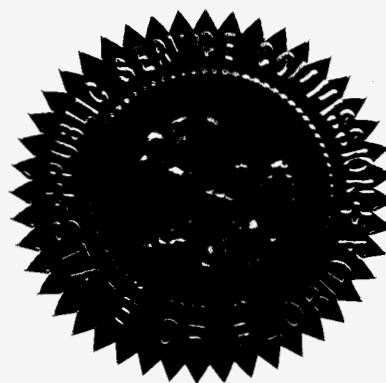


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100304-EU

PETITION TO RESOLVE TERRITORIAL  
DISPUTE WITH GULF POWER COMPANY IN  
OKALOOSA COUNTY BY CHOCTAWHATCHEE  
ELECTRIC COOPERATIVE, INC.



PROCEEDINGS:	PREHEARING CONFERENCE
COMMISSIONER PARTICIPATING:	COMMISSIONER RONALD A. BRISÉ PREHEARING OFFICER
DATE:	Monday, May 9, 2011
TIME:	Commenced at 9:30 a.m. Concluded at 9:55 a.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR Official FPSC Reporter (850) 413-6732

FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NUMBER-DATE

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## 1 APPEARANCES:

2 RUSSELL A. BADDERS, ESQUIRE, and STEVEN R.  
3 GRIFFIN, ESQUIRE, Beggs Law Firm, 501 Commendencia  
4 Street, Pensacola, Florida 32502, appearing on behalf of  
5 Gulf Power Company.

6 NORMAN H. HORTON, JR., ESQUIRE and GARY EARLY,  
7 ESQUIRE, Messer Law Firm Post Office Box 15579,  
8 Tallahassee, Florida 32317, appearing on behalf of  
9 Choctawhatchee Electric Cooperative, Inc.

10 RALPH JAEGER, ESQUIRE, Florida Public Service  
11 Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
12 Florida 32399-0850, appearing on behalf of the Florida  
13 Public Service Commission Staff.

14 MARY ANNE HELTON, Deputy General Counsel,  
15 Florida Public Service Commission, 2540 Shumard Oak  
16 Boulevard, Tallahassee, Florida 32399-0850, Advisor to  
17 the Florida Public Service Commission.

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

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**COMMISSIONER BRISÉ:** Good morning, everyone.

We're going to go ahead and call this prehearing to order. I would ask staff to read the prehearing notice.

**MR. JAEGER:** Yes, Commissioner. Pursuant to notice, this time and place has been scheduled for a prehearing conference in Docket Number 100304-EU, petition to resolve territorial dispute with Gulf Power Company in Okaloosa County by Choctawhatchee Electric Cooperative, Inc. Choctawhatchee Electric Cooperative, Inc. is commonly referred to as CHELCO, and I think that is what everybody will agree to call them from here on out.

**COMMISSIONER BRISÉ:** Thank you.

At this time we'll take appearances, and we'll go from left to right.

**MR. BADDERS:** Good morning, Commissioner.

Russell Badders with Beggs and Lane on behalf of Gulf Power Company.

**MR. GRIFFIN:** Good morning, Commissioner.

Steven Griffin, Beggs and Lane, on behalf of Gulf Power Company.

**MR. HORTON:** Good morning, Commissioner.

Norman H. Horton, Jr., and E. Gary Early of Messer

1 Caparello and Self, appearing on behalf of CHELCO.

2 **MR. JAEGER:** Ralph Jaeger on behalf of  
3 Commission staff.

4 **MS. HELTON:** Mary Anne Helton, Advisor to the  
5 Commission.

6 **COMMISSIONER BRISÉ:** Thank you very much. Are  
7 there any preliminary matters that we need to address  
8 before we get to the draft prehearing order?

9 **MR. JAEGER:** I think we can get to them at the  
10 end of the order, but I just wanted you to be aware that  
11 Gulf has filed two motions since this all came about.  
12 On Friday afternoon they renewed their motion for  
13 summary final order, and then this morning they handed  
14 me a motion to strike. Neither have to be ruled on  
15 today, and Gulf will have a chance to respond to that  
16 motion to strike -- I mean, CHELCO will have a chance to  
17 respond to that motion to strike.

18 **COMMISSIONER BRISÉ:** All right. Thank you.  
19 So let's proceed to the prehearing order. Let's go  
20 through the draft order now. I will identify sections,  
21 and I want the parties to let me know if there are any  
22 changes or corrections that you see that need to be  
23 made. We'll go through this rather quickly, so please  
24 speak up so that we can identify what needs to change or  
25 be corrected.

1           Section I, case background. Section II,  
2           conduct of proceedings. Section III, jurisdiction.  
3           Section IV, procedure for handling confidential  
4           information. Section V, prefiled testimony and  
5           exhibits; witnesses.

6           Are any of the parties willing to shorten or  
7           dispense with witness summaries of testimonies?

8           **MR. GRIFFIN:** Commissioner, we have talked in  
9           conference earlier, and I think that we have some  
10          stipulations for witnesses that we would propose at this  
11          point in time for both parties, for Gulf and for CHELCO.

12          Gulf has indicated that it's willing to  
13          stipulate to the entry of the testimony of Doctor Blake  
14          and Ms. Sullivan, which are CHELCO witnesses, without  
15          the need for cross-examination. I believe CHELCO has  
16          indicated that they would be willing to do the same for  
17          Gulf witnesses Jacob, Johnson, and Harper.

18          **MR. HORTON:** That's correct.

19          **COMMISSIONER BRISÉ:** Okay. All right. Is  
20          there anything else in that section that we need to  
21          address?

22          **MR. GRIFFIN:** Well, in terms of the order of  
23          the witnesses, the order for the direct testimony, I  
24          think, is agreed upon by everyone. There is a slight  
25          disagreement as to the order for the rebuttal. CHELCO

1 has proposed that the testimony proceed as follows:  
2 CHELCO direct, Gulf direct, Gulf rebuttal, and then  
3 CHELCO rebuttal. And as a practical matter, that has  
4 the effect of Gulf's witnesses being on the stand for  
5 one sitting and doing the rebuttal and the direct at the  
6 same time.

7 We believe that that is somewhat awkward.  
8 Logically, given that CHELCO is the petitioner in this  
9 case, we would think that it would be appropriate that  
10 they would go first, and that Gulf Power would follow  
11 and not have to do direct and rebuttal, essentially, in  
12 one sitting.

13 So we would propose, consistent with the last  
14 prehearing order for territorial dispute that we are  
15 aware of that took place before this Commission in 2001,  
16 that it would be in order as follows: CHELCO direct,  
17 Gulf direct; CHELCO rebuttal, Gulf rebuttal. If that's  
18 not acceptable to the Commission, perhaps a compromise  
19 would be for CHELCO to put on their direct and rebuttal  
20 in one sitting and then for Gulf to do the same. That  
21 could potentially expedite things.

22 **COMMISSIONER BRISÉ:** All right.

23 **MR. HORTON:** Commissioner, ordinarily, as  
24 petitioner, we would have the opportunity to go last;  
25 put on our case, and Gulf puts on their case, and then

1 we would have the opportunity to follow up. However,  
2 you know, the Commission practice has been to take  
3 direct and rebuttal at the same time. I have seen it  
4 split out, as well. To expedite matters, we wouldn't  
5 object to having direct and rebuttal at the same time.

6 **COMMISSIONER BRISÉ:** Let me see if there is  
7 any direction from staff as to what we might want to  
8 consider.

9 **MR. JAEGER:** I was just wondering, are we  
10 going to go with CHELCO direct and rebuttal at the same  
11 time?

12 **MR. HORTON:** To expedite matters, yes.

13 **MR. JAEGER:** And then we would have Gulf  
14 direct and rebuttal?

15 **MR. HORTON:** Yes.

16 **MR. GRIFFIN:** Yes.

17 **MR. JAEGER:** Staff has no problems with that,  
18 if that's what the Commissioner deems appropriate.  
19 That's the way we have done it in the past.

20 **COMMISSIONER BRISÉ:** It seems like there is an  
21 agreement there, and I think we will move forward in  
22 that fashion.

23 Section VII, basic positions.

24 **MS. HELTON:** Mr. Chairman, I did want to  
25 comment on one thing. Since the parties have agreed to

1 stipulate witnesses, I think that's wonderful, but it's  
2 our practice, typically, to make sure that no  
3 Commissioners have questions. So Mr. Jaeger will need  
4 to check with the Commissioners to make sure that they  
5 can actually be stipulated.

6 **MR. JAEGER:** Yes. The five witnesses that  
7 have been stipulated, we will check with the panel and  
8 make sure they can be -- they don't have to attend.

9 **COMMISSIONER BRISÉ:** Thank you.

10 **MR. HORTON:** Commissioner, before we leave  
11 Section VI, I did provide to staff, and it's noted in  
12 the handwritten changes, specifically identifying issues  
13 for our witnesses. And I do have a typed page of that  
14 that I will give to staff.

15 **COMMISSIONER BRISÉ:** All right. Thank you.

16 All right. Section VIII, issues and  
17 positions. Section IX --

18 **MR. GRIFFIN:** Commissioner, I think we need to  
19 go back, if we could.

20 **COMMISSIONER BRISÉ:** To which section?

21 **MR. GRIFFIN:** To the issues and positions.  
22 Gulf has some modified language for Issue VI relating to  
23 uneconomic duplication. As you can see there, under  
24 Gulf's position, it says services provided by CHELCO.  
25 We have indicated that we were without sufficient



1 information at that point in time to take a position on  
2 that. We now have the ability to do that, and so we do  
3 have some modified language. I have copies of it here.  
4 I don't know how we want to address it. I could provide  
5 that to opposing counsel and staff; we could read it  
6 into the record; whatever the Commission's preference  
7 is.

8 **COMMISSIONER BRISÉ:** Staff.

9 **MR. JAEGER:** I think they can pass it out, and  
10 then maybe for the record just read -- how long is it?  
11 Just read it into the record.

12 **MR. GRIFFIN:** It's not very long.

13 **MR. JAEGER:** Okay.

14 **MR. GRIFFIN:** Commissioner, I apologize, we  
15 don't have a copy for you, but I will read it. And it  
16 would say, "Services provided by CHELCO: While Gulf  
17 Power does not have full and complete knowledge of the  
18 benefits that would accrue to CHELCO should it serve  
19 Freedom Walk, it is reasonable to expect that those  
20 benefits would be similar to Gulf Power's, if Gulf Power  
21 were to serve Freedom Walk. It is Gulf Power's position  
22 that CHELCO's serving Freedom Walk would not constitute  
23 an uneconomic duplication of Gulf Power's facilities, as  
24 long as the true and full cost for CHELCO to extend  
25 adequate and reliable service to Freedom Walk does not

1 significantly exceed the minimum cost of \$377,786  
2 already identified by Gulf Power."

3 **COMMISSIONER BRISÉ:** Okay. Staff.

4 **MR. JAEGER:** And staff will get a copy later,  
5 I assume. Okay.

6 **MR. GRIFFIN:** I apologize for that.

7 **COMMISSIONER BRISÉ:** No problem. So we want  
8 to include this into the record?

9 **MR. JAEGER:** That will be Issue 6 under Gulf's  
10 position, the first part. And the second part remains  
11 the same, if service is provided by Gulf Power.

12 **MR. GRIFFIN:** Correct.

13 **COMMISSIONER BRISÉ:** Any other issues?

14 **MR. HORTON:** Commissioner, on Issues 4, 5A,  
15 5B, excuse me, 5C and D, Ms. Grantham is shown as the  
16 witness for those issues, and she should be removed as a  
17 witness.

18 **MR. JAEGER:** I'm sorry, Doc, could you go  
19 slower on that? You started out with Issue 4 --

20 **MR. HORTON:** It was Issue 4 and all of the  
21 subparts of 5.

22 **MR. JAEGER:** Okay.

23 **MR. HORTON:** Commissioner, I'm not sure if  
24 this is the appropriate time, but with respect to Issues  
25 5C and D, and maybe it's for the later stipulation

1 section, but 5C and D, I think the parties could  
2 probably stipulate those two subissues.

3 **COMMISSIONER BRISÉ:** Okay. I think we will  
4 address that when we get down to proposed stipulations.

5 **MR. HORTON:** Okay.

6 **COMMISSIONER BRISÉ:** Are there any other  
7 issues as we talk about issues and positions?

8 Section VIII. Okay. It seems like there  
9 aren't any. We are going move to Section IX, exhibit  
10 list.

11 **MR. GRIFFIN:** And we have also discussed this,  
12 Commissioner, with opposing counsel, but I think both  
13 parties are interested in introducing either a composite  
14 exhibit or separately identified exhibits which consist  
15 of -- for us it would be CHELCO's responses to our  
16 interrogatories, our request for admissions, and the  
17 deposition transcripts of CHELCO's witnesses. And they  
18 have a similar composite that they would like to  
19 introduce, as well, I believe.

20 **MR. HORTON:** Correct, Commissioner. Our  
21 exhibit list would be the depositions transcript of the  
22 Gulf witnesses as well as Gulf's response to our first  
23 and second set of interrogatories, and a couple of the  
24 documents produced in response to the production of  
25 documents.

1                   **COMMISSIONER BRISÉ:** Okay. Staff, any  
2 direction?

3                   **MR. JAEGER:** I was given something by Gulf.  
4 Is that the exhibit list of Gulf, or was that CHELCO,  
5 I'm sorry? I have the deposition transcript and  
6 exhibits for Theodore F. Spangenberg.

7                   **MR. HORTON:** That was from CHELCO.

8                   **MR. JAEGER:** Okay. And I haven't got Gulf's  
9 list yet, but those are stipulated exhibits.

10                  **MR. GRIFFIN:** That's correct, and we'll  
11 prepare a list and have it for you, hopefully later  
12 today.

13                  **MR. JAEGER:** Okay. We'll add that to the  
14 prehearing order. And I think, basically, when we go  
15 back for the exhibit list, we'll probably put in direct  
16 and all the exhibits for all the witnesses. We'll just  
17 change the order, since we have changed the order of the  
18 witnesses, but the exhibits will be redone in the order  
19 that the witnesses come up.

20                  **MR. GRIFFIN:** That's fine.

21                  **COMMISSIONER BRISÉ:** Is that acceptable to  
22 both parties?

23                  **MR. HORTON:** Yes, sir.

24                  **COMMISSIONER BRISÉ:** Okay. Thank you.  
25 We move forward. All right. We'll move to

1 Section X, proposed stipulations.

2 **MR. HORTON:** Well, Commissioner, I mentioned,  
3 I think the parties are willing to stipulate Issue 5C  
4 and D, and Mr. Griffin has already addressed the  
5 witnesses that we are willing to stipulate.

6 **MR. GRIFFIN:** If we are willing to Stipulate  
7 5C and D, are we willing to -- are we just saying that  
8 we agree with the numbers included in there, or are we  
9 saying that we can agree that the cost to serve within  
10 the development are substantially equal for the parties?

11 **MR. HORTON:** I think we're just stipulating  
12 to -- my understanding is we are just stipulating to the  
13 numbers.

14 **COMMISSIONER BRISÉ:** Okay. Staff.

15 **MR. JAEGER:** I will list the stipulations in  
16 the prehearing order. And staff had an exhibit list  
17 that we were -- also, I think, were stipulated to, but  
18 we won't need the Deposition Exhibit 2 to Leigh  
19 Grantham, and the deposition exhibit of Ted Spangenberg,  
20 because those are already included. That is on Page 24  
21 of staff's composite exhibit, so that will delete the  
22 need for two of ours.

23 **COMMISSIONER BRISÉ:** Okay. Does that work for  
24 everyone?

25 **MR. GRIFFIN:** Yes, sir.

1           **MR. HORTON:** Yes, sir.

2           **COMMISSIONER BRISÉ:** Are we ready to move to  
3 the next section? Pending motions.

4           **MR. GRIFFIN:** Well, as staff indicated  
5 earlier, Gulf Power has two pending motions, a motion  
6 for final summary order and a motion to strike, and we  
7 have asked that those be taken up at the outset of the  
8 evidentiary hearing.

9           **COMMISSIONER BRISÉ:** Okay. CHELCO.

10          **MR. HORTON:** We would want the opportunity to  
11 respond to both of those motions obviously, and taking  
12 it up at the beginning of the hearing is fine.

13          **COMMISSIONER BRISÉ:** All right. Thank you.  
14 Staff.

15          **MR. JAEGER:** That will be fine.

16          **COMMISSIONER BRISÉ:** All right. Now, moving  
17 to Section XII, pending confidentiality motions.

18                 All right. Seeing none, Section XIII,  
19 post-hearing procedures, if anyone would like to modify  
20 anything.

21                 All right. Section XIV, rulings.

22          **MR. HORTON:** Commissioner, my sections are  
23 numbered differently.

24          **COMMISSIONER BRISÉ:** Okay.

25          **MR. JAEGER:** Section XIV should be other

1 matters? I'm sorry.

2 **COMMISSIONER BRISÉ:** I'm going off the script.  
3 Other matters at this time. I'm going off the wrong  
4 script.

5 Okay. So we'll go back to other matters at  
6 this time.

7 **MR. HORTON:** Commissioner, under other  
8 matters, we have a short video, it's less than two  
9 minutes, that we would like to use as part of the  
10 opening statement. And also we have addressed in there  
11 scheduling conflicts with Ms. Sullivan and Doctor Blake,  
12 and, of course, now that they have been stipulated,  
13 those no longer are an issue.

14 And demonstrative exhibits, we have -- staff  
15 is using Exhibits A and D, which were part of our  
16 petition. We would ask that we use Exhibits B, C, and  
17 E, as well, which depict the lines of the various  
18 parties. They're aerial photographs, they were attached  
19 to our petition, so it would just be then all, all the  
20 exhibits that were attached to the petition would be  
21 available -- available for demonstrative exhibits.  
22 That's easy to say.

23 **COMMISSIONER BRISÉ:** All right. Gulf.

24 **MR. GRIFFIN:** And it's reflected here that  
25 Gulf intends to use a demonstrative existing showing

1 Gulf's and CHELCO's existing three-phase and  
2 single-phase lines and connections. Essentially what  
3 that is is an aerial photograph. And it's just an  
4 enlargement of what was attached to Witness  
5 Spangenberg's rebuttal testimony as an exhibit. There  
6 is one more which is just an aerial of Bluewater Bay.  
7 And that is not attached as an exhibit to any testimony  
8 at this point in time, but we would like to use that.

9           **COMMISSIONER BRISÉ:** Okay. Is CHELCO  
10 comfortable with that?

11           **MR. HORTON:** We have no objection.

12           **COMMISSIONER BRISÉ:** Okay. Staff.

13           **MR. JAEGER:** Commissioners, as for Blake and  
14 Sullivan, although they have been stipulated, I think  
15 you probably should go ahead and rule that if they have  
16 to attend that she would attend on the first day and Mr.  
17 Blake would attend on the second day if they don't get  
18 stipulated completely.

19           **COMMISSIONER BRISÉ:** Sure. We can do that.

20           **MR. HORTON:** That's fine. That was an  
21 oversight on my part.

22           **COMMISSIONER BRISÉ:** Okay.

23           **MR. GRIFFIN:** Commissioner, with these aerials  
24 we do have a CD-Rom so that the Commissioners could view  
25 that at their bench. I don't know exactly how that



1 would work. They are in a .pdf format on the CD, and I  
2 assume that the Commission has the technical capability  
3 to be able to do that, but I wonder if we could get some  
4 guidance from staff as to how they would like us to  
5 present the CD-Rom to.

6 **COMMISSIONER BRISÉ:** Staff.

7 **MS. HELTON:** I'm sorry, what was the CD-Rom  
8 for?

9 **MR. GRIFFIN:** It's just the .pdf copies of the  
10 two aerial demonstrative exhibits that we have here on  
11 poster board. We would like the Commissioner to be able  
12 to view that on their TV screens.

13 **MS. HELTON:** I think maybe if you would  
14 provide that to us a good bit in advance, then we'd have  
15 to talk to our IT folks. That is way -- I know that's  
16 way above my capabilities, and I'm assuming not to  
17 reflect negatively on anybody else sitting up here, but  
18 that's something we will have to see if our IT staff can  
19 help us with that.

20 **MR. GRIFFIN:** And that's above my  
21 capabilities, also. I will get that to you. Thank you.

22 **COMMISSIONER BRISÉ:** All right.

23 Anything else on other matters?

24 All right. So I guess at this time we are  
25 moving to post-hearing procedures.

1                   **MR. JAEGER:** That's correct.

2                   **COMMISSIONER BRISÉ:** Is there anything there;  
3 any issues, concerns at this point?

4                   All right. Moving to the last section, which  
5 is rulings.

6                   **MR. JAEGER:** Yes, Commissioner. In most  
7 instances it is pretty standard that opening statements,  
8 if any, shall not exceed ten minutes per party, and then  
9 we have the rulings on the other matters, I think, that  
10 you have made. And other than that, I believe there  
11 is -- I see no other problems there.

12                   **COMMISSIONER BRISÉ:** All right.

13                   **MR. JAEGER:** Staff has the last request, that  
14 to the extent any other positions change due to  
15 discussion that they provide any such changes to staff  
16 by close of business on May 12th.

17                   **COMMISSIONER BRISÉ:** Okay.

18                   **MR. HORTON:** Commissioner, I do have --

19                   **COMMISSIONER BRISÉ:** Yes, go right ahead.

20                   **MR. HORTON:** The two pending motions, the  
21 motion for summary final order and the motion to strike,  
22 I believe our answer, response for the motion to strike  
23 would will be due next Monday. We received the motion  
24 for summary final order late Friday. I would request  
25 that we be allowed until Monday to file our written

1 response to that, as well, and I just mentioned that to  
2 Mr. Griffin, and I don't think they have an objection to  
3 that.

4 **MR. GRIFFIN:** No, sir, no objection.

5 **COMMISSIONER BRISÉ:** Okay. So then that will  
6 be fine.

7 **MR. HORTON:** Thank you.

8 **COMMISSIONER BRISÉ:** All right. Is there  
9 anything else at this time?

10 **MR. JAEGER:** Nothing from staff, Commissioner.

11 **MR. GRIFFIN:** Nothing from Gulf Power.

12 **MR. HORTON:** Nothing from CHELCO.

13 **COMMISSIONER BRISÉ:** Okay. With that, I will  
14 say that we are adjourned.

15 (The prehearing concluded at 9:55 a.m.)  
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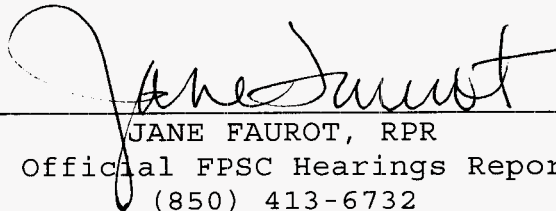
STATE OF FLORIDA        )  
                                  :  
                                  :        CERTIFICATE OF REPORTER  
COUNTY OF LEON        )

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 13th day of May, 2011.

  
\_\_\_\_\_  
JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
(850) 413-6732

Revised language for Gulf Power's position on Issue 6:

If service is provided by CHELCO: While Gulf Power does not have full and complete knowledge of the benefits that would accrue to CHELCO should it serve Freedom Walk, it is reasonable to expect that those benefits would be similar to Gulf Power's, if Gulf was to serve Freedom Walk. It is Gulf Power's position that CHELCO's serving Freedom Walk would not constitute an uneconomic duplication of Gulf Power's facilities, as long as the true and full cost for CHELCO to extend adequate and reliable service to Freedom Walk does not significantly exceed the minimum cost of \$377,786 already identified by Gulf Power.

✓ Gulf Power Co.  
Parties/Staff Handout  
event date 5/9/11  
Docket No. 100304