

ORIGINAL FILE COPY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to resolve territorial dispute with Gulf Coast Electrical Cooperative, Inc. by Gulf Power Company))))))

Docket No. [REDACTED]

MOTION OF GULF POWER COMPANY TO LIMIT SCOPE OF ISSUES OR, IN THE ALTERNATIVE, TO EXTEND TIME FOR FILING REBUTTAL TESTIMONY

GULF POWER COMPANY ["Gulf Power", "Gulf", or "the Company"], by and through its undersigned attorneys, files this motion requesting that the Florida Public Service Commission ["Commission"] either limit the scope of issues to be addressed through testimony in this docket or, if the Commission declines to do so, clarify the issues which are to be addressed and allow Gulf Power a reasonable extension of time in which to file rebuttal testimony responsive to those issues. In support of this motion, the Company states:

1. On September 8, 1993, Gulf Power filed its Petition to Resolve Territorial Dispute with Gulf Coast Electric Cooperative, Inc., invoking the Commission's jurisdiction over territorial disputes pursuant to Section 366.04(2)(e), Florida Statutes (1993). Gulf's Petition specifically requested that the Commission grant to Gulf Power the right to provide electric service to a correctional facility under construction by the Department of Corrections and located or to be located at the northwest corner of Highway 77 and Highway 279 in Washington County, Florida. Gulf's Petition did not request that the Commission exercise its jurisdiction under Section 366.04(2)(3) over any other disputed territory.

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2. In its answer to Gulf's Petition, Gulf Coast Electric Cooperative ["the Coop"] likewise did not assert any issue regarding additional disputed territory. To the contrary, the Coop's answer refers numerous times to the prison site as the disputed area. In fact, in its response to Staff's First Request for Production of Documents, the Coop submitted a map (a copy of which is attached to this motion as Exhibit A) identifying the "disputed area" as the area described in Gulf's Petition; i.e., the intersection of Highway 77 and Highway 279.

3. The Order Establishing Procedure¹ issued in this docket on December 27, 1993, likewise acknowledges that Gulf's Petition requests resolution of a territorial dispute "concerning a new correction facility in Washington County."

4. A pre-prehearing conference was held in this docket on January 12, 1994. At that time, an issue was identified for inclusion on the preliminary issues list concerning the geographical area in dispute. At all times, Gulf Power took the position that the "disputed area" was limited to the site of the correctional facility, and that position is reflected in the prefiled direct testimony of Gulf witness William C. Weintritt.

5. At no time was any issue, policy or otherwise, identified concerning the history and/or purpose of rural electric cooperatives such as the Coop vis-a-vis regulated investor-owned utilities such as Gulf Power.

¹Order No. PSC-93-1830-PCO-EU

6. Following the pre-prehearing conference, the parties jointly requested that this docket be stayed in order that the Company and the Coop might attempt to resolve the dispute concerning the provision of electric service to the correctional facility. The Commission granted the requested relief, and this docket remained stayed until May 5, 1994. At the Coop's request, to which Gulf Power acquiesced, the filing date for the prefiled direct testimony of Gulf's witness was delayed five additional days, until May 10, 1994. The intervals for filing testimony were not extended accordingly.

7. On May 24, the Coop filed its direct testimony in this docket. Gulf Power did not receive its copy of the testimony of Coop witnesses Archie Gordon, Jeff Parrish, and William S. Dykes until the morning of May 26. Gulf did not receive the direct testimony of Coop witness H.W. "Hub" Norris until the afternoon of May 26..

8. Mr. Norris', and to some extent Mr. Gordon's, prefiled direct testimony significantly expands the issues to be addressed in this docket. Specifically, neither Mr. Norris nor Mr. Gordon limit their testimony to the disputed area of the correctional facility. Further, their testimony, particularly that of Mr. Norris, raises additional policy issues, including rural development goals, policies and programs, and the history and purpose of rural electrical cooperatives and investor-owned utilities.

9. It is Gulf's position that neither Mr. Norris' nor Mr. Gordon's testimony should be considered by the Commission to the extent that it goes beyond the scope of this docket as previously established by the terms of Gulf's Petition, the Coop's answer and discovery responses, and recognized in the Order Establishing Procedure. In the interests of fairness and expediency, the Commission should only consider those matters which relate to the area which is actively in dispute between the parties; that is, the site of the correctional facility at the intersection of Highway 77 and Highway 279 in south Washington County.²

10. If the Commission deems it appropriate or desirable that the area in dispute be expanded beyond the prison site notwithstanding the Company's specific request in its Petition, and/or that the policy issues raised in Mr. Norris' and Mr. Gordon's testimony be considered, then Gulf respectfully requests that the Commission clarify the matters at issue in this docket and that the Company be granted a reasonable extension of time in which to prepare and file rebuttal testimony addressing those issues. It should be noted that the combination of the stays entered in this docket, the one-day modification requested by the Coop, and the intervening Memorial Day holiday, have left Gulf with less than a week to prepare rebuttal testimony with regard to the factual issues raised in the testimony of Messrs. Gordon, Parrish and

²The Commission apparently intended this docket to remain focused on this specific area and to proceed expeditiously toward a resolution as to that area, as the Commission has reserved only one-half day for the hearing to be held on August 15.

Dykes. Gulf is able to meet the filing deadline for its rebuttal to the factual testimony of these three Coop witnesses; however, the import of the policy issues addressed for the first time in this docket by Coop witnesses Norris and Gordon requires more attention. Attached as Exhibit B to this motion is the affidavit of Russell L. Klepper, who discusses the significance of these issues. If the Commission deems it appropriate to consider those issues in the context of this docket, the Company requires additional time in order to file testimony from Company and outside witnesses to more fully address the substantial policy issues the Coop has raised for the first time.

11. Should the Commission desire to address the broad and substantive policy issues raised in the Coop witnesses' testimony, Gulf, given a reasonable length of time, expects to file extensive expert testimony from both inside the Company and from outside consultants. In the increasingly competitive environment in which all utilities are operating, it is wholly appropriate that the Commission address issues such as the purpose and intent of the cooperatives and the Rural Electrification Administration, federal and state subsidies, and equitable regulation for both investor owned utilities and coops. The question is whether to address those issues in this proceeding. Mr. Norris' testimony raises serious questions relative to the use of coop member and REA funds to attract load which could be more economically and reliably served by a regulated public utility. The Commission and the Florida Supreme Court have held that the "real purpose to be served

in the creation of REA was to provide electricity to those rural areas which were not being served by any privately or governmentally owned utility." Escambia River Electric Cooperative, Inc. v. Florida Public Service Commission, 421 So.2d 1384, 1385 (Fla. 1982), cert den. 461 U.S. 912 (1983). Mr. Norris' testimony indicates very clearly that the Coop in this instance has strayed far from this expressed intent.

12. Even without the expanded issues presented by the Coop's testimony, there will be at least nine (9) witnesses testifying at the hearing, which is currently scheduled for only one-half day. If the issues addressed in Mr. Norris' and Mr. Gordon's testimony are to be fully dealt with in rebuttal testimony and through cross-examination by Staff and all parties, it seems highly unlikely that a hearing can be concluded within the time reserved. In order to properly address these issues, Gulf estimates that a minimum of three days of hearings, rather than the one-half day currently scheduled, would be necessary.

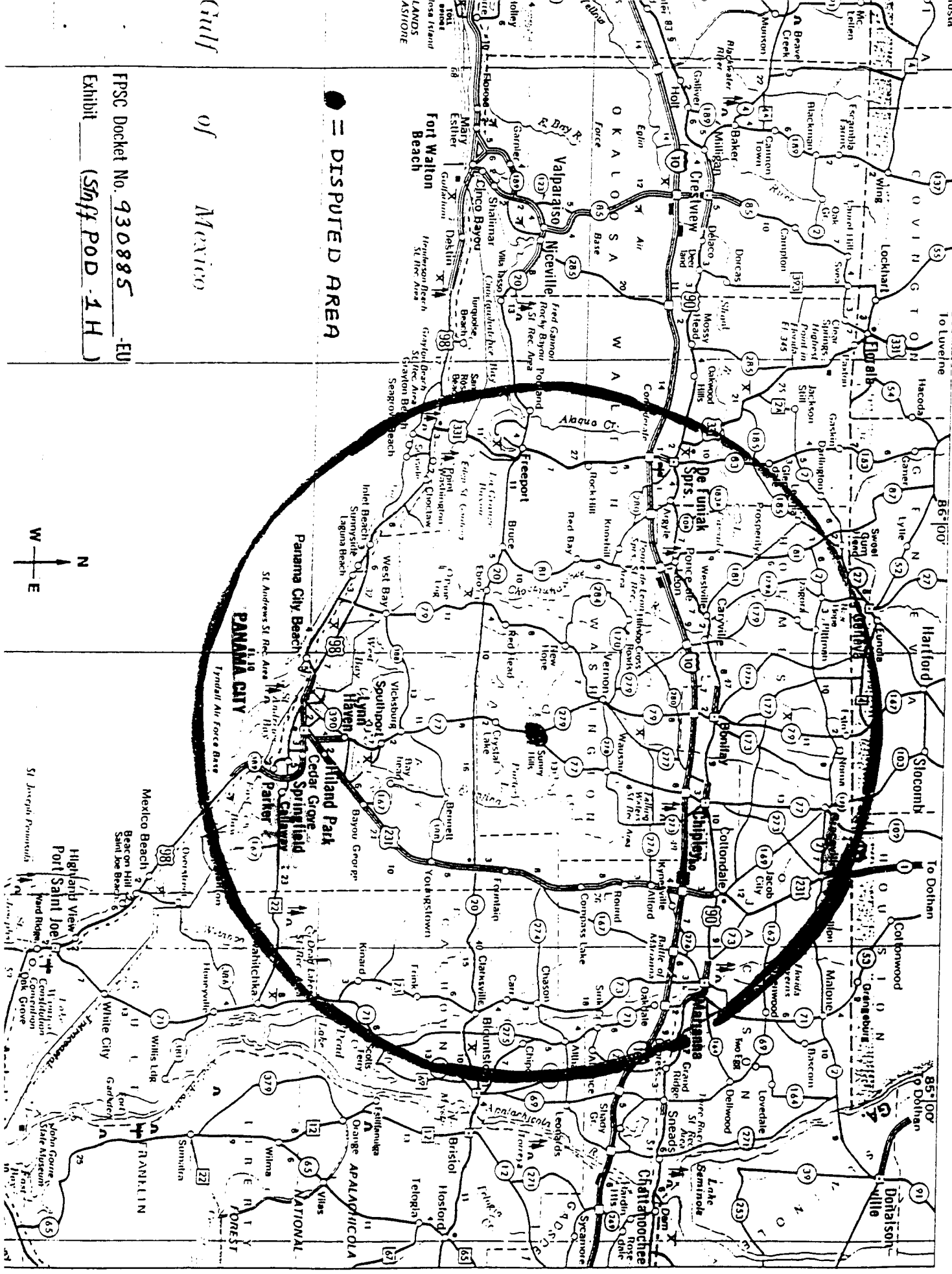
WHEREFORE, Gulf Power Company requests that the Commission either narrow the scope of the issues to be considered in this docket to: (1) the specific area in dispute between the parties, to-wit the correctional facility site located at the intersection of Highway 77 and Highway 279, and (2) the fact issues identified to date, to the exclusion of any policy issues concerning rural electric cooperatives vis-a-vis investor-owned utilities, or, if the Commission deems it appropriate to decline to so limit this docket, then that the issues to be addressed through

testimony be clarified and a reasonable extension of time granted in which to submit additional rebuttal testimony on behalf of the Company.

Respectfully submitted this 30 day of

June, 1994.

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Gulf of Mexico

DISPUTED AREA

FPSC Docket No. 930885 -EU
Exhibit (Staff POD -1H)

GULF POWER COMPANY
Before the Florida Public Service Commission
Docket No. 930885-EU

AFFIDAVIT OF RUSSELL L. KLEPPER

Comes the Affiant, Russell L. Klepper, and having first been sworn states as follows:

1. The undersigned, Russell L. Klepper, is the Principal of Rawson, Klepper & Company, a utility and energy consulting services firm established in 1984. I specialize in the areas of energy economics, utility finance and planning, ratemaking, and analysis and decision making in a regulated environment. A significant portion of my professional activities involves analyzing the public policy implications of alternative forms of utility ownership, as well as writing and speaking on this matter. These public policy implications include the necessity of direct federal involvement in the electric utility industry, and determining the true economic cost of electric service inclusive of governmentally funded transfer payments to electric consumers who are the ultimate beneficiaries of such transfer payments.

2. The focal issue in the instant proceeding is a dispute between Gulf Power Company ("Gulf Power") and Gulf Coast Electric Cooperative, Inc. ("Gulf Coast Electric") over the right to provide retail electric service to a new correctional facility (the "Facility") to be located by the Florida Department of Corrections in Washington County.

3. The direct testimony submitted in the instant proceeding by H. W. Norris, the Manager of Gulf Coast Electric, clearly

acknowledges the fact that Gulf Power is both willing and capable of providing adequate and reliable electric service to the Facility at a price that will provide the State of Florida with a substantial annual savings over the cost which the Facility would incur if electric service is provided by Gulf Coast Electric.

4. The incremental increase in electric service costs which the Facility would incur if served by Gulf Coast Electric would be nothing more than a subsidy provided by the taxpayers of the State of Florida to Gulf Coast Electric. There is no economic or legal justification for the Florida PSC to effect any such subsidy for the purpose of promoting Gulf Coast Electric's stated objectives of increasing density, acquiring more industrial and commercial loads, and improving efficiency and load factor. If a subsidy is warranted, that public policy decision should be decided upon and effected by the state legislature, and not by an administrative body charged with assuring that electric consumers have access to the most economical supply of electric power.

5. The argument posited by Gulf Coast Electric, that it should have a preferential right to provide electric service to the Facility because of the reluctance in 1951 of Gulf Power to provide retail electric service to Washington County, is patently absurd for three specific reasons, which are:

(a) From 1951 until the early 1980s, Gulf Power made all necessary capital expenditures in generating and transmission facilities and incurred all necessary operating costs to provide adequate and reliable wholesale electric service to Gulf Coast Electric. Thus,

Gulf Power (and not Gulf Coast Electric) bore the preponderance of the electric service cost burden which allowed Gulf Coast Electric to provide retail electric service to Washington County. In the late 1970s through the mid-1980s, Gulf Coast Electric undertook the action of changing its wholesale electric supplier from Gulf Power to Alabama Electric Cooperative, an opportunity that was afforded to Gulf Coast Electric due to significant policy shifts in federal wholesale power regulation. As a practical matter, this action by Gulf Coast Electric left Gulf Power with temporarily stranded capital investment (which was redeployed as quickly as possible), notwithstanding that such capital investment had been undertaken in good faith because of Gulf Power's understanding at that time that it was obligated on a continuing basis to provide electric facilities capable of reliably serving the wholesale power requirements of Gulf Coast Electric.

(b) Gulf Coast Electric blithely ignores the fundamental and pervasive changes which have occurred in the electric utility industry in the forty three (43) intervening years since 1951, even though such changes allowed Gulf Coast Electric to change its wholesale power supplier as noted above. As a result of these changes in the electric utility industry, investor owned utilities are no longer reluctant, and are in fact seeking, to provide retail electric service to even the most remotely located customers. As overwhelming evidence that the cooperatives are acutely aware of this shift in position and of the shift toward a more competitive environment, cooperatives in Florida recently sponsored legislation

which, had it passed, would have removed all vestiges of competition in Florida between utility suppliers, and in Northwest Florida would have relegated many customers to higher rates and less reliability. The cooperatives have, for sometime, enjoyed the protection of legislation rendering it a practical impossibility for any investor owned utility to acquire rural service territories now served by cooperative electric utilities, even if such action were desired by the investor owned utility and in the best economic interests of the cooperatives' customers. The rural cooperatives sought and seek to maintain this territorial protection because of their explicit recognition that the economic considerations which initially led to the development of rural electric cooperatives are no longer valid, and thus there is no longer any economic justification which would assure the continuing existence of such entities.

(c) The proposed action of Gulf Coast Electric to provide retail electric service to the Facility flies in the face of the enabling legislation of the Rural Electrification Administration ("REA"), which was established for the sole purpose of acting as a lending agency which would provide subsidies to enable reasonably priced retail electric service to be provided to farms and other rural customers whom investor owned utilities were reluctant to serve due to the structure of the electric industry that existed nearly sixty years ago when the enabling legislation was enacted. Clearly, there is no reluctance of Gulf Power to provide retail service to the Facility, and therefore no necessity for Gulf Coast Electric to

provide service which would not otherwise be provided. There is no evidence in the enabling legislation that the intent of REA was to subsidize service to commercial or industrial customers in addition to the targeted farming and other small rural electric customers, or that rural electric cooperatives should seek commercial or industrial loads which would operationally cross-subsidize the cost of service to farms and residential customers.

6. The underlying intent of the enabling legislation can be clearly seen from the fact that the REA is an agency of the United States Department of Agriculture, which is charged with implementing public policy in the farming sector, rather than the Department of Energy, which implements public policy in the energy industries. As a matter of public policy, the Department of Energy has purposefully acted to create a more competitive and cost effective electric utility industry to minimize electric service costs to ultimate consumers. Acceptance by the Florida PSC of the stated position of Gulf Coast Electric might be compatible with the objectives of the REA, but it would be completely contrary to the public policy established and implemented by the Department of the Executive Branch which exercises primary responsibility with respect to electric service issues.

7. Notwithstanding Gulf Coast Electric's representations to the contrary, the \$45,000 grant and other financial concessions made to Washington County pursuant to Gulf Coast Electric's rural development financial assistance policy was a calculated investment made by Gulf Coast Electric in hopes of acquiring the electric

service rights to the new Facility. Because the Florida Department of Corrections has decided to site its new Facility in Washington County, all of the intended benefits cited by Gulf Coast Electric, such as increased payroll and other beneficial economic activity, will inure to the citizens of Washington County regardless of which electric utility ultimately provides electric service to the Facility. Thus, the claimed purpose of the rural development grant will be effectively served. Nevertheless, Gulf Coast Electric demands reimbursement of the grant if it is not chosen to serve the Facility, which fully illustrates the underlying motive of Gulf Coast Electric in providing this grant. Further, this grant may be well justified even if Gulf Power is chosen to serve the Facility, because Gulf Coast Electric should realize significant economic benefits arising in respect of the Facility through its increased service to residential customers in Washington County.

8. The Florida PSC can accord no weight whatsoever to the unanimous vote of the Washington County Commissioners awarding Gulf Coast Electric the right to serve the Facility. The authority to make the determination of service to a state owned facility is vested exclusively in the Florida PSC and is clearly outside the authority of the Washington County Commission.

9. The interest free loan of \$308,000 which was granted by the REA to Washington County, with the assistance of Gulf Coast Electric, was not conditioned upon service being provided by Gulf Coast Electric. The appropriateness of having all United States taxpayers provide an interest rate subsidy to Washington County is

highly questionable because the subject Facility would almost certainly have been located in a rural area, even if not Washington County. Nevertheless, this subsidized loan served the intended policy purpose of furthering rural economic development in Washington County, and the assistance provided by Gulf Coast Electric in obtaining this special benefit for Washington County is not relevant to the focal question of which electric utility can provide more cost effective electric service to the Facility.

10. The salient public policy issues manifested by the electric service dispute which is the focal point in the instant proceeding are already incorporated in the decision making criteria which have been legislatively mandated for use by the Florida PSC. As the current lower cost provider of service, and as the "for profit" provider which has a continuing and pervasive profit seeking incentive to increase efficiencies and minimize long term electric rates (which incentives for efficiency are notably lacking in a cooperative electric utility because of its "not for profit" structure), the only reasonable and defensible choice of an electric service provider to the subject Facility is Gulf Power. The Florida PSC should effect this decision without further consideration because of the absurdity of Gulf Coast Electric's stated position, as discussed above, and because the public policy aspects of this decision are already incorporated within the existing decision making criteria which are to be used by the Florida PSC to resolve such electric service disputes.

Further, the affiant saith not.

This the 2nd day of June, 1994.

Russell L. Klepper
Russell L. Klepper

STATE OF GEORGIA
COUNTY OF COBB

The foregoing Affidavit was subscribed and sworn to before me
by Russell L. Klepper on this 2nd day of June, 1994.

Jay C. Turk
Notary Public
My commission expires:
NOTARY PUBLIC, POLK COUNTY, GA.
MY COMMISSION EXPIRES JULY 15, 1997
EXECUTED BEFORE ME
THIS 2 DAY OF June, 1994.