHELCO will absolutely serve anyone who requests service, just as the
17 CHELCO Board has honored the obligation to serve the territory on and around
18 the Freedom Walk property for decades. In the context of this dispute, that would
19 be consistent with prior decisions of this Commission. In an earlier order, the
20 Commission held that cooperatives have an obligation to serve in their historic
21 service areas.

1 **Q. DO YOU AGREE WITH MR. SPANGENBERG’S CHARACTERIZATION**
2 **THAT GULF POWER’S EFFORTS TO TAKE THE FREEDOM WALK**
3 **DEVELOPMENT IS IN THE INTEREST OF “FAIR AND EFFECTIVE**
4 **COMPETITION?”**

5 A. No. Utilities do not operate in a competitive environment. Competition fosters a
6 duplication of facilities, encouraging both utilities to have facilities in place to
7 serve a customer. This is not in the best interest of the consumer.

8 **Q. WILL THE CUSTOMER BENEFIT FROM OTHER ASPECTS OF**
9 **RECEIVING SERVICE FROM GULF RATHER THAN CHELCO AS MR.**
10 **JACOB STATES ON PAGE 4 OF HIS TESTIMONY?**

11 A. No. Mr. Jacob offers an argument that customers of Gulf benefit from the
12 regulatory oversight of the Commission while CHELCO members do not have
13 that benefit. Dr. Blake addresses this in part in his testimony, but I understand
14 that the Commission, in a case involving Gulf Power and Escambia River Electric
15 Cooperative, viewed their regulatory oversight of Gulf Power as something to
16 consider in favor of Gulf Power. The Supreme Court rejected this position.
17 CHELCO has many thousands of satisfied members receiving adequate and
18 reliable service from CHELCO. There is no customer “benefit” that would result
19 from the award of the disputed territory to Gulf.

1 **Q. MR. JACOB SAYS THAT ALL OF GULF POWER'S CUSTOMERS WILL**
2 **BENEFIT IF GULF POWER SERVES FREEDOM WALK. IF CHELCO**
3 **IS AWARDED THE TERRITORY, WILL CHELCO'S CUSTOMERS**
4 **RECEIVE COMPARABLE BENEFIT?**

5 A. Absolutely. What Mr. Jacob says about Gulf Power customers receiving a benefit
6 is just as correct for CHELCO's customers, but even more so because we have a
7 much smaller member base than Gulf has customers. The benefits would be
8 relatively greater for our members.

9 **Q. ON PAGE 25 OF HIS TESTIMONY MR. SPANGENBERG SUGGESTS**
10 **THAT ALLOWING GULF POWER TO SERVE THE DISPUTED AREA**
11 **WOULD SAVE THE MEMBERS OF CHELCO COSTS. DO YOU HAVE**
12 **ANY RESPONSE TO THIS?**

13 A. I do. First we have presented testimony that we can handle the load at Freedom
14 Walk without any upgrades other than those we have already planned whether or
15 not we are allowed to serve Freedom Walk. Our members will not be "spending"
16 any more for CHELCO to serve Freedom Walk than they would without the load.
17 What they receive though, are the benefits of the additional revenue, and that is a
18 significant benefit. Mr. Spangenberg addresses ratios, benefits, future loads and
19 other issues, and I submit that all of the benefits he suggests for Gulf customers
20 are just as applicable for CHELCO members.

21 **Q. HAVE YOU READ DR. HARPER'S TESTIMONY?**

22 A. I have.

1 **Q. WHAT DOES DR. HARPER ADDRESS?**

2 A. He addresses several areas that CHELCO serves and presents an argument that
3 because CHELCO serves these areas we cannot serve Freedom Walk based on his
4 estimates of the number of “persons” served.

5 **Q. DO YOU AGREE?**

6 A. No. In the first place not once in his testimony does Dr. Harper refer to Chapter
7 366, Florida Statutes, which establishes the criteria for resolution of a territorial
8 dispute. Dr. Harper, as does Mr. Spangenberg and others, generally ignores the
9 directly applicable territorial dispute standard over which the Commission has
10 clear regulatory authority, that being one of determining “the ability of the
11 utilities to expand services within their own capabilities and the nature of the area
12 involved, including population, the degree of urbanization of the area, its
13 proximity to other urban areas, and the present and reasonably foreseeable future
14 requirements of the area for other utility services.” While CHELCO does not
15 believe the Commission is limited to those precise items, it is limited to areas of
16 inquiry established, and over which jurisdiction has been conferred, under
17 Chapter 366.

18 **Q. DR. HARPER AND MR. SPANGENBEG ADDRESS BLUEWATER BAY**
19 **IN THEIR TESTIMONY. DO YOU AGREE WITH THEIR**
20 **CONCLUSIONS CONCERNING THE NATURE OF BLUEWATER BAY?**

21 A. No. While the Commission’s decision that awarded Bluewater Bay to CHELCO
22 is relevant, I do not think Bluewater Bay itself has any relevance to the issue of
23 Freedom Walk.

1 Bluewater Bay was the subject of a dispute between Gulf Power and
2 CHELCO 30 plus years ago. CHELCO prevailed in that proceeding and currently
3 serves that area as a result of a decision of this Commission. The order granting
4 CHELCO authority to serve Bluewater Bay also specifically prohibits Gulf Power
5 from serving that area. In its order, the Commission found the area to be rural and
6 the position of Gulf that it would become “urbanized” to be speculative and not a
7 consideration. Having found the territory to be served by CHELCO that issue
8 should be resolved. Furthermore, Bluewater Bay is not incorporated. Regardless
9 of what Dr. Harper and other witnesses do to describe it as some sort of a city, the
10 fact is that it is not a city, town, or any other form of political subdivision. Their
11 efforts to make up some new sort of entity, unrecognized in Florida law, does not
12 make any difference to this dispute.

13 **Q. DR. HARPER AND OTHERS DEFINE THE NUMBER OF “PERSONS”**
14 **CHELCO SERVES IN BLUEWATER BAY AND OTHER AREAS. DO**
15 **YOU AGREE WITH USING “PERSON” AS THEY DO?**

16 A. No. The utility serves members or customers, and it does not matter how many
17 “persons” there are in a residence or business. Again, Gulf’s testimony is nothing
18 more than an effort to have the Commission extend and expand its jurisdiction, so
19 as to allow it to construe and interpret potentially unclear and ambiguous terms in
20 Chapter 425 in Gulf Power’s favor and to Gulf Power’s benefit. CHELCO
21 believes that there are legitimate questions regarding the extent to which the
22 legislature has granted authority to the Commission to interpret, construe, and
23 apply provisions of Chapter 425 pertaining to CHELCO’s entire service area to a

1 determination of the nature of the disputed area and the capability of providers to
2 serve. However, that being said, nothing I read in Chapter 425 causes me to
3 believe that there was or is any intent to count total persons. The authority to
4 serve “members” and “other persons” to me clearly means we can serve members
5 and “non-members.” I would point out that the Commission’s rules define a
6 “customer” as any person, firm, partnership, company, corporation, association,
7 governmental agency or similar organization who makes application for and is
8 supplied with electric service.” To apply the definition of “person” as they do is
9 not consistent with utility practices and their calculations are designed to do
10 nothing more than improperly inflate numbers.

11 **Q. DR. HARPER REFERS TO THE GREATER AREA OF CRESTVIEW,**
12 **DEFUNIAK SPRINGS AND FREEPORT. ARE YOU FAMILIAR WITH**
13 **THESE TERMS?**

14 A. Yes. Earlier in this proceeding in discovery Gulf Power introduced these terms
15 and they are now used in testimony. Generally the reference has been defined to
16 be an area outside but adjacent to the municipal limits of the 3 cities. CHELCO
17 answered that discovery, but objected to the terms as made up and used by Gulf
18 on the basis that they have absolutely no support in any statute or Commission
19 rule. The basis for that objection still applies.

20 **Q. IS THE TERM “GREATER AREA” USED IN CHAPTER 366, FLORIDA**
21 **STATUTES?**

22 A. Not to my knowledge.

1 **Q. DOES CHELCO SERVE ANY MEMBERS WITHIN THE AREAS**
2 **DEFINED BY DR. HARPER AND GULF POWER?**

3 A. We do and we have been serving members in those areas for many years.

4 **Q. DR. HARPER TESTIFIES THAT BLUEWATER BAY, AND THE**
5 **GREATER AREAS OF CRESTVIEW, DEFUNIAK SPRINGS AND**
6 **FREEPORT ARE NOT “RURAL.” DO YOU AGREE?**

7 A. No. None of these areas are incorporated and would be rural as defined in Section
8 425.03, Florida Statutes, cited by Dr. Harper. Apparently he is taking the position
9 that these areas are “unincorporated cities, towns, villages or boroughs” but
10 nowhere is there any definition as to what those would be. Therefore, to try and
11 restrict cooperatives to the maximum extent possible, Gulf has fabricated its own
12 definition for these “unincorporated communities” – another undefined term used
13 by Gulf Power witnesses – and would have the Commission apply Gulf’s
14 statutory construction to Chapter 425 and apply them to a Chapter 366 territorial
15 dispute. However, Dr. Harper and Gulf can call these areas anything they want
16 but it does not change the fact that those areas are not urbanized, but are factually
17 rural in their nature.

18 **Q. THE BOUNDARIES OF THE FREEDOM WALK DEVELOPMENT**
19 **HAVE BECOME AN ISSUE. DO YOU AGREE WITH THE**
20 **BOUNDARIES AS DESCRIBED BY MR. SPANGENBERG?**

21 A. I do not. In our petition we describe the development to lie south of old Bethel
22 Road as depicted on Exhibit “A” (par. 6 of Petition). Exhibit “A” includes the
23 overlay of the entire development which was prepared from the development plat

1 provided to us by the developer. The same plats CHELCO used were included in
2 documents produced by Gulf Power. CHELCO has been clear as to the area we
3 consider to be the boundaries and it is that area shown on development plat.
4 When we realized that Gulf Power misunderstood our view of the area involved
5 in the dispute we offered clear descriptions in responses to discovery from Gulf.
6 In fact Gulf asked CHELCO specifically to define the “disputed area” and we did
7 so very clearly. In spite of this, Gulf Power continues to tell us what we meant in
8 our petition. The fact is that whichever company is awarded the disputed territory
9 will be asked to serve within the entire Freedom Walk development as established
10 by the developer.

11 **Q. WHAT ABOUT THE DIFFERENCE BETWEEN THE ORDINANCE**
12 **DISCUSSED BY MR. SPANGENBERG ON P. 6 AND OTHERS AND THE**
13 **DEVELOPER’S PLAT?**

14 A. I don’t think that makes any difference. As I understand, the City can only enact
15 a Community Development District to be effective within the city limits so the
16 legal description would have to be limited to that within the city limits. That does
17 not mean that the development could not be larger than that described in the
18 ordinance. CHELCO believes the developer’s proposed plat of the development
19 should define the boundaries.

20 **Q. MR. SPANGENBERG SPEAKS TO THE NATURE OF THE AREA AND**
21 **DEVELOPMENT. WOULD YOU ADDRESS THIS?**

22 A. Yes. By any definition Freedom Walk is not an urban area in nature. There are
23 three (3) parcels occupied at present and the area of Freedom Walk is nothing but

1 heavy woods, surrounded by more woods and pasture lands. There are no roads
2 or other utility services, other than the CHELCO lines, on the property. This
3 property is not urban in character as that term is used in Section 366.04, Florida
4 Statutes, nor is it urban under the definitions he cites on p. 8 of his direct
5 testimony. What it may become in the future is speculative.

6 **Q. HAS GULF POWER EVER MADE A SIMILAR ARGUMENT WITH**
7 **RESPECT TO WHAT AN AREA MAY BECOME?**

8 A. Yes they have. In a complaint that CHELCO filed in 1976 regarding service to an
9 area now known as Bluewater Bay, Gulf argued, partly, that CHELCO could not
10 serve Bluewater Bay because it had the potential to become urbanized. The
11 Commission rejected that argument as being speculative.

12 **Q. DO YOU BELIEVE MR. SPANGENBERG'S TESTIMONY THAT THE**
13 **FREEDOM WALK AREA IS NOT "RURAL IN NATURE"?**

14 A. No. Mr. Spangenberg's testimony is misleading as to the "nature" of the
15 property. He states that "CHELCO acknowledged that the Freedom Walk
16 development will not be 'rural' in nature." That is an absolute
17 mischaracterization of the discovery response from which his testimony derives.

18 Section 366.04(3)(b) provides that the Commission may consider, among
19 other things, "the degree of urbanization of the area, [and] its proximity to other
20 urban areas." In response to a very specific discovery request, CHELCO admitted
21 that the Freedom Walk development area, as a result of its annexation by the City
22 of Crestview, did not meet the legal definition of a "rural area" in Section 425.03.
23 However, the "nature" of the area is a factual issue. Freedom Walk is far from

1 “urban,” and would meet any reasonable person’s idea of being rural “in nature.”
2 Freedom Walk is nothing but pine, pasture and palmetto. The area around
3 Freedom Walk is more of the same, interspersed with low-density rural residential
4 and a sand mine.

5 Gulf, in an effort to confuse the issue, has tried to engraft the Chapter 425
6 definition of “rural area” – which the legislature has determined to be inside the
7 boundary of a political subdivision of some nature - onto the Chapter 366 term
8 “urban.” Those terms are not the same, and if the legislature had intended for
9 them to mean the same thing, one would presume they could have used the same
10 terms. They did not. In fact, the term “rural” is not used as a standard under
11 Chapter 366 at all. However, Gulf would have the Commission substitute Gulf’s
12 construction of “rural” for the legislature’s use of “urbanization.” In any event,
13 even if the Commission were to determine that the factual “urbanization” of an
14 area is to be determined by a Chapter 425 statutory definition, Chapter 425 does
15 not prohibit a cooperative from serving areas that are not “rural areas.”

16 **Q. IS THERE ANY PRACTICAL REASON WHY THE COMMISSION**
17 **WOULD WANT TO AVOID THE SCOPE OF A TERRITORIAL**
18 **DISPUTE AS ADVANCED BY GULF POWER?**

19 A. Yes. The position of Gulf Power would require the Commission to make a full
20 analysis of the entire service area of a cooperative every time a territorial dispute
21 over a subdivision, school, or shopping center was brought to the Commission
22 involving any rural electric cooperative in Florida. Each analysis would
23 presumably require a full assessment of the members of the cooperative in areas

1 far removed from the area in dispute, would require counting members served in
2 incorporated areas, would require a determination of the boundaries of any
3 “unincorporated community,” would essentially put the Commission in the
4 position of conducting a census of “persons” living in the cooperative’s service
5 area, and would require the Commission to, in effect, extend its jurisdiction to
6 interpreting and construing Chapter 425. If Gulf Power’s position prevails, the
7 relatively simple and objective exercise of determining “the ability of the utilities
8 to expand services within their own capabilities and the nature of the area
9 involved, including population, the degree of urbanization of the area, its
10 proximity to other urban areas, and the present and reasonably foreseeable future
11 requirements of the area for other utility services,” would balloon into a full
12 assessment of the complete service area of the cooperative at the time the dispute
13 was brought – thus being subject to change in any subsequent dispute involving
14 the same cooperative. Despite the legislature’s limited focus on a determination
15 of the ability of the utility to provide service and the nature of the area to which
16 service would be provided, Gulf would expand the Commission’s jurisdiction and
17 workload far beyond that anticipated by Section 366.04(3)(b). Aside from the
18 legal issues involved in such an extension of the Commission’s jurisdiction, such
19 an extension does not seem practical in the context of political and budgetary
20 realities.

1 Q. SEVERAL OF GULF'S WITNESSES, INCLUDING MR. SPANGENBERG
2 TAKE THE POSITION THAT CHELCO IS LEGALLY PROHIBITED
3 FROM SERVING FREEDOM WALK. ARE YOU FAMILIAR WITH
4 THOSE ARGUMENTS?

5 A. Yes.

6 Q. SINCE GULF HAS ADDRESSED THE ISSUE COULD YOU RESPOND
7 TO THE ARGUMENTS?

8 A. Yes, but I do so only because CHELCO does not want the argument to go
9 unrebutted.

10 First, let me say that our position is that this dispute has to be resolved
11 with reference to Chapter 366, Florida Statutes, and not Chapter 425. The
12 position and argument offered by Mr. Spangenberg, and others, is just wrong and
13 an attempt to direct attention away from the real issues.

14 Gulf Power makes the argument that under Chapter 425 CHELCO can
15 only serve in rural areas, and that since Freedom Walk is within the city limits of
16 Crestview, it is not rural as defined in Chapter 425, Florida Statutes. Gulf Power
17 has stated its position to be that CHELCO is prohibited from serving within the
18 city limits of Crestview if to do so results in more than 10 percent of CHELCO's
19 membership being located in non-rural areas. This was in their response to
20 discovery from CHELCO and they cited Alabama Electric Cooperative Inc. v.
21 First National Bank of Akron, Ohio for this contention.

1 **Q. DO YOU AGREE WITH GULF POWER'S POSITION?**

2 A. No. The 10 percent limit is not there to prevent cooperatives from serving, but to
3 ensure that they will be allowed to serve within the boundaries of political
4 subdivisions, especially in cases where cooperatives have historically served areas
5 without central station service. Dr. Blake will expand on this in his testimony.

6 **Q. DOES CHELCO SERVE MORE THAN 10% OF ITS MEMBERS WITHIN**
7 **THE LIMITS OF ANY INCORPORATED CITY, TOWN, VILLAGE OR**
8 **BOROUGH?**

9 A. No. Based on responses to discovery CHELCO submitted CHELCO serves 1195
10 members within the city limits of the cities identified by Mr. Spangenberg and Dr.
11 Harper. This is well below 10% of our total membership.

12 **Q. MR. SPANGENBERG AND DR. HARPER CALCULATE A MUCH**
13 **HIGHER NUMBER. HOW DO THEY ARRIVE AT THEIR NUMBERS?**

14 A. As I discussed earlier, they get their desired result only by including
15 unincorporated Bluewater Bay and the "Greater Areas" of Crestview, DeFuniak
16 Springs and Freeport and by using their improper definition of "person" rather
17 than members.

18 **Q. IS IT APPROPRIATE TO INCLUDE THESE AREAS?**

19 A. It is not. All of these areas are unincorporated areas outside the limits of any city,
20 town, village or borough. The "greater areas" are contrived descriptions
21 developed by Mr. Spangenberg, designed as nothing more than an artificial
22 limitation on the ability of CHELCO to serve. He cites as a reason to include
23 these areas that expansion of city limits tends to lag behind evolving urban

1 migrations. His definition ignores the facts – the city limits are established by the
2 various municipalities for any number of reasons. The City of Crestview is not
3 what Mr. Spangenberg defines it to be – it is what the City says it is. I think it is
4 important that in addressing each of these areas, Mr. Spangenberg says “as I
5 would define it.” As a matter for the Commission, it matters only how the
6 municipalities define their boundaries.

7 **Q. MR. SPANGENBERG CITES A COMMISSION ORDER TO SUPPORT**
8 **HIS INCLUSION OF THE SURROUNDING AREAS. ARE YOU**
9 **FAMILIAR WITH THIS?**

10 A. I am. The order he recites was in a territorial dispute in Live Oak. The
11 Commission did consider the connection of the subdivision to the city and the
12 urban nature of the area. In this dispute Gulf is going beyond that and is seeking
13 to redefine municipal limits, or establish non-existent municipal limits that are
14 located miles away from the Freedom Walk area, to say that CHELCO is legally
15 prohibited from serving Freedom Walk. That is not the same thing.

16 **Q. DO YOU KNOW WHAT AN UNINCORPORATED CITY, TOWN,**
17 **VILLAGE OR BOROUGH IS?**

18 A. No. I have not seen any definition in any Florida statute or administrative rule. In
19 the absence of any lawful definition, Gulf Power made up its own.

20 **Q. SHOULD THE PSC ADOPT THE DEFINITIONS OFFERED BY GULF**
21 **POWER?**

22 A. Not in my opinion. Gulf Power is asking the PSC to interpret the meaning of
23 terms in Chapter 425, Florida Statutes, and the position of CHELCO is that such

1 an extension of the Commission's jurisdiction is not within the parameters of
2 Chapter 366, Florida Statutes, nor is it necessary to determine the nature of the
3 territory in dispute and the capabilities of the competing providers to serve that
4 territory.

5 **Q. ARE YOU A "COMPETITOR" IN AN AREA WHERE ELECTRICITY IS**
6 **AVAILABLE BY APPLICATION TO AN EXISTING PUBLIC UTILITY**
7 **AS MR. SPANGENBERG DISCUSSED ON P. 11 OF HIS TESTIMONY?**

8 A. No, Gulf Power does not now provide service to any portion of the Freedom Walk
9 development and never has. CHELCO has and is providing service to portions of
10 that development. If one accepts Gulf's argument that it has the right and
11 obligation to serve any customer within all of Northwest Florida (or, what it views
12 as its service area), then CHELCO could not serve any person in our service area
13 because, in theory, anybody could request service from Gulf. For that matter, the
14 position of Gulf would have statewide implications. I think that is an impractical,
15 unrealistic position.

16 **Q. WOULD GULF POWER BE DUPLICATING YOUR FACILITIES IF**
17 **THEY SERVE FREEDOM WALK?**

18 A. Yes. Dr. Blake addresses this but I want to address it also. The fact is that
19 CHELCO has lines at Freedom Walk now – today – and Gulf Power does not, and
20 they acknowledge this. Our presence is no surprise to them, they knew it from the
21 beginning of their contact with the developer, and they gave consideration as to
22 how they could establish a presence in the area quickly. I have yet to see Gulf
23 acknowledge the fact that its service to Freedom Walk will entail considerable

1 duplication of existing CHELCO facilities, or that it will have to parallel and
2 cross CHELCO lines to reach the point of service. To any reasonable person the
3 fact that Gulf has to extend lines just to get to where we are now is a duplication
4 of facilities.

5 **Q. DID YOU INSTALL THOSE FACILITIES WITH THE EXPECTATION**
6 **THAT YOU WOULD BE SERVING MEMBERS IN THE AREA?**

7 A. We did. We did not know about Freedom Walk when our lines were initially
8 installed but we made the investment with the expectation that we would continue
9 to acquire new members in the area.

10 **Q. MR. SPANGENBERG TESTIFIES THAT BY ALLOWING GULF TO**
11 **SERVE THE DEVELOPMENT THE COMMISSION WOULD BE**
12 **SAVING CHELCO AND ITS MEMBERS MONEY. IS THIS TRUE?**

13 A. An interesting approach, but no. First of all, I do not agree with the costs
14 identified by Mr. Spangenberg, and Mr. Avery addresses this in his testimony.
15 CHELCO has facilities in place to serve the full expected load without having to
16 spend any funds beyond those currently planned and budgeted. Secondly, our
17 members would derive significant benefits from the addition of this new load, as I
18 have referenced earlier in my testimony.

19 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

20 A. Yes.