

IN THE SUPREME COURT OF FLORIDA

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Case No. ~~66~~307
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GULF POWER COMPANY,

Appellant,

vs.

PUBLIC SERVICE COMMISSION,

Appellee.

LEISURE PROPERTIES, LTD.,

Appellant,

vs.

Case No. 66,339

PUBLIC SERVICE COMMISSION,

Appellee.

APPELLANT, GULF POWER COMPANY'S,
INITIAL BRIEF

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CITATIONS OF AUTHORITIES

CASE CITATIONS:

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<u>Polk County vs. Florida Public Service Commission</u> , 460 So.2d 370, Fla. 1984)	21, 1
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<u>Tampa Electric Co. v. Withlacoochee River Coop.</u> , 122 So.2d 471 (Fla. 1960)	24

FLORIDA STATUTES CITED:

Section 366.03, Florida Statutes	10, 12, 25
Section 366.04(2)(e), Florida Statutes	7, 10, 13, 14, 16, 18, 20, 24, 25
Section 366.04(3), Florida Statutes	7, 10, 13, 14, 26
Section 425.04(4), Florida Statutes	15
Chapter 425, Florida Statutes	10, 13, 14, 15

UNITED STATES CODE CITED:

Rural Electrification Act (7 U.S.C. §901)	10, 13
Rural Electrification Act (7 U.S.C. §902)	15
Rural Electrification Act (7 U.S.C. §904)	15
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PRELIMINARY STATEMENT AND DESIGNATION

In this brief, the appellant Gulf Power Company will be referred to as "Gulf Power." The appellee Gulf Coast Electric Cooperative, Inc. will be referred to as "the Cooperative." The appellee Florida Public Service Commission will be referred to as "the Commission".

References to the transcript of the hearing held on June 8, 1984 will be designated as (Tr. _____); and the Commission's Orders will be designated as Order No. _____.

STATEMENT OF THE CASE

On October 18, 1983, the petitioner, Gulf Coast Electric Cooperative (hereinafter "the Cooperative") filed its petition with the Public Service Commission seeking a determination that Gulf Power Company (hereinafter "Gulf Power" or "the Company") is prohibited from serving the Leisure Lakes Subdivision. On November 4, 1983, Gulf Power filed its response, generally denying the allegations of the Cooperative. Pursuant to notice issued by the Commission, the parties filed prehearing statements on May 21, 1984. The prehearing conference was held on May 24, 1984, and a prehearing order was issued on June 5, 1984. The hearing was held as scheduled on Friday, June 8, 1984 in Chipley, Florida. On September 10, 1984, the Commission issued its order awarding the disputed territory to the Cooperative. On September 21, 1984, Gulf Power Company filed its motion for reconsideration. Oral argument was held on November 13, 1984, and the order denying the motion was issued on November 20, 1984. On December 14, 1984, Gulf filed its notice of appeal.

STATEMENT OF FACTS

The Leisure Lakes development consists of approximately 2,300 acres subdivided into approximately 750 lots. The development is located in Washington County, west of Highway 77, approximately eight miles due south of Vernon, Florida. Two hundred of the lots front on two large fresh water lakes. The developer is Mr. Gene Brown, who has also developed similar properties in Northwest Florida. Tr. 90-91, 201, (Ex. 1B, 4). The developer, and his project manager, Mr. Lee Thompson, project a complete sellout of the project within three to five years. Tr. 91, 201, 231. The development currently requires three phase electric service for operation of the water system and will require three phase service to serve the expected 2.5 MW load in the subdivision.

Leisure Lakes development is a planned community. It has the urban characteristics of paved streets, street lights, storm water drainage, underground utilities, protective covenants, and security provisions. The developers are investing approximately \$250,000 in the construction of a lodge and tennis facilities, as well as a dedicated boat ramp. These facilities are located on the west side of Lake Denise. An equestrian area is also planned on the southwest portion of the development, with equestrian riding trails throughout the subdivision. There will be limited access to the development through the use of electronic security devices and ultimately a security guard. Tr. 90-92, 201-202, 210-212.

Gulf Power's facilities in the area of the Leisure Lakes development consist of its Crestview-Highland City 115 KV transmission line located approximately one mile east of the development, a 230 KV transmission line located west of the development and distribution facilities located to the north, west, and east of the development. Gulf Power's closest three phase distribution line at the time Gulf commenced construction of the facilities to serve Leisure Lakes was approximately 2.7 miles to the Northeast. The Crestview-Highland City 115 KV transmission line was constructed by Gulf Power in the early 1940's, as part of its bulk power transmission system, to meet the electric power requirements of Northwest Florida, including until recently, those of the Cooperative. It has done so by providing bulk power transfer and serving new load along its route as it developed as evidenced by the addition of the Laguna tap in 1953, the Vernon tap in 1967, the Sunny Hills tap in 1971, and the Greenhead tap in 1983. Gulf's Lansing Smith generating plant is located within fifteen miles of the development. Tr. 102, 260.

The Cooperative's facilities in the area consist of a radially fed three phase distribution line running north along Highway 77 out of the Crystal Lake substation, owned and operated by Alabama Electric Cooperative. This three phase line is approximately 2.7 miles from the development. A single phase radial line runs off of the Highway 77 distribution line north of a county road serving Leisure Lakes, with another single phase radial running south of the road. The combined reserve

capacity of these two feeders is approximately 1.6 MVA, and was thus inadequate to provide the required service to the subdivision. Tr. 14-17. The nearest generating facility of the Cooperative is located in Alabama. Tr. 102. Neither party has ever served the property constituting the Leisure Lakes development, and neither had the facilities in the area necessary to serve the requirements of the subdivision.

On August 16, 1983, Clayton Anderson and Doug Hammons of Leisure Properties, Ltd., met with Donnell Collins, Gulf Power's senior distribution engineering representative, in Gulf's Chipley office located on Highway 90 in Washington County, Florida. Gulf was requested to assess the feasibility of serving Leisure Lakes. Tr. 80. On August 23, 1983, Mr. Anderson wrote Bill Weintritt, supervisor of Eastern Division Engineering, formally requesting that Gulf Power provide electric service to Leisure Lakes. Underground service was requested to begin at the point of entry into the development. Tr. 92, 232, Ex. 4. Mr. Anderson was replaced as project manager for Leisure Lakes on September 1, 1983 by Mr. Lee Thompson. In mid-September, Mr. Thompson, unaware of Mr. Anderson's prior contacts with Gulf Power, contacted the Cooperative. Mr. Norris, the general manager, informed Mr. Thompson that the Cooperative's territory did not extend further north than Crystal Lake and requested that he call West Florida Cooperative. Mr. Thompson did so and was informed that West Florida likewise did not serve the area of Leisure Lakes. Mr. Thompson then contacted Gulf Power. Tr. 232-233.

By letter dated September 26, 1983, Mr. Thompson requested service to two parcels of land located on Lake Denise within the proposed development. By letter dated October 5, 1983, Mr. Thompson requested three phase service for a water system to be located on the west side of Lake Denise. Tr. 92-93. On October 20, 1983, Mr. Brown gave an easement to Gulf Power to install and maintain an underground utility system within the development. He also signed an agreement for underground service, made formal application for service and paid deposits for the sales office and lodge. Tr. 203.

Subsequently, Gulf Power built an 8 MVA substation adjacent to its existing 115 KV transmission line. Gulf then constructed 2.2 miles of overhead three phase 25 KV distribution line from the substation along an existing county road to the entrance of Leisure Lakes. Tr. 95. Underground facilities were then constructed along the entrance road to the west side of Lake Denise in order to provide electric service to the sales office. Tr. 194. At no point in the construction of the facilities did Gulf Power cross any Cooperative lines. Tr. 40.

SUMMARY OF ARGUMENT

This appeal involves a developer, Gene Brown, of Leisure Property Ltd., who is developing one of many subdivisions in rural Northwest Florida. Mr. Brown's development consists of approximately 2,300 acres subdivided into approximately 750 lots. When built out, the demand of the subdivision is expected to exceed 2.5 MW. The developer, and his project manager, Mr. Lee Thompson, strongly desire electric service from Gulf Power Company, as evidenced by their intervention in the proceeding before the Commission and this appeal. This strong desire for electric service by Gulf Power Company is motivated by the fact that Gulf Power Company can provide the more reliable and most economical electric service to the development. It is also motivated by the fact that Gulf Power Company is an investor-owned utility regulated by the Public Service Commission and that the Cooperative is a rural electric cooperative, subsidized by the federal government and essentially regulated by no one.

This appeal results from an application by the Florida Public Service Commission of the criteria for determining territorial disputes, which, if consistently followed, will effectively preclude Gulf Power Company from serving developments of this type and will secure them for the Cooperative. The Commission's application of the territorial dispute provisions found in Sections 366.04(2)(e) and (3), is objective, simplistic and constitutes a departure from the

essential requirements of the law. Moreover, the Commission's decision herein is unsupported by competent substantial evidence.

Inconsistent with the statutory criteria, the Commission essentially ignores the magnitude of the investment involved in providing electric service, the desires of the developer, and the type and magnitude of load which investor-owned utilities as opposed to rural electric cooperatives are intended to serve. Instead, the Commission focuses on the fact that the development is currently located in a rural area, and that the Cooperative has relatively inexpensive single phase distribution lines, which the evidence shows are incapable of providing the required service to the subdivision.

Finally, again failing to take into consideration the magnitude of the investment, the Commission concluded that the Cooperative could serve the subdivision for slightly less cost than Gulf and that therefore, "an uneconomic duplication" of facilities had occurred from Gulf's service. This conclusion is likewise unsupported by competent substantial evidence. The evidence in fact showed that had Gulf desired, it could have constructed three phase service from its existing lines in the area to the subdivision at a cost less than or equal to the service provided by the Cooperative. Instead, due to reliability factors related to Gulf's other distribution facilities in the area, it chose to locate a substation adjacent to its Crestview-Highland City 115 KV transmission line located approximately 1 mile east of the development. This substation

not only provided reliable service to Leisure Lakes, but also provided needed backup to the Vernon and Sunny Hills substations located to the north of Leisure Lakes. The uncontradicted evidence is that the backup facilities were needed by Gulf Power, and that the options available to Gulf Power were far more costly than the construction of the substation adjacent to Leisure Lakes. Despite this evidence and with no evidence to indicate otherwise, the Commission concluded that Gulf Power Company built the substation solely to serve Leisure Lakes. This conclusion was reached despite the undisputed fact that had Gulf Power desired to serve only Leisure Lakes, it had no need to construct the substation, but could have constructed the tie line to its existing distribution facilities and served Leisure Lakes at far less expense.

Gulf Power Company does not object to an objective comparison of the cost associated with the provision of electric service to a development. It does however, object, and cannot condone, an analysis which is focused almost exclusively on comparative costs, to the exclusion of other statutory criteria, and which even fails to properly analyze the comparative costs. If the statutory criteria of (1) the ability of the utilities to expand services within their own capabilities, (2) the nature of the area involved, and (3) the present and reasonably foreseeable future requirements for the area for other utility services, are also taken into account and properly considered, Gulf's providing electric service to the Leisure Lakes development was proper and the decision of the Commission must

be reversed.

Moreover, if the Court will examine the legislative intent behind these criteria, the legislative intent behind the Rural Electrification Act, 7 U.S.C. §901 et. seq., Chapter 425, Florida Statutes, and the case law relating thereto, the only conclusion is that investor-owned utilities were intended to serve developments of this kind, to the exclusion of the cooperatives. Gulf Power Company is required by Florida law to provide each person applying therefore reasonable sufficient, and efficient electric service. Section 366.03, Florida Statutes. The developer requested this service and Gulf Power Company committed to make the investment of some \$700,000 to provide it. It is inequitable and an abuse of discretion to force a developer to take service from a federally subsidized cooperative when that developer can obtain low cost, reliable electric service from an investor-owned utility upon application. This is especially so when service by the investor-owned utility will inure to the benefit of the developer, the residents of the development and the general body of ratepayers. Gulf Power's service to the Leisure Lakes development is consistent with its obligation under Section 366.03, and is in no way proscribed, but is supported, by the territorial provisions of Section 366.04(2)(e) and (3).

ARGUMENT

I. IN ITS DECISION, THE COMMISSION HAS FAILED TO FOLLOW THE ESSENTIAL REQUIREMENTS OF THE LAW AND THE DECISION IS UNSUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE IN THE RECORD.

A. STANDARD OF REVIEW

Gulf Power is well aware of the standard of review applicable to administrative decisions. The Court will not reweigh or re-evaluate the evidence presented to the Commission, but will examine the record only to determine whether the order complained of meets the essential requirements of law and whether the agency had available to it competent substantial evidence to support its findings. Citizens of the State of Florida vs. Public Service Commission, et al., Florida Supreme Court, Case No. 64,928 and 65,200, (February 28, 1985); Polk County vs. Florida Public Service Commission, 460 So.2d 370, Fla. 1984); General Telephone Co. vs. Carter, 115 So.2d 554 (Fla. 1959). Gulf is likewise aware that it has the burden to show that the order of the Commission is invalid, arbitrary or unsupported by the evidence. Shevin v. Yarborough, 274 So.2d 505 (Fla. 1973)

Where, however, as here, the Commission's decision is arbitrary, unsupported by substantial competent evidence, and constitutes a departure from the essential requirements of the law, the Court will not affirm the decision of the Commission. Shevin 274 So.2d 505 at 509. Each determination of the Commission must be based on specific independent findings supported by competent substantial evidence. Citizens of Florida v. Hawkins, 356 So.2d 254 (Fla. 1978).

Gulf Power Company is likewise aware of the admonitions of this Court in Gulf Coast Electric Cooperative, Inc. v. Florida Public Service Commission, et al., Case No. 64,983, Florida Supreme Court, (January 24, 1985). Just as serious consideration was given to the decision to serve the Leisure Lakes Subdivision, Gulf Power has given serious consideration to the Commission's decision and this appeal. Gulf Power Company feels very strongly that if it is to meet its statutory requirement to serve (Section 366.03, Florida Statutes) and is to provide the least costly and most reliable service possible to the ratepayers of Northwest Florida, it must take those steps necessary to protect those efforts on behalf of both Gulf and its ratepayers. Gulf in no way condones the "competitive race to serve" found to be so offensive in the prior case. Nor can Gulf condone, however, the use of an objective standard by the Commission in its resolution of territorial disputes which has no basis in the law and virtually ignores the purpose and intent of investor-owned utilities as opposed to rural electric cooperatives. The Commission's decision herein does not meet the essential requirements of the law and is not supported by competent substantial evidence.

B. LEGISLATIVE AND JUDICIAL STANDARDS FOR DECIDING TERRITORIAL DISPUTES.

In deciding territorial disputes, the Commission is governed by a number of legislatively and judicially prescribed standards. The Commission's jurisdiction to resolve territorial

disputes is founded in Section 366.04(2)(e), Florida Statutes, which provides that the Commission shall have jurisdiction:

(e) To resolve any territorial dispute involving service areas between and among rural electric cooperatives, municipal electrics, and other electric utilities under its jurisdiction. In resolving territorial disputes, the Commission may consider, but not be limited to consideration of, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population, the degree of urbanization of the area, its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services.

Under the Grid Bill, particularly Section 366.04(3) the Commission is given further jurisdiction:

. . . over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission and distribution facilities.

When a cooperative is involved, consideration must be given to the Rural Electrification Act, 7 U.S.C. §901 et. seq., Chapter 425, Florida Statutes, and the case law relating thereto. In its adoption of Section 366.04(2)(e), Florida Statutes, the legislature obviously gave significant consideration to this body of law and to the intended differences in the intent and purpose of investor-owned utilities versus rural electric cooperatives. Each criteria raised in Section 366.04(2)(e), relates to these differences in the nature and type of electric service each was intended to provide. Section 366.04(2)(e), Florida Statutes, Chapter 425, Florida Statutes, the Rural Electrification Act, 7 U.S.C. §901

et. seq., and the case law relating to these statutes, all dictate that investor-owned utilities be allowed to serve those customers and loads which are, or are likely to become "urban" in characteristic, or are of a nature that the revenues from the customer will support the investment in the facilities required to serve the customer.

In its application of the legislative standards contained in Section 366.04(2)(e) and 366.04(3), the Commission has adopted an objective and overly simplistic methodology which virtually ignores the true intent of the legislation.

This Court has consistently recognized the distinction between investor-owned utilities and rural electric cooperatives. The Court has consistently held that the cooperatives shall not be able to use their "preferential economic advantage" to compete with investor-owned utilities.

It is a matter of common knowledge 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 public utility. It was not intended that REA should be a competitor in those areas in which as a matter of fact electricity is available by application to an existing public utility holding a franchise for the purpose of selling and serving electricity in a described territory. Escambia River Electric Cooperative, Inc. v. Public Service Commission, et al 421 So.2d 1384 at 1385. (Emphasis added)

In Escambia River, the Court recognized that the legislature of Florida, in enacting Chapter 425, intended to preclude rather than promote competition between cooperatives and investor-owned utilities. Id. The intent of the Rural

Electrification Act ("the Act") was obviously the same. Section 2 of the Act authorizes loans for "rural electrification and the furnishing of electric energy to persons in rural areas who are not receiving central station service...." 7 U.S.C. §902

(Emphasis supplied) (A copy of the Rural Electrification Act is attached as Appendix A) Further, Section 4 of the Act specifically authorizes the low interest loans but prohibits their use under certain circumstances.

The administrator is authorized and empowered from the sums hereinbefore authorized to make loans for rural electrification. . . . for the rural areas who are not receiving central service station. . . .

7 U.S.C. §904 (Emphasis supplied).

Florida law specifically prohibits any electric cooperative from serving or offering to serve, a customer receiving adequate central station service:

However, no cooperative shall distribute or sell any electricity or electric energy to any person residing within any town, city or area which person is receiving adequate central station service or who at the time of commencing such service or offer to serve by a cooperative is receiving adequate central station service from any utility agency, privately or municipally owned individual partnership or corporation.

Section 425.04(4), Florida Statutes. (Emphasis supplied)

Congress, the Florida legislature, the Commission, and the Supreme Court have all recognized that allowing the cooperatives to use their "preferential economic advantage" to compete with investor-owned utilities is inequitable and violates the "fundamental underlying purposes which motivated the establishment of the rural electrification program".

Escambia River, 421 So.2d at 185. The Florida legislature gave further recognition to these fundamental differences in its enactment of Section 366.04(2)(e), Florida Statutes. Each of the criteria listed therein evidences a recognition by the legislature of the differences between the entities and the type load which each was intended and designed to serve. The Commission's decision herein evidences a complete disregard for these differences and constitutes a failure to follow the essential requirements of the law.

1. Ability of the Utilities to Expand Service Within Their Own Capabilities.

In its order, the Commission has completely ignored the statutory criteria of the ability of the respective utilities to expand services within their own capabilities, and has likewise ignored the superior ability of Gulf Power Company to "expand services within its own capabilities". The intent of this provision was to provide for consideration by the Commission of the comparative abilities of the utilities to provide the requested services. Inherent in this consideration is the nature of the load to be served and the cost to serve. The provision is further a recognition by the legislature of the inherent wrong in allowing cooperatives to use their "preferential economic advantage" to compete with investor-owned utilities. Escambia River, 421 So.2d at 185.

The Leisure Lakes development consists of approximately 2,300 acres subdivided into 750 lots. Two hundred of the lots front on two large freshwater lakes. It is projected that there

will be a complete sellout of the project within 3 to 5 years. Tr. 91, 201, 231. The developer requested, and Gulf Power Company has provided underground electric service to the development. Tr. 95, 194.

The Commission has ignored the tremendous investment which will be required in order for either party to serve Leisure Lakes. The comparison has been solely one of which party can serve the development for the least cost. This comparison ignores the recognized differences between investor-owned utilities and rural electric cooperative and the criteria of each utility's ability to expand services within its own capabilities. Regardless of the methodology used to determine the relative cost of the parties to serve Leisure Lakes, the cost will be between \$650,000 and \$800,000. The parties stipulated that it would cost approximately \$600,000 for either utility to provide underground electric service within the development from the border of the property. Tr. 41, 265-266. Gulf Power has evidenced its capability of investing the requisite amount of manpower and dollars for the required expansion of its services. To the contrary, the Cooperative presented no evidence whatsoever regarding its capability to expand its services to the degree required to serve Leisure Lakes subdivision, either in terms of dollars, manpower, or experience. It is extremely likely that in order to make an investment of this magnitude, the Cooperative would be required to seek low interest funding from the federal government under the Rural Electrification Act and possibly raise its rates. As

has been repeatedly recognized by this Court, and as recognized by Section 366.04(2)(e), Florida Statutes, this is not the type of investment which Congress contemplated the Cooperative making with the funds provided under the Rural Electrification Act.

The Commission found to be irrelevant the undisputed testimony that Gulf Power Company has the far greater experience in the provision of underground utilities. Order No. 13668, page 5. Gulf's experience in the installation and maintenance of underground facilities was certainly not irrelevant or unimportant to the developer, his project manager or respective purchasers in the development. Tr. 203, 234. The relative abilities of Gulf and the Cooperative to provide reliable underground services should have been extremely relevant to the Commission in its determination of the "ability of the utilities to expand services within their own capabilities". A determination that both utilities are in the business of supplying reliable electric service, whether it be overhead or underground, totally ignores the issue of the relative abilities of the parties to do so.

Upon completion, the Leisure Lakes development will have over 21 miles of primary cable, 159 pad mounted transformers, and 25 miles of service conductors. This one system represents 7 times the total underground miles of cable reported by the Cooperative, system-wide, as of December 31, 1982. In contrast, since 1965, Gulf has installed, operated and maintained over 320 trench miles of underground distribution facilities. Gulf has installed and is maintaining approximately

200 times more miles of underground facilities than the Cooperative. The Eastern Division of Gulf Power Company which serves the Leisure Lakes subdivision has extensive experience with large underground developments such as Bay Point, Venetian Villa and Sunny Hills. The uncontradicted evidence was that Gulf has readily available many skilled craftsmen capable of preparing underground primary cable, and in the event of failure, has qualified and trained employees available for immediate action locally. Tr. 99. The expansion of services by Gulf Power into the Leisure Lakes subdivision was done within Gulf's own capabilities. No evidence was presented by the Cooperative that it could do likewise or that it could provide equally reliable underground service to Leisure Lakes.

This criteria was placed in the statute for the purpose of having the Commission compare the relative abilities of the utilities to serve the area in dispute. It constitutes a recognition by the legislature that differences do exist in the capabilities of various utilities to provide services to certain types of loads such as subdivisions. It was further a recognition by the legislature that loads such as subdivisions, with higher degrees of investment, operation, and maintenance, might more appropriately be served by investor-owned utilities with the ability to raise their own capital, and with substantially more operation and maintenance personnel and equipment, than a rural electric cooperative. Leisure Lakes is such a subdivision, and under this criteria should clearly continue to be served by Gulf Power Company.

2. Nature of the Area Involved and the Present and Reasonably Foreseeable Future Requirements of the Area for Other Utility Services.

In its order, the Commission found that the disputed area is "rural" in nature, and that therefore the Cooperative is not legally prohibited from serving the area. Order No. 13668, p.2. In its findings, the Commission cites to Section 366.04(2)(e), Florida Statutes. Although Gulf Power Company maintains that other statutory and case law prohibits the Cooperative from serving Leisure Lakes, it does not, and has never contended that Section 366.04(2)(e) prohibits cooperatives from serving rural areas. Likewise, however, this section does not prohibit investor-owned utilities from serving rural areas. It is as though the Commission has created a presumption that if the area is "rural" in nature at the time of commencement of the service, regardless of the nature of the load to be served or the potential growth of the area, the Cooperative should serve. There exists no support whatsoever for such a presumption in the statutory or case law.

To the contrary, Section 366.04(2)(e), Florida Statutes, clearly contemplates that consideration be given not only to the nature of the area at the time of the request for service, but also the requirements for the reasonably foreseeable future. In its order, the Commission gave no consideration to the undisputed testimony of Gulf, the intervenors and the public witnesses regarding the potential for growth in the subdivision and the surrounding area. The

Commission's focus was solely on the area as it existed as of the time of the request for service. The Commission's failure to consider the nature of the area in terms of its potential for growth and the reasonably foreseeable future requirements of the area for other utility services constitutes a departure from the essential requirements of the law. Polk County, supra; General Telephone Co., supra.

Once again, the legislative intent in including these criteria are obvious. If an area, though rural in nature, is within the reasonably foreseeable future likely to increase in population and require additional utility services, it is not the type area which the rural electric cooperatives were intended to serve. If the area is one in which the revenues from the services provided will, within the reasonably foreseeable future, provide sufficient dollars to cover the investment required to be made to provide the service, there exists absolutely no need for the taxpayers of the state or nation to subsidize the service through the rural electrification loan program. These criteria in the statute were simply a recognition by the legislature of the distinctions between investor-owned utilities and rural electric cooperatives and a need to deter cooperatives from using their "preferential economic advantage" to compete with investor-owned utilities. Escambia River, 421 So.2d at 185.

The undisputed testimony is that the area of the Leisure Lakes development is one of high growth, in transition from rural to urban. The Leisure Lakes development is a planned

community having the urban characteristics of paved streets, street lights, storm water drainage, underground utilities, protective covenants, and security provisions. Within the 2300 acres being subdivided, there is planned approximately 750 lots. Were the area to be completely built out, and the population of the development averaged 2 or more people per residence, the Cooperative would be prohibited by law from using federal funds to serve the development. 7 U.S.C §913 Thus, when completely built out, the Leisure Lakes subdivision, in and of itself will no longer be deemed to be a "rural area" within the definition of the Rural Electrification Act.

The developer testified that he expected all of the lots within the subdivision to be sold within a 3 to 5 year time period. His projection is based upon the fact that similar developments in the area have done well and that the Leisure Lakes development should do even better because of the lakes, and the development plan with restrictions, security, etc. Tr. 209-215. Moreover, Gulf Power personnel, familiar with developments of this type in Northwest Florida, expressed their opinion that the developer's projections of sales are reasonable. Tr. 141. The projections of a sellout of the first phase of 168 lots by mid-August or September of 1984 were supported by a waiting list of approximately 30 potential buyers and closings on 18 of the waterfront lots expected within a week following the hearing. The testimony of the developer and Gulf Power went virtually un rebutted by the Cooperative. Although the Cooperative attempted to challenge the developer's and Gulf

Power's projections of growth in the area and indeed the development itself, no substantive evidence was presented indicating that the projections were not realistic. It is difficult to understand why the Cooperative would be challenging Gulf's providing electric service to the area and fighting to expend from \$600,000 to \$800,000 in order to provide the service if they do not expect the area to develop.

The growth rate of the area was supported by an abundance of other evidence. According to the study performed by Dr. John F. Alexander, Jr., of the University of Florida, the area in question is one of high growth in terms of population and parcelization. The rate of growth in population between 1970 and 1980 was 27.7%. In 1980 there existed 6,154 residential lots and in 1983, 25,661 lots, or an increase of 317%. Dr. Alexander predicted that due to increased migration to Florida from the north and the opening up of previously rural counties via improved roadways, Washington County is expected to continue to grow. Dr. Alexander determined that there was pattern of parcelization to the south and west of Chipley, forming a corridor along State Road 77 between Chipley and Panama City, Florida. Exhibit 4A, Tr. 91-92. Dr. Alexander's findings were supported by the testimony of Mr. Syfrett, an adjoining landowner, who stated that he was in the process of subdividing a 68 acre tract adjacent to Leisure Lakes. Tr. 78-79.

The uncontradicted evidence is that the area will continue to grow in terms of both population and parcelization.

It is certain that in the reasonably foreseeable future additional utility services will be required in the area. These developments will require even greater expenditures than involved in Leisure Lakes. The total load of Leisure Lakes, when built out is expected to exceed 2.5 MW. The demand of Leisure Lakes and the other developments planned in the general vicinity will far exceed 2.5 MW. It is areas such as this which Gulf Power is intended to and fully capable of serving. The expenditures and manpower required to provide service to Leisure Lakes and the surrounding developments are not of the type which the Cooperative was intended to serve when electricity is available by application to an existing public utility.

Escambia River, 421 So.2d 1384 at 1385; Tampa Electric Co. v. Withlacoochee River Coop., 122 So.2d 471 at 473 (Fla. 1960).

The Commission's attempt to find a "more meaningful analysis" by looking at the "surrounding area" further evidences their departure from the essential requirements of Section 366.04(2)(e) and the failure to support their findings by competent substantial evidence. The application of this "new" method is nothing short of arbitrary. Referencing Gulf Power's Exhibit 4, the Commission found that the amount of distribution lines owned by Gulf Power in the area south of Vernon were in sharp contrast to the distribution facilities of Gulf Coast. The Commission dismissed the distribution lines of Gulf Power in the Sunny Hills area by finding that these lines serve only 350 of the 25,000 lots in the development. No analysis whatsoever was made of the number of customers served off the distribution

lines of the Cooperative. Reference to the Cooperative's Exhibit 2 and Gulf Power's Exhibit 4 reveals that Gulf Power Company in fact serves more customers and has more miles of line in South Washington County than does the Cooperative. Thus the Commission's finding that Gulf Coast has historically served the surrounding area is unsupported in the evidence.

The Commission's finding serves only to re-emphasize a point which Gulf has continually attempted to make i.e., that the Cooperative's construction of relatively inexpensive single-phase distribution line throughout a large geographic area gives the Cooperative absolutely no superior claim to a prescribed area. In looking at the "nature of the area" to be served, the Commission should not be looking solely at the location of the Cooperative's single-phase distribution line in relation to the area, but to the magnitude of the investment necessary to serve the disputed area and the respective abilities of the parties to do so. The application by the Commission of Section 366.04(2)(e) regarding the "nature of the area", and the present and reasonably foreseeable future requirements of the area for other utility services, constitutes a departure from the essential requirements of the law and is unsupported by competent substantial evidence.

3. Uneconomic Duplication and the Cost to Serve
(Section 366.04(3), Florida Statutes)

Unlike the Cooperative, Gulf Power Company does not question the Commission's authority to compare the utilities' relative "cost to serve" in order to attempt to avoid the

"uneconomic duplication of facilities", as proscribed by Section 366.04(3), Florida Statutes. Gulf does seriously question the Commission's virtual total reliance upon comparative costs and its failure to consider the magnitude of the expenditures involved and the relative capabilities of the utilities to make the expenditure and provide the service. Moreover, the Commission's findings regarding the comparative cost to serve are not supported by competent substantial evidence.

Gulf Power Company's service to the Leisure Lakes Subdivision does not constitute an "uneconomic duplication" as proscribed by Section 366.04(3), Florida Statutes. The Leisure Lakes development requires three phase service to power the pump for the water system, as well as for reliability to serve a 2.5 MW load. At the time Gulf Power was requested to provide service to the development, neither Gulf Power nor the Cooperative were providing electric service to the disputed area. Moreover, neither party had three phase electric service available to the area. The closest three phase distribution line of the Cooperative is located on Highway 77 and is 2.7 miles from the entrance road of Leisure Lakes. Tr. 93. The uncontradicted testimony in the record by the Cooperative was that in order to provide three phase electric service to the entrance road of the development where requested, the Cooperative would have been required to expend approximately \$61,000 to rephase and reconductor both the north and south laterals. Tr. 41-42, 47. This estimate includes neither the costs of regulators or substation facilities required to provide

adequate capacity and voltage regulation as the load increases, nor the cost of obtaining easements to extend the north and south laterals, and assumes that such easements would be readily available. The public witnesses who own the property adjacent to Leisure Lakes and from whom the Cooperative would be required to obtain easements testified that no easements would be granted the Cooperative. Tr. 74, 82.

The Commission's finding regarding the cost of the Cooperative to provide service to the subdivision is certainly unsupported by competent substantial evidence. The Commission found that the cost of the Cooperative to provide service to the entrance road of the subdivision was \$61,000. The Commission found, however, that the Cooperative could serve the subdivision by entering it at two separate points, one at the north lateral of the Cooperative and one at the south lateral. It found the cost for this to be "only \$27,000". The Commission based its decision to accept the \$27,000 on its construction of the subdivision owner's testimony that "he did not care whether service was brought into the subdivision at one point or another, as long as the service within the subdivision was underground." Order No. 13668, p.3. An examination of the developer's testimony reveals that at no time did he testify that he would accept commencement of the underground service to the subdivision at any point other than the entrance road. He agreed that he might be willing to grant entry to the property at the points preferred by the Cooperative but would require the Cooperative to go underground along the eastern border of his

property to the entrance road. He at no time stated that he would allow the Cooperative to commence underground service at the points preferred by the Cooperative. He was consistent in his demand that the service start at the main security gate and entrance to the subdivision. Tr. 206, 219.

The Cooperative failed to provide an estimate of the cost of entering the subdivision at the points preferred by it, including additional costs of constructing underground facilities up the eastern border of the subdivision to the entrance road. The Cooperative's estimate of \$27,000 clearly only included the cost of connecting to the subdivision and did not include the cost of construction of an underground facility to the entrance road. Tr. 47-48. It is extremely likely that the cost of this construction would far exceed the Cooperative's estimate of \$61,000 to serve overhead to the entrance road. Moreover, regardless of the route taken by the Cooperative to serve the subdivision, easements would be required from the two adjoining landowners, both of whom testified that such an easement would not be granted. Tr. 74, 82. Were the Cooperative to be required to condemn the necessary right-of-way, additional costs would have to be added to its estimate.

The rationale for the developer insisting that service commence at the entrance road was best explained by the project manager. He testified that if service commenced at any other point, it would severally restrict his ability to redesign other portions of the development as its progressed. He was adamantly

opposed to service commencing at any other point. As he testified, the fact is that he now has electric service commencing at the entrance road. Tr. 246-247. Thus, contrary to the Commission's finding, the only competent substantial evidence in the record as to the cost of the Cooperative to serve the subdivision is \$61,000.

In assessing its alternatives for providing service to Leisure Lakes, Gulf Power had essentially two alternatives. One alternative was to construct approximately 1.4 miles of distribution line from Gulf's existing three phase distribution line along Highway 279 to the entrance road and then approximately 2 miles of distribution line along the entrance road to the entrance to Leisure Lakes. Gulf's cost of constructing this 3.4 miles of distribution line would have been approximately equal to the \$61,000 estimate of the Cooperative to provide adequate three phase service to the subdivision. Tr. 169, 275, 300. The other alternative was to construct a substation adjacent to Gulf's existing 115 KV transmission line and then construct 2.2 miles of overhead three phase distribution line along the county road to the entrance of Leisure Lakes. For a variety of reasons, this latter alternative was the obvious choice.

In 1981, engineers of Gulf Power noted that the transformer bank in Gulf's Vernon substation would be overloaded by the mid-1980's and identified it for possible system modification in 1983. It was noted that both the regulator and transformer at the Vernon substation would be overloaded by the

mid-1980's unless modifications were made. The Vernon substation provided backup power to the Sunny Hills substation transformer through a 2,500 KVA step-up transformer in the distribution line along State Road 279 between Vernon and Sunny Hills. Tr. 261, Ex. 4, Sch. 1. An overload at the Vernon substation would result in the inability to provide backup to the Sunny Hills substation were it to go out. At the time of the request for service from Leisure Lakes, Gulf was faced with the economic decision of choosing from the options of a transformer bank capacity increase at Vernon, i.e., buying a larger bank for Vernon, or purchasing a spare bank for the Sunny Hills substation. The request for service to Leisure Lakes presented another option. This option was the construction of the Greenhead substation to serve Leisure Lakes, as well as serving as a source of backup power to Sunny Hills and Vernon. Looking at these alternatives, there was no question that the most prudent and cost effective means of solving all of the problems was construction of the Greenhead substation. Tr. 261-262.

When the request for service from Leisure Lakes was made, and the option of the Greenhead substation was made available, Gulf Power employees performed a cost benefit analysis. Of the alternatives, the Greenhead substation was by far the least costly. It was estimated that to replace the Vernon substation transformer bank with a larger transformer would cost \$302,000. To purchase and add a second transformer bank at Sunny Hills to serve as a spare would cost approximately

\$230,000. The cost of constructing the Greenhead substation and building distribution line to tie Greenhead substation to existing distribution at Highways 279 and 277 was estimated to cost approximately \$200,000. Tr. 267-278, Exs. 5, 5D and 5E.

Not only was the Greenhead substation the most cost effective solution to the problems of the overload at Vernon and the backup to Sunny Hills, it also provided the following additional operating benefits not provided by the other alternatives:

1. It greatly improved efficiency which reduced electrical losses by approximately \$26,000 per year.
2. It provided backup to Sunny Hills substation in the event the transmission line serving that substation was out.
3. It allowed deferral of replacement of the Vernon substation transformer bank for several years due to transfer of load from the Vernon substation to the Greenhead substation.
4. It provided backup to a large percentage of the customers served from the Vernon substation in the event of an outage on that transmission tap or substation. Tr. 268-278, Ex. 5A. (Appendix B)

Thus, in addition to providing service to Leisure Lakes, construction of the Greenhead substation was clearly the most cost effective solution to the operating problems outlined

above, and further provided reduced electrical losses, saving approximately \$26,000 annually. Tr. 277.

Had the request for service to Leisure Lakes development not come along, Gulf would have either replaced the Vernon substation transformer bank with a larger transformer or added a second transformer bank at Sunny Hills to serve as a spare. Either alternative would have been more costly. If either alternative had been completed at the time the request for service from Leisure Lakes came along, Gulf's most cost effective alternative for providing service to Leisure Lakes would have been construction of the three phase distribution line from Highway 279 to the entrance road of Leisure Lakes. The cost of doing this, when added to the cost of either of the two alternatives for solving the operational problems, would far exceed the cost of the Greenhead substation.

The uncontradicted facts are that the Greenhead substation or a more expensive alternative would have been required regardless of the Leisure Lakes development. Given this fact, it is only fair and equitable that only that portion of the Greenhead substation necessary to provide electric service to Leisure Lakes be allocated any cost comparison. The Florida Public Service Commission has, in the past, recognized that any new customer has a distribution, transmission, and generation cost associated with it on the system of any utility, regardless of whether sufficient capacity exists on the system at the time of the initial service. Tr. 283. When a distribution line, substation, or any other facility is

constructed solely to provide service to a new customer, that entire cost is properly allocated to the estimate of cost to provide such service. When, however, as here, a substation or other facility provides a solution to operational problems, only that portion of the facility used to provide the new service should be allocated to it. As Mr. Oerting testified, had the Greenhead substation been built solely as the least costly alternative to providing backup to Vernon and Sunny Hills, and then Leisure Lakes had come along, it would have been proper to allocate some cost of the substation to the Leisure Lakes development in any cost comparison. Gulf is in no way disputing the fact that the proper date for determining the relative cost of the utilities to serve is at the time the service is provided. If, however, at the time the service is provided, other needs exist for the facilities required, these should be taken into account.

Gulf's allocation methodology was based on that portion of the total capacity of the substation actually used and useful in serving Leisure Lakes. Using this methodology, the total cost for Gulf Power to provide service to Leisure Lakes is \$87,455, while the cost for the Cooperative is \$108,216, accepting the \$27,000 estimate of service to the subdivision and allocating a portion of the substation facilities required by the Cooperative to serve the development. Tr. 264-266, Ex. 5, Schs. 2 & 3. Using the Cooperative's estimate of \$61,000 for the Cooperative to provide three phase service to the entrance road, the total cost of the Cooperative would be \$132,066. Tr.

41, 266. Even if one omits allocation of the substation cost to the estimate of the cost of the Cooperative to serve Leisure Lakes, and looks at the entire cost to serve, including facilities within the subdivision, it would have cost the Cooperative approximately \$661,000 as opposed to \$687,000 for Gulf Power Company. Under either comparison, Gulf Power Company has not uneconomically duplicated the facilities of the Cooperative.

In its Order No. 13668, p.3, the Commission found that in order to serve the disputed area, Gulf was required to build an additional substation. Based on this determination, the Commission allocates all of the costs of the substation to Gulf Power, finding the total cost to serve to be \$200,480. The Commission has ignored the unrebutted direct evidence to the contrary. As stated earlier, in order to provide three phase service to Leisure Lakes, Gulf could have constructed approximately 3.4 miles of distribution line from its existing three phase distribution line along Highway 279 at a cost approximately equal to the \$61,000 estimate of to provide adequate three phase service to the subdivision. Obviously, Gulf was not required to construct the substation. If Gulf's only purpose was to provide service to the Leisure Lakes development, the only cost effective alternative would have been to have built the 3.4 miles of distribution line.

The Commission further found that "the record is clear that Gulf Power built the Greenhead substation to serve Leisure Lakes and sought to justify its decision later." Order No.

13668, p.4. Once again, however, the Commission fails to point to any evidence in the record to support this conclusion. The uncontradicted evidence is totally to the contrary. Gulf Power did not specifically plan for the Greenhead substation until the opportunity to serve the Leisure Lakes load came along.

However, the record is replete with testimony regarding the Company's determination as early as 1981 that certain actions would have to be taken by the Company in the mid-1980's to prevent an overload at the Vernon substation and provide backup power to the Sunny Hills subdivision. The problem was slated for review in mid-1983. Gulf had the funds available in miscellaneous plan expenditure accounts for requirements of this type.

The undisputed evidence is that when the opportunity to serve Leisure Lakes came along, Gulf Power Company carefully analyzed the various alternatives to providing service to Leisure Lakes and the required backup to Vernon and Sunny Hills. The result of the Commission's Order is a determination that Gulf should have constructed either the additional 15 MVA spare bank at Sunny Hills at an estimated cost of \$230,000, or replaced the existing 5 MVA transformer at Vernon with a 50 MVA bank at a total cost of \$302,000, plus build the 3.4 miles of distribution to the entrance of Leisure Lakes at a cost in excess of \$60,000 as a cost effective alternative to expending approximately \$200,000 for the Greenhead substation and related facilities. Contrary to the Commission's holding, the evidence reveals that Gulf Power looked carefully at the alternatives

available to serve a number of problems and decided on the most cost effective.

The Commission's findings with regard to "comparative costs" and "uneconomic duplication" only serve to point out the inherent dangers in such a simplistic analysis. One can only assume that costs differences so small as to be inconsequential will still result in the awarding of the service to the utility with the least cost. There exists no basis for a determination that simply because it costs an investor-owned utility a few dollars more to serve a customer than it would a cooperative, that service by the investor-owned utility constitutes uneconomic duplication. Where service by the investor-owned utility does not duplicate existing and inadequate facilities of the cooperative and the service is an economic benefit to the customers of the utility and the one requesting service, there is no uneconomic duplication. This is the case herein. There has been no uneconomic duplication by Gulf and proper application of all the statutory criteria dictate that Gulf be allowed to continue its service to Leisure Lakes.

II. GULF POWER COMPANY IS PROVIDING THE LEAST COSTLY, MORE RELIABLE AND PREFERRED ELECTRIC SERVICE TO THE LEISURE LAKES DEVELOPMENT.

The Commission concluded that both utilities could provide reliable service to the development and that the developer had no strong preference for Gulf Power Service. Order No. 13668, p.5. Both of these conclusions are unsupported in the evidence. The evidence presented by the Cooperative regarding its standard for reliability is neither competent, nor substantial. The overwhelming weight of the evidence indicates that Gulf Power can provide the more reliable service to the Leisure Lakes development. It was the conclusion of the developer, his project manager and all of the public witnesses that Gulf Power Company could provide the more reliable and less costly electric service. It is these factors, in addition to the fact that Gulf Power is regulated by the Public Service Commission, which resulted in the developer of Leisure Lakes, as well as those land owners surrounding the development, preferring service from Gulf Power Company.

The outage rate of Gulf Power is 1.2 hours per customer per year as opposed to 3.88 hours per customer per year for the Cooperative. The Cooperative's outage rate is thus over three times the average outage time experienced by Gulf's customers. Tr. 99-100, 113. Gulf has experienced no outages whatsoever during the past five years on the 115 KV line serving the Greenhead substation. Tr. 278. To the contrary, the outage rate for the Crystal Lake substation, from which the Cooperative would serve the development was 3.565 hours. Tr. 51. Moreover,

due to the strength of Gulf's system, the voltage swings would be much less for Gulf than those of the Cooperative. Tr. 264, 267, 70-72. Gulf Power's nearest generating plant is located only 15 miles from the subdivision, while the Cooperative's is located in the state of Alabama. Service by the Cooperative would be from a radial feed out of its Crystal Lake substation, for a distance of from five to seven miles. Tr. 14-15. Service to the development by Gulf Power is provided from 2.4 miles of distribution line out of the Greenhead substation. When the Greenhead substation is tied to the distribution line on Highway 279, Gulf would still be able to provide service to Leisure Lakes out of either the Vernon or Sunny Hills substation during non-peak periods. Tr. 287.

Despite these uncontradicted facts, the Commission found that since both utilities are within the "industry standard" of less than five outage hours per customer per year, both can provide adequate service. First, this "industry standard" was testified to by Mr. Gordon of the Cooperative as the standard required by the Rural Electrification Administration for receipt of funds. This is not an "industry standard", was not supported as such, and is certainly not the standard of Gulf Power Company. This is clearly indicated by the fact that Gulf's outage hours are only 31% of those experienced on average by the Cooperative. The Commission's conclusion that the Cooperative can provide the same degree of reliability is unsupported by competent substantial evidence. When more reliable service, and less cost, can be provided to

the customer, it should certainly be available and the Commission's denial of that right to the developer constitutes an abuse of the Commission's discretion.

Moreover, as argued above, despite the Commission's refusal to consider reliability in the context of the provision of underground service within the subdivision, the undisputed evidence is that Gulf Power Company can provide, by far, the more reliable underground service. It can do so, within its own capabilities. These assurances may not be important to the Commissioners, but are extremely important to the developer and to the ultimate consumers of the electricity within the subdivision.

The Commission is correct in that customer preference based solely upon rates is not to be determinative in a territorial dispute. When, however, customer preference is based, in part, upon reliability factors, it should be given serious consideration. Based on the testimony of the developer, his project manager, and the public witnesses, the reliability of the Cooperative's service in the Leisure Lakes area is questionable. Mr. Carter testified that service from the Cooperative was not good and that the employees of the Cooperative were very disrespectful. Tr. 75. Mr. Syfrett, who has lived in the area for 10 to 15 years, has experienced "real difficulties" with the service of the Cooperative. He testified that even if the Cooperative's rates were cheaper he would still prefer Gulf Power because of poor service by the Cooperative. Tr. 79, 81. Mr. Sapp testified that he was displeased with the

service from the Cooperative and was extremely frustrated by the fact that he had no where to complain. Tr. 83-84.

The developer, Mr. Brown testified that there appeared to be a general dissatisfaction with the service provided by the Cooperative in the area. It was his opinion that taking into account the nature and extent of Gulf Power's generation, transmission and distribution system, Gulf Power could provide the most reliable service to the lot owners in the subdivision. Tr. 203. Mr. Thompson, the project manager, also expressed his preference for service from Gulf Power. He testified that it was his opinion that Gulf Power could provide the more reliable service. He further testified that Mr. Claude Carter, a Gulf Coast Cooperative customer, recommended that Leisure Properties, Ltd. not even consider Gulf Coast Electric Cooperative as the provider of electric service to the development. Tr. 234. Mr. Thompson also expressed a preference for Gulf Power based on the fact that Gulf is regulated by the Commission.

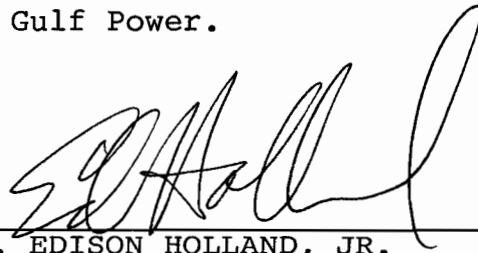
Mr. Brown did testify that he would have no preference if shown that the service would be equally reliable and that no underground differential would be charged. He at no time, however, indicated that he was convinced that the Cooperative could provide as reliable service to his subdivision. To the contrary, the evidence was that Gulf Power could provide by far the more reliable service both to the development as well as within. Certainly, the developer would not have intervened in the proceeding before the Commission, nor filed his appeal of the Commission's decision, were he not extremely concerned about

the provider of electric service to his development.

The evidence indicates that Gulf Power can provide the more reliable service to the residents of the Leisure Lakes development. Service by Gulf Power is strongly preferred by both the developer and his project manager. Moreover, the undisputed evidence is that those electric customers of the Cooperative in the vicinity of the development are dissatisfied with the service provided by the Cooperative. The Commission, by statute, is charged with seeing that utilities under its jurisdiction provide efficient, sufficient, and adequate electric service to the customers in a utility's service area. §§ 366.041, 366.05, 366.06. The Commission has no authority over the Cooperative with regard to service or reliability. Certainly, the Commission should give consideration to the choices and quality of service available to the residents of Leisure Lakes, and give due weight to the preference of the developer based upon reliability of service. Its failure to do so, constitutes an abuse of discretion and is a departure from the essential requirements of the law.

CONCLUSION

Gulf Power Company is lawfully and rightfully providing electric service to the Leisure Lakes development. Gulf Power has the greater capabilities to provide reliable, efficient service to the development. The nature of the area in terms of growth potential and required service require that such service be provided by Gulf Power. Service by Gulf Power is strongly preferred by the developer. Gulf Power has not uneconomically duplicated the facilities of the Cooperative. Proper application of pertinent state and federal laws dictate that the Leisure Lakes service be awarded to Gulf Power.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Gene D. Brown, Esq., Brown & Camper, 800 West Calhoun Street, Tallahassee, FL 32302, and Robert Vandiver, Esq., Fletcher Building, 101 East Gaines Street, Tallahassee, FL 32301, by hand delivery and to Clinton E. Foster, Esq., 1610 Beck Avenue, Panama City, FL 32504, by U. S. Mail this 12th day of March, 1985.



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