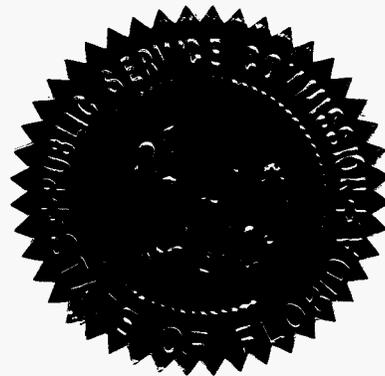


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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.



VOLUME 1

Pages 1 through 177

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PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ

DATE: Tuesday, May 17, 2011

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

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FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

1 APPEARANCES:

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

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

10 WILLIAM B. WILLINGHAM, ESQUIRE, and MICHELLE
11 L. HERSHEL, ESQUIRE, Florida Electric Cooperatives
12 Association, Inc., 2916 Apalachee Parkway, Tallahassee,
13 Florida 32301, appearing on behalf of Florida Electric
14 Cooperatives Association, Inc.

15 RALPH R. JAEGER, ESQUIRE, Florida Public
16 Service Commission, 2540 Shumard Oak Boulevard,
17 Tallahassee, Florida 32399-0850, appearing on behalf of
18 the Florida Public Service Commission Staff.

19 MARY ANNE HELTON, Deputy General Counsel,
20 Florida Public Service Commission, 2540 Shumard Oak
21 Boulevard, Tallahassee, Florida 32399-0850, Advisor to
22 the Florida Public Service Commission.

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P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** Good morning, everyone.
3 Come on. Good morning. There we go. I know it's not
4 that early. I think we finally got our stuff together
5 up here, so I think it's time to get started. Let the
6 record show it is Wednesday -- I'm sorry -- it is
7 Tuesday, May 17th. For those of you that don't know,
8 it's election day back in Jacksonville, so it's quite
9 interesting --

10 **UNIDENTIFIED SPEAKER:** (Inaudible. Speaker
11 not on microphone.)

12 **CHAIRMAN GRAHAM:** North Miami Beach? So it's
13 quite interesting back home for us right now. But let
14 the record show it's Docket Number 100304-EU. It is
15 May 17th, Tuesday, and it's about 9:34 a.m. We've got
16 to call this meeting to order. Staff, would you please
17 read the notice?

18 **MR. JAEGER:** Yes, Chairman Graham. Pursuant
19 to notice, this time and place has been scheduled for a
20 hearing on May 17th, 2011, and May 18th, 2011, if
21 needed, in Docket 100304-EU, petition to resolve
22 territorial dispute with Gulf Power Company in Okaloosa
23 County by Choctawhatchee Electric Cooperative, Inc. I
24 think that would be the last time we would say that
25 mouthful. I think from now on we will refer to it as

1 CHELCO and it would make it a lot easier.

2 **CHAIRMAN GRAHAM:** Sounds good. All right.
3 We've got to take appearances. Who do we have here?
4 Start with CHELCO.

5 **MR. HORTON:** Norman H. Horton, Jr., of the
6 Messer, Caparello & Self Law Firm, appearing on behalf
7 of CHELCO. And appearing with me is Mr. E. Gary Early
8 of the same law firm.

9 **CHAIRMAN GRAHAM:** Gulf.

10 **MR. WILLINGHAM:** My name is Bill Willingham.
11 I'm with the Florida Electric Cooperatives Association,
12 and appearing with me is Michelle Hershel with the
13 Florida Electric Cooperatives Association. We filed a
14 petition to intervene yesterday.

15 **CHAIRMAN GRAHAM:** Okay.

16 **MR. BADDERS:** Good morning, Commissioners.
17 Russell Badders, and with me is Steven A. Griffin with
18 the law firm of Beggs & Lane. We're here on behalf of
19 Gulf Power Company.

20 **MR. JAEGER:** Ralph Jaeger on behalf of
21 Commission Staff.

22 **MS. HELTON:** And Mary Anne Helton, advisor to
23 the Commission.

24 **CHAIRMAN GRAHAM:** Good morning, Mary Anne.
25 How are you doing?

1 **MS. HELTON:** I'm great, Mr. Chairman. How are
2 you?

3 **CHAIRMAN GRAHAM:** I didn't even see you over
4 there.

5 All right. Preliminary matters. Any
6 preliminary matters?

7 **MR. JAEGER:** Yes, Chairman. Originally there
8 were three motions, but I think Gulf has advised me at
9 the beginning of the hearing that their motion to strike
10 is going to be withdrawn. So we have a motion for leave
11 to intervene and file a response to Gulf's motion for
12 summary final order by FECA, that's the Florida Electric
13 Cooperatives Association, that was filed yesterday, as
14 Mr. Willingham said, and then we have Gulf's motion for
15 summary final order.

16 I believe we need to take up the petition for
17 intervention first. And I note that in neither motion
18 was oral argument requested, but any time the Commission
19 thinks that oral argument will aid them in understanding
20 the issues, they may request oral argument at their
21 pleasure.

22 **CHAIRMAN GRAHAM:** What do you mean we have to
23 take up the petition first? What does that involve?

24 **MR. JAEGER:** I'm sorry. I couldn't hear you,
25 sir.

1 **CHAIRMAN GRAHAM:** You said we have to take up
2 the FECA petition first?

3 **MR. JAEGER:** I think the petition for
4 intervention should be taken up first because then that
5 governs whether they participate in the motion for
6 summary final order.

7 **CHAIRMAN GRAHAM:** So what does that involve?
8 What do we have to do? We just have to decide if we're
9 going to allow the petition, Mary Anne?

10 **MS. HELTON:** Yes, sir. I think you as
11 Chairman, you can decide whether to allow intervention
12 or you can defer to the whole panel, whichever is your
13 choice. Typically intervention must be within five days
14 of the hearing or it would be denied. However, it's my
15 understanding that in this case that Gulf has waived any
16 issues it may raise with respect to the timing of the
17 intervention. I'm assuming CHELCO has no issue with
18 respect to the co-op association intervening. So I
19 believe at this point it's really within your discretion
20 whether you want to allow intervention or not. And it
21 may be that you want to hear from the parties or you may
22 want to go ahead and rule.

23 **CHAIRMAN GRAHAM:** CHELCO.

24 **MR. HORTON:** We, we don't object to the
25 intervention and wouldn't have any argument.

1 **CHAIRMAN GRAHAM:** Gulf.

2 **MR. BADDERS:** As stated by Ms. Helton, Gulf
3 does not object on the basis of time. Our only
4 objection is that their petition to intervene actually
5 introduces a lot of new evidence in the form of
6 testimony and an affidavit. We do object to that
7 portion of their petition; however, we don't object to
8 their intervention, per se.

9 **CHAIRMAN GRAHAM:** To the board. Commissioner
10 Edgar.

11 **COMMISSIONER EDGAR:** Mr. Chairman, could we
12 hear from Mr. Willingham briefly?

13 **CHAIRMAN GRAHAM:** Okay.

14 **MR. WILLINGHAM:** Thank you, Commissioners.
15 The reason we intervened is we believe that Gulf's
16 motion to dismiss is a monumental change in the scope of
17 this proceeding, changing it from a question of which
18 utility can serve a particular piece of property in
19 Okaloosa County to a question of whether an undeveloped
20 plan that is in or may be annexed into a municipality
21 may be served by the electric co-op.

22 Electric cooperatives provide service in 56
23 counties in addition to Okaloosa, and in many of those
24 counties there are municipalities in portions of cities
25 that are served exclusively by cooperatives. And if a

1 new customer cannot take service in the cooperative,
2 they can't get service. This problem is readily apparent
3 in the Florida Keys service area, which is what our, the
4 exhibit today, our protesting revolves around, where
5 they have two cities that were incorporated in the '90s
6 and now more than 40 percent of their members are in
7 municipalities with a population of 2,500 or more. As
8 shown in the exhibit, there's no other provider there.
9 Florida Power & Light is 25 miles away, the Keys Energy
10 Service is eight miles from Marathon and even further
11 from Islamorada.

12 In its motion, Gulf is asking you to just
13 forget about the grid bill, forget about the 35 years of
14 jurisprudence with the grid bill, and to turn all this
15 on its head, and trying to do this based only upon the
16 body of evidence that you've got for Okaloosa County.
17 We think that's a big problem. We urge you to accept
18 our petition and the affidavit that's attached to it.

19 **CHAIRMAN GRAHAM:** Commissioner Edgar, you
20 still have the floor.

21 **COMMISSIONER EDGAR:** Thank you. And then I
22 would like to ask if Gulf has a very brief response.

23 **MR. BADDERS:** I do. And I'm not going to
24 address the actual motion that will be before you -- be
25 before you in just a few minutes, but I would like to

1 address the testimony that he's added to the record just
2 now in the form of an affidavit and several paragraphs
3 in their petition.

4 They take this case as they find it when they
5 intervene. We're well past the time for filing
6 testimony. There's no way for us to cross-examine what
7 he's just said about Marathon or anywhere else. We
8 could not conduct discovery, no cross-
9 examination. It's really basically a violation of due
10 process to allow this at this point, the day of the
11 hearing, new testimony.

12 **COMMISSIONER EDGAR:** Mr. Chairman, I would be
13 inclined to grant the motion for intervention, with the
14 understanding that they find, that they take the case as
15 they find it and our general prohibition against
16 friendly cross.

17 As to the possibility of the admission of
18 additional testimony through Mr. Willingham either
19 verbally or by documents, I would like to hear from Mary
20 Anne on that point, if we could.

21 **MS. HELTON:** Well -- excuse me -- Mr. Badders
22 is correct and you are correct in that they take the
23 case as they find it. So at this point I think it's not
24 appropriate to raise any new issues that weren't already
25 raised in the prefiled testimony and the issues as they

1 were set out by the Prehearing Officer.

2 With respect to any testimony that
3 Mr. Willingham may or may not have offered, he is not a
4 sworn witness and, as such, it would not be competent,
5 substantial evidence for purposes of your final decision
6 here today.

7 **COMMISSIONER EDGAR:** Mr. Chairman, I think
8 Ms. Helton got it just right and I would concur with her
9 comments.

10 **CHAIRMAN GRAHAM:** Thank you.

11 Commissioner Brisé.

12 **COMMISSIONER BRISÉ:** Yes. Considering the
13 fact that the scope of the intervention is well
14 determined, I think I would be fine with the
15 intervention.

16 **CHAIRMAN GRAHAM:** Thank you. I can tell you,
17 I, I tend to be a stickler for rules. And this coming
18 at the last minute, I've never really been inclined in
19 allowing these sort of things. But it seems like
20 everybody else seems to be fine with it, so I'll go
21 along.

22 I guess the question I have for FECA, why is
23 this so -- why is it just now and you guys didn't file
24 this a week ago?

25 **MR. WILLINGHAM:** With all due respect, the

1 motion was filed a week ago Friday, and that's when they
2 substantially changed the scope of this proceeding from
3 being one parcel of property in Okaloosa County to being
4 widespread law that will affect everybody. They'll
5 be -- you know, the other 56 counties, number one, had
6 no notice. The notice of this hearing was specifically
7 to Okaloosa County, as you just heard from Mr. Jaeger.
8 Someone in Marathon who's got a piece of property that
9 they would like to develop, they have no idea that this
10 is going to prevent them from getting service to that
11 property down the road. They've had no notice of that.
12 We had no notice that this was going to be the scope of
13 this proceeding. This is a substantial change from
14 their petition. And even their witnesses testified that
15 there's this 10 percent rule we need to look at. Their
16 motion doesn't mention that 10 percent rule. This is
17 way beyond that.

18 So they've expanded that. And we're -- we
19 actually filed timely -- if we had been a party, our
20 response was timely to respond to their motion. But
21 obviously we were not a party and we had no reason to be
22 a party until that motion was filed.

23 **CHAIRMAN GRAHAM:** I got you. All right. Mary
24 Anne, do we need a motion to approve this petition or we
25 just -- put us in proper order.

1 **MS. HELTON:** Well, there's, I guess, two
2 options here. One, you can rule on it yourself and
3 allow intervention, or you can call for a motion and all
4 three of you can rule on whether to allow intervention
5 or not.

6 **CHAIRMAN GRAHAM:** Were there stipulations on
7 this petition? Didn't you make some limitations to it,
8 Commissioner Edgar?

9 **COMMISSIONER EDGAR:** I think, Mr. Chairman,
10 are you referring to the affidavit and other, the
11 attachments to the petition?

12 **CHAIRMAN GRAHAM:** Yes.

13 **COMMISSIONER EDGAR:** I don't, I don't think
14 we're there yet. I mean --

15 **MS. HELTON:** Well, perhaps I could suggest
16 that one of you make a motion to allow intervention and
17 with the finding that the co-op association would take
18 the case as they find it, and any additional issues or
19 testimony that they have presented to you by way of the
20 petition to intervene shall be denied or not allowed,
21 not entered into the proceeding.

22 **COMMISSIONER EDGAR:** Mr. Chairman, I'm glad to
23 do so. I would move that we grant intervention with the
24 understanding, as discussed, that the association takes
25 the case as they find it, that we follow our general

1 prohibition against friendly cross, and that no new
2 issues will be considered.

3 **CHAIRMAN GRAHAM:** That's been moved and
4 seconded. Any further discussion on the petition?
5 Seeing none, all in favor, say aye.

6 (Affirmative vote.)

7 Those opposed? We have granted the petition
8 as stated.

9 Is that all the preliminary matters?

10 **MR. JAEGER:** No, Chairman. The second motion
11 is Gulf's motion for summary final order, and we need to
12 take that up. It's Gulf's motion. So if you, again, if
13 you want oral argument, if you think it would aid in
14 assisting you in understanding the issues, you may
15 request oral argument.

16 **CHAIRMAN GRAHAM:** Let's hear a little oral
17 argument, get you guys warmed up.

18 **MR. GRIFFIN:** Thank you, Mr. Chair. Again, my
19 name is Steven Griffin here on behalf of Gulf Power
20 Company. And as you're aware by now, this dispute
21 involves a proposed 170-plus-acre mixed-use development
22 within the city of Crestview, Florida, known as Freedom
23 Walk.

24 The motion that is before you now that was
25 filed on May 6th is the substantial equivalent of a

1 motion for summary final order that we filed back in
2 February of 2011. At that time we, we withdrew that
3 motion on April 25th in light of a negative Staff
4 recommendation that the motion was premature. Discovery
5 was still ongoing at that point in time, and so once
6 discovery closed, we elected to refile the motion and
7 ask that it be heard at the outset of this hearing.
8 Obviously what we are seeking is a summary final order
9 that CHELCO is prohibited as a matter of law from
10 serving the Freedom Walk development.

11 The Freedom Walk area is all or substantially
12 all within the city of Crestview. The city of Crestview
13 is an incorporated municipality with population in
14 excess of 2,500. As such, it's clearly a rural area as
15 defined under 425.031, *Florida Statutes*. And we believe
16 that under this Commission's precedent that we cite in
17 our motion that is a de facto bar to CHELCO's
18 prospectively serving new customers in this nonrural
19 area.

20 And let me be clear about what we're not
21 seeking. Mr. Willingham indicated that this would have
22 far-reaching impacts across the state of Florida, and
23 obviously that, that information is not in the record at
24 this point in time. But we are not seeking a
25 declaratory statement as FECA has suggested, nor are we

1 seeking to require CHELCO or any other cooperative in
2 the state of Florida to relinquish service in nonrural
3 areas where they're presently serving. What we're
4 seeking is a determination relating to this single
5 development in Crestview, Florida. And the relevant
6 facts and law are clear in our motion, I'm not going to
7 go through all of those here, but I would just like to
8 point out that as you can see from the motion in the PSC
9 precedent that is stated there, we believe the law is
10 clear that they cannot respectively serve this nonrural
11 area.

12 At page 6 of the motion we cite to Commission
13 precedent holding that the intent of Chapter 425 must be
14 strongly considered by the Commission in resolving
15 territorial disputes. At pages 7 through 9 of the
16 motion we cite to five previous orders where the
17 Commission held that cooperatives were not legally
18 prohibited from serving areas because those areas were
19 rural in nature. And certainly under the precedent
20 cited at page 7 through 9 of the motion, the contrary
21 would also be true. In other words, CHELCO would be
22 legally prohibited from serving the area if it's
23 determined to be nonrural under Chapter 425.

24 At pages 16 through 17 of the motion we cite
25 to a long line of Commission orders where the Commission

1 has interpreted and applied Chapter 425 in the context
2 of resolving territorial disputes. And we submit to you
3 that CHELCO's and now FECA's arguments cannot be
4 reconciled with that precedent.

5 In our view, there are only three material
6 facts for resolution here in this motion for final
7 summary order. That is whether CHELCO is a cooperative
8 under Chapter 425, whether the city of Crestview is an
9 incorporated city with a population in excess of 2,500
10 people, and whether the Freedom Walk area is nonrural in
11 nature under 425.031. And we submit to you that there,
12 there cannot be a legitimate dispute in that regard.
13 CHELCO is a cooperative under 425, the city of Crestview
14 is an incorporated city with a population in excess of
15 2,500 people, and the Freedom Walk development area is
16 nonrural under 425.03. And for those reasons we would
17 ask that you grant this motion.

18 **CHAIRMAN GRAHAM:** Thank you.

19 CHELCO.

20 **MR. EARLY:** Good morning, Mr. Chairman,
21 Commissioners. This case involves the first time that I
22 can tell from my review of the orders in the cases that
23 the Commission has been asked to take such a fundamental
24 role in the construction and interpretation of a statute
25 over which it has no express legislative jurisdiction,

1 and that is Chapter 425 which regulates rural electric
2 cooperatives.

3 This question that's before you in the, in
4 the, the, in this summary final order is to what extent
5 should the Commission assume that role of construing and
6 interpreting Chapter 425 to establish what will
7 ultimately become a very bright-line jurisdictional
8 limit over a cooperative's service area. And
9 Mr. Griffin has said this, this will only have
10 application to this case, but in fact under the rules,
11 general rules of stare decisis the Commission's order is
12 going to have an effect that will reach beyond this
13 particular case. It's going to establish a precedent as
14 to the application and construction of 425 that will,
15 that will be effective as to anybody similarly situated
16 that appears before this Commission.

17 Now we acknowledge generally that there are a
18 number of Supreme Court orders and orders of this
19 Commission that have applied Chapter 425, and it appears
20 as though they typically arise in the case of a
21 determination of what is the nature of the area.
22 Chapter 366 in terms of the standards to be applied to a
23 territorial dispute empowers the Commission to determine
24 whether or not an area is urbanized, and that's the
25 language in 366.

1 I think it has always been a convenient
2 reference point when you're speaking of urbanization to
3 also speak of whether something is rural. And there's
4 been almost a mixture of the legal definition and the
5 factual realities of a particular piece of property in
6 these Commission orders. But we do recognize that
7 Chapter 425 has been utilized by the Commission. We
8 don't intend to suggest that, that we throw off the
9 effect of those previous orders, but we do suggest that
10 they not be given a, a broad range of applicability that
11 would, that would, as I said, affect a fundamental
12 jurisdictional question of the ability of a rural
13 electric cooperative to serve a particular area. We
14 believe that's outside of the delegated legislative
15 authority granted to the Commission by the Legislature.

16 More specifically, we would note that
17 territorial disputes are governed specifically by
18 Chapter 366, *Florida Statutes*. The effect of a ruling
19 consistent with the relief sought by Gulf would ignore
20 what you will probably hear as the 10 percent rule. And
21 under, under 425.04 it states that a rural electric
22 cooperative shall have the power to distribute electric
23 energy in rural areas to its members, to governmental
24 agencies, political subdivisions, and to other persons
25 not in excess of 10 percent of the number of its

1 members. So there is a recognition that there is
2 something other than members in rural areas that may be
3 served by an electric cooperative. And the *PRECO* case
4 which I've cited in my, in my response and the *Alabama*
5 *Electric Power Company* case which I've cited in my
6 response very definitely say that there are instances in
7 which cooperatives can serve outside of, outside of
8 rural areas.

9 The -- 425.04 also provides, I guess it's an
10 exception, I'm not sure what to call it, but it states
11 that a cooperative can serve a town, city or area in
12 which a person is not receiving adequate central station
13 service or who at the time of commencing such service or
14 offer to serve by a cooperative is not receiving
15 adequate central station service. I've actually kind of
16 flipped that and made it negative, but that's what it
17 says. And that's another issue that would have to be
18 determined.

19 The fact is that there are a number of issues
20 with regard to 425, and I'm not going to suggest that
21 this is the most clearly written statute that appears in
22 the *Florida Statutes*. There is ambiguity. There are
23 things that have to be given careful thought and
24 consideration in determining how they apply and to whom
25 they apply. And respectfully we just don't believe that

1 this Commission is the body politic that has been given
2 the authority by the Legislature to make that type of
3 decision, decision.

4 I'm not going to draw this out. We obviously
5 have lots to do today. But the bottom line is that the
6 Commission has -- despite the Commission's application,
7 consideration and use of Chapter 425, the Commission has
8 never exercised this degree of fundamental jurisdiction
9 over the service area of a cooperative so as to
10 establish a bright-line jurisdictional service territory
11 test as is being requested by Gulf. We believe that
12 this would be an extension, if not the creation, of
13 regulatory jurisdiction where the Legislature has
14 granted none.

15 To the extent the Commission reviews the
16 concept of a rural area in the context of determining
17 the nature of the area under 366, that has been done.
18 We don't argue that it has been done and can be done in
19 this case. But that determination of the nature of an
20 area is one of the criteria under Chapter 366. It is
21 not the only criteria.

22 So to the extent that, that Gulf wants the
23 creation of this kind of super dispositive criteria that
24 will, that will supercede all other criteria in 366,
25 that will supercede the grid bill, as Mr. Griffin has

1 stated, considerations of uneconomic duplication are not
2 to be considered. They characterize those as collateral
3 factual issues in their motion.

4 Issues of the capability of the utility to
5 serve would not be considered because that would be a
6 collateral factual issue. We just do not believe that
7 the Legislature intended for the Commission to take that
8 step in this case and we would ask that that relief be
9 denied.

10 **CHAIRMAN GRAHAM:** Mr. Willingham.

11 **MR. WILLINGHAM:** Thank you. I'll be brief. I
12 think that the test, the three facts that CHELCO, that
13 Gulf just asked you to consider in the, in this
14 territorial dispute are of themselves a statement that
15 co-ops are not allowed to serve in a municipal service
16 territory. And that is a problem under previous
17 Commission orders with territorial orders, and I think
18 it's a -- this is a test they're setting forth that
19 would have broad application if y'all adopt it this way,
20 and I'm very concerned about that. That's all I have.

21 **CHAIRMAN GRAHAM:** Thank you, sir.

22 Commissioner Edgar.

23 **COMMISSIONER EDGAR:** Mr. Chairman, in my mind,
24 the standard for summary judgment is a, it's a high
25 standard. In this instance, from what we've heard and

1 from the material that we've had to review up to this
2 point, I do believe that there are facts and issues in
3 dispute which go even right down to what exactly are the
4 boundary areas of the area that is before us. So my
5 thinking is that the standard for summary judgment is
6 not met in this instance and that that motion would be
7 denied.

8 **CHAIRMAN GRAHAM:** Commissioner Brisé.

9 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.
10 Just listening to the oral arguments and in review of
11 the information before me, I think there's quite a lot
12 of things that we cannot simply dispose of without going
13 into more testimony and so forth. So I would tend to
14 agree that the motion for summary judgment should be
15 denied.

16 **CHAIRMAN GRAHAM:** All right. Gulf's motion is
17 denied. Any other preliminary matters?

18 **MR. JAEGER:** Yes, Chairman. I don't know if
19 we got it on the record that there was a, Gulf had a
20 motion to strike and they advised me that they were
21 withdrawing it. I'm not sure if they got that on the
22 record.

23 **MR. BADDERS:** That is correct. In the
24 interest of time, we've withdrawn our motion.

25 **MR. JAEGER:** Okay. After that there are no

1 other pending motions.

2 **CHAIRMAN GRAHAM:** Any other outstanding
3 motions or petitions? We've gotten all of that taken
4 care of?

5 **MR. JAEGER:** Yes, Chairman.

6 **CHAIRMAN GRAHAM:** Any other preliminary
7 matters? There's some exhibits.

8 **MR. JAEGER:** Yes, Chairman. We've put up
9 easels because each party has indicated they have
10 demonstrative exhibits that they would like to use at
11 hearing. Staff was going to use this easel here, and I
12 guess we could have Gulf here and CHELCO over there if
13 that suits the parties for their demonstrative exhibits
14 to put up on easels.

15 **CHAIRMAN GRAHAM:** That works for me.

16 **MR. GRIFFIN:** If the Commissioners could see
17 over there, we're okay with that.

18 **MR. JAEGER:** I couldn't figure out how to put
19 it where it didn't block other people's view, and so
20 there's -- it is going to be hard to see, but they have
21 the exhibits in their testimony also.

22 **CHAIRMAN GRAHAM:** We'll see what it's like
23 when we start going through them. If we can't see them,
24 I'll allow you guys to move a little closer.

25 **MR. EARLY:** Well, and they may have instances

1 in which their witnesses might need to see an exhibit,
2 so we have no objection if they want to use our easel.

3 **CHAIRMAN GRAHAM:** Okay.

4 **MR. JAEGER:** However they want to put them up
5 on easels is fine with Staff.

6 **CHAIRMAN GRAHAM:** All right. So are we done
7 now with all --

8 **MR. JAEGER:** No. There's -- also there are
9 three stipulations listed in the prehearing order that
10 the Commission should approve or acknowledge.

11 First is for Issues 5C and 5D. The parties
12 stipulate that the cost of necessary facilities for
13 CHELCO and Gulf to provide adequate and reliable service
14 within the Freedom Walk development is that set forth by
15 each of the parties as to its respective costs.

16 Therefore, there will be no additional testimony or
17 evidence presented at the hearing as to Issues 5C and
18 5D. And I think that's just an explanation of why you
19 will not see any, any additional testimony on 5C and 5D.
20 And you need to approve that stipulation, Chairman.

21 **CHAIRMAN GRAHAM:** As a board or just me?

22 **MR. JAEGER:** The board.

23 **CHAIRMAN GRAHAM:** Could I get a motion?

24 **COMMISSIONER EDGAR:** Mr. Chairman, I would
25 move that we take note of and approve the stipulations

1 to Issues 5C and 5D.

2 **CHAIRMAN GRAHAM:** It's been moved and
3 seconded. Any further discussion?

4 **MR. JAEGER:** No.

5 **CHAIRMAN GRAHAM:** Yes, sir.

6 **MR. JAEGER:** The next stipulation is the
7 parties and Staff have agreed that --

8 **CHAIRMAN GRAHAM:** Wait. Wait. Wait. Wait.
9 Wait.

10 **MR. JAEGER:** I'm sorry. Did we move on that?
11 Okay.

12 **CHAIRMAN GRAHAM:** It's just been moved.

13 **MR. JAEGER:** We have no further discussion.

14 **CHAIRMAN GRAHAM:** No further discussion. All
15 in favor, say aye.

16 (Affirmative vote.)

17 Those opposed? All right. By your action,
18 you have approved those stipulations. Okay. Thank you.

19 **MR. JAEGER:** The second stipulation is --
20 there's only two more stipulations total. The parties
21 and Staff have agreed that the testimony and exhibits of
22 CHELCO witnesses Sullivan and Blake and Gulf witnesses
23 Jacob, Johnson and Harper may be admitted, and the panel
24 has also agreed that they may be excused from the
25 hearing. So when those witnesses' testimony and

1 exhibits come up, we'll enter them into the record at
2 that time. But you need to confirm that those five
3 witnesses have been excused and their testimony and
4 exhibits will be admitted at the proper time.

5 **CHAIRMAN GRAHAM:** Now I guess the question I
6 have, since FECA was just granted last minute, they
7 weren't part of this agreement and this was stipulated;
8 correct?

9 **MR. JAEGER:** Yes, it is stipulated by the
10 parties. And that was the way it stood at the
11 Prehearing Conference and for the Prehearing Order.

12 **CHAIRMAN GRAHAM:** Any comments? Mary Anne.

13 **MS. HELTON:** Mr. Chairman, this would be one
14 of those instances where Mr. Willingham would take the
15 case as he finds it. So it would be my recommendation
16 even if he wanted to cross-examine one of those
17 witnesses, that unfortunately for him it would be too
18 late.

19 **COMMISSIONER EDGAR:** I agree.

20 **CHAIRMAN GRAHAM:** Okay. Let's get a motion
21 for that stipulation.

22 **COMMISSIONER EDGAR:** Mr. Chairman, I don't
23 know that we need a motion for that. But my
24 understanding as to where we are is that we are taking
25 note that five witnesses have been excused from the

1 hearing and that we will enter their testimony and
2 exhibits into the record as we come to them in the order
3 of witnesses in the Prehearing Order.

4 **CHAIRMAN GRAHAM:** Okay. So that's for the
5 witnesses and for the exhibits?

6 **MR. JAEGER:** That's correct, Chairman.

7 **CHAIRMAN GRAHAM:** Okay. So are we now done
8 with preliminary matters?

9 **MR. JAEGER:** One more. This is the last
10 preliminary.

11 Parties and Staff have stipulated the exhibits
12 listed as CHELCO stipulated exhibits, that's CSE-1
13 through 7, Gulf's stipulated exhibits 1 through 18, and
14 Staff's stipulated exhibits 57 through 62. And those
15 exhibits have already been placed in front of you. And
16 I believe if it, if the Commission -- with -- since
17 those exhibits have been stipulated, we could move all
18 those exhibits into the record at this time, if you --
19 if they -- if you agree with the stipulation.

20 **CHAIRMAN GRAHAM:** Okay. So we are going to
21 move --

22 **MR. JAEGER:** That's Exhibits 20 through 26 for
23 CHELCO. And for Gulf, Exhibits 38 through 56. And for
24 Staff this is Exhibits 57 through 62.

25 **COMMISSIONER EDGAR:** Mr. Chairman, it might be

1 helpful if we take note for the record of the fact that
2 we do have a Comprehensive Exhibit List that is before
3 us and that we will, I believe, be entering that list,
4 and that the stipulated exhibits are marked as indicated
5 by Mr. Jaeger on that Comprehensive Exhibit List.

6 **MR. JACOBS:** Yes, Commissioner. That's
7 completely correct. I should have identified the
8 Comprehensive Exhibit List first.

9 **CHAIRMAN GRAHAM:** Okay. So we've marked 20
10 through 26. These are the hearing ID numbers. And then
11 38 through 56 and 57 through 62; is that correct?

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

13 **CHAIRMAN GRAHAM:** And that's all been
14 stipulated.

15 **MR. JAEGER:** That's all been stipulated.

16 **CHAIRMAN GRAHAM:** And everybody has got thumbs
17 up over here. Sounds good. Now do we have to make a
18 motion for that or is that all good?

19 **MR. JAEGER:** Just agree that those exhibits
20 should be admitted into the record.

21 **COMMISSIONER EDGAR:** So at this time, Mr.
22 Chairman, if you agree, we would enter those exhibits
23 into the record. And also again note that the
24 Comprehensive Exhibit List is Exhibit 1, and enter that
25 list into the record, if you concur, Mr. Chairman.

1 **CHAIRMAN GRAHAM:** Sounds good. Let's enter
2 all that into the record as stated.

3 (Exhibits 1 through 62 marked for
4 identification.)

5 (Exhibits 1, 20, 21, 22, 23, 24, 25, 26, 38,
6 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52,
7 53, 54, 55, 56, 57, 58, 59, 60, 61, and 62 admitted into
8 the record.)

9 Okay. Now we're to opening statements; is
10 that correct?

11 **MR. JAEGER:** That is correct, Chairman.

12 **CHAIRMAN GRAHAM:** There we go. That's what I
13 like to hear. All right. We'll give you guys ten
14 minutes each. We will start with CHELCO.

15 **MR. HORTON:** Mr. Chairman, before I start,
16 just to make it easier for you to see, I have some
17 copies of an exhibit I'm going to be looking at.

18 **CHAIRMAN GRAHAM:** We'll get someone from Staff
19 to come grab those from you, pass those out.

20 (Pause.)

21 I'll give you guys ten minutes each. I'll let
22 you know when ten minutes has passed and I'll give you a
23 minute to conclude. Start when you're ready, sir.

24 **MR. HORTON:** Yes. Good morning. Good
25 morning, Commissioners. I'm Norman H. Horton, Jr.,

1 again on behalf of CHELCO. I provided you with some
2 copies of exhibits. I believe one of them is the
3 exhibit that Staff has on the easel over here. But just
4 to, just to make it a little easier, at one of the first
5 meetings between the parties and the Staff to identify
6 the issues and procedures the question was raised as to
7 why we are here. And that may still be on the minds of
8 some people, but the answer to that is very simple. We
9 are here because Gulf Power wants to serve a proposed
10 development that's to be built on property that has been
11 served by CHELCO and where CHELCO currently has lines.
12 CHELCO has had a presence on, around and adjacent to
13 this property for 60 years.

14 If you'll look at the diagram that you've been
15 provided and that exhibit over there, you'll see that
16 CHELCO has existing lines on the western boundary of the
17 property, and that would be Normandy, Normandy Road. We
18 also have a three-phase line along the northern boundary
19 of the property on Old Bethel Road. And, in fact, our
20 three-phase service is right at the entrance of that, of
21 that proposed development.

22 Gulf Power, on the other hand, has a line
23 that's over 2,000 feet away, and they're going to have
24 to extend that line just over 2,000 feet just to get
25 where CHELCO is currently.

1 Gulf has, does have single-phase service down
2 to a residence that's located on the southeastern part
3 of the, of the area, but, but they've, that's not
4 sufficient to provide the service to the, to the
5 property.

6 I have a short video to give you an idea of
7 the existing lines and the area generally, and I guess
8 --

9 (Video played: CHELCO lines are visible above
10 the Freedom Walk property sign. The property begins at
11 the corner of Old Bethel Road and Jones Road in
12 Crestview. This is where the Gulf Power lines end just
13 east of Davidson Middle School on Old Bethel Road. Here
14 we are driving westward toward Freedom Walk on Old
15 Bethel Road. Gulf Power's closest three-phase line to
16 Freedom Walk is approximately one-half mile east of the
17 development on Old Bethel Road. Gulf Power has stated
18 it will cost \$90,000 to build a three-phase line
19 extension to the development where CHELCO already has
20 existing lines to the property. From this shot, you can
21 see CHELCO will not have to build additional lines to
22 serve Freedom Walk. CHELCO has an existing single-phase
23 line on the property, and the three-phase line continues
24 to the northwest corner of the Freedom Walk property at
25 Normandy Road. A CHELCO single-phase line also follows

1 along Normandy Road, which is the western boundary of
2 the Freedom Walk property. CHELCO is in the best
3 position to serve the development without building
4 additional lines to reach Freedom Walk. Video
5 concluded.)

6 **MR. HORTON (Continuing):** Now to get to where
7 CHELCO currently has lines is going to cost Gulf at
8 least \$90,000. Gulf knew of CHELCO's presence at this
9 property from the very beginning of their discussions
10 with the developer. In fact, it's not in dispute. One
11 of the earlier e-mails between Gulf and their staff, or
12 internal e-mails, Gulf staff inquired as to the cost
13 just to get where CHELCO is. CHELCO has a presence; we
14 have the current ability to serve the full projected
15 load now with no unplanned upgrades to our system.
16 Potentially a project planned for 2014 would have to be
17 moved up. But given the probable build-out schedule, no
18 unplanned upgrades would be necessary in order for
19 CHELCO to serve the full load at the end of 2014.

20 Gulf Power will tell you that if a full load
21 comes on now, CHELCO will have to perform not only the
22 planned upgrade, but other change-outs as well because
23 of the capacity levels placed on existing equipment.
24 You will hear from CHELCO that equipment will not exceed
25 the rated capacity at full build-out, and it is safe to

1 operate the equipment at those capacities.

2 It is prudent to monitor those capacities as
3 load grows, however. There will be assertions that
4 CHELCO will exceed the parameters of their system design
5 and operating criteria, but those are planning
6 guidelines and not mandates to upgrade. CHELCO can
7 safely operate its facilities at full build-out.

8 In contrast, Gulf has to extend lines at a
9 cost of \$90,000. And despite maintaining a position
10 that nothing else needs to be done to serve the load,
11 it's only recently acknowledged that if a full load were
12 to come on now, they would have to replace three
13 transformers at a cost of \$40,000.

14 In Mr. Feazell's testimony, a witness for
15 Gulf, he estimated the cost of a transformer for CHELCO
16 to be in the \$700,000 to \$1.2 million range. So how it
17 only costs Gulf \$40,000 for three transformers is
18 unclear at best.

19 They say they will replace fully depreciated
20 transformers with fully depreciated transformers, which
21 suggests they plan to use used equipment. I'm not an
22 accountant, but that doesn't seem to me to be apples to
23 apples. More importantly, it is doubtful that Gulf will
24 be able to serve the full load in December 31st, 2014,
25 at all based on their numbers.

1 The fact that CHELCO has lines in the area and
2 Gulf does not means that an extension by Gulf will be
3 duplicating existing facilities. In fact, in response
4 to discovery item 13, which is one of the
5 interrogatories, Gulf said, quote, nor does it dispute
6 that this extension will result in duplication of some
7 CHELCO facilities which are presently in place, close
8 quote.

9 Gulf will tell you there's no economic --
10 uneconomic duplication, that Gulf Power's expenditures
11 would not be deemed uneconomic. However, Dr. Marty
12 Blake, former commissioner and chair of the New Mexico
13 Public Service Commission, points out in his rebuttal
14 that Gulf's view considers only what is best for Gulf
15 and does not consider whether it would be uneconomic
16 from CHELCO's perspective. He says that consideration
17 must be given to whether there's a need to parallel,
18 cross, or duplicate existing adequate facilities a
19 utility has constructed in good faith, which is what
20 CHELCO has done to serve this area over the years.

21 The opinion of Dr. Blake is not inconsistent
22 with language from the Supreme Court case of *Gulf Coast*
23 *v. Clark*, 674 So.2d 120, wherein the court said, "In its
24 argument before the Court, the Commission asserts that
25 the actual cost is only one factor to be considered in

1 determining uneconomic duplication. The Commission
2 states that lost revenues for the non-serving utility,
3 aesthetic and safety problems, proximity of lines,
4 adequacy of existing lines, whether there has been a
5 race to serve, and other concerns must be considered in
6 evaluating whether an uneconomic duplication has
7 occurred. We do not disagree that these factors must be
8 considered."

9 You're going to hear a lot of, a lot of
10 arguments during this, during the course of this
11 hearing. You're going to see in the testimony that
12 you'll be reading some language arguments, including one
13 very basic one over the area in dispute. You may think
14 that's a silly argument, but Gulf raised it and we have
15 responded. Gulf will respond to my characterization of
16 the argument as silly by saying that they're only
17 pointing out we have changed our position. But I think
18 if you look at our petition in subsequent pleadings and
19 filings as a whole and not as a single word or sentence,
20 you'll agree with us.

21 The testimony presented by Gulf also raises
22 issues related to the obligation to serve, customer
23 choice, benefits to customers of having service from a
24 regulated utility rather than a co-op, and other similar
25 arguments. Many of these arguments have been presented

1 in prior territorial dispute cases. I know this is the
2 first territorial dispute case that's gone to hearing in
3 a number of years, but many of those arguments have been
4 presented and rejected either by this Commission, the
5 Commission at that time, or by the court, and they were
6 rejected for a reason.

7 One argument you'll hear is that historic
8 presence has been given little weight. In the case that
9 Gulf will rely upon, the *West Florida v. Jacobs*, in that
10 case the Court said that, "The historical presence of
11 one utility in an area thus may be relevant in
12 determining whether uneconomic duplication would result
13 from an award of service to another. Accordingly, the
14 Commission has accorded some weight to a utility's
15 historical presence in resolving territorial disputes
16 where it found that an award of service to the competing
17 utility resulted in uneconomic duplication or greater
18 cost of service." The Commission has considered
19 historic presence. It's a matter of weight. It's not
20 one of the listed criteria, but the court has been very
21 plain, very clear over the years that you can consider
22 various criteria, and it would be appropriate to
23 consider historic presence.

24 When you apply the criteria of Chapter 366,
25 and that is the criteria by which you assess territorial

1 disputes, there is no doubt that a decision for CHELCO
2 is not just appropriate but required. Thank you.

3 **CHAIRMAN GRAHAM:** Mr. Horton, thank you.
4 Gulf.

5 **MR. GRIFFIN:** Good morning, Commissioners. We
6 have an aerial of the Freedom Walk development that
7 should be on your screens or in a file. It's a .pdf.
8 I'd like to bring that up for purposes of the opening,
9 if you have that ability. There may be a file that
10 references, references Gulf Power Company exhibits,
11 demonstrative.

12 **CHAIRMAN GRAHAM:** Got you.

13 **MR. GRIFFIN:** And there should be two separate
14 files in that file, one Bluewater Bay, one Freedom Walk.
15 Okay. So it's the Freedom Walk property.

16 Okay. As you can see from Mr. Horton's video,
17 CHELCO's case is premised on the fact that CHELCO has
18 distribution lines which presently abut portions of the
19 Freedom Walk property and that Gulf Power would need to
20 extend its existing three-phase line 2,130 feet to serve
21 the development, and Gulf has acknowledged those facts
22 since the outset of the dispute and we acknowledge that
23 today. Certainly if that were the only consideration in
24 resolving a territorial dispute, we would not be here.
25 In fact, Gulf made a very similar argument to CHELCO's

1 back in the *Gulf Coast Electric Cooperative v. Clark*
2 case that was rejected by the Florida Supreme Court.
3 Under the Commission's rule, the Commission is entitled
4 to consider a number of factors in resolving territorial
5 disputes other than the location of existing facilities.
6 Those factors include the capability of the parties to
7 provide service within the development, the capability
8 of the parties to extend service to the development, and
9 the cost associated with that, and customer preference,
10 if all other factors are, are equal.

11 There is not a great deal of dispute here over
12 the parties' ability to serve within the development,
13 but with respect to the other three factors under the
14 rule, we believe that the evidence will show that Gulf
15 Power prevails on each of those. Of course, another
16 factor is the nature of the area, and we've discussed
17 that this morning and I'm not going to reiterate all of
18 that here. Suffice it to say that we believe that the
19 evidence will confirm that the area is both nonrural
20 under Chapter 425 and will be quite urbanized as that
21 term is used in Chapter 366 and the Commission's
22 territorial dispute rule.

23 Mr. Early talked about the 10 percent
24 limitation in Chapter 425.044. We don't believe that
25 the Commission needs to reach a determination on that

1 issue. Gulf Power has submitted testimony on that;
2 however, we believe under the precedent, the precedent
3 is quite clear that the Commission does not need to
4 reach that determination in order to determine that
5 CHELCO is barred from serving the development under
6 Chapter 425 in the application of Chapter 366.

7 Turning to the necessary facilities and
8 associated costs for the parties to serve the
9 development. CHELCO's witnesses Grantham and Avery will
10 tell you that they can serve the development with their
11 existing facilities at no additional cost. The evidence
12 will show that that testimony is not only inconsistent
13 with Nicole Sullivan's testimony, who is their expert
14 witness in this case, but also inconsistent with prudent
15 engineering practices. Gulf Power witnesses Spangenberg
16 and Feazell explain why CHELCO would be required to make
17 substantial upgrades to their Auburn substation in order
18 to provide adequate and reliable service to Freedom
19 Walk. Failure to make those upgrades could lead to --
20 well, it would certainly lead to components in that
21 substation being operated at or above their maximum
22 rated capacity and could lead to brownouts, blackouts or
23 catastrophic failure of the substation itself.

24 Ms. Sullivan, CHELCO's consultant, recognized
25 those problems in her direct testimony and recommended

1 that CHELCO address them, and she provided two
2 alternatives. She said that you can, you can make
3 upgrades to the substation itself or you can construct
4 an entirely new line out of the substation. And, of
5 course, those options come with costs.

6 In his rebuttal testimony, Witness Avery tries
7 to distance CHELCO from Ms. Sullivan's recommendations
8 and says, well, we can simply monitor the situation
9 instead. Witnesses Spangenberg and Fezell explain to
10 you why monitoring the situation is not a viable or
11 realistic option from an engineering perspective.

12 The cost of the substation components alone
13 would be estimated to be in excess of \$70,000.
14 Mr. Spangenberg and Fezell also demonstrate that CHELCO
15 will need to spend approximately \$227,000 to upgrade a
16 1.3-mile segment of the distribution line that CHELCO
17 would use to serve the development.

18 Now Mr. Horton told you that that was a
19 previously planned project, and because -- they'll say
20 it's going to go forward regardless of whether they
21 serve Freedom Walk and, therefore, the costs associated
22 with that project should not be considered in CHELCO's
23 cost to serve the project. And if that were true, that,
24 that would probably be a viable argument. But witnesses
25 Spangenberg and Fezell will explain in their testimony

1 why CHELCO will not be required to perform that upgrade
2 in 2014 if CHELCO does not serve Freedom Walk based on
3 planned load projections. And so as a result of that,
4 the costs associated with that 1.3-mile segment upgrade
5 should be considered in CHELCO's cost to serve the
6 development.

7 Turning to Gulf Power's necessary facilities,
8 in order to serve Freedom Walk, Gulf Power would
9 obviously have to extend its existing three-phase line
10 2,130 feet along Old Bethel Road, and that would be at a
11 cost of \$89,738. Gulf would serve the development using
12 its Airport Road substation, which is 2.6 miles away
13 from the development. And Gulf had previously planned a
14 substation conversion project that relates to Airport
15 Road sub, but not only Airport Road. That conversion
16 project involves a number of substations in north
17 Okaloosa County. That project includes the Milligan
18 sub, the Baker sub, the South Crestview sub, and the
19 Laurel Hill substations.

20 And the point of that project is that it's not
21 related to serving load in any way. The system in that
22 area is a 46kV system, and Gulf has previously planned
23 to upgrade that system to a 115kV system, which is
24 consistent with Southern Company's standards. The
25 project is intended to address operational efficiencies

1 and maintenance costs on the system to bring it more in
2 line with Southern Company's standards and is not
3 related to serving load at Freedom Walk or any other
4 customers in that area. The fact is that the upgrade
5 project will provide Gulf Power with more than enough
6 substation capacity to serve Freedom Walk, but it's not
7 intended to address load issues. And, therefore, it's
8 going to go forward irrespective of whether Gulf Power
9 serves Freedom Walk, and the costs should not be
10 contributed to Gulf's cost to serve the project.

11 The other element under the rule obviously is
12 customer preference, and you're entitled to consider
13 that if you determine that all other factors are
14 considered substantially equal. As demonstrated by Gulf
15 witness Bernard Johnson in this case, the developer,
16 Emerald Coast Partners, LLC, has unequivocally indicated
17 its preference that Gulf Power serve this development.
18 Attached to Mr. Johnson's testimony are two letters; one
19 is dated September 16th, 2008, and the second is dated
20 February 10th, 2011, long after this territorial dispute
21 began. In both of those letters the developer requests
22 that Gulf Power serve the project.

23 CHELCO has suggested that that developer's
24 request should be entitled to no weight in this
25 proceeding. We would submit to you that that is not

1 consistent with Commission precedent, and it ignores the
2 fact that the developer is the person who is responsible
3 for installing all of the electric infrastructure within
4 this development, and for that reason he is a reasonable
5 proxy for the future residents of the area.

6 Finally, I'd like to discuss the concept of
7 historical presence. Mr. Horton touched upon that. And
8 of course CHELCO contends that it has historically
9 served the area around Freedom Walk and the area that
10 will be Freedom Walk in the future, and as a result of
11 that CHELCO is entitled to an intrinsic exclusive right
12 to serve the development itself. And there are a couple
13 of points that you should be aware of there.

14 Foremost is the fact that CHELCO is ignoring
15 that Gulf Power has a historic presence in and around
16 that area as well, and you can see that from the aerial
17 photograph that you have before you. Gulf Power has
18 been serving the city of Crestview, the members within
19 the city of Crestview since 1928, nearly 13 years before
20 CHELCO's formation. And, in fact, if you look to the
21 letter B there, that letter B represents a customer
22 there on the southeastern boundary that Gulf Power has
23 been serving since 1955. That, that customer is
24 immediately adjacent to the boundaries of the Freedom
25 Walk development, the development. All of the

1 residential dwellings south of Freedom Walk are marked
2 with a C. Those are all served by Gulf Power Company.
3 Gulf Power also serves the Davidson Middle School that
4 is marked with the letter D, and the Crestview High
5 School which is marked with the letter F.

6 Finally, Gulf serves a shopping center which
7 is marked with an -- and other commercial enterprises
8 over to the east of the development that are marked with
9 the letters E and G. All of these services are located
10 within approximately one-half mile or less of the
11 development. And so CHELCO's suggestion that Gulf Power
12 is a newcomer to this area is, is simply without merit
13 in our opinion.

14 One more point to remember about historical
15 presence is the fact that it isn't mentioned in 366 or
16 the Commission, the Commission's territorial rule.
17 Mr. Horton is correct that the Commission certainly has
18 the discretion to consider that, but there's no question
19 that they're not required to, and that become clear in
20 the *West Florida Electric Co-op v. Jacobs* case.

21 In conclusion, the evidence will show that
22 CHELCO is barred as a matter of law from serving the
23 development because of its nonrural characteristics.
24 The evidence will also show that Gulf Power is able to
25 provide service to the development at a cost below that

1 of CHELCO. And, finally, the evidence will show that
2 Gulf Power is the supplier of choice for the customer in
3 this instance, and for those reasons we would ask that
4 you enter an award in favor of Gulf Power Company.

5 **CHAIRMAN GRAHAM:** Thank you, sir.

6 FECA.

7 **MR. WILLINGHAM:** Thank you, Mr. Chairman. I
8 just wanted to thank y'all for allowing us to intervene.
9 And I've already essentially made my opening statement,
10 so I'll waive any more time I may have.

11 **CHAIRMAN GRAHAM:** Well, you got my vote
12 already. For the record, I was joking.

13 (laughter.)

14 All right. I do appreciate all the opening
15 statements. We are going to take about a five-minute
16 recess, and we'll come back to the witnesses. Thanks.

17 (Recess taken.)

18 Okay. We've finished the opening statements.
19 Mr. Jaeger, I believe we've already done these exhibits
20 you have here.

21 **MR. JAEGER:** That's correct, Chairman.

22 **CHAIRMAN GRAHAM:** So now we're to testimony.
23 If I can get the witnesses to stand and raise your right
24 hand.

25 (Witnesses collectively sworn.)

1 As the different attorneys, as the different
2 attorneys pull up their witnesses, I need for them to
3 reconfirm that the witness has already been sworn. My
4 understanding is we're going to do the direct and
5 rebuttal together, so you will have seven minutes to
6 summarize your, both your direct and rebuttal when
7 you're up on the stand. Is that all correct?

8 **MR. JAEGER:** Seven and one-half minutes is
9 what was agreed to, Chairman. That 30 seconds may be
10 important.

11 **CHAIRMAN GRAHAM:** Well, we'll see about that
12 30 seconds. (Laughter.)

13 That all being said, Staff, we're going to
14 take up CHELCO witnesses first?

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

16 **MR. HORTON:** And CHELCO would call Ms. Leigh
17 Grantham.

18 **LEIGH V. GRANTHAM**

19 was called as a witness on behalf of Choctawhatchee
20 Electric Cooperative, Inc., and, having been duly sworn,
21 testified as follows:

22 **DIRECT EXAMINATION**

23 **BY MR. HORTON:**

24 Q Would you state your name and address for the
25 record, please, ma'am.

1 A Leigh Grantham, 1350 West Baldwin Avenue,
2 DeFuniak Springs, Florida 32435.

3 Q And you were sworn a few minutes ago, were you
4 not?

5 A Yes.

6 Q By whom are you employed and in what capacity?

7 A I'm employed by CHELCO as Chief Executive
8 Officer.

9 Q And have you prepared and prefiled direct
10 testimony in this docket consisting of 13 pages?

11 A Yes.

12 Q Do you have any corrections to make to your
13 prefiled direct testimony at this time?

14 A Yes, I do. On page 11, line 8, "develop"
15 should be "developer."

16 Q Do you have any other corrections to your
17 direct testimony?

18 A No, sir.

19 Q If I asked you -- with that correction, if I
20 asked you the questions contained in your direct
21 testimony today, would your answers be the same?

22 A Yes.

23 **MR. HORTON:** Mr. Chairman, we would request
24 that Ms. Grantham's prefiled direct testimony be
25 inserted into the record as though read.

1 **CHAIRMAN GRAHAM:** Let it be inserted as though
2 read.

3 **BY MR. HORTON:**

4 **Q** Ms. Grantham, did you have any exhibits to
5 your direct testimony?

6 **A** Yes, I did.

7 **MR. HORTON:** And, Mr. Chairman, those have
8 been premarked as Exhibits 2 through 6 on the
9 Comprehensive Exhibit List.

10 **BY MR. HORTON:**

11 **Q** Ms. Grantham, were those exhibits provided to
12 you or relied upon you -- by you in preparing your
13 testimony?

14 **A** Yes.

15 **MR. HORTON:** Mr., Mr. Chairman, we'd offer
16 Exhibits 2 through 6 subject to cross-examination at
17 this time.

18 **CHAIRMAN GRAHAM:** We'll enter exhibits
19 2 through 6 into the record.

20 **MR. HORTON:** After cross-examination I'll move
21 them. I'm just offering them.

22 **CHAIRMAN GRAHAM:** Okay.

23 **BY MR. HORTON:**

24 **Q** Ms. Grantham, have you also prepared and filed
25 rebuttal testimony in this docket consisting of 19

1 pages?

2 A Yes, I have.

3 Q Do you have any corrections to make to your
4 prefiled rebuttal testimony at this time?

5 A Yes, I do. Page 3, line 7, "thelaw" as one
6 word should be two words, "the law." Also on that same
7 line strike the hyphen following "state."

8 On page 4, lines 20 through 21, strike "in
9 their historic service areas," and insert "a consumer
10 within a disputed area in the context of a territorial
11 dispute when the cooperative prevails."

12 On page 7, line 18, "Spangenberg" should be
13 "Spangenberg." Page 14, line 17, "366.04(3)(b)" should
14 be "366.04(2)(e)."

15 Q And with those corrections, if I asked you the
16 questions contained in your rebuttal testimony, would
17 your answers be the same today?

18 A Yes.

19 MR. HORTON: I would request, Mr. Chairman, I
20 would request that Ms. Grantham's prefiled rebuttal
21 testimony with the changes be inserted into the record
22 as though read.

23 CHAIRMAN GRAHAM: Let it be inserted as though
24 read.

25 BY MR. HORTON:

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Q And you had no exhibits to your rebuttal, did you?

A No, sir.

DOCKET 100304-EU**DIRECT 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. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am the Chief Executive Officer of Choctawhatchee Electric Cooperative
6 (CHELCO).

7 **Q. PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE WITH**
8 **CHELCO.**

9 A. I earned a Bachelor's Degree in Public Relations/Journalism from Auburn
10 University and a Master's Degree in Personnel Management from Troy
11 University. Additionally, I have completed the University of Nebraska/National
12 Rural Electric Cooperative Association's Management Internship Program. I
13 became the CEO of CHELCO on January 1, 2010, after 19 years of
14 progressively responsible experience at CHELCO.

15 **Q. HAVE YOU TESTIFIED BEFORE THIS COMMISSION BEFORE?**

16 A. No.

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 A. I will provide some background and history of CHELCO and our operations.

3 I'll also provide a description of the Freedom Walk development that is at

4 dispute in this case and some of the history of the dispute.

5 **Q. WOULD YOU PROVIDE A BRIEF OVERVIEW OF CHELCO?**

6 A. Yes. CHELCO is a member-owned not-for-profit electric cooperative that was

7 formed in 1940 by leaders in the community to provide central station electric

8 service to themselves since they lived in areas that other utilities chose not to

9 serve. CHELCO began delivering power to its members in the summer of 1941

10 and has provided electric service ever since. Presently, we serve members in

11 Walton, Okaloosa, Holmes and Santa Rosa Counties. Our headquarters are in

12 DeFuniak Springs, and we also have six (6) area offices to serve our members.

13 **Q. WHAT IS AN ELECTRIC COOPERATIVE?**

14 A. An electric cooperative is a member-owned utility operated on a non-profit

15 basis for the mutual benefit of its members. It is this mutual benefit that

16 differentiates electric cooperatives from other electric utilities and drives our

17 strategic direction. Instead of charging customers for service based upon a stated

18 rate of return, electric cooperatives charge rates that recover costs and provide a

19 reasonable margin for future contingencies. Electric cooperatives invest their

20 capital into infrastructure that produces the lowest cost to all its members, as

21 opposed to investing capital into infrastructure that maximizes the return to

22 stockholders, as other utilities may.

1 **Q. HOW DO YOU ACHIEVE THIS MANDATE OF MUTUAL BENEFIT?**

2 A. Through being good stewards of our members' resources – by maximizing their
3 investment in infrastructure by achieving the lowest cost service.

4 **Q. HOW DOES THIS OBLIGATION TO PROVIDE MUTUAL BENEFIT**
5 **RELATE TO THIS DISPUTE?**

6 A. Our members have made an investment to serve this area, and we filed this
7 dispute in an effort to protect that investment.

8 **Q. HOW WOULD GULF POWER COMPANY BEING ALLOWED TO**
9 **SERVE THIS AREA HURT THE MEMBERS' INVESTMENT?**

10 A. CHELCO has made a substantial investment in serving electric consumers in
11 the Freedom Walk Development area for the previous 60 years. The area has
12 low customer density yet CHELCO provided service when no other electric
13 provider showed interest. Now, once a high density, high revenue development
14 is proposed, Gulf Power claims the right to displace CHELCO as the electric
15 provider in the area. Not only will CHELCO not be able to maximize the
16 investment in its current facilities, it will be precluded from taking advantage of
17 the higher customer density and higher revenue per capital investment return
18 that developments like Freedom Walk produce. In essence, CHELCO's other
19 members are precluded from the opportunity to average down the cost of service
20 from a high density area. If Gulf Power continues to claim the right to serve
21 future high density areas because they are "urban", then CHELCO's traditional
22 customers are relegated to always have a higher cost of service.

1 Q. HOW IS CHELCO GOVERNED?

2 A. The members elect a Board of Trustees to govern the Cooperative. Those
3 Trustees must be members of the Cooperative and they collectively set the basic
4 policies and strategic plans for the operation of the cooperative. As Chief
5 Executive Officer of CHELCO, I report to the Trustees. I have responsibility
6 for the day-to-day operation of the cooperative and make recommendations to
7 the Trustees on plans, policies, and budgets.

8 Q. HOW MANY MEMBERS DOES CHELCO HAVE?

9 A. 34,727

10 Q. YOU IDENTIFIED THE COUNTIES WHERE YOU SERVE. ARE YOU
11 THE ONLY PROVIDER OF ELECTRIC SERVICE IN THESE AREAS?

12 A. No, we are not. Other providers include Escambia River Electric Cooperative,
13 Gulf Coast Electric Cooperative, Gulf Power Company and West Florida
14 Electric Cooperative.

15 Q. HAVE YOU HAD OTHER FORMAL DISPUTES WITH ANY OF THOSE
16 OTHER PROVIDERS?

17 A. Only with Gulf Power.

18 Q. WHY ONLY GULF POWER?

19 A. We've always been able to resolve our disputes with others.

20 Q. HAVE YOU HAD ANY OTHER FORMAL DISPUTES BEFORE THE
21 PUBLIC SERVICE COMMISSION?

22 A. Yes. In August 1974, CHELCO filed a petition with the PSC involving a
23 dispute with Gulf Power over serving a tract of land that became known as

1 Bluewater Bay. The PSC issued a ruling in CHELCO's favor in November
2 1976. That initial ruling was confirmed by the FPSC and ultimately, the Florida
3 Supreme Court, upheld the PSC's findings by denying Gulf Power's Petition for
4 writ of certiorari.

5 **Q. DO YOU HAVE ANY TERRITORIAL AGREEMENTS WITH ANY OF**
6 **THESE OTHER PROVIDERS?**

7 A. Yes. We have one (1) with Gulf Power

8 **Q. COULD YOU DESCRIBE THAT AGREEMENT?**

9 A. Yes. In June 2000, CHELCO and Gulf Power entered into an agreement with
10 respect to service areas in south Walton County. This agreement was filed with
11 and approved by the Commission in Docket No. 000805-EU.

12 **Q. DO YOU GENERATE THE POWER THAT YOU SELL TO YOUR**
13 **MEMBERS?**

14 A. No. We are not a generating utility. We obtain power from PowerSouth Energy
15 Cooperative through an agreement with them, and we distribute the power.

16 **Q. WHO IS POWERSOUTH?**

17 A. PowerSouth is a generation and transmission electric cooperative formed in
18 1941, formerly known as Alabama Electric Cooperative ("AEC"). CHELCO is
19 one of the twelve original members of PowerSouth. PowerSouth has a
20 generating capacity of more than 2000 megawatts and is rated A- by all three
21 major credit rating agencies.

1 Q. THIS DISPUTE INVOLVES A DEVELOPMENT KNOWN AS
2 FREEDOM WALK AND SERVICE TO THAT DEVELOPMENT AND
3 ULTIMATELY CONSUMERS WITHIN THAT DEVELOPMENT.
4 COULD YOU DESCRIBE WHERE FREEDOM WALK IS LOCATED?

5 A. Yes. The planned Freedom Walk development is on the north side of the City of
6 Crestview, approximately 1 mile west of Highway 85 North. The planned
7 development is bounded by Old Bethel Road, Jones Road and Normandy.
8 Exhibit LVG-1 shows the location of the planned development

9 Q. WHAT DOES CHELCO CONSIDER THE FREEDOM WALK
10 DEVELOPMENT TO BE?

11 A. We consider the development, and the area in dispute, to be the area depicted on
12 the development plat we received from the consultant for Freedom Walk. This
13 area is shown as an overlay to the property on Exhibit LVG-2.

14 Q. ARE YOU AWARE THAT GULF POWER DOES NOT CONSIDER THE
15 AREA SOUTH OF OLD BETHEL THAT IS NOT WITHIN THE CITY
16 TO BE PART OF THE FREEDOM WALK DEVELOPMENT?

17 A. I am. We believe the plat given to us by the developer's consultant is the
18 appropriate reference on this matter.

19 Q. IS THE PLANNED FREEDOM WALK DEVELOPMENT WITHIN THE
20 CITY LIMITS OF CRESTVIEW?

21 A. Part of it is, and part of it is not.

22 Q. WHEN WAS THE PORTION WITHIN THE CITY LIMITS ANNEXED?

23 A. April, 2006.

1 Q. DO YOU SERVE MEMBERS IN THE AREA PLANNED FOR THE
2 FREEDOM WALK DEVELOPMENT?

3 A. Yes.

4 Q. ARE THESE MEMBERS WITHIN THE CITY LIMITS?

5 A. Not at the present time.

6 Q. DO YOU SERVE MEMBERS WITHIN THE CRESTVIEW CITY
7 LIMITS?

8 A. Yes, we do.

9 Q. WERE THEY IN THE CITY LIMITS WHEN YOU BEGAN SERVING
10 THEM?

11 A. As of today, CHELCO has active accounts at seven (7) locations within the
12 Crestview City Limits. Four (4) of those locations were being served prior to
13 annexation; three (3) locations have received service since annexation.

14 Q. SINCE YOU HAVE MEMBERS NOW WITHIN THE CITY LIMITS, DO
15 YOU HAVE A FRANCHISE AGREEMENT WITH THE CITY?

16 A. Yes, we do. Exhibit LVG- 3 is a copy of that franchise.

17 Q. WHEN DID YOU BEGIN SERVING THIS AREA OF THE PLANNED
18 FREEDOM WALK DEVELOPMENT?

19 A. The first meter was set in 1965. We built a line to a home in the interior of the
20 property in 1967. I would add that CHELCO had a single-phase line along Old
21 Bethel Road in 1946 (which is the north boundary of the development), and a
22 single-phase line along Normandy Road on the west by 1967. The single phase

1 service along Old Bethel was upgraded to three-phase service sometime before
2 1983.

3 **Q. PRIOR TO THE DECISION TO DEVELOP FREEDOM WALK, HAD**
4 **GULF POWER MADE ANY ATTEMPT TO SERVE ANY CUSTOMERS**
5 **IN THE PROJECTED FREEDOM WALK DEVELOPMENT?**

6 A. Not to my knowledge.

7 **Q. COULD YOU DESCRIBE THE NATURE OF THE FREEDOM WALK**
8 **AREA?**

9 A. Yes. It is an undeveloped wooded tract. There are no roads other than trails on
10 the property. There are no water or sewer services on the property although
11 there are water lines along Old Bethel. Except for our lines on the property and
12 the service to the members we serve, there is no other electric utility service.

13 **Q. DO YOU HAVE ANY EXHIBITS DEMONSTRATING THE NATURE OF**
14 **THE PROPOSED FREEDOM WALK DEVELOPMENT AREA?**

15 A. Yes. Exhibit LVG-1 is an aerial view of Freedom Walk, and you can see it is
16 heavily wooded and rural in nature. Exhibit LVG-4 is a composite exhibit of
17 photographs of the property from the ground.

18 **Q. DO YOU HAVE LINES ON THE PROPERTY PLATTED AS FREEDOM**
19 **WALK?**

20 A. Yes, we also currently provide electricity to four services that are within the plat
21 of the development.

22 **Q. IS THE LINE TO THE CENTER OF THE PROPERTY STILL THERE?**

23 A. Yes.

1 Q. WOULD YOU USE THAT LINE TO SERVE FREEDOM WALK?

2 A. I would refer questions as to how we would serve the area to Mr. Avery.
3 However, I would simply state that we are not looking to move into an area new
4 to CHELCO; we are there now and we have had a presence on and around this
5 very property for 60 years.

6 Q. DO YOU SERVE MEMBERS IN THE GENERAL VICINITY OF THE
7 FREEDOM WALK PROPERTY, AND IF SO, HOW MANY?

8 A. Yes, we have 810 accounts within a one-mile radius and 139 active accounts
9 within a quarter of a mile of the property.

10 Q. ARE THESE WITHIN THE CITY LIMITS?

11 A. Some are and some are not.

12 Q. WHEN DID YOU FIRST LEARN OF PLANS TO DEVELOP THIS
13 PROPERTY?

14 A. I believe it was in early 2009.

15 Q. DID CHELCO HAVE ANY DISCUSSIONS WITH THE DEVELOPER
16 REGARDING THE SERVICE TO THE PROPERTY?

17 A. Yes, we did. Matthew Avery is more familiar with those discussions, and I
18 would refer questions to him.

19 Q. BUT THE DEVELOPER WAS AWARE OF YOUR PRESENCE IN THE
20 AREA?

21 A. Yes, I believe so.

1 Q. IS THERE A MONETARY INCENTIVE FOR THE DEVELOPER TO
2 CHOOSE GULF?

3 A. I don't know. Gulf Power Company has yet to provide their cost estimate.

4 Q. TYPICALLY, WOULD CHELCO AND GULF POWER'S COSTS TO A
5 DEVELOPER BE ABOUT THE SAME FOR CONSTRUCTION OF
6 FACILITIES WITHIN THE DEVELOPMENT?

7 A. Mr. Avery can address the construction that would be needed, but the costs to
8 build out the necessary facilities within the development should be generally the
9 same. There may be a difference in what the developer would pay the
10 respective utilities because of a difference in line extension policies.

11 Q. WHY WOULD THE LINE EXTENSION POLICY MAKE A
12 DIFFERENCE?

13 A. At CHELCO, our line extension policy is written with the intent of protecting
14 the membership from investing in developments upon which there is no—or
15 slow—return. We strive to be good stewards of our members' resources, so
16 consequently, the developer pays upfront costs, and receives a rebate as each lot
17 is developed. In this way, we protect the members from paying for the
18 infrastructure of an abandoned or minimally-occupied subdivision through
19 increased rates. Since we are owned by the members we serve, our
20 responsibility and allegiance is toward them—the end users of our service—not
21 the developer.

22 Remember, CHELCO's goal is the mutual benefit of the members, not a
23 profit. To us this means providing reliable service at a competitive value,

1 something that is much more challenging to do when you have 11 members per
2 mile of line versus 55 ratepayers per mile of line. Consequently, CHELCO's
3 Line Extension Policy varies from Gulf Power's Line Extension Policy, since
4 they are guaranteed a rate of return and strive to provide value to stockholders.
5 In short, CHELCO charges the developer more for underground or electric
6 infrastructure cost which is not pooled and recovered from other CHELCO
7 members. Gulf Power, on the other hand, pays more of the up-front
8 infrastructure cost and does not charge the ~~develop~~^{developer} those costs. Of course, the
9 developer likes that arrangement because it means less out-of-pocket
10 expenditures in the development that he will have to recover. However, all of
11 Gulf Power's other customers will suffer incrementally higher electric rates to
12 cover the costs the developer did not pay. I should also point out here that the
13 developer is not the electric customer at Freedom Walk. The people that buy the
14 lots and houses from the developer are the customers. Their interests may not be
15 served if the developer chooses to keep the reduced infrastructure costs as profit
16 on the development. The ultimate customers, who are not at all known now, may
17 well benefit, as well as all other Gulf Power customers, if the developer pays the
18 additional infrastructure costs.

19 **Q. WHEN DID YOU LEARN THAT GULF POWER INTENDED TO**
20 **SERVE FREEDOM WALK?**

21 **A.** At about the same time as we learned of the development.

1 Q. TO YOUR KNOWLEDGE, WAS GULF POWER AWARE THAT YOU
2 HAD SERVICE AND MEMBERS AT OR ON THE PROPERTY?

3 A. I believe so. Their responses to our discovery requests indicate they knew we
4 had service to the property (Exhibit LVG-5).

5 Q. PRIOR TO FILING THIS PETITION, DID YOU COMMUNICATE
6 WITH GULF POWER REGARDING THE POTENTIAL DISPUTE?

7 A. Yes, we did. There were a series of phone calls, meetings, and letters, and we
8 did attempt to resolve the dispute, but with no resolution.

9 Q. YOU EARLIER TESTIFIED THAT YOU HAD A FORMAL DISPUTE
10 WITH GULF POWER IN 1976 AND NO OTHER FORMAL DISPUTES
11 UNTIL THIS ONE. WHY DID YOU FILE THIS DISPUTE?

12 A. Because Gulf Power is trying to move into an area we have been serving for
13 over 60 years. Until the planned development, Gulf was content with CHELCO
14 serving the area. But as soon the possibility of a development arose, they
15 showed interest in serving the area. CHELCO has made an investment to serve
16 consumers in many areas that Gulf chose not to serve. There is nothing that we
17 see in any rule or law that states that once a co-op is serving an area, and the
18 area is annexed into a city or becomes urbanized due to growth, that a
19 Cooperative must leave or be denied the right to serve future developments in
20 the area. As an example, four of the largest ten co-ops in the United States are in
21 Florida. They grew to their size as the areas grew. If those co-ops had to stop
22 serving their areas, the duplication of infrastructure and the cost of stranded
23 investment would be great. CHELCO develops its work plans with the

1 stewardship of our members' resources in mind. We rely on agencies like the
2 PSC to make sure that existing investments are protected from territorial threats
3 which will result in duplication of service and will adversely affect the rate
4 payers (our members).

5 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

6 **A. Yes.**

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

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} ~~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 ^{a consumer} ~~in their historic~~
 21 ~~service areas.~~ within a disputed area in the context
 of a territorial dispute when the cooperative
 prevails.

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.

SPANGENBERG

18 **Q. DR. HARPER AND MR. SPANGENBERG 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 ~~365.04(3)(b)~~^{365.04(2)(e)}. 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 un rebutted.

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.

1 BY MR. HORTON:

2 Q Do you have a summary of your testimony?

3 A Yes, I do.

4 Q Please give it.

5 A Good morning, Commissioners. I'd like to tell
6 CHELCO's story, who we are, what we do, why we filed
7 this petition, and why we believe we should prevail.

8 CHELCO is the sole utility to have made a
9 substantial capital investment in infrastructure to
10 provide electric service to the area in and around
11 Freedom Walk for the previous 60 years. Gulf Power has
12 only become interested in serving this area in dispute
13 since the planned development of Freedom Walk was
14 announced. Gulf Power's actions are in complete
15 contradiction to the lawful commonsense expectation that
16 CHELCO has in continuing to serve the Freedom Walk area
17 in which its members have substantially invested their
18 resources for the past 60 years.

19 CHELCO is a member-owned, not-for-profit
20 electric cooperative that was formed in 1940 by
21 community leaders to provide electric service to people
22 in areas Gulf Power chose not to serve. Our
23 headquarters are in DeFuniak Springs, and we presently
24 serve 35,000 members in four Florida counties. CHELCO
25 exists for the mutual benefit of our members and returns

1 excess margins to our members in the form of capital
2 credits. Consequently, our sole objective is to provide
3 reliable electric service at the lowest possible cost to
4 our members.

5 Given that objective, the elected board of
6 trustees, who are members themselves, and management of
7 CHELCO strive to be good stewards of the members'
8 resources by investing their capital into infrastructure
9 that produces the lowest cost to all members.

10 Additionally, CHELCO has an obligation to protect our
11 members' investments from being rendered uneconomic
12 because of the actions of other utilities.

13 CHELCO has made investments to serve electric
14 consumers in many areas that Gulf Power chose not to
15 serve because providing service to these areas with low
16 customer density was not efficient and increased the
17 average cost of service to their existing customers.
18 Again, Gulf Power's reluctance to serve in rural areas
19 is the singular reason why CHELCO was formed. Gulf
20 Power's failure to provide service is why CHELCO built a
21 single-phase line in 1946 along Old Bethel Road, which I
22 think was pretty rural at the time.

23 Old Bethel is the northern boundary of the
24 property being referred to as Freedom Walk. This line
25 was later upgraded to a three-phase facility to serve

1 CHELCO members in the area. CHELCO also built a
2 single-phase line adjacent to the western boundary of
3 Freedom Walk in 1967, the same year we built a line to a
4 home on the property that is being called Freedom Walk.
5 Gulf Power's lack of interest in serving this area is
6 also why CHELCO serves three members and four active
7 accounts on the property which is platted to be part of
8 the Freedom Walk development.

9 For decades CHELCO has served members on the
10 property being referred to as Freedom Walk, which was
11 clearly rural by any definition when we commenced
12 service there and is clearly rural in nature today,
13 despite partial annexation by the city of Crestview.
14 CHELCO's membership in the area has grown, and we have
15 expanded our facilities and made a good faith investment
16 to meet that load and anticipated load growth in the
17 area. Gulf Power's actions put that investment at risk.

18 Gulf Power only become interested in
19 displacing CHELCO as the electric service provider to
20 the area when a developer announced a high density
21 development on the property being referred to as Freedom
22 Walk under the pretext of a right of competition and
23 customer choice. However, there is nothing economic
24 about duplicating CHELCO's facilities currently serving
25 the area, preventing CHELCO's members from enjoying the

1 fruits of their 60-year investment or preventing CHELCO
2 from lowering its cost of service with a high density
3 service development.

4 Testimony of Gulf witnesses indicates that
5 Gulf Power actively engages in the practice of
6 appropriating areas served by other utilities when those
7 areas become more lucrative to serve. An integral part
8 of Gulf Power's activities is to preemptively obtain a
9 letter from the developer expressing a preference of
10 service from Gulf Power. Gulf Power uses that request
11 in an effort to trump all other factors, regardless of
12 the adverse economic impact to other parties.

13 If all other factors in this case were equal,
14 customer preference is a legitimate tiebreaker. But all
15 other criteria are decidedly not equal; they favor
16 CHELCO. Further, and very importantly, the Freedom Walk
17 developer will not be the ultimate customer on this
18 property, despite Gulf Power's efforts to portray him as
19 such.

20 Gulf Power's blatant raid, if successful, will
21 deprive CHELCO and its members from maximizing the
22 benefits and economies of scale derived from CHELCO's
23 investment in its electric facilities in the area that
24 were made in good faith. To condone Gulf Power's
25 actions would render system planning extremely difficult

1 and would give rise to increased uneconomic duplication
2 of electric facilities. A utility must have some
3 reasonable degree of certainty that its provision of
4 service to an area will be respected, not only by other
5 utilities but by the Commission. Such certainty allows
6 for adequate future planning and provides assurance that
7 capital investments will not be wasted as a result of
8 other utilities poaching more profitable service areas
9 and duplicating facilities to do so.

10 In conclusion, CHELCO has exclusively provided
11 service to the area now being referred to as Freedom
12 Walk for 60 years. And CHELCO has sufficient electric
13 distribution facilities to serve Freedom Walk today and
14 Gulf Power does not, and they acknowledge that fact.

15 Gulf Power knew of CHELCO's presence from the
16 beginning and raced to the developer to quickly stake
17 their claim. Gulf Power's service to Freedom Walk will
18 entail considerable duplication of existing CHELCO
19 facilities and require it to parallel and cross CHELCO
20 lines just to reach the point of service. To any
21 reasonable person, the fact that Gulf Power has to
22 extend lines almost one-half mile at a cost of \$90,000
23 and perform significant substation upgrades just to get
24 where we are now is an uneconomic duplication of
25 facilities. CHELCO did not know about the Freedom Walk

1 development when our lines were initially installed.
2 CHELCO was willing to provide service regardless of
3 density or profitability. Gulf Power was not and should
4 not be allowed now, after decades of disinterest, to
5 provide service to this area. CHELCO has facilities in
6 place to serve the full expected load of Freedom Walk
7 without having to spend any funds beyond those currently
8 planned and budgeted.

9 Finally, our members would derive significant
10 benefits from the addition of this new load. On behalf
11 of CHELCO's 35,000 members, thank you for the
12 opportunity to tell our story.

13 MR. HORTON: And Ms. Grantham is available for
14 cross.

15 CHAIRMAN GRAHAM: Let's start with FECA first,
16 and then we'll go to, to Gulf.

17 MR. WILLINGHAM: We don't have any questions.

18 CHAIRMAN GRAHAM: Okay. Gulf.

19 MR. GRIFFIN: Thank you, Mr. Chair.

20 CROSS EXAMINATION

21 BY MR. GRIFFIN:

22 Q Ms. Grantham --

23 A Yes.

24 Q -- good to see you again.

25 A Good to see you, Steve.

1 Q We're over here.

2 I assume you have your testimony with you?

3 A I do.

4 Q Okay. Let's start by turning to page 3 of
5 your direct testimony, please, ma'am.

6 A Okay. Just one second as I shuffle all these
7 papers around. I'm there.

8 Q Okay. I want to go to, specifically to lines
9 6 and 7 of page 3 there near, near the top. And you
10 state that, "Our members have made an investment to
11 serve this area, and we filed this dispute to protect
12 the investment." Correct?

13 A Correct.

14 Q And the investment that you're referring to
15 there is the three-phase distribution feeder that runs
16 along Old Bethel Road on the northern boundary of
17 Freedom Walk's property.

18 A That's a portion of the investment I'm
19 referring to.

20 Q Okay. And that line was upgraded sometime
21 before 1983; is that correct?

22 A That's correct.

23 Q It went from a, from a single-phase to a
24 three-phase?

25 A That's correct.

1 Q Okay. And since that upgrade in 1983, that
2 three-phase line has not only had sufficient capacity to
3 serve normal load growth in the area, but, according to
4 CHELCO, also the capacity to serve the Freedom Walk
5 development; is that correct?

6 A I'm going to defer that question to Mr. Avery,
7 but I believe that that line was upgraded also around
8 2006. The capacity was expanded.

9 Q Okay. Would it be fair to say that when
10 CHELCO built that line, it was uneconomic for CHELCO to
11 do so?

12 A I would say that it was a, a prudent
13 investment at that time, although the entire capacity
14 was not being utilized at that particular point.

15 Q Okay. Ms. Grantham, do you recall when I took
16 your deposition in this case?

17 A Yes, sir, I do.

18 Q Do you have a copy of that deposition
19 transcript with you?

20 A Yes, sir, I do.

21 Q Okay. I would ask you to turn to page 6,
22 please, ma'am.

23 A I'm there.

24 Q Okay. And specifically down there to line 19
25 on page 6. And we were engaged in a line of

1 questioning, and at that point I asked, "How are those
2 interests, how are CHELCO's interests in maximizing its
3 investment in the area any different than Gulf Power
4 Company in your view?" And you answered, "Well, it's
5 different because we were there 60 years ago. We built
6 to that area when it was uneconomic to do so, and our
7 members were willing to make that investment at that
8 time." Is that correct?

9 A Yes, sir.

10 Q Okay. Would you agree that when CHELCO made
11 that investment in its three-phase line, CHELCO took on
12 a certain degree of business risk that the excess
13 capacity in that line would not be utilized to its full,
14 to its fullest extent?

15 A Yes, sir, I would agree with that. But I
16 would also add that we had the reasonable expectation
17 that any load that came into that immediately adjacent
18 area would be served by CHELCO.

19 Q But there was no guarantee that when CHELCO
20 built that line that it would be able to use that line
21 to its fullest extent; is that correct?

22 A That's correct.

23 Q Okay. Let's turn to page 7, and specifically
24 lines 1 through 3, please, of your direct testimony.

25 A I'm there.

1 Q You're there?

2 A Uh-huh.

3 Q Okay. There you indicate that CHELCO serves
4 members in the area planned for the Freedom Walk
5 development; correct?

6 A Correct.

7 Q And the members to which you were referring
8 there are not located within the bold black lines on
9 Exhibit A to CHELCO's petition, are they?

10 A They're located on the development plat.

11 Q I understand that that's your position. But
12 in terms of whether they are located within the bold
13 black lines on CHELCO's petition, that is my question,
14 ma'am.

15 A No, sir, they are not. In fact, some of those
16 members who've made the investment in distribution
17 facilities and in substation facilities are in the area
18 certainly but not immediately on that property.

19 Q Okay. The three members that you are
20 referring to there in your testimony are located on what
21 Gulf has referred to in this case as the out parcels; is
22 that correct?

23 A Yes.

24 Q Okay. Does CHELCO presently serve anyone or
25 anything in the area that's encompassed by the bold

1 black line on CHELCO's petition on Exhibit A?

2 A No.

3 Q Okay. Please turn to page 8, line 18, of your
4 testimony.

5 A I'm there.

6 Q And there the question asked, "Do you have any
7 lines on the property platted as Freedom Walk?" And
8 your answer is, "Yes, we also currently provide
9 electricity to four services that are within the plat of
10 the development." Is that right?

11 A I'm sorry. Could you redirect me to the line?

12 Q Okay. It should be line 18, page 8.

13 A Yes.

14 Q Okay. And it says, "Do you have lines on the
15 property platted as Freedom Walk?" And you say, "Yes,
16 we also currently provide electricity to four services
17 that are within the plat of the development."

18 A I'm so sorry. I think I'm still on the
19 deposition. You said that's in my direct testimony?

20 Q This is, this is your direct testimony. Yes,
21 ma'am.

22 A Okay. I'm sorry.

23 Q I'm sorry.

24 A Yes, I'm there.

25 Q Okay. And there beginning at line 18, again

1 the question is asked, "Do you have lines on the
2 property platted as Freedom Walk?"

3 A Yes.

4 Q And your answer is, "Yes, we also currently
5 provide electricity to four services that are within the
6 plat of the development."

7 A Yes, sir.

8 Q Okay. Now you're aware, Ms. Grantham, that
9 there is no final approved plat for this development; is
10 that correct?

11 A Yes, sir.

12 Q Okay. And just to be clear, the four services
13 that you mentioned there in your testimony are on what
14 Gulf has characterized as the out parcels; is that
15 correct?

16 A Yes.

17 Q Okay. Thank you. Let's go now to lines
18 7 through 12 on that same page of your direct testimony,
19 page 8.

20 A Yes.

21 Q Okay. And there you describe the nature of
22 the Freedom Walk area as an undeveloped wooded tract;
23 correct?

24 A Yes, sir.

25 Q You would agree with me, Ms. Grantham, that as

1 framed by CHELCO's petition in this case, this dispute
2 is over a new development known as Freedom Walk, not an
3 undeveloped wooded tract; is that correct?

4 A I believe that, yes, but I do believe that in
5 that petition we also went on to describe the current
6 nature of the, of the property.

7 Q Okay. Thank you. Let's turn now to page 9 of
8 your direct testimony, and specifically to lines
9 3 through 5. And there in the middle of line 3 you say,
10 "we are not looking to move into a new -- into an area
11 new to CHELCO; we are there now and we've had a presence
12 on and around this property for 60 years." Is that
13 correct?

14 A Yes, sir.

15 Q Okay. Are you aware that Gulf Power has
16 provided continuous service within the city of Crestview
17 since 1928?

18 A Yes, sir, I am. In fact, one of our founders
19 commented that in 1940 they couldn't -- he was actually
20 the county agent of the, of Okaloosa County. He stated
21 they couldn't get Gulf Power to build lines a quarter
22 mile outside of the city limits to serve the largest
23 farmers.

24 Q Okay. And, in fact, a number of the customers
25 that Gulf Power has served within the city of Crestview

1 since 1928 are in the immediate vicinity of Freedom
2 Walk, are they not?

3 A Please reask the question.

4 Q And, in fact, a number of those customers are
5 located within the immediate area of Freedom Walk; is
6 that correct?

7 A I disagree with that. I have no information
8 that would confirm that.

9 Q Okay. I'm going to direct you back to page 39
10 of your deposition, please, and specifically to line 10.
11 And there I asked, "Have you," and it should be are you,
12 "aware that Gulf Power has continuously served the city
13 of Crestview since 1968?" But that's a typo. That
14 should be 1928. And you indicate, "Yes." And, in
15 fact -- and then my next question was, "And, in fact, a
16 number of those customers are located within the
17 immediate Freedom Walk area; is that not correct?" And
18 you say, "Yes, sir."

19 A Yes, sir. So you're talking about currently,
20 not in 1928?

21 Q That's correct.

22 A Okay. I'm sorry. I misunderstood your
23 question. Yes, there are -- I wouldn't say in the
24 immediate vicinity, but in the vicinity.

25 Q Okay.

1 A With the exception of the service that's the
2 single service to the southern area of the property.

3 Q Okay.

4 A Or about 30 feet off the southern boundary, I
5 believe.

6 Q Right. And one of those customers would be
7 the Davidson Middle School that is located approximately
8 2,130 feet from the development; right?

9 A Yes, sir. And I would just say at this
10 juncture that at, at the time that school was built, we
11 gave great consideration about whether we should object
12 to Gulf Power serving that particular load because we
13 had lines immediately across the street and were
14 probably closer than Gulf, but we chose not to at that
15 time. So when this particular issue came up that we're
16 here for today, we could not let it pass again.

17 Q Okay. And in addition to the Davidson Middle
18 School, Gulf Power also serves the Crestview High School
19 in that vicinity; correct?

20 A Yes, they do.

21 Q Okay. And as you just mentioned, Gulf Power
22 also serves a customer that's located immediately
23 adjacent to the southeastern boundary of the
24 development; is that correct?

25 A That's correct. And I would restate that

1 CHELCO built the line along Old Bethel Road in 1946.
2 And it was a full nine years before Gulf Power
3 established service to the residents that you speak of
4 and many decades later that the service to the high
5 school and Davidson Middle School came along.

6 Q Thank you.

7 MR. GRIFFIN: And, Mr. Chair, at this point
8 I'm asking very succinct yes or no questions, and I've
9 given Ms. Grantham some leeway to editorialize on some
10 of my questions. At this point I would ask that the
11 witness simply answer my questions with a yes or no to
12 the extent that's possible.

13 MR. HORTON: Well, Mr. Chairman, the witness
14 and the practice of this Commission has always been that
15 the witness is allowed to explain their answer, and
16 that's what Ms. Grantham has been doing. She's been
17 saying yes or no and giving an explanation, and I think
18 that's entirely reasonable.

19 CHAIRMAN GRAHAM: I'm going to sustain, excuse
20 me, sustain the objection. I was kind of wondering when
21 you were going to finally ask her to just answer the
22 question.

23 Ms. Grantham, if you would just answer the
24 question and not editorialize on past that.

25 THE WITNESS: Yes, sir.

1 BY MR. GRIFFIN:

2 Q Okay. Ms. Grantham, let's turn to page 11 of
3 your direct, please. And there at lines 12 through 13
4 you state that the developer is not the electric
5 customer at Freedom Walk; is that correct?

6 A I'm sorry. I must be on the wrong page again.
7 My direct testimony?

8 Q Yes, ma'am. It's page 11, lines 12 through
9 13.

10 A Yes.

11 Q And you say there, "I should also point out
12 here that the developer is not the electric customer at
13 Freedom Walk." Is that correct?

14 A Yes.

15 Q Okay. And from a practical perspective for
16 developments like Freedom Walk who is going to be
17 requesting initial service to that development? Is it
18 going to be the developer or is it going to be the
19 persons who ultimately reside within that development?

20 A The developer.

21 Q Okay. And would it be fair to say that that
22 developer is acting as an agent on behalf of those
23 ultimate end users?

24 A Yes.

25 Q Okay. Let's turn to your rebuttal testimony,

1 please, specifically to lines 18 through 20 on page 2.
2 And there you state, quote, CHELCO filed this petition
3 but Gulf created the dispute with its decision to
4 disregard CHELCO's existing facilities and service to
5 the area, and instead chose to engage in a race to the
6 developer. Correct?

7 A Yes.

8 Q And you mentioned this race to the developer
9 in your summary also, did you not?

10 A Yes.

11 Q Okay. And my question for you is, just to be
12 clear, you do not have any personal knowledge of whether
13 a race to the developer occurred in this particular
14 case, do you?

15 A No.

16 Q Thank you. Let's turn to page 4, please, and
17 specifically lines 19 through 21. And there you state,
18 quote, In an earlier order, the Commission held that
19 cooperatives have an obligation to serve in their
20 historic service areas, close quote. Correct?

21 A Yes. I believe that was part of the testimony
22 that we -- I corrected here a moment ago.

23 Q Okay. And what was the correction? I'm
24 sorry. I must have missed that.

25 A It was to strike "in their historic service

1 areas," and to insert, "a consumer within a disputed
2 area in the context of a territorial dispute when the
3 cooperative prevails."

4 Q Okay. Well, with that, let's turn to page 5.

5 A Yes.

6 Q And there at the top of the page the question
7 asks, "Do you agree with Mr. Spangenberg's
8 characterization that Gulf Power's efforts to take the
9 Freedom Walk development is in the interest of 'fair and
10 effective competition?'" And your answer is, "No.
11 Utilities do not operate in a competitive environment."
12 Is that correct?

13 A Yes.

14 **MR. GRIFFIN:** Okay. I would like to provide
15 Ms. Grantham with a, with a document, if I could,
16 please, and just ask her to take a look at that. There
17 should be ten copies in that stack.

18 (Pause.)

19 **BY MR. GRIFFIN:**

20 Q Ms. Grantham, do you have a copy of that
21 document?

22 A No, I don't.

23 Q Not yet? Okay.

24 A Thank you.

25 Q And I'll represent to you that that is a copy

1 of the Public Service Commission's News Release for
2 today's hearing. Can you see that?

3 A Yes, sir.

4 Q Can you please read the highlighted language
5 there down at the bottom?

6 A "The PSC facilitates safe and reliable utility
7 services at fair prices for Florida's consumers. The
8 primary responsibilities including -- include setting
9 fair rates, encouraging competition, and monitoring for
10 safety and reliability."

11 Q Okay. Thank you. That's all I have on that
12 document.

13 I would like to ask a hypothetical
14 question, if I may. And to do that, we would like
15 to bring up the same aerial that I used during my,
16 my opening statement, and that is the aerial of the
17 Freedom Walk development.

18 Ms. Grantham, can you see that, or would
19 you like us to bring over -- we actually have a, a
20 board picture here that we can put on an easel.

21 A I believe I can see it. If not, if I may
22 reserve the right to ask for that. Oh, here we go.
23 Thank you. That's great. Thank you.

24 Q Okay. And it may be helpful for you if I can
25 just show you, I've got a laser pointer here, so this is

1 dangerous. I'm sorry, Commissioners. But I'm focusing
2 on this 30-acre parcel right here that's just to the
3 east of the Freedom Walk development. Okay?

4 A Yes.

5 Q And to the left of the D. Yeah. And in the
6 hypothetical I want you to suppose that the developer
7 was planning to build a 50-lot subdivision requiring
8 three-phase service on the 16 acres that abut the
9 Davidson Middle School there. And the Davidson Middle
10 School, I'll represent to you, is marked with that, that
11 letter D. So it would be the 16 acres to the east of
12 the Davidson Middle School. Do you follow me so far?
13 Okay.

14 A I'm sorry.

15 Q I just asked if you were following me so far?

16 A I am.

17 Q Okay. Thank you. Now would you consider that
18 to be CHELCO's planned service area?

19 A I would say that -- give me the proposed load
20 that was going to go on the property.

21 Q There is no proposed load. It would require a
22 three-phase service. It's a 50-lot development.

23 A I would say that that would depend. And the
24 courtesy that we've always tried to extend Gulf Power is
25 whoever is closer to the load serves the load.

1 Q Okay.

2 A So I think it depends on the nature of the
3 development itself.

4 Q So in your opinion in that case, depending on
5 the nature of the development, the developer could have
6 a choice between Gulf Power or CHELCO serving them?

7 A No, sir, that's not what I said. I said, you
8 know, the courtesy that we've ordinarily extended to
9 Gulf Power is whomever is closest to the, to the
10 development or the account would serve the load.

11 Q Okay. And what if the development was equal
12 distance between CHELCO's three-phase service there on
13 that road and Gulf Power's?

14 A I believe all the history is clear that if all
15 other things are equal, then the customer preference
16 rules, can be the tiebreaker.

17 Q Okay. Let's go to page 18 of your rebuttal
18 testimony, please.

19 A Yes. Excuse me. Could I ask that this be
20 removed at this time?

21 Q Sure.

22 A Some of my staff cannot see me now, and I'd
23 prefer that that be removed. Thank you.

24 (Easel relocated.)

25 Q Sure. Okay. Now there on page 18 of your

1 rebuttal, beginning on line 22 at the bottom of the page
2 and spanning over to the top of the next page, you state
3 as follows. "I have yet to see Gulf Power acknowledge
4 the fact that its service to Freedom Walk will entail
5 considerable duplication of existing facilities, or that
6 it will have to parallel and cross CHELCO's lines to
7 reach the point of service." Is that correct?

8 A Yes.

9 Q And I just want to be sure that we're clear as
10 to which CHELCO lines you were referring to there in
11 your testimony in terms of Gulf Power's crossing them.
12 You are not suggesting, are you, that Gulf Power would
13 have to cross CHELCO's three-phase line on Old Bethel to
14 provide service to the development, are you?

15 A Yes.

16 Q You are suggesting that?

17 A Yes.

18 Q Okay. And where would that --

19 A Actually there at the corner of Old Bethel and
20 Jones Road.

21 Q Old Bethel and Jones Road?

22 A Uh-huh.

23 Q Okay. Let's go to the, the next sentence on
24 page 19. That would be, that would be lines 2 and 3.

25 A Yes.

1 Q And you say, "To any reasonable person the
2 fact that Gulf Power has to extend lines just to get
3 where we are now is duplication of facilities."

4 A Yes.

5 Q And are you familiar with the section of
6 Chapter 366 that speaks to duplication of facilities?

7 A Yes.

8 Q Okay. And would that be Section 366.04(5)?

9 A Yes, I believe so.

10 Q Okay. Do you have it there in front of you?

11 A Yes, I do.

12 Q All right. And that section states, among
13 other things, that the Commission has jurisdiction over
14 the avoidance of further uneconomic duplication of
15 generation, transmission and distribution facilities; is
16 that correct?

17 A Yes.

18 Q Would you agree with me, Ms. Grantham, that
19 the inclusion of the word "uneconomic" before the word
20 "duplication" suggests that some amount of duplication
21 may be permissible?

22 A Yes.

23 Q And are you aware whether the Florida Supreme
24 Court has, in fact, ruled that to be the case?

25 A Yes.

1 Q Okay. One more line of questions that relates
2 to a second aerial photograph that we have, so
3 unfortunately we'll have to block you off for one more
4 second.

5 A You can leave it right there. If you'll just
6 turn it toward me a little more, that would be great.
7 Thank you.

8 **MR. GRIFFIN:** And, Commissioners, I think you
9 also have a .pdf version of this available to you. It's
10 the aerial of the Bluewater Bay development. That's a
11 --

12 **BY MR. GRIFFIN:**

13 Q Ms. Grantham, do you recognize the area
14 depicted on that photograph?

15 A Yes.

16 Q Okay. And what is that area?

17 A Bluewater Bay.

18 Q In your rebuttal testimony you, you offer your
19 opinion that Bluewater Bay is not a city, town, or any
20 other form of political subdivision; is that correct?

21 A Yes.

22 Q Is it your opinion that Bluewater Bay is not
23 presently urbanized?

24 A Yes.

25 Q Okay. Would you agree that Bluewater Bay is a

1 rather compactly settled area?

2 **A** Yes.

3 **MR. GRIFFIN:** Thank you. That's all the
4 questions that I have, ma'am.

5 **CHAIRMAN GRAHAM:** Staff.

6 **MR. JAEGER:** Staff has no questions, Chairman.

7 **CHAIRMAN GRAHAM:** To the Commission board, any
8 questions?

9 Mr. Horton?

10 **MR. HORTON:** I have no redirect.

11 **CHAIRMAN GRAHAM:** You wanted to move your --

12 **MR. HORTON:** I would move Exhibits 2 through
13 6.

14 **CHAIRMAN GRAHAM:** Let the record show Exhibits
15 2 through 6 are moved into the record.

16 (Exhibits 2, 3, 4, 5 and 6 admitted into the
17 record.)

18 **MR. EARLY:** Mr. Chairman, I'll be responsible
19 for CHELCO's next witness. Could I have about two
20 minutes --

21 **CHAIRMAN GRAHAM:** Sure.

22 **MR. EARLY:** -- and then come back? Thank you.

23 **CHAIRMAN GRAHAM:** We'll take a recess for
24 about three minutes. Make it five.

25 (Recess taken.)

1 Mr. Early.

2 MR. EARLY: Do we need to wait for Mr. Badders
3 to return?

4 MR. GRIFFIN: I'm sorry. No, we do not.

5 MR. EARLY: Okay. Thank you.

6 On behalf of CHELCO, we would call Matthew
7 Avery.

8 JONATHAN MATTHEW AVERY

9 was called as a witness on behalf of Choctawhatchee
10 Electric Cooperative, Inc., and, having been duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. EARLY:

14 Q Would you please state your name and address
15 for the record.

16 A Jonathan Matthew Avery, 1350 West Baldwin
17 Avenue, DeFuniak Springs, Florida 32435.

18 Q And, Mr. Avery, have you previously been sworn
19 in this proceeding?

20 A Yes, sir.

21 Q Okay. Have you prepared and prefiled direct
22 testimony in this docket consisting of 14 pages?

23 A Yes, sir.

24 Q And do you have any corrections to make to
25 your prefiled direct testimony at this time?

1 **A** Other than the changes in my supplemental
2 direct, no.

3 **Q** Okay. If I asked you the questions contained
4 in your direct testimony today, would your answers be
5 the same?

6 **A** With the changes reflected in my supplemental
7 direct, yes, they would.

8 **MR. EARLY:** Okay. Mr. Chairman, I request
9 that the prefiled direct testimony of Matthew Avery be
10 inserted into the record as though read.

11 **CHAIRMAN GRAHAM:** Let that testimony be
12 inserted into the record as though read.

13 **BY MR. EARLY:**

14 **Q** And, Mr. Avery, did you have any exhibits to
15 your direct?

16 **A** Yes, sir.

17 **Q** Okay. And how have those exhibits been
18 identified -- or, well, how were those exhibits
19 identified?

20 **A** They were identified as JMA-1 through JMA-6.

21 **Q** Okay.

22 **A** I believe they've --

23 **Q** And were those exhibits provided to you or
24 relied upon you, relied upon by you in preparing your
25 testimony?

1 A Yes, sir.

2 **MR. EARLY:** Okay. I would ask that, that
3 Mr. Avery's exhibits, which are identified as
4 JMA-1 through JMA-6 and appear on the Comprehensive
5 Exhibit List as Exhibits 7 through 12, be inserted into
6 the record, subject to cross.

7 **BY MR. EARLY:**

8 Q Mr. Avery, have you prepared and prefilled
9 supplemental direct testimony in this docket consisting
10 of four pages?

11 A Yes, sir.

12 Q Did the supplemental direct -- I'm sorry. Do
13 you have any corrections to make to your prefiled
14 supplemental direct testimony at this time?

15 A Yes, one change. On page 3, line 3, I
16 reference an Exhibit JMA-7. There is no JMA-7 exhibit.
17 Well, I guess no JMA-7 exhibit in the supplemental.

18 Q Okay. If I were to ask you the questions
19 contained in your supplemental direct testimony today,
20 would your answers be the same?

21 A Yes, they would.

22 **MR. EARLY:** Okay. Mr. Chairman, I would ask
23 that the prefiled supplemental direct testimony of
24 Matthew Avery be inserted into the record as though
25 read.

1 **CHAIRMAN GRAHAM:** Let's have it inserted into
2 the record as though read.

3 **BY MR. EARLY:**

4 **Q** Mr. Avery, have you prepared and prefiled
5 rebuttal testimony in this docket consisting of 14
6 pages?

7 **A** Yes, sir.

8 **Q** Do you have any corrections to make to your
9 prefiled rebuttal testimony at this time?

10 **A** No, I do not.

11 **Q** If I asked you the questions contained in your
12 rebuttal testimony, prefiled rebuttal testimony, would
13 your answers be the same?

14 **A** Yes.

15 **MR. EARLY:** Okay. Mr. Chairman, I would ask
16 that Mr. Matthew Avery's prefiled rebuttal testimony be
17 inserted into the record as though read.

18 **CHAIRMAN GRAHAM:** Let that be inserted into
19 the record as though read.

20 **BY MR. EARLY:**

21 **Q** Okay. Mr. Avery, did you have any exhibits to
22 your rebuttal testimony?

23 **A** Yes. That has been identified as JMA-7.

24 **Q** Okay. Was that exhibit provided to you or
25 relied upon you, by you in preparing your testimony?

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A Yes.

MR. EARLY: Okay. Mr. Chairman, I would ask that Exhibit JMA-7, which has been marked on the Comprehensive Exhibit List as CHELCO Exhibit 13, be admitted into the record, subject to cross.

DOCKET 100304-EU
DIRECT TESTIMONY OF
JONATHAN MATTHEW AVERY
ON BEHALF OF CHOCTAWHATCHEE ELECTRIC COOPERATIVE, INC.

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

2 A. Jonathan Matthew Avery and my business address is 1350 West Baldwin
3 Avenue, DeFuniak Springs, FL 32435

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

5 A. I am the Vice President of Engineering for Choctawhatchee Electric
6 Cooperative, Inc. (CHELCO).

7 **Q. WHAT ARE YOUR RESPONSIBILITIES WITH CHELCO?**

8 A. I provide the technical expertise relied upon to develop and implement the
9 planning, design, construction and maintenance work plans for CHELCO's
10 electrical distribution system. I am responsible for meeting the economic and
11 reliability guidelines of the cooperative. I am also responsible for leading the
12 engineering department, which involves multiple areas of specialties.

13 **Q. CAN YOU DESCRIBE YOUR BACKGROUND AND EXPERIENCE?**

14 A. I graduated from Auburn University in 1995 with a degree in electrical
15 engineering and I am a registered professional engineer in the states of Florida
16 and Alabama. I also completed the University of Wisconsin/National Rural
17 Electric Cooperative Association's Management Internship Program. My
18 background includes experience in telecommunications design and engineering,
19 electrical design and engineering, engineering and sales consulting, and sales

1 and marketing in the residential and commercial construction industry. I have
2 management experience in engineering, operations marketing, and sales. I have
3 experience in regulatory compliance, customer service, and training of
4 personnel.

5 **Q. ARE YOU FAMILIAR WITH THE LOCATION AND DESCRIPTION**
6 **OF THE FREEDOM WALK DEVELOPMENT?**

7 A. Yes. Exhibits LVG-1 and LVG-2 attached to Ms. Grantham's testimony
8 depict the location.

9 **Q. DOES CHELCO CURRENTLY SERVE MEMBERS WITHIN THE**
10 **FREEDOM WALK DEVELOPMENT?**

11 A. Yes, CHELCO currently serves three members which represent four active
12 residential accounts within the developer's designated boundary of Freedom
13 Walk. The peak load used by those existing accounts is 53 KW.

14 **Q. WHEN DID YOU FIRST PROVIDE SERVICE TO MEMBERS ON THE**
15 **PROPERTY?**

16 A. Based on our Customer Information System (CIS), January 19, 1965 was the
17 date the first meter was set within the developer's designated boundary of
18 Freedom Walk. The four existing accounts on the property came in after that
19 date.

20 **Q. WOULD YOU DESCRIBE THE SERVICE YOU NOW PROVIDE AND**
21 **THE FACILITIES IN PLACE TO PROVIDE THAT SERVICE?**

22 A. Yes. All of the service in the area now is residential. The services are all single
23 phase services that are fed from CHELCO's 3 phase power line on Old Bethel

1 Road. This three phase line that serves the Freedom Walk development,
2 originates at the Auburn substation which is 3 miles north of the development.
3 Exhibit JMA-1 shows the location of our existing lines.

4 **Q. TO BE CLEAR, WHEN YOU SAY YOU SERVE MEMBERS WITHIN**
5 **THE FREEDOM WALK DEVELOPMENT, WOULD THESE MEMBERS**
6 **BE CONSIDERED FREEDOM WALK RESIDENTS NOW?**

7 A. No. Freedom Walk has not been developed yet and there is still a lot of work to
8 be done by the developer before anyone can move into a house in Freedom
9 Walk. The members we currently serve reside and take service from CHELCO
10 on property shown to be part of the development.

11 **Q. IF YOU DO NOT PREVAIL IN THIS PROCEEDING, WOULD YOU**
12 **CONTINUE TO SERVE THESE MEMBERS?**

13 A. If the development is constructed as depicted on the plat as reflected on Exhibit
14 JMA-1, and the rights to serve in our existing service area are given over to
15 Gulf, CHELCO would be forced to remove our facilities and have members
16 taken from us.

17 **Q. HOW LONG HAVE YOU HAD LINES TO OR ON THE FREEDOM**
18 **WALK DEVELOPMENT?**

19 A. Since 1946. By that time, CHELCO had a 1ph line along Old Bethel Road in
20 front of the Freedom Walk development. That line served, among others, a
21 customer located in the middle of the Freedom Walk property. The poles and
22 line are still there. By 1967, CHELCO had run a 1ph line along Normandy
23 Road to the west of the Freedom Walk development. In addition, CHELCO has

1 a recorded utility easement that extends into the property from the western
2 boundary of the Freedom Walk development. By 1983, CHELCO completed a
3 planned upgrade and extension of a 3ph line to the area along Old Bethel in
4 front of the Freedom Walk development.

5 **Q. DO YOU CURRENTLY PROVIDE SERVICE TO MEMBERS IN THE**
6 **GENERAL VICINITY OF FREEDOM WALK?**

7 A. Yes. We currently serve members immediately adjacent to the north and west of
8 the Freedom Walk development. We serve 139 active accounts within ¼ mile
9 of the boundary of Freedom Walk. See Exhibit JMA-2.

10 **Q. YOU MENTION THE AUBURN SUBSTATION. IS THAT THE**
11 **SUBSTATION THAT WOULD BE USED TO SERVE FREEDOM**
12 **WALK?**

13 A. Yes. CHELCO's Auburn substation currently serves the members on the
14 Freedom Walk development site and members around the development, and
15 would be used to serve the development. The Auburn substation is capable of
16 serving the current and anticipated future load in the area. Like most
17 substations, the Auburn substation can be upgraded to handle additional load as
18 needed to adequately serve the current and future needs of the area, and such
19 upgrades are a part of CHELCO's normal and routine business practices.

20 **Q. WHAT IS THE AVERAGE MONTHLY PEAK LOAD OF THE AUBURN**
21 **SUBSTATION AND MAXIMUM LOAD IT CAN HANDLE?**

22 A. The average monthly peak, in 2010, was 14.1 MVA. The maximum planning
23 load the Auburn substation can currently handle is 20 MVA during the summer

1 and 24.8 MVA during the winter. This substation can be upgraded to serve
2 additional load if and when required.

3 **Q. HAS CHELCO HAD ANY CONVERSATIONS WITH THE**
4 **DEVELOPER AS TO THE SERVICES AND LOADS THAT WOULD BE**
5 **NEEDED FOR THE MEMBERS IN THE DEVELOPMENT?**

6 A. Yes. There have been a few conversations between Mike Kapotsy, CHELCO's
7 Supervisor of Engineering Services, and the developer.

8 **Q. WHAT INFORMATION WAS PROVIDED TO YOU BY THE**
9 **DEVELOPER?**

10 A. We received a copy of the proposed plat that the developer has identified as the
11 Freedom Walk development. The plat we were provided showed there might be
12 some commercial load and potentially a YMCA, but the developer did not give
13 us any load information for the commercial sites.

14 **Q. WHAT ABOUT THE RESIDENTIAL SERVICE? DID YOU GET**
15 **DETAILS ABOUT THAT?**

16 A. In part, yes. We received some information from the developer himself, and
17 supplemented that information by simply counting the lots on the developer's
18 plat to develop a load number.

19 **Q. BASED ON THE INFORMATION PROVIDED YOU, HAVE YOU**
20 **PREPARED AN ANALYSIS OF ADDITIONAL PLANT AND**
21 **FACILITIES THAT WOULD BE NEEDED TO SERVE THE**
22 **ANTICIPATED LOAD IN FREEDOM WALK?**

23 A. Yes. That is shown in exhibits attached to the testimony of Ms. Sullivan.

1 **Q. WHAT WAS THE SOURCE OR BASIS FOR THE PROJECTIONS YOU**
2 **USED TO DEVELOP THE ADDITIONAL PLANT?**

3 A. As I said, we did not have specific information from the developer as to any of
4 the total load since the developer was not prepared to provide us with
5 commercial load information. We added a minimal amount of commercial load
6 to the projected residential load to determine the total load of the development.
7 We projected 3.56 MW of residential load, based on 0.65 primary amps per unit.
8 We then added 35 meter points, at 0.65 primary amps each (total 138 kva), for
9 the commercial load. We had a general expectation that if the development
10 actually built out, the commercial load could be greater. However, since we
11 were not provided with actual commercial load data, we opted to not include it
12 in our total load estimate.

13 **Q. DO YOU HAVE MECHANISMS TO ADDRESS NORMAL GROWTH**
14 **RELATED SERVICE DEMANDS LIKE THOSE PRESENTED BY**
15 **FREEDOM WALK AND SIMILAR TYPES OF DEVELOPMENT AND**
16 **CONSRUCTION?**

17 A. Yes. We are a responsible provider, and as such must project for growth and
18 development in our service areas. By having certainty in our growth
19 projections, we can plan for investment and availability of resources to ensure
20 that service is available to meet the needs not only of our existing members, but
21 of those wishing to invest and build in areas we serve. We routinely prepare
22 Construction Work Plans (CWP) to help us plan for the anticipated growth of
23 the distribution system. CWPs help us ensure we are prepared to provide

1 adequate and dependable service to our members. Such CWP's underscore the
2 importance of having economic and territorial certainty regarding our continued
3 ability to serve areas into which facilities and services have been and are
4 provided, and for which CHELCO has projected as a growth area. As discussed
5 herein, if the built-out commercial load exceeds the admittedly small amount we
6 projected, the implementation of our current CWP's, along with upgrades that
7 would be consistent with current growth and upgrade projections, will be
8 sufficient to serve the developer's commercial load requirements.

9 **Q. SINCE YOU PREPARED THIS ANALYSIS, HAVE YOU FOUND IT**
10 **APPROPRIATE TO REVISE YOUR ESTIMATE OF PLANNED LOAD**
11 **FOR FREEDOM WALK?**

12 **A.** After reviewing the information Gulf Power provided in response to CHELCO's
13 First Request for Production of Documents, I would add additional commercial
14 load for Freedom Walk. It appears Gulf was able to acquire more information
15 from the developer regarding the commercial aspect of the development. Gulf
16 included 1.1 MW for commercial load. If I add this amount to our residential
17 projections the total load for the development is approximately 4.7 MW. That
18 projected load can be served from the Auburn south circuit. As will be
19 discussed herein, we have the capacity to serve the projected residential load
20 with a minimal change to our existing CWP schedule. To serve the additional
21 1.1 MW commercial projection, we would have to do the following (which is
22 also discussed in Nicole's testimony):

23 1) Complete CWP project 300-RU10-01 in 2011 instead of 2014.

1 2) Complete CWP capacitor placement recommendations for Auburn circuit 03
2 in 2011.

3 3) Switch approximately 1,255 kW of load along Hwy 85 from Auburn Sub
4 circuit 01 and 02 to Laurel Hill Sub circuit 03.

5 4) After this load swap, install a set of voltage regulators at the intersection of
6 Senterfitt Rd. & Springcreek Dr.

7 5) Add additional system capacity to the area (i.e., upgraded power transformer
8 at Auburn sub or add a second bank, or add a new delivery point).

9 6) If a second bank is added at Auburn sub or the transformer is upgraded,
10 then add another circuit that feeds south of the substation. This will relieve the
11 loading on Auburn circuit 03, the circuit breaker and the lowside buswork.

12 7) Additional capacitors and/or voltage regulators may need to be added,
13 but can be evaluated later.

14 Those additional steps are not unusual in the normal pattern of planned system
15 upgrades.

16 **Q. EXPLAIN HOW SERVICE TO FREEDOM WALK WILL BE**
17 **PROVIDED FROM THE AUBURN SUBSTATION?**

18 A. The existing feeder from the Auburn substation south circuit extends south
19 along Hwy 85, turns west on Phil Tyner Road, turns south on Roberts Road and
20 then turns west on Old Bethel Road along the north boundary of Freedom Walk.

21 **Q. WILL YOU PROVIDE SERVICE USING A LOOP FED SYSTEM OR A**
22 **RADIAL SYSTEM?**

1 A. We will be using a loop fed system. While there is only one feeder serving the
2 area in and around Freedom Walk, the 3ph line on Old Bethel Road is a looped
3 3ph line.

4 **Q. ARE THERE ADVANTAGES TO USING A LOOP FED SYSTEM?**

5 A. Based on my experience, a loop-fed system provides greater system reliability
6 than does the radial system. With a loop-fed system, major service outages can
7 be restored faster because the loop-fed system provides multiple options for
8 restoration of power, resulting in minimizing interruption of power to any
9 member(s) affected.

10 **Q: WILL YOU NEED TO ACQUIRE ANY ADDITIONAL EASEMENTS OR**
11 **FRANCHISES FOR THIS SERVICE?**

12 A. Since we have service on and abutting the Freedom Walk development we
13 would not need any additional easements or franchises to get to the property.
14 We would require the developer to provide us an easement for all facilities
15 within the development.

16
17 **Q. IS IT CHELCO'S PLAN TO PROVIDE SERVICE TO FREEDOM**
18 **WALK USING EXISTING FACILITIES?**

19 A. Yes. Freedom Walk will not develop to full build-out overnight. In fact, it will
20 most likely be years before the development is completed. CHELCO can serve
21 all reasonably projected needs of the development today without any additional
22 construction needed to extend service to the development. As the demand
23 increases with build-out, we will have to upgrade our Auburn south circuit and

1 potentially upgrade the Auburn substation. If the full build-out load is 3.7 MW,
2 we can meet the demand with our scheduled 2014 upgrade. If the build-out
3 occurs over normal a period of time, the load can be met under the current 2014
4 upgrade plan. If the load is greater, or construction to build-out proceeds at a
5 faster pace, we would proceed by moving a planned upgrade forward from 2014
6 to whenever the job is required, and with the other upgrades previously
7 discussed as the load dictated. However, as stated earlier, CHELCO, as is the
8 case with most utilities, routinely plans for growth and upgrades to its physical
9 plant and facilities. The upgrades discussed herein are not unusual in the normal
10 pattern of planned upgrades.

11 **Q. OTHER THAN THE BUILD OUT WITHIN THE FREEDOM WALK**
12 **DEVELOPMENT, WOULD CHELCO HAVE TO EXPAND ITS**
13 **EXISTING FACILITIES TO SERVE THE FIRST CUSTOMER**
14 **RESIDING WITHIN THE FREEDOM WALK DEVELOPMENT?**

15 A. No. We can provide reliable service to that member now from our existing
16 facilities.

17 **Q. YOU ARE FAMILIAR WITH THE RECOMMENDATIONS FROM**
18 **PATTERSON & DEWAR ENGINEERS, INC. AS TO THE UPGRADES**
19 **TO YOUR SYSTEM TO SERVE FREEDOM WALK?**

20 A. Yes, I am. I worked closely with Patterson & Dewar Engineers, Inc. on this
21 project.

22 **Q. DO YOU PLAN ANY UPGRADES TO YOUR SYSTEM THAT WOULD**
23 **SERVE FREEDOM WALK AND THE VICINITY?**

1 A. Yes, we do. Our CWP projects an upgrade project in 2014 to serve projected
2 growth in the area. If Freedom Walk starts construction immediately, we have
3 the present ability to expedite that upgrade project when required to meet
4 Freedom Walk's service requirements.

5 **Q. IF GULF PREVAILS IN THIS DOCKET, WOULD YOU MAKE THOSE**
6 **UPGRADES?**

7 A. We intend to serve our present and future members in the area. Our system
8 planning has been based on service to current members in the area and to handle
9 reasonably expected growth. Our planned upgrades included an expectation of
10 growth in the area. We have a sizeable investment in the area, so my expectation
11 is that we would continue with our current upgrade schedule. However, if Gulf
12 prevails and we are prevented from serving this development that is squarely in
13 our existing and planned service area, our schedule and projections could be
14 changed.

15 **Q. FREEDOM WALK IS LARGELY UNDEVELOPED PROPERTY. IN**
16 **ADDITION TO THE FACILITIES USED TO PROVIDE SERVICE TO**
17 **THE CHELCO MEMBERS ON THE FREEDOM WALK PROPERTY AS**
18 **DISCUSSED EARLIER, ARE THERE OTHER FACILITIES FOR**
19 **ELECTRIC SERVICE ON THE PROPERTY?**

20 A. Yes. CHELCO has a 1ph line that extends well into the interior of the property.
21 See Exhibit JMA-3.

22 **Q. WHAT FACILITIES WOULD HAVE TO BE INSTALLED ON**
23 **FREEDOM WALK TO SERVE MEMBERS?**

1 A. Distribution facilities within the development would need to be installed to
2 include cable, conduit, transformers, switchgear, pedestals, etc. Such individual
3 customer distribution facilities will have to be constructed regardless of the
4 outcome of this territorial dispute.

5 **Q. WOULD THOSE LINES BE UNDERGROUND?**

6 A. Yes.

7 **Q. WHO WOULD BE RESPONSIBLE FOR THESE ADDITIONS?**

8 A. CHELCO would install the facilities. However, the developer does have the
9 option to install the conduit.

10 **Q. DO YOU HAVE AN ANALYSIS OF THOSE COSTS?**

11 A. Yes. The cost estimate has already been provided to the developer. See Exhibit
12 JMA-4.

13 **Q. HOW ARE THOSE COSTS DETERMINED?**

14 A. The cost is based on CHELCO's Line Extension Policy, approved by the FPSC.
15 A copy of that is attached as Exhibit JMA-5.

16 **Q. WOULD THE DEVELOPER RECOVER THOSE COSTS FROM
17 CHELCO?**

18 A. As the development builds out, the developer can recover the majority of the
19 upfront costs. That is reflected on Exhibit JMA-4.

20 **Q. YOU STATED PREVIOUSLY THAT CHELCO HAS HAD
21 CONVERSATIONS WITH THE DEVELOPER. TO YOUR
22 KNOWLEDGE IS THE DEVELOPER AWARE THAT YOU HAVE
23 SERVICE AT THE PROPERTY NOW?**

1 A. Yes.

2 **Q. HAS THE DEVELOPER EXPRESSED AN INTENT TO HAVE SERVICE**
3 **FROM YOU OR GULF?**

4 A. He has not expressed a preference to us, other than one related to price.

5 **Q. ARE YOU FAMILIAR WITH THE FACILITIES THAT GULF POWER**
6 **HAS IN THE GENERAL AREA OF FREEDOM WALK?**

7 A. Yes. Gulf Power has a 3ph line approximately 2100 feet to the east of the
8 development and a 1ph line within 30 feet of the development at the southeast
9 corner. The 1ph line could not be used to serve the development. Those are
10 shown on Exhibit JMA-1 and JMA-6 shows the location of the existing lines
11 relative to both parties.

12 **Q. WOULD GULF POWER HAVE TO EXTEND ITS LINES TO GET TO**
13 **FREEDOM WALK?**

14 A. Yes.

15 **Q. WOULD GULF POWER HAVE TO CROSS YOUR LINES OR**
16 **DUPLICATE ANY OF YOUR EXISTING FACILITIES TO GET TO**
17 **FREEDOM WALK**

18 A. Yes.

19 **Q. ARE YOU FAMILIAR WITH THE COST IN AID TO CONSTRUCTION**
20 **(CIAC) CHARGED TO MEMBERS FOR ELECTRIC SERVICE?**

21 A. Yes.

1 **Q. BASED ON YOUR CURRENT LINE EXTENSION POLICY, WHAT**
2 **WOULD A RESIDENTIAL MEMBER IN FREEDOM WALK PAY FOR**
3 **SERVICE?**

4 A. Unless there was an unusual circumstance, the member will pay nothing, \$0, in
5 CIAC for service to their home.

6 **Q. PLEASE SUMMARIZE YOUR TESTIMONY?**

7 A. CHELCO has a 3ph line at the northern boundary of Freedom Walk and 1ph line
8 along the western boundary and into the interior of the Freedom Walk property.
9 We will not have to build additional facilities to serve the development, except
10 for those new distribution facilities required within the development. As the
11 load grows, we will have to upgrade our facilities to serve the full build-out.
12 However, we can serve 3.7 MW without performing any additional work
13 beyond those projects already in our 2011-2014 CWP.

14 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

15 A. Yes.

DOCKET 100304-EU**SUPPLEMENTAL DIRECT TESTIMONY OF****JONATHAN MATTHEW AVERY****ON BEHALF OF CHOCTAWHATCHEE ELECTRIC COOPERATIVE, INC.**

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

2 A. Jonathan Matthew Avery 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 SUPPLEMENTAL DIRECT**
7 **TESTIMONY?**

8 A. The purpose of this testimony is to revise my prefiled direct testimony to
9 reflect changes made necessary because parts of that prefiled direct were
10 based on incorrect information.

11 **Q. PLEASE EXPLAIN THE INCORRECT INFORMATION AND HOW**
12 **IT WAS DISCOVERED.**

13 A. Initially we projected a load of 3700 kW associated with the Freedom Walk
14 development based on what we considered reasonable estimates based on the
15 information we had at the time. I still think this is a reasonable assumption
16 but when questions were raised about the load forecast I recalculated our
17 projections with addition of more load and used that updated projection in my
18 direct testimony.

1 **Q. WHAT WAS THE REVISED LOAD PROJECTION?**

2 A. 4700 kW upon full build out.

3 **Q. WHAT DID YOU DO WHEN YOU UPDATED YOUR**
4 **PROJECTIONS?**

5 A. We asked our consulting engineers, Patterson & Dewar Engineers, Inc. to run
6 a study similar to the one they performed for the 3700 kW load but using 4700
7 kW. They did this and my testimony was prepared using the results of that
8 study.

9 **Q. WHAT HAS CHANGED THAT NOW REQUIRES YOU TO FILE**
10 **THIS SUPPLEMENTAL TESTIMONY?**

11 A. One of the components used in the study was that the Auburn substation was
12 rated at 20 MVA and we subsequently learned the it was actually rated at 25
13 MVA.

14 **Q. IS THAT SIGNIFICANT?**

15 A. It is.

16 **Q. HOW WAS THIS DISCOVERED?**

17 A. In preparing rebuttal testimony and for depositions I was in contact with
18 Power South our generating and transmission provider and owner of the
19 Auburn substation, and it came out as a result of conversation with them.

20 **Q. DO YOU KNOW HOW THIS MISTAKE HAPPENED?**

21 A. No. I do not but shortly after we learned of it we notified Gulf Power and our
22 consulting engineers.

1 **Q. HAVE YOU VERIFIED THAT THE AUBURN SUBSTATION IS**
2 **RATED AT 25 MVA?**

3 A. I have and a picture of the plat is attached as Exhibit JMA-7.

4 **Q. WHAT REVISIONS TO YOUR TESTIMONY ARE REQUIRED AS A**
5 **RESULT OF THIS DISCOVERY?**

6 A. On page 4, line 22 and page 5, line 1, I said the maximum planning load the
7 Auburn substation can currently handle was 20 MVA during the summer and
8 24.8 MVA during the winter. It is actually 25 MVA in the summer and 31
9 MVA in the winter.

10 Beginning on page 7, line 23, and continuing through line 15 on page
11 8, I discuss what upgrades would need to be performed to serve Freedom
12 Walk if the load is 4700 kW. Those lines should be stricken and the following
13 inserted:

- 14 1) Complete CWP project 300-RU10-01 in 2011 instead of
15 2014.
- 16 2) Complete CWP capacitor placement recommendations for
17 Auburn circuit 03 in 2011.
- 18 3) On Auburn circuit 03, switch the single phase tap at Adams
19 Rd & Hwy 85 to Auburn circuit 02.
- 20 4) The lowside buswork and recloser at the Auburn Substation
21 should be monitored as load increases and at some point in the
22 future it will be necessary to evaluate ways to reduce the
23 loading on the lowside bus and recloser for Auburn circuit 03

1 should Freedom Walk development reach the estimated load of
2 4,700 kW.

3 5) Additional capacitors and/or voltage regulators may need to
4 be added, but can be evaluated later.

5 Those additional steps are not unusual in the normal pattern of
6 planned system upgrades.

7 On page 10, line 1; I say the Auburn substation potentially has to be upgraded.
8 The substation will not need to be upgraded given the substation transformer
9 is a 25 MVA unit.

10 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL DIRECT**
11 **TESTIMONY?**

12 **A. Yes.**

DOCKET 100304-EU
REBUTTAL TESTIMONY OF
JONATHAN MATTHEW AVERY
ON BEHALF OF CHOCTAWHATCHEE ELECTRIC COOPERATIVE, INC.

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

2 A. Jonathan Matthew Avery 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 statements made in the Direct Testimony of Gulf Power
8 witness Mr. Mike Feazell.

9 **Q. ON PAGE 5 OF HIS TESTIMONY, MR. FEAZELL ADDRESSES THE**
10 **NECESSARY FACILITIES FOR CHELCO TO PROVIDE SERVICE**
11 **TO FREEDOM WALK. DO YOU AGREE WITH HIS ASSESSMENTS?**

12 A. No. First of all, the question to Mr. Feazell uses the word “extend” and to be
13 clear, CHELCO would not have to extend any facilities to provide service to
14 Freedom Walk. We are there now, with three-phase service as Mr. Feazell
15 acknowledges. Secondly, the upgrades he references are not needed to
16 provide initial service to Freedom Walk. Project 300-RU10—01 (the 1.3 mile
17 conductor segment span), was planned to be completed regardless of the
18 specific load for Freedom Walk. The current 2011-2014 Construction Work

1 Plan calls for it to be constructed in 2014. It is not a problem, nor is it unusual
2 to accelerate the construction schedule as needs arise. That does not affect the
3 cost or the resources to construct the segment. Again, this project is in our
4 Construction Work Plan (CWP) and will be constructed whether CHELCO
5 serves Freedom Walk or not. This project should not be included in the cost
6 to serve the development.

7 **Q. MR. FEAZELL INCLUDES THE NORMANDY ROAD PROJECT IN**
8 **HIS ANALYSIS. IS THIS APPROPRIATE?**

9 A. No. Normandy Road runs along the western boundary of Freedom Walk and
10 CHELCO currently has a single phase line along that road. Because that line
11 is there, CHELCO has the ability to provide an additional feed into the
12 property from the western boundary. As the load grows, CHELCO could
13 upgrade the single phase line on Normandy to 3-phase to increase the
14 reliability of the service and provide a back feed to the development. That
15 upgrade would not be required to serve Freedom Walk, but is an option
16 available to CHELCO strictly to provide an additional safeguard and to ensure
17 reliable service in the event of unusual circumstances. That option is not
18 available to Gulf Power since they have no lines in the area. Since the
19 improvement to the Normandy Road line is not a requirement for CHELCO to
20 deliver adequate and reliable service to Freedom Walk, it would not be
21 appropriate to include that project in the cost to serve analysis.

1 **Q. ON PAGE 6 OF HIS TESTIMONY, MR. FEAZELL DISCUSSES THE**
2 **SDOC. WHAT IS THE SDOC?**

3 A. The System Design and Operating Criteria (SDOC) is primarily a planning
4 guideline, not a mandate for operations. The SDOC is used to plan for
5 projected upgrades on a reasonable schedule, and to help meet the minimum
6 standards of adequacy for voltages, thermal loading, safety and reliability on
7 the system. It allows us to look ahead to anticipate when components of the
8 system are expected to approach their operating capacities, and to plan for
9 upgrades to meet those contingencies. Generally, we try to identify facility
10 components that may be reviewed well in advance of their approaching 100%
11 of their operating capacity. I want to stress that the criteria given in the
12 SDOC are considered to be a guideline and not a mandate. Oftentimes system
13 conditions will occur which may exceed a specific planning criteria which
14 gives planners an indication that the facilities may need to be upgraded in the
15 future before they can exceed a specific operating criteria.

16 **Q. ON PAGES 6 AND 7 OF HIS TESTIMONY, MR. FEAZELL STATES**
17 **CHELCO WILL EXCEED THE SDOC RECOMMENDED CAPACITY**
18 **ON SEVERAL SECTIONS OF CONDUCTOR. DOES AN**
19 **EXCEEDANCE OF THE SDOC GUIDELINES COMPROMISE THE**
20 **SAFETY OR RELIABILITY OF THE FACILITY OR ITS**
21 **COMPONENTS?**

22 A. Again, the SDOC is a planning guideline or tool, not a mandate. We use the
23 SDOC to help plan for future load and growth in an area. The SDOC helps us

1 identify primary conductors that may need to be upgraded at some point in the
2 future. By identifying these line sections when they reach 60% to 75% of
3 their design load capacity, we can begin to evaluate whether facility upgrades
4 may be necessary in the future while there is still a surplus of capacity to
5 maintain adequate service to our members. The conductors are designed to
6 safely operate at 100% of their rated capacity, and should not fail under
7 normal circumstances when loaded to 80%, 90% or even 99% of capacity.
8 Depending on what the conductor is serving, whether the load in the area is
9 growing or not, whether the conductor is part of a feeder that is connected to
10 another feeder or not are all considerations that influence if the conductor
11 needs to be upgraded. Exceeding the SDOC planning criteria provides an
12 indication that the line segments should be watched and evaluated for possible
13 upgrades in the future. Mr. Feazell suggests that just because we are allowing
14 sections of conductor to exceed the SDOC that we cannot provide adequate
15 service. That is just not accurate.

16 **Q. AS MR. FEAZELL DESCRIBES THE SITUATION, IT SOUNDS AS IF**
17 **YOU WILL BE VIOLATING SOME STANDARDS OR**
18 **REQUIREMENTS. IS THIS CORRECT?**

19 **A.** No. As I said the SDOC is primarily a planning guideline or tool and that is
20 how we use it. It is our planning document and not one mandated or required
21 by any agency or standard. I have to believe most responsible utilities have a
22 similar tool that allows them to plan for upgrades well in advance of the time

1 their facilities approach capacity. Some wait until their load comes closer to
2 capacity; however CHELCO uses a very conservative number.

3 The SDOC recommends evaluating whether conductor should be
4 changed out when the conductor load is greater than 60% of operating
5 capacity in the summer and 75% in the winter. We evaluate power lines once
6 they reach the 60% and 75% loading because we like to have sufficient
7 capacity in reserve to provide the ability to back-feed when possible. If the
8 circuit is loaded more than 60% or 75%, it limits the option to back-feed in
9 high load times, but in no way does it compromise the ability or safety of the
10 lines to meet their intended load requirements.

11 In planning for projected conductor upgrades, we also consider other
12 factors. For example, regarding the Auburn South Circuit (03), this feeder
13 does not tie to another feeder and is not utilized to back-feed any other circuit.
14 Therefore, CHELCO will likely not plan for an upgrade when the circuit
15 reaches the summer 60% or winter 75% guideline, but will be allowed to get
16 closer to its operating capacity before a specific upgrade is planned. The
17 Auburn Substation Circuit 03 can be loaded more than the SDOC planning
18 recommendation because at the present time, it is not needed for back-feed
19 capability. Therefore, even though adding a full build out load of 4700 kW
20 will result in load to the system greater than the summer 60% or winter 75%
21 planning guideline, it is both safe and acceptable to operate that circuit at
22 loads up to and including 100% of the rated capacity.

1 As to our earlier discussions in which CHELCO considered moving
2 Project 300-RU10—01 (the 1.3 mile conductor segment span) up 3 years, we
3 have determined that to be unnecessary. That discussion was based on a full
4 increase of 4700 kW from Freedom Walk coming on line instantaneously.
5 CHELCO could handle that instantaneous load within the current CWP
6 merely by accelerating that one project. However, because a development
7 such as Freedom Walk cannot be built out overnight, CHELCO could provide
8 service to the projected load without any modification to the already planned
9 CWP projects.

10 **Q. ARE UPGRADES NEEDED TO HANDLE THE FULL PROJECTED**
11 **FREEDOM WALK 4700 kW LOAD?**

12 A. No, there would be no unplanned upgrades needed. If that load were to come
13 on tomorrow, the only needed upgrade to CHELCO facilities would be the
14 acceleration of existing Project 300-RU10—01 (the 1.3 mile conductor
15 segment span) from 2014 to 2011. Outside of the CWP projects already
16 planned, no other upgrades would be necessary. Given the more probable
17 Freedom Walk build out schedule, we will not need to alter any planned
18 project or schedule to meet the 4700 kW load. However, I would add that
19 once we upgrade the 394 AAAC conductor to the 741 AAAC conductor, as
20 already planned in our Construction Work Plan, we will have the ability to
21 serve the Freedom Walk development as well as other expected growth in the
22 area. As I've mentioned before, this upgrade was planned without including

1 load for Freedom Walk and is not being constructed just for the Freedom
2 Walk development.

3 **Q. WITH THAT ACKNOWLEDGMENT, WOULD CHELCO HAVE TO**
4 **UPGRADE OR BUILD A NEW SUBSTATION TO SERVE THE 4700**
5 **kW LOAD?**

6 A. Because the Auburn substation transformer is a 25 MVA unit, no substation
7 upgrades are required.

8 **Q. WILL THE LOWSIDE BUSWORK IN THE AUBURN SUBSTATION**
9 **NEED TO BE UPGRADED?**

10 A. No. Even if the Freedom Walk load reached 4700 kW tomorrow, it would not
11 be necessary to change out or upgrade the lowside buswork, switches or
12 breakers.

13 **Q. MR. FEAZELL REFERENCES THE RECOMMENDATIONS OF**
14 **PATTERSON & DEWAR ENGINEERS (P&D) IN HIS TESTIMONY.**
15 **WHAT WAS THE ROLE OF P&D IN THIS DOCKET?**

16 A. P & D is an engineering firm that provides consulting services to CHELCO
17 and a number of other cooperatives. Specifically for this docket, we asked P &
18 D to perform studies on the effects to the distribution system of the additional
19 load of Freedom Walk. Ms. Nicole Sullivan discusses those in her testimony.

1 **Q. WERE THE RECOMMENDATIONS FROM P&D BASED ON**
2 **SERVING THE FULL PROJECTED 4700 kW LOAD**
3 **IMMEDIATELY?**

4 A. Yes. Even though we do not believe that the full load will be there on the first
5 day, but will be phased in over several years, in order to approach our member
6 service responsibilities in the most conservative and prudent manner possible,
7 the study assumed full load immediately. Even under that extreme scenario,
8 the conclusions and recommendations demonstrate that CHELCO does not
9 have to make any upgrades to serve the load other than the acceleration of the
10 previously planned upgrade. If the 4700 kW load phases in over several
11 years, as most likely will occur, CHELCO would not need to make any
12 unscheduled upgrades.

13 **Q. HOW HAS GULF POWER INCORPORATED THE PROJECTED**
14 **LOAD ASSOCIATED WITH FREEDOM WALK IN THEIR**
15 **PLANNING?**

16 A. Gulf has not included Freedom Walk's projected load in its current planning
17 documents because, in Gulf's words, "the probability of Freedom Walk
18 developing has not yet reached a threshold where Gulf would begin to include
19 the anticipated load in its load studies." However, for purposes of responding
20 to the question, Gulf Power provided a table in which they begin slowly
21 phasing in the load beginning in 2012. By 2015, they project additional load
22 of only 3760 kW associated with Freedom Walk, which is less than the full
23 build out projection. With the addition of a phased in load, it appears that

1 Gulf's Airport Road substation will exceed its rated capacity with the addition
2 of 1880 kW from Freedom Walk in 2013.

3 It is interesting to note that earlier in this proceeding, CHELCO based
4 some projections on an anticipated load of 3700 kW by 2014. Gulf was
5 critical of CHELCO for failing to account for the full 4700 kW load, and
6 argued that CHELCO's service was deficient because it would have to move
7 its conductor upgrade from 2014 to 2011 to meet the full 4700 kW load.
8 However, now that Gulf has provided information, we have learned that Gulf
9 was planning only for 3760 kW by 2015, and has never planned out to
10 determine what steps it would have to take to be fully capable of meeting that
11 4700 kW load.

12 **Q. MR. FEAZELL ESTIMATES THAT THE COSTS ASSOCIATED**
13 **WITH THE PATTERSON & DEWAR ENGINEERS**
14 **RECOMMENDATIONS ASSOCIATED WITH THE 4700 kW LOAD**
15 **WOULD BE APPROXIMATELY \$1 MILLION. DO YOU AGREE?**

16 A. No. Mr. Feazell's testimony was based on the cost of performing substation
17 upgrades. As stated earlier in my rebuttal, the Auburn substation is rated at
18 25MVA, which is more than needed to serve Freedom Walk and other
19 anticipated load. There are no upgrades needed for the substation lowside
20 buswork, switches or breakers. Therefore, as I've previously testified, there
21 are no additional substation costs associated with serving the full 4700 kW
22 Freedom Walk load.

1 **Q. ON PAGE 9 MR. FEAZELL ADDRESSES THE CHELCO COSTS TO**
2 **PERFORM WHAT HE CONSIDERS TO BE REQUIRED UPGRADES.**
3 **DO YOU HAVE ANY RESPONSE TO HIS TESTIMONY?**

4 A. Yes. Upgrading the 394 AAAC segment of the feeder to 741 AAAC will be
5 performed whether Freedom Walk is served by CHELCO or not. That section
6 of line will be upgraded when the load demands it, but given the likely build
7 out we have determined that it will not be required in 2011. The upgrade is
8 not being planned just for Freedom Walk and the inclusion of this amount is
9 not proper until the load demands it, which is currently projected for 2014.
10 When that upgrade is performed, there will be sufficient reserve capacity to
11 serve projected loads well into the future. CHELCO will use this upgrade to
12 serve the Auburn South Circuit (Circuit 1003). The Freedom Walk load will
13 be served by Circuit 1003.

14 CHELCO has not yet assessed and provided the cost to upgrade the
15 750 MCM because there is no reasonably, immediate need to upgrade it.
16 There is no upgrade required at present, and therefore no costs. Exceeding the
17 60%/75% SDOC planning guidelines is acceptable in this situation, for the
18 reasons described more fully above.

19 As set forth in detail earlier in my testimony, we have not provided
20 costs to upgrade the Auburn substation because there are no upgrades to the
21 substation currently required.

1 Q. ON PAGE 10 MR FEAZELL TESTIFIES THAT GULF POWER
2 WOULD NOT NEED TO MAKE ANY UPGRADES OR INVESTMENT
3 TO SERVE FREEDOM WALK OTHER THAN THAT ASSOCIATED
4 WITH EXTENDING THEIR EXISTING LINES. WOULD YOU
5 COMMENT ON THIS PLEASE?

6 A. Yes. Responses to discovery provided by Gulf Power raise questions on that.
7 For example, in response to interrogatory No. 39, Mr. Feazell says there are
8 no planned upgrades at the Airport Road substation in order to serve Freedom
9 Walk. However, in that response and the response to No. 41, he describes
10 major upgrades to several facilities, including the Airport Road substation, to
11 address “reliability and maintenance” issues. Gulf Power’s position is that
12 since these upgrades were planned independent of Freedom Walk, the costs
13 should not be included in this docket. I would note however that in his
14 response to Interrogatory 39, Mr Feazell says : “Absent these planned
15 upgrades, Gulf would need to replace three single phase substation
16 transformers at the Airport Road substation at a cost of approximately \$40,000
17 in order to serve the estimated 4.7 MW load associated with Freedom Walk.”

18 That seems to be consistent with the table in Interrogatory 43 which
19 shows the Airport Road substation to be in excess of its rated capacity by
20 2013 with only a small portion of the total projected 4700 kW load. As to the
21 ability of Gulf to implement those substation upgrades, the upgrades are
22 currently not scheduled, with the only time projection being that they should
23 occur sometime within 5 years. Even that schedule assumes that there will be

1 no problems with easements, rights-of-way and other land use issues.
2 Therefore, there is no certainty that Gulf can provide adequate and reliable
3 service to Freedom Walk from its Airport Road substation at any time in the
4 next five years without some stop-gap measures being implemented.

5 **Q. DO YOU HAVE AN EXHIBIT WITH THESE RESPONSES?**

6 A. Yes. Exhibit JMA-7 contains responses from Gulf Power to Interrogatories 39-
7 41 and 43

8 **Q. ON PAGES 9 AND 10 OF HIS TESTIMONY, MR. FEAZELL**
9 **ADDRESSES THE GULF POWER COSTS TO EXTEND SERVICE TO**
10 **THE FREEDOM WALK DEVELOPMENT. DO YOU HAVE ANY**
11 **RESPONSE TO HIS TESTIMONY?**

12 A. Yes. Mr. Feazell indicates the only cost Gulf Power would incur in extending
13 service to Freedom Walk is \$89,738. While this may be the cost to extend the
14 3 phase to the development, Mr. Feazell did not include the \$40,000 in
15 additional transformer work to upgrade the Airport Road substation that will
16 be required to serve Freedom Walk as addressed in my prior responses. Based
17 on my experience, this figure seems extremely low, and Mr. Feazell was
18 unable to provide any specific information as to those costs. As a matter of
19 comparison, when discussing CHELCO's costs of purchasing transformers,
20 Mr. Feazell testified that a substation transformer costs between \$700,000 and
21 \$1.2 million. I can only surmise that his \$40,000 estimate for **three**
22 transformers is a pro-rated cost of the total cost to upgrade the substation
23 transformers based on the percentage of the total upgraded capacity to be

1 devoted to Freedom Walk. Such a pro-rating and parceling out of cost is at
2 total odds with the manner in which Gulf has suggested that the cost of
3 upgrades be applied to CHELCO in this territorial dispute.

4 The bottom line, however, is that it will not cost CHELCO anything to
5 extend adequate and reliable service to Freedom Walk for the full projected
6 4700 kW load since CHELCO is already there. It will, however, cost Gulf
7 much more than the \$89,738 in admitted costs to extend such service, much of
8 which will be expended to duplicate CHELCO's existing facilities.

9 **Q. ON PAGES 11 AND 12 OF HIS TESTIMONY, MR. FEAZELL**
10 **ADDRESSES THE COSTS TO PROVIDE THE FACILITIES WITHIN**
11 **FREEDOM WALK. DO YOU AGREE WITH HIS OPINION THAT**
12 **THE COSTS WITHIN THE DEVELOPMENT SHOULD BE**
13 **SUBSTANTIALLY THE SAME FOR BOTH PARTIES?**

14 A. Yes. The costs should be essentially the same as he notes.

15 **Q. ON PAGE 13 OF HIS TESTIMONY, MR. FEAZELL TESTIFIES**
16 **THAT GULF POWER HAS THE ABILITY TO RESPOND TO**
17 **OUTAGES AT FREEDOM WALK MORE QUICKLY BECAUSE OF**
18 **THE LOCATION OF THEIR RESOURCES. DO YOU AGREE WITH**
19 **THIS?**

20 A. No. While Gulf does have an operations facility closer to Freedom Walk,
21 whether Gulf Power is able to provide more reliable service to Freedom Walk
22 because of this is speculative. From a day-to-day supply/material perspective
23 there is no advantage. The availability of materials for either Gulf or

1 CHELCO is the same in that they have to be picked up and/or delivered.
2 Also, there would be no advantage for after-hours events. CHELCO's Baker
3 service center is roughly 12 miles away from Freedom Walk; and most
4 material required for any repair is stored there. Mr. Fezell seems to imply
5 that the closer you live to Gulf Power's Crestview headquarters the higher
6 level of service or outage response you would receive. That is simply not the
7 case. Gulf's System Average Interruption Duration Index ("SAIDI") for 2009
8 was 140 minutes. CHELCO's SAIDI for 2010 was 104 minutes, and 83
9 minutes when excluding major event days. CHELCO strives to provide the
10 same high quality level of service to all members no matter what distance they
11 are from our main headquarters. We have two service centers in the general
12 area of Freedom Walk, Auburn and Baker. As our SAIDI numbers indicate,
13 CHELCO can respond as or more quickly as Gulf Power. As an added bonus
14 to Freedom Walk residents, CHELCO's Auburn service center shares space
15 with the water provider of Freedom Walk – Auburn Water System, making
16 doing business simultaneously with each utility very convenient for members.

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

18 **A. Yes.**

1 **MR. EARLY:** Before I ask Mr. Avery to commence
2 with his summary of his testimony, he will be relying on
3 a document that is Exhibit E to the petition, which
4 should be in your materials, and he'll obviously have
5 the, the larger version up there.

6 **BY MR. EARLY:**

7 **Q** Mr. Avery, do you in fact have a summary of
8 your testimony?

9 **A** Yes, I do.

10 **Q** Okay. Would you please present that.

11 **A** Sure. Mr. Chairman, Commissioners, in my
12 direct and rebuttal testimony I address the facilities
13 needed to serve the area in dispute and respond to
14 Mr. Feazell.

15 CHELCO has been owned and serving the Freedom
16 Walk property for over 40 years and serving the area
17 around Freedom Walk for 60 years. We have facilities in
18 place to immediately serve any new load in this area.
19 CHELCO can serve the full build-out load of Freedom Walk
20 without any unplanned upgrades to our system. In
21 contrast, Gulf Power cannot now serve the property
22 without extending nearly half a mile of three-phase line
23 at a cost of \$90,000 just to get to where CHELCO is now,
24 and would have to upgrade a substation to serve the full
25 build-out load.

1 Mr. Horton gave you an overview of our
2 existing lines and, as he noted, we will serve the
3 Freedom sub -- Freedom Walk development from our Auburn
4 substation south circuit.

5 And I'm not sure you can see this at all, but
6 possibly you have Exhibit E in front of you. I'd just
7 like to point out, this area is the Auburn substation.
8 Down here is the Freedom Walk development. Auburn south
9 circuit extends radial -- is a radial-fed circuit from
10 the substation to this point right here. At this point
11 the circuit loops back onto itself. Okay? This loop
12 will provide us, or allow us to provide greater
13 reliability to that area.

14 An example of how a loop works. If a car hits
15 a pole in this area and the normal feed is this way,
16 well, by this circuit being looped on this portion, we
17 can then back-feed the members the opposite direction.

18 CHELCO completed our 2011/2014 construction
19 work plan in May 2010. A construction work plan
20 identifies projects required to meet the expected future
21 load. The Freedom Walk load was not included when
22 developing the construction work plan, but the
23 construction work plan projects are sufficient to meet
24 that load.

25 In my testimony I discuss several projects

1 planned prior to the inclusion of the Freedom Walk load
2 that, once constructed, also allow CHELCO to serve
3 Freedom Walk at full build-out. These projects are on
4 schedule as planned, and thus no additional upgrades are
5 required for CHELCO to serve Freedom Walk.

6 I also discuss the capacity of the Auburn
7 substation in various components of the substation in my
8 testimony. What I have stated and I would like you to
9 know, the Commissioners, is that based on our load
10 forecast and with the addition of the full 4,700kW load
11 of Freedom Walk, no piece of equipment in the Auburn
12 substation will be over its rated capacity through 2014.
13 The equipment is designed to operate safely and reliably
14 at 100 percent of its capacity. And while we will
15 monitor the growth of the load, the equipment is within
16 its rating.

17 Gulf Power, on the other hand, has an admitted
18 \$40,000 substation upgrade to do to serve Freedom Walk,
19 an amount that we think is grossly understated in
20 addition to the \$90,000 line extension. Therefore, Gulf
21 will have to spend at least \$130,000 to duplicate our
22 facilities.

23 To close, Gulf Power has asked the Commission
24 to allow it to serve the Freedom Walk area despite
25 having never made an investment or served any customers

1 there in the past. Gulf Power cannot serve the property
2 without extending nearly half a mile of three-phase line
3 just to get to where CHELCO is now, and Gulf Power has
4 to upgrade its substation.

5 CHELCO has been serving its members on and
6 around the Freedom Walk property with adequate and
7 reliable electric power for over 60 years. We have
8 facilities in place to immediately serve Freedom Walk
9 and can serve the full build-out load of Freedom Walk
10 without any unplanned upgrades to our system. Thank
11 you.

12 Q Thank you, Mr. Avery. Does that conclude your
13 summary?

14 A Yes, sir.

15 MR. EARLY: Okay. And we offer Mr. Avery for
16 cross-examination.

17 CHAIRMAN GRAHAM: Thank you.

18 MR. WILLINGHAM: FECA does not have any
19 questions for this witness.

20 CHAIRMAN GRAHAM: Thank you, sir.

21 **CROSS EXAMINATION**

22 **BY MR. GRIFFIN:**

23 Q Mr. Avery, good to see you again.

24 A You too, Mr. Griffin.

25 Q Since you have your Exhibit E there on that,

1 that board in front of you, I thought I would take the
2 opportunity to ask you a question about that. Down in
3 the bottom left-hand corner of that poster board it
4 looks like there, at least on my version, there are gray
5 or very light blue lines for streets. Do you see those?

6 A Yes, sir.

7 Q There are a number of streets down there on
8 the left-hand corner which would be west of the Freedom
9 Walk development; correct?

10 A That is correct.

11 Q What utility serves those residences in that
12 area?

13 A Gulf Power Company.

14 Q Okay. Do you have your rebuttal testimony
15 available to you?

16 A Yes, sir.

17 Q Let's start with Page 1, please, sir.

18 A Okay.

19 Q Okay. There beginning at line 12 you start
20 your explanation of why you disagreed with Mr. Feazell's
21 assessment of the facilities that CHELCO will need to
22 upgrade in order to provide service to Freedom Walk; is
23 that correct?

24 A That is correct.

25 Q And you make specific reference there on line

1 16 to Project 300-RU10-01; is that correct?

2 A Correct.

3 Q And that is the project involving the upgrade
4 of the 1.3-mile segment of the conductor that CHELCO
5 would use to serve the development; is that right?

6 A That is correct.

7 Q I want to make sure that the record is very
8 clear on one point. If the full load of Freedom Walk
9 were to come online next week, next year, or even in
10 2014, that circuit could not handle that load without
11 that upgrade; is that correct?

12 A Not a yes or no question. The -- first of
13 all, I should correct: The 1.3 miles is not the entire
14 circuit, it's just a section.

15 Q It's a segment. Yes, sir.

16 A A segment of the circuit. And, yes, if the
17 full load came on next week, that section, segment of
18 line would need to be upgraded. However, that project
19 is in our current construction work plan and will be
20 upgraded, if needed, when the load is there. And if
21 Freedom Walk comes online, it will be moved forward.

22 Q Right. And I do want to ask you about that
23 here in a moment. But if it were to come on tomorrow or
24 next week or even in 2014, without that upgrade that
25 segment could not handle the load associated with

1 Freedom Walk; is that correct?

2 A Yes, sir. That's correct.

3 Q Okay. And the estimated cost to make that
4 upgrade is \$227,404; is that correct?

5 A Correct.

6 Q Okay. Now CHELCO's position in this case is
7 that the cost associated with that upgrade should not be
8 included in CHELCO's cost to serve Freedom Walk; is that
9 right?

10 A That is correct.

11 Q And the rationale behind that position is that
12 the project was included in CHELCO's 2011/2014
13 construction work plan before CHELCO had any plans to
14 serve Freedom Walk; is that right?

15 A That is correct. But that is also based on
16 expected load growth in the area that will, could drive
17 the construction of that particular project.

18 Q Right. And to that point, the reason that the
19 project was included in the 2011 to 2014 CWP is that
20 that segment of the conductor was projected to exceed
21 CHELCO's SDOC or standard design and operating criteria
22 by 3 percent, is that correct, in 2014?

23 A Yes, sir. And I can't remember if it was
24 actually 1 percent or 3 percent, but a small percentage.
25 However, there are other reasons for upgrading that line

1 segment. As I pointed out on our Exhibit E, and if I
2 may use this again, the lines that Mr. Griffin is
3 referring to is this section here. At the end of this
4 line section that will be upgraded is where the loop
5 starts. That's a split in the load. Well, by upgrading
6 this line section, we're able to kind of split the load
7 at that point.

8 Also upgrading to a larger wire size will
9 reduce our losses on that particular section of line,
10 which thus saves our members money over the long-term.

11 Q Mr. Avery, do you recall when I took your
12 deposition in this case the first time?

13 A Yes, I do.

14 Q Okay. And that was the March 30th, 2011,
15 deposition. Could you please turn to page 34 of that
16 transcript?

17 A Okay. I'm there.

18 Q And there beginning at line 8 and all the way
19 down through 21 we were involved in a discussion about
20 this 1.3-mile segment of conductor, and it's referred to
21 there as the 394 AAAC upgrade; correct?

22 A Yes, sir.

23 Q And there on lines 15 through 21 you indicate
24 that you were referring to the construction work plan.
25 And you say, "If memory serves me right, 3 percent over,

1 basically 63 percent not including Freedom Walk. The
2 way that project got into the construction work plan was
3 because it was 3 percent over the 60 percent based on
4 growth up until 2014." Correct?

5 A That's what it says. Yes, sir.

6 Q Okay. Thank you.

7 If the line was projected to be loaded at
8 3 percent over CHELCO's SDOC, that would mean that
9 the projected loading for that line would be
10 63 percent of its max operating capacity; is that
11 right?

12 A Yes. Correct.

13 Q And CHELCO's 2011 through 2014 construction
14 work plan was based upon normal load growth projections
15 included in CHELCO's 2009 load forecast; is that
16 correct?

17 A That is correct.

18 Q And the 2009 load forecast did not
19 specifically identify or include any load for the
20 Freedom Walk development itself; is that correct?

21 A That is correct.

22 Q But the 2009 load forecast did include
23 projections of load growth in and around the area where
24 the Freedom Walk development would be built; is that
25 correct?

1 A That is correct.

2 Q So, Mr. Avery, if Gulf Power is awarded the
3 right to serve Freedom Walk, some portion of that load
4 growth that was projected for the Freedom Walk area in
5 the 2009 load forecast would not materialize; is that
6 correct?

7 A That is possible.

8 Q Now in your rebuttal testimony you testified
9 that Project 300-RU10-01, quote, will be constructed
10 whether CHELCO serves Freedom Walk or not. Correct?

11 A Could you point me to that page?

12 Q Yes, sir. That's rebuttal page 2, lines
13 4 through 5.

14 A Okay.

15 Q Was that a correct statement of your
16 testimony?

17 A Yes, it was. Yes, it was.

18 Q Okay. But you also acknowledge in your direct
19 testimony on page 11 that if Gulf Power prevails and
20 CHELCO is prevented from serving Freedom Walk, the
21 schedule and projections for the upgrade could change;
22 correct?

23 A Yes. You know, again -- well, not again, but
24 a load forecast is just that, it's a forecast. There's
25 lots of factors that come into play. And so, yes,

1 things could definitely change depending on a higher
2 growth rate, a slower growth rate. So, yes.

3 Q And, in fact, the project could be delayed,
4 could it not?

5 A It could.

6 Q And depending on the then current load growth,
7 as you just mentioned, it could be delayed for five or
8 even ten years; correct?

9 A It's possible.

10 Q I want to talk briefly about CHELCO's SDOC or
11 system design and operational criteria. You began your
12 discussion of CHELCO's SDOC at page 3 of your rebuttal
13 testimony, I believe. Is that right?

14 A Yes, sir.

15 Q There at the, there at the very top of the
16 page. And there at lines 3 through 4 on Page 3 of your
17 rebuttal you indicate that the SDOC, quote, is primarily
18 a planning guideline, not a mandate for operations,
19 close quote; is that right?

20 A That is correct.

21 Q Please turn over to page 5, lines 3 through
22 7 of your rebuttal.

23 A Page 5, lines 3 through 7?

24 Q Yes, sir.

25 A Okay. Okay.

1 Q And there on those lines you state, quote,
2 that the SDOC recommends evaluating whether conductors
3 should be changed out when the conductor load is greater
4 than 60 percent of the operating capacity in the summer
5 and 75 percent in the winter; correct?

6 A That is correct.

7 Q Now if Gulf Power Company is awarded the right
8 to serve Freedom Walk, it is likely that the loading on
9 that 1.3-mile segment of conductor that we've been
10 talking about will not reach 60 percent of the line's
11 operating capacity by year 2014, isn't it?

12 A That is correct. But again, however, there
13 are other reasons for upgrading that line section.

14 Q Okay. And even if that 1.3-mile line segment
15 was projected to be loaded to 63 percent of its maximum
16 operating capacity, under your characterization of
17 CHELCO's SDOC, 63, 63 percent loading would just be a
18 basis for evaluating whether to upgrade that line; is
19 that right?

20 A That is correct.

21 Q Let's turn now to the, the issue of the Auburn
22 substation. The Auburn sub is the substation that
23 CHELCO would use to serve the Freedom Walk development;
24 is that right?

25 A Yes, sir.

1 Q Okay. Please turn to page 7 of your rebuttal.
2 And there beginning on line 10 of page 7 you indicate
3 that CHELCO would not need to upgrade any of the lowside
4 buswork, switches or breakers at the Auburn substation
5 in order to serve the full load of Freedom Walk;
6 correct?

7 A Yes, sir.

8 Q Now you mentioned during your summary that
9 CHELCO filed supplemental direct testimony in this case;
10 right?

11 A That is correct.

12 Q And the reason that CHELCO filed the
13 supplemental direct testimony was that CHELCO discovered
14 an error or whatever you want to call it, but in the
15 initial direct testimony CHELCO had assumed that the
16 bank rating of the transformer at the Auburn substation
17 was 20MVA. CHELCO subsequently realized that the bank
18 rating was actually 25MVA; is that right?

19 A Yes. The information that had been provided
20 to us from our generation and transmission company
21 PowerSouth had that information as a 20. It turned out
22 it was a 25.

23 Q Okay. And so the new nameplate rating for the
24 transformer at the Auburn substation, that doesn't
25 change the rating for the lowside bank breaker at the

1 substation, does it?

2 **A** No, sir, it does not.

3 **Q** And, similarly, the nameplate rating for the
4 transformer doesn't change the rating of any of the
5 lowside buswork in the sub, does it?

6 **A** No, sir.

7 **Q** And the same would be true for the recloser
8 for Auburn Circuit 3; is that correct?

9 **A** That's correct.

10 **Q** During your, your April 22nd deposition in
11 this case we walked through a rough diagram of the
12 Auburn substation. Do you recall that?

13 **A** I do.

14 **Q** And that diagram was, was attached as an
15 exhibit to that deposition; correct?

16 **A** Correct.

17 **Q** And as we walked through that diagram, you
18 provided me with the ratings and the current amperages
19 for various components of the substation; is that right?

20 **A** That is correct.

21 **Q** Okay. And those components included the
22 lowside bank breaker, the lowside buswork, the recloser,
23 and the switches; is that right?

24 **A** That is correct.

25 **Q** Okay. And as a result of that exercise, we

1 concluded that CHELCO's serving the full 4,700kW load of
2 Freedom Walk in 2014 would result in the recloser
3 operating at 93 percent of its maximum rated capacity,
4 did we not?

5 A Yes. We concluded that at peak conditions --

6 Q Correct.

7 A -- it would operate it. Yeah.

8 Q And with respect to the lowside bank breaker,
9 the buswork, and the switches, we determined that those
10 would be operating at 97 percent of their maximum
11 operating capacity during peak conditions; correct?

12 A That is correct.

13 Q And in reaching those 93 percent and
14 97 percent figures, we used the projected load for
15 Freedom Walk plus the normal load growth assumptions
16 included in CHELCO's probable load forecast; correct?

17 A That is correct.

18 Q Okay. Now CHELCO has what is also called an
19 extreme load forecast; is that correct?

20 A No.

21 Q That is not correct?

22 A We do not have an extreme load forecast
23 document.

24 Q Okay. Does PowerSouth develop an extreme load
25 forecast for CHELCO?

1 **A** They do. They -- well, let me clarify. There
2 is a most probable, extreme, and the lower version, I
3 can't remember what that's called, but there's no --
4 we're not presented any data for that extreme forecast.
5 The load forecast that you see is the most probable
6 numbers, so.

7 **Q** So I'm confused on your answer because what --
8 CHELCO's SDOC actually specifically mentions CHELCO's
9 extreme load forecast, does it not?

10 **A** Well, I think it actually says -- one second.
11 Yes. The SDOC does refer to an extreme load forecast.

12 **Q** And I'm actually looking at JNS-2. This is an
13 exhibit to Ms. Sullivan's testimony, Exhibit JNS-2 there
14 on page 29 of 44. Is that what you're looking at?

15 **A** Yes.

16 **Q** Okay. And it says there in the middle of the
17 page, quote, the following maximum loading conditions as
18 a percent of full equipment nameplate ratings based on
19 CHELCO's extreme load forecasts are recommended, period,
20 close quote; correct?

21 **A** That is correct.

22 **Q** And my question for you, sir, is does CHELCO
23 maintain or develop extreme load forecasts?

24 **A** And, again, my answer would be no because we
25 do not have the data to support the extreme, extreme

1 load forecast information. The 2009/2010 load forecasts
2 that have been provided in discovery are based on most
3 probable. You know, why this exact wording is in here,
4 I can't tell you that. But I can tell you that we do
5 not have the chart that you've seen for the 2009/2010
6 load forecast for extreme weather conditions.

7 Q And I'm not asking you if you have a chart,
8 but I'm asking you is it, is it CHELCO's practice to
9 have probable load forecasts and extreme load forecasts
10 that they can look at and use to assess whether their --

11 A Yes. Yes.

12 Q -- components meet the SDOC or --

13 A Are you asking me if CHELCO has that
14 information?

15 Q CHELCO or its generation and transmission
16 provider, PowerSouth.

17 A I can't speak directly for PowerSouth. But,
18 yes, there are extreme forecasts most probable, so the
19 answer is yes.

20 Q And is that information that you use in your
21 capacity as Vice President of Engineering for CHELCO on
22 a routine basis?

23 A As I've stated, we use the most probable load
24 forecast to do our planning.

25 Q But you do take into account the fact that

1 there is an extreme load forecast?

2 A Absolutely.

3 Q And you take that into account in your
4 planning also?

5 A One more time.

6 Q You take that into account, the fact that
7 there is an extreme load forecast.

8 A Yes, we do.

9 Q Okay. How much higher is the load growth as a
10 percentage under CHELCO's extreme load forecast than its
11 probable load forecast?

12 A I don't have that information.

13 Q Okay. Would it be safe to say that it is
14 higher?

15 A Most likely, yes.

16 Q Okay. And based on what you've seen in the
17 past, is it typically 10 percent higher?

18 A It all depends on the weather that year.

19 Q Let's, let's use last year, let's use 2010.

20 A Uh-huh.

21 Q How much higher was it in 2010?

22 A I don't have that information in front of me,
23 but I would assume that it was higher since we did have
24 a peak January 11th, 2010.

25 Q Well, but the load forecast that year would be

1 exactly that, it would be a projection. So presumably
2 it would have occurred at some point prior to that peak.

3 **A** Correct.

4 **Q** But I'm just asking from a general
5 perspective, we know that the extreme load forecast is
6 higher than the probable, and I'm just trying to get a
7 basic feeling for how much higher it is on a --

8 **A** And, again, I don't have the answer. I don't
9 know that answer.

10 **Q** Okay. Would it be reasonable to say that it
11 would be 5 percent?

12 **MR. EARLY:** Objection. It's been -- the
13 question has been answered.

14 **CHAIRMAN GRAHAM:** Objection is sustained.

15 **BY MR. GRIFFIN:**

16 **Q** Mr. Avery, I want you to assume that the
17 extreme load forecast for CHELCO is 5 percent. Now if
18 we walked through the same exercise that we did during
19 your deposition using this assumed extreme load forecast
20 of 5 percent through 2014, those 93 percent and those
21 97 percent figures that we reached would actually be
22 higher, would they not?

23 **A** Yes.

24 **Q** Okay. And in fact if it were 5 percent, they
25 would actually be in excess of 100 percent; is that

1 correct?

2 A At least for the 97 percent.

3 Q Okay. Let's go back to that page of the
4 standard design and operational criteria that we were
5 just talking about. And, again, that's Page 29 of 44 of
6 Exhibit JNS-2 to Ms. Sullivan's direct testimony. And
7 you have a copy of that, right, before you?

8 A Yes, I do.

9 Q Now I want to talk again about this language
10 that appears at the middle of that page. In bold there
11 it says, "System design criteria." Correct?

12 A That is correct.

13 Q And then right beneath that it says,
14 "Substations." Correct?

15 A Correct.

16 Q And if you go to the second full paragraph
17 under I, it reads as follows. "The following maximum
18 loading conditions as a percent of nameplate ratings
19 based on CHELCO's extreme load forecasts are
20 recommended. When these levels are projected to be
21 exceeded, plans for the uprating -- plans for uprating
22 are to be scheduled." Is that correct?

23 A Yes, sir.

24 Q And then if you look directly beneath that
25 verbiage, it refers to the ratings for circuit breakers,

1 reclosers, busses, and switches, and it indicates that
2 all of those components should not be operated in excess
3 of 100 percent of their ratings; correct?

4 A That's correct.

5 Q Now if a switch or a breaker is operating at
6 97 percent of its rated capacity, that means there's a
7 3 percent margin or cushion in the event that the load
8 experienced on the system turns out to be higher than
9 was projected; is that right?

10 A That is correct.

11 Q And sometimes the load that is actually
12 experienced on a system does turn out to be higher than
13 was projected; correct?

14 A Yes, it does.

15 Q And, in fact, the load actually experienced at
16 CHELCO's Auburn substation in the winter of 2010
17 exceeded CHELCO's 2009 probable load forecast by over
18 10 percent; is that correct?

19 A I believe it did.

20 Q Okay. And, in fact, the exceedance was
21 actually closer to 15 percent; is that correct?

22 A I'll take your word for it. I don't, I don't
23 know exactly, so.

24 Q Okay.

25 A Subject to check, I would say yes.

1 Q Let's turn to page 14 of your rebuttal
2 testimony, please, sir.

3 A What page was that again?

4 Q 14. Are you there?

5 A Yes, sorry.

6 Q Beginning at line 4 on page 14, you state as
7 follows. Mr. Feazell seems to imply that the closer you
8 live to Gulf Power's Crestview headquarters, the higher
9 level of service or outage response you would receive.
10 That is simply not the case. Gulf's Average -- System
11 Average Interruption Duration Index or SAIDI for 2009
12 was 140 minutes. CHELCO's SAIDI for 2010 was
13 104 minutes, and 83 minutes when excluding major event
14 days, close quote. Is that right?

15 A That is correct.

16 Q Now the SAIDI figure that you provide there
17 for Gulf Power, does that relate to Gulf Power's overall
18 system or just Gulf Power's Airport Road substation?

19 A I'd have to go back and check, but it came
20 from a discovery response through one of the
21 interrogatories that were issued. But I feel like it's
22 a systemwide. I'm not exactly sure.

23 Q Okay. And do you recall whether both CHELCO
24 and Gulf Power submitted responses to Staff's first
25 request for production of documents that included SAIDI

1 figures for the parties' respective substations?

2 A You know, I'm sure we did. I've submitted so
3 much information, it's hard to recall it all.

4 Q Okay. But you haven't had an opportunity to
5 compare the SAIDI figures at a substation level for Gulf
6 Power and CHELCO?

7 A I don't recall.

8 Q Well, then sitting here today you can't
9 testify that CHELCO actually provides more reliable
10 service to -- would provide more reliable service to
11 Freedom Walk than Gulf Power?

12 A I can testify exactly what this says here.
13 Other than that, no.

14 MR. GRIFFIN: Okay. Thank you, sir. That's
15 all we have.

16 CHAIRMAN GRAHAM: Staff?

17 MR. JAEGER: Staff has no questions.

18 CHAIRMAN GRAHAM: Commission board?

19 Redirect?

20 MR. EARLY: Yes, sir, just a couple of
21 questions.

22 **REDIRECT EXAMINATION**

23 **BY MR. EARLY:**

24 Q Mr. Avery, in your discussion with Mr. Griffin
25 regarding the recloser and other breakers and switches

1 and things being at 93 and 97 percent, I believe he
2 indicated in his questioning to you that they use the
3 full Freedom Walk load plus normal load growth. Do you
4 recall that discussion with Mr. Griffin?

5 A Yes, sir, I do.

6 Q Okay. And in an earlier line of questioning
7 Mr. Griffin, I believe, indicated that the Freedom Walk
8 growth actually absorbed some of what you, what you
9 characterized as your normal load growth; isn't that
10 correct?

11 A That's what he was implying, yes.

12 Q And didn't he ask you to assume that with
13 regard to whether or not you might have to upgrade your
14 conductor segment, that in fact your normal load growth
15 would be smaller because of Freedom Walk because that
16 would absorb some of that growth? Isn't that an
17 accurate statement?

18 MR. GRIFFIN: Objection.

19 CHAIRMAN GRAHAM: Let's hear the objection.

20 MR. GRIFFIN: Leading question.

21 MR. EARLY: I think I'm just asking him if he
22 recalls the line of questioning from Mr. Griffin and
23 restating it.

24 CHAIRMAN GRAHAM: Can you reask the question
25 more succinctly?

1 **MR. EARLY:** Yes.

2 **BY MR. EARLY:**

3 **Q** Do you recall your discussion with Mr. Griffin
4 regarding the load projections that you would assume for
5 upgrading your conductor segment?

6 **A** Yes, I do.

7 **Q** Do you recall the assumptions that he asked
8 you to make if Freedom Walk were awarded to Gulf?

9 **A** Yes.

10 **Q** Okay. What were those assumptions?

11 **A** He asked me to assume that if Gulf was awarded
12 Freedom Walk, then based on that our load forecast would
13 be lower, and thus the project identified as 300 -- the
14 1.3-mile section of line would not be required.

15 **Q** Okay. But for purposes of the percentages,
16 the 93 percent on the recloser and the others at
17 97 percent, did he ask you to assume the full projected
18 load growth and the full projected Freedom Walk growth?

19 **A** Yes, he did.

20 **Q** If you were to answer that same question using
21 his assumption as to the effect on your normal load
22 growth as a result of Freedom Walk, how would that
23 affect that 93 and 97 percent?

24 **A** They would be less. The percentages would be
25 less.

1 Q I'm sorry. What?

2 A They would be lower, a less percentage.

3 Q Okay. Okay. Are you today, as we sit here
4 today able to calculate those numbers or are you, or are
5 they just lower?

6 A They're lower.

7 Q Okay. Mr. Griffin, I believe, asked you a
8 question regarding, again regarding the conductor
9 segment and the cost of \$227,000. And I believe his
10 question was regardless of whether the load comes on
11 today, next year, or by 2014, that conductor segment
12 will have to be upgraded. Do you recall that question?

13 A Yes, I do.

14 Q If the load comes on on December 31, 2014, its
15 full load is phased in and comes on, becomes complete on
16 that date, is there anything that CHELCO will have to do
17 in terms of either the project or the schedule --

18 A No.

19 Q -- to meet that load on that date?

20 A No. Every -- all facilities should be in
21 place to meet that load.

22 MR. EARLY: Okay. I have no further
23 questions. Thank you.

24 CHAIRMAN GRAHAM: And you're going to move
25 your exhibits?

1 **MR. EARLY:** Oh, I'm sorry. Yes. I would like
2 to move the exhibits into evidence, please. That would
3 be exhibits, CHELCO exhibits number 7 through 13.

4 **CHAIRMAN GRAHAM:** Move exhibits CHELCO hearing
5 ID number 7 through 13.

6 (Exhibits 7, 8, 9, 10, 11, 12 and 13 admitted
7 into the record.)

8 Are we finished with this witness?

9 **MR. EARLY:** Yes, sir.

10 **CHAIRMAN GRAHAM:** Thank you. It looks like,
11 it looks like we're at a good time to take a lunch
12 break, so let's take a recess and reconvene at 1:30.

13 (Recess taken.)

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

3
4 I, LINDA BOLES, RPR, CRR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

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

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

18 DATED THIS 23rd day of May,
19 2011.

20
21 Linda Boles
22 LINDA BOLES, RPR, CRR
23 FPSC Official Commission Reporter
24 (850) 413-6734
25