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**West Florida Electric Cooperative Ass'n v. E. Leon Jacobs, Jr.**

NEXT CASE ON THE DOCKET IS WEST FLORIDA ELECTRIC COOPERATIVE ASSOCIATION INC. VERSUS JACOBS. ALL RIGHT. WE WILL SHIFT FROM TAMPA TO THE PANHANDLE.

THANK YOU, SIR.

CHIEF JUSTICE: GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM JOHN HASWELL OF THE FIRM OF CHANDLER, LANG AND HAS WELL IN GAINESVILLE, FLORIDA, APPEARING HERE ON BEHALF OF WEST FLORIDA ELECTRIC COOPERATIVE ASSOCIATION. THE CASE, AND I AM JOINED BY MR. WILLING HAM, THE CEO AND GENERAL MANAGER STATEWIDE OF OUR ASSOCIATION. I WOULD LIKE TO USE TWELVE MINUTES ON MY INITIAL PRESENTATION AND RESERVE EIGHT FOR REBUTTAL. THIS IS A APPEAL OFAL ORDER OF THE FLORIDA PUBLIC SERVICE COMMISSION, AWARDING ELECTRIC SERVICE TO GULF POWER, IN AN AREA, A GEOGRAPHIC AREA ALREADY SERVED BY WEST FLORIDA. AN AREA SERVED FOR 60 YEARS. IT IS A ORDER THAT IGNORES APPELLANT'S HISTORIC SERVICE TO THE AREA.

PAINT US A WORD PICTURE, IF YOU WILL, OF THIS AREA THAT WE ARE TALKING ABOUT, SO WE CAN CALL THAT UP IN OUR VIEW SCREEN.

THAT IS GOOD. IT IS HENSON CROSS ROAD IS AN UNDEVELOPED OR SPARSELY-DEVELOPED AREA, BUT IN THAT AREA THERE WAS ABOUT 400 CUSTOMERS OF WEST FLORIDA. AT RIGHT AROUND HENSON CROSSROADS IS A PUMPING STATION, GAS TRANSMISSION PUMPING STATION OWNED BY FLORIDA GAS TRANSMISSION. IT HAS BEEN THERE SINCE 1962. IT HAS BEEN SERVED BY WEST FLORIDA SINCE 1962. THESE ARE RESIDENTIAL AREAS AROUND THERE. IT IS NOT HIGHLY-DEVELOPED. THIS, YOU HAVE TO GO FOUR MILES AWAY, TO ENCOUNTER ANOTHER UTILITY. ON ONE SIDE, I BELIEVE IT IS ANOTHER COOPERATIVE, TELCO, AND TO THE EAST IS FLORIDA POWER. TO THE SOUTH ABOUT SIX MILES AWAY IS A 230 TRANSMISSION LINE OWNED BY GULF POWER. THAT IS BASICALLY WHAT IT IS. THIS IS A VERY, IF IT IS FOUR MILES IN RADIUS THAT, MEANS WE ARE TALKING EIGHT MILES FROM ONE SIDE TO THE OTHER IN ALL DIRECTIONS.

DOESN'T THIS CASE, REALLY, TURN UPON HOW THE CONCEPT OF HISTORICAL PROVISION OF SERVICE FITS INTO THE STATUTORY SCHEME, AND WHETHER THAT, REALLY, IS AN ELEMENT, IS NOT AN ELEMENT FOR CONSIDERATION, BECAUSE WE HAVE THE STATUTORY ELEMENTS PRETTY CLEARLY. ISN'T THAT --

YES.

-- WHEN WE BOIL THIS ALL DOWN, ISN'T THAT WHERE WE COME DOWN TO?

THAT IS THE BASIC PREMISE. THERE ARE SOME OTHER ISSUES, BUT THE FUNDAMENTAL ONE, YES, SIR.

YOU SAY THAT IS WHAT TIPS IT IN YOUR FAVOR.

YES, SIR. EXACTLY.

WHAT ELEVATES THAT ELEMENT TO A STATUTORY CONSIDERATION, A REGULATORY

CONSIDERATION THAT WE ARE DEALING WITH TODAY IN YOUR MIND -- THAT WE ARE DEALING WITH TODAY, IN YOUR MIND THAT, THAT IS AN ELEMENT AND THE FAIL YOUR TO DO SO -- AND THE FAILURE TO DO SO REALLY CONSTITUTES A BASIS FOR US TO REVERSE WHAT HAPPENED.

YES, SIR. THAT IS A GOOD QUESTION. WE ARE SAYING THAT THE STATUTE ITSELF, DEALS WITH GEOGRAPHIC TERRITORY. WHEN YOU LOOK AT THE APPENDIX TO OUR REPLY BRIEF, YOU CAN SEE THAT THE COMMISSION, WHEN IT WAS ADOPTING A RULE ON DISPUTE RESOLUTION SAID GEOGRAPHIC AREA IS IMPORTANT. GEOGRAPHIC WANTING TO KNOW WHERE UTILITIES SERVE AND WHERE THEY ARE LOCATED GEOGRAPHICALLY, IT IS CLEARLY HISTORIC SERVICE. WHEN YOU LOOK AT THE RULES, IT IS FUNDAMENTAL THAT THE RULE WAS BASED ON HISTORIC SERVICE. NOW, THE FACT THAT THEY DON'T SAY, DON'T SPECIFICALLY ITEMIZE IT IN THE RULE, 6-25.0441, DOESN'T MEAN IT DOESN'T EXIST, BECAUSE THOSE ARE SIMPLY THING THAT IS THEY WILL CONSIDER. A STATUTE SAYS THEY MAY CONSIDER, AND THEY HAVE ALWAYS CONSIDERED HISTORIC SERVICE. IT IS EMBODIED IN THE RULE, WHEN THEY SAY IF YOU HAVE A TERRITORIAL DISPUTE, WE WANT TO SEE MAPS OF THE FACILITIES. WE WANT TO SEE WHERE YOUR FACILITIES EVER LOCATED. IF HISTORIC SERVICE WAS RELEVANT, THEY WOULDN'T ASK THAT QUESTION.

COUNSEL, DO YOU CONCEDE THAT, IF THE COMMISSION LIMITED ITSELF TO THE FOUR FACTORS DESIGNATED IN THE RULE, AND DID NOT CONSIDER HISTORIC SERVICE, THAT IT, THERE WERE COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THE DECISION TO AWARD THE CONTRACT TO GULF?

I CAN'T MAKE THAT CONCESSION. WHAT I CAN TELL YOU --

WHAT IS YOUR ARGUMENT THEN?

THE ARGUMENT IS THIS, THAT HISTORIC SERVICE, BY COMMISSION RULE --

LET'S LEAVE ASIDE HISTORIC SERVICE. LET'S SAY THAT IT STICKS TO THE 4 A-THROUGH-D IN THE RULE. UNDER A-THROUGH-D, DO YOU AGREE THAT THERE IS COMPETENT SUBSTANTIAL EVIDENCE FOR ITS DECISION?

THERE IS FACTUAL BASIS FOR THAT, WHICH I WOULD STILL URGE WOULD BE CONTRARY TO LAW.

WELL, B AND C, YOU CONCEDED. YOU STIPULATED TO. RIGHT?

CORRECT. YES.

AND D, YOU ALSO CONCEDED BECAUSE THAT WAS THE CUSTOMER'S PREFERENCE WAS FOR GULF.

I AM GLAD YOU ASKED THAT QUESTION, BECAUSE WE DIDN'T CONCEDE OR AGREE THAT CUSTOMER PREFERENCE WAS APPLICABLE. WE SIMPLY AGREED THAT THE CUSTOMER HAD SELECTED ENRON.

WHAT DOES D PROVIDE? DD SAY CUSTOMER PREFERENCE, IF ALL OTHER FACTORS ARE SUBSTANTIALLY EQUAL?

YES. IT SAYS THE COMMISSION MAY CONSIDER CUSTOMER PREFERENCE, IF ALL OTHER FACTORS ARE REASONABLE, BUT WE DON'T CONCEDE THAT THEY ARE. THE DECISION WAS, EXCUSE ME, DID ENRON SELECTOR PREFER POWER FROM GULF POWER, AND IT IS TRUE THEY DID. THAT IS ALL WE CONCEDED THERE.

ALL RIGHT. AND SO THE ONLY THINGS LEFT, WE HAVE B, C AND D IN GULF'S FAVOR. THE ONLY THING LEFT, THEN, IS A, CAPABILITY OF EACH UTILITY TO PROVIDE RELIABLE ELECTRIC SERVICE. WHAT IS YOUR ARGUMENT THERE, THAT THAT SHOULD GO IN YOUR FAVOR INSTEAD OF GULF'S

FAVOR?

AGAIN, THAT GOES TO THE ARGUMENT THAT THE FACILITIES THAT WERE INSTALLED OR COULD BE INSTALLED, INCLUDING THE SPARE TRANSFORMER AT THE HENSON CROSSROADS SITE, COULD BE OF BENEFIT TO WEST FLORIDA'S CUSTOMERS BY HAVING ACCESS TO THAT, IF WEST FLORIDA HAD BEEN THE POWER SUPPLIER AND IF WEST FLORIDA HAD BEEN ALLOWED TO MAKE A CONTRACTUAL ARRANGEMENT OR SOME KIND OF A DEAL WITH ENRON, BUT OF COURSE WEST FLORIDA WAS KEPT OUT OF THAT LOOP, AND BY THE TIME WEST FLORIDA DISCOVERED WHAT WAS GOING ON, THEY HAD ALREADY HAD PRELIMINARY NEGOTIATIONS AND WERE READY TO ROLL ON THEIR FINAL CONTRACT. OUR POINT IS THIS, THAT EVEN THOUGH THE ARGUMENT BY THE COMMISSION AND BY GULF POWER IS THAT THERE, BY CONTRACT YOU CAN'T USE THAT SPARE TRANSFORMER. IT IS A DEDICATED ONE. WE DON'T KNOW WHAT WOULD HAVE HAPPENED, IF WEST FLORIDA HAD BEEN ALLOWED TO NEGOTIATE WITH ENRON AND HAD WORKED OUT A DEAL ON THE USE OF THAT, BECAUSE THERE IS 400 CUSTOMERS OF WEST FLORIDA IN THE AREA THAT MIGHT HAVE BENEFITED AND HAD A RELIABLE SYSTEM FROM THAT. COULD HAVE BENEFITED. SO THAT WOULD BE ONE.

IS IT A FACTOR HERE, I GUESS THE SITUATION WHERE, YOU ARE IN A GEOGRAPHIC AREA AND YOU ARE THE UTILITY THAT HAS SERVICED THIS GEOGRAPHIC AREA.

CORRECT.

AND I GUESS IT WOULD BE EASIER FOR US TO BE THINKING ABOUT, IF A NEW DEVELOPMENT, RESIDENTIAL DEVELOPMENT CAME IN, AND THOSE CUSTOMERS SAID, WELL, WE WANT TO GO WITH GULF POWER, IT WOULD SEEM COUNTERINTTIVE TO THIS IDEA THAT THE UTILITIES ARE INDIFFERENT, IF THEY ARE IN ONE GEOGRAPHIC AREA THAT, IS USUALLY THE MORE EFFICIENT AREA.

CORRECT.

SO DID YOU PUT ON ANY EVIDENCE THAT YOUR OTHER CUSTOMERS WERE GOING, WOULD BENEFIT FROM YOUR HAVING INCREASED THE PLANT THAT YOU WERE PLANING TO BUILD, THAT THAT WOULD BENEFIT THE OTHER CUSTOMERS?

THE TESTIMONY OF OUR WITNESS PERRY, WHICH IS IN THE RECORD, BASICALLY SAID THERE WOULD BE A BENEFIT.

IS THAT A FACTOR THAT THE PSC IS SUPPOSED TO TAKE INTO CONSIDERATION THAT WOULDN'T MAKE ALL THINGS EQUAL, DID THEY NOT?

YES.

THEY JUST DIDN'T TAKE, IS IT YOUR CLAIM THEY ABUSED THEIR DISCRETION BY IGNORING THE BENEFIT TO YOUR OTHER CUSTOMERS?

EXACTLY. NOT ONLY THEY IGNORED THAT, THEY ALSO IGNORED HISTORIC SERVICE AREA.

THAT IS SORT OF PART AND PARCEL. CORRECT.

THAT YOU HAVE CUSTOMERS THERE, IF THERE WOULD BE SOME BENEFIT TO THOSE CUSTOMERS.

RIGHT. THE FOLLY OF THIS WHOLE THING IS THAT WE NOW HAVE TWO UTILITIES SERVING THE SAME PROPERTY, TWO UTILITIES SERVING THE SAME FACILITY, AND THAT RUNS AGAINST, COUNTER TO EVERYTHING THAT THIS COMMISSION HAS ADOPTED BY RULE. IT IS CONTRARY TO THE STATUTORY SCHEME.

YOU SAY THEY ARE SERVICING THE SAME FACILITY. MAYBE, EXPLAIN, COULD YOU, MAYBE HELPING WITH THIS PICTURE OF WHAT ARE YOU TALKING ABOUT.

TO GET BACK TO THAT WORD PICTURE, WE HAVE A PUMPING STATION THAT IS AND IS ON ONE OF OUR EXHIBITS TO THE PENNED DICTION. I BELIEVE IT WAS EXHIBIT NO. FOUR THAT WAS FILED AND IT SHOWS A DIAGRAM OF THE FACILITIES, A DIAGRAM FILED WITH FERC SHOWING THE PUMPING STATION, SO WE HAVE A BUILDING OR FACILITY INSIDE A 35-ACRE TRACT OF LAND THAT PUMPS GAS FROM TEXAS CAN COMING TO FLORIDA, AND IT IS RECOMPRESSING GAS, I GUESS, TO HELP IT RUN DOWN THE PIPELINE, AND THAT HAS BEEN SERVED BY WEST FLORIDA FOR 40 YEARS, OKAY, SO THEY WANT TO ADD SOME NEWCOMBE PRESSORS.

AND THE FAST -- SOME NEW COMPRESSORS.

WAS THE FACILITY OWNED BY ENRON?

NO.

I THOUGHT YOU SAID THE FACILITY WAS OWNED BY ENRON.

IT IS OWNED BY FLORIDA GAS TRANSMISSION AND OWNED BY THEM SINCE 1962 AND THE COOP HAS BEEN PROVIDING SERVICE TO THAT SITE TO FLORIDA GAS TRANSMISSION SINCE THAT TIME AND, ALSO, HAS BEEN SERVING THE AREA SINCE 1946. FLORIDA GAS TRANSMISSION NEEDS TO UP ITS CAPACITY TO ITS TRANSMISSION OF GAS, SO IT ADDS, IT IS GOING TO ADD SOME COMPRESSORS, AND IT FILES WITH FARRAKHAN THIS IS ON THE RECORD -- WITH FERC, AND THIS IS ON THE RECORD, THEY ARE GOING TO ADD CAPACITY TO THAT STATION, SO THEY GO BUY SOME COMPRESSORS, AND CONTRACT WITH ENRON TO LEASE THEY WILL BACK. THERE IS A LEASING ARRANGEMENT BACK AND FORTH BETWEEN THE TWO. OUR VIEW IS THAT THE ELECTRIC FACILITIES THAT WENT TO SERVE THAT SITE, IF WEST FLORIDA WAS SERVING IT, WOULD BE THE SAME FACILITIES UNDER THIS PAPER TRANSACTION. ALL THAT IS HAPING IS THEY ARE PUTTING IN SOME NEWCOMBE PRESSORS, POWERING THEM WITH ELECTRICITY TO INCREASE THE CAPACITY, AND THEY ARE LETTING SOME OTHER UTILITY COME SIX MILES INTO THE TERRITORY TO BUY --

IS THAT FACT? IN OTHER WORDS IF SOMEONE HAD A HOUSE AND THEY WERE ADDING ANOTHER ROOM ON AND ANOTHER AIR CONDITIONING, OBVIOUSLY THEY ARE GOING TO GET THE POWER FROM THE SAME POWER COMPANY. IS THAT, BUT IS THAT, NOW, AGAIN, BECAUSE WE ARE TALKING HERE ABOUT OUR STANDARD OF REVIEW, I ASSUME THAT ARGUMENT WAS MADE TO THE PSC THAT THIS WAS ACTUALLY THE SAME FACILITY, AND THEY REJECTED THAT ARGUMENT.

CORRECT.

AND SO HOW IS THAT SOMETHING THAT WE CAN REVERSE?

WE CAN REVERSE IT ON THIS BASIS. AGAIN, IS THAT THEY ARE ALLOWING RETAIL COMPETITION WHICH IS NOT THE LAW OF THE STATE, BY GOING BACK TO HISTORIC AREA AND THE INTEGRITY OF SERVICE AREAS, WHICH IS REALLY CRUCIAL. THEY ARE ALLOWING ANOTHER UTILITY TO COME IN, UNDER THE GUISE OF A NEW CUSTOMER. IT DOESN'T MAKE ANY DIFFERENCE WHETHER IT IS A NEW CUSTOMER. THE NEW CUSTOMER IS WITHIN WEST FLORIDA'S TERRITORY, BUT THEY ARE SAYING THAT THAT CUSTOMER CAN COME IN AND BE SERVED BY A NEIGHBORING UTILITY WHO CAN BUILD FACILITIES INTO THE SAME BUILDING, SO YOU NOW HAVE ONE UTILITY SERVING ANSWER LATER SERVICES AND ANOTHER ONE SERVING THE -- ANSWER I LATER SERVICES -- ANCILLARY SERVICES AND ANOTHER ONE SERVING THE MOTORS. THE BOTTOM LINE HERE IS IT HAS GONE FROM THE HISTORIC AREA AS IN THIS SUWANNEE VALLEY CASE, 36 SQUARE MILES THAT THEY OKAYING ONNIZE THE SIZE AND INTEING -- THAT THEY RECOGNIZE THE SIZE AND INTEGRITY OF SERVICE AREAS AND THEY SAY DISENGIN WASLY ---DISENGENUOUSLY THAT WE

ARE SERVING THIS AREA BY ANOTHER UTILITY, AN AREA THE SIZE OF THIS TABLE WOULD COMPLETELY BE SERVICED BY ANOTHER UTILITY.

YOU ARE SAYING IT IS THE SAME FACILITY.

YES, MA'AM. THE SAME FACILITY, ON THE SAME PROPERTY, IN THE SAME BUILDING.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL TIME, I WOULD LIKE TO REMIND YOU.

THANK YOU.

CHIEF JUSTICE: GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM RICHARD BELLAK, REPRESENTING THE FLORIDA PUBLIC SERVICE COMMISSION. IT IS A MISNOMER ON THE PART OF WEST FLORIDA, TO TALK ABOUT DEREGULATION, AND IT IS A MISNOMER TO SAY THAT THE COMMISSION FAILED TO CONSIDER ANY OF THEIR ARGUMENTS. IN FACT WE CONSIDERED ALL OF THEIR ARGUMENTS.

COULD YOU DEAL JUST WITH THAT. I THINK YOUR OPPONENT HAS SORT OF PAINT ADD IMAGE FOR US HERE, THAT THIS -- PAINTED AN IMAGE FOR US HERE, THAT THIS IS AN AREA THAT THEY HAVE TRADITIONALLY SERVED AND THEY HAVE BEEN THE ONLY UTILITY TO SERVE THAT AREA, AND THAT ACTUALLY THEY CONTINUE TO SERVE THIS SAME TRANSMISSION STATION, YOU KNOW THAT, IS LOCATED THERE, AND THAT WHAT HAS HAPPENED IS THAT, THROUGH YOUR ORDER, YOU HAVE ACTUALLY ALLOWED A DISTANT UTILITY TO COME SIX MILES, I BELIEVE IT IS --

RIGHT. RIGHT.

-- AND SUPPLY POWER IN ADDITION, NOW, TO WHAT THE HISTORIC SERVICE UTILITY HAS DONE, AND THAT, I MUST SAY THAT THE IMAGE OF THAT THROWS YOU A LITTLE CURVE.

WELL, THE PROBLEM --

SO HELP US OVER THAT.

THE PROBLEM WITH THEIR WHOLE CASE IS IT IGNORES THE ELEPHANT IN THE ROOM. THE ELEPHANT IN THE ROOM IS THE SPECIAL CHARACTER OF THE SERVICE, THE 230,000-VOLT SERVICE. NO ONE HAD EVER EXPENDED A PENNY TO SERVE 230,000-VOLT SERVICE, SO THERE IS NO RELEVANT HISTORIC PRESENCE. THEY NEGLECT THE FACT THAT GULF POWER HAS RELEVANT HISTORIC PRESENCE, BECAUSE THEY HAVE GOT THE ONLY 230 KV FACILITY ANYWHERE IN WASHINGTON COUNTY, BUT THE COMMISSION DID NOT WEIGH THAT IN FAVOR OF GULF POWER.

COULD YOU GO BACK TO JUSTICE ANSTEAD'S QUESTION, THOUGH, WHAT ABOUT THIS FOOT PRINT, AND DID THEY NOT ALREADY, COULD THIS HAVE BEEN DONE, WITHOUT DRAWING A FOOTPRINT?

NO. THE, ACTUALLY THEY SFIPTED AWAY THEIR -- STIPULATED AWAY THEIR CASE AND HAVE FORGOTTEN ABOUT IT APPARENTLY, BUT IT IS STIPULATION TWO, ON PAGE 185 OF THE RECORD, AND IT WAS ADOPTED AT PAGE 20 OF THE TRANSCRIPT BY THE COMMISSION, AND HERE IS THE REMARKABLE SENTENCE IN STIPULATION TWO THAT THEY HAVE APPARENTLY FORGOTTEN ABOUT, AND THAT IS, QUOTE, RETAIL SERVICE TO STATION 13-A, IS THE ONLY PRESENT AND REASONABLY REASONABLY-FORESEEABLE FUTURE REQUIREMENT OF THE AREA IN DISPUTE." SO THEY ARE TALKING ABOUT THE 35-ACRE FGT SITE. THEY ARE TALKING ABOUT POTENTIALLY DRAWING THEIR OWN UNILATERAL BOUNDARY AGAIN, AROUND A 4-MILE RADIUS, WHICH WOULD BE 16,000 ACRES. THEY HAVE STIPULATED THAT THE ONLY DISPUTE IS ABOUT RETAIL SERVICE TO THOSE TWO MOTORS. AND THAT IS WHAT THE COMMISSION DECIDED. AND IT DIDN'T WEIGH IT IN FAVOR OF GULF POWER, BECAUSE THEY HAVE GOT THE ONLY RELEVANT HISTORIC PRESENCE.

BUT IT DID THE WEIGH THAT IN FAVOR OF WEST FLORIDA, EITHER, BECAUSE THEY HAVE ONLY IRRELEVANT HISTORIC PRESENCE.

COULD YOU COME BACK, AGAIN, TO THE, COULD THIS HAVE BEEN DONE WITHOUT DRAWING THIS ARTIFICIAL FOOTPRINT? WHAT WOULD HAVE BEEN THE ANSWER, HAD WE NOT HAD THE COMMISSION DRAWING THE FOOTPRINT AROUND THE TWO MOTORS? WHAT WOULD HAVE BEEN THE ANSWER THEN, UNDER THOSE CIRCUMSTANCES, SAME AS WE HAVE OR WOULD IT HAVE BEEN DIFFERENT?

WELL, IT WOULD HAVE BEEN THE SAME, BECAUSE THE KEY IS WHAT THEY ARE NOT TALKING ABOUT IS THAT EITHER UTILITY CAN EXTEND SERVICE IN FLORIDA, SO LONG AS IT DOESN'T UNECONOMICALLY DUPLICATE EXISTING SERVICE, AND THAT IS WHY THE 230 KV ISSUE IS DISPOSITIVE OF THIS. IN THE USUAL HISTORIC PRESENCE CASE OF, AS JUSTICE PARIENTE SAID, WHOEVER IS THEIR FIRST. YOU DON'T WANT TO DUPLICATE THAT IN MOST CASES, BECAUSE IT IS GOING TO BE AN EXPENSIVE, UNECONOMIC DUPLICATION OF SOMETHING THAT IS ALREADY THERE. ADEQUATE SERVICE THAT IS ALREADY PROVIDED.

YOUR DISSENTING COMMISSIONER SEEMS TO SUGGEST THAT, BECAUSE THIS IS REALLY IN THE HENSON AREA, THAT, AND WEST FLORIDA HAS, IN FACT, HISTORICALLY GIVEN POWER OR SERVICED THAT PARTICULAR HENSON AREA, THAT YOU HAVE CARVED OUT AN EXCEPTION TO THE NORMAL NOT HAVING RETAIL COMPETITION IN THE SAME AREA, BY ALLOWING YET ANOTHER COMPANY TO COME IN, NOT EVEN NEXT DOOR BUT RIGHT IN THE SAME FACILITY, AND OPERATE IT.

WELL, THEIR FOUR-MILE RADIUS IS SURROUNDED BY GULF POWER'S EIGHT-MILE RADIUS, SO IT IS IRRELEVANT. THERE ARE MANY ADJACENT SERVICE AREAS.

BUT THE AREA, ISN'T GULF POWER'S AREA SORT OF OUTSIDE OF THIS HENSON AREA?

THERE IS NO TERRITORYAL BOUNDARY HERE, AND THEREFORE WHAT GOVERNS IS, IF YOU ARE NOT UNECONOMICALLY DUPLICATING, YOU CAN BE IMMEDIATELY ADJACENT, AND TAKE A LOOK AT THE PRISON CASE, GULF COAST VERSUS CLARK, THAT IS IMMEDIATELY ADJACENT TO GULF POWER.

IS IT BECAUSE, THEN, BECAUSE OF THE SIZE OF WHAT THE INCREASE IS THAT DETERMINES IT? SAY IT WAS ORLANDO, AND WE WERE BACK IN WHATEVER TIME, AND THERE WAS ONE COMPANY, I DON'T KNOW WHICH POWER COMPANY SERVICES, BUT DISNEY WORLD COMES ALONG, AND THAT IS GOING TO BE A WHOLE BIG REQUIREMENT FOR POWER. COULD ANYBODY COME IN AND SAY WE WANT TO SERVICE DISNEY WORLD?

IT IS THE NATURE OF THE POWER. IT IS A 230,000-VOLT REQUIREMENT, AND ONLY GULF POWER UNDERSTOOD THAT RIGHT FROM THE BEGINNING. WEST FLORIDA IS STILL AMBIVALENT ABOUT THAT IN THEIR TESTIMONY.

AMBIVALENT, MEANING YOU DON'T KNOW OR THE PSC DIDN'T FEEL THEY WOULD BE ABLE TO SUPPLY THAT TYPE OF --

THEY COULD SUPPLY IT, BUT THEIR WITNESSES ARE INCONSISTENT. AT PAGE 129 OF THE TRANSCRIPT, THEIR BULK POWER EXPERT SAYS, WELL, MAYBE IT IS 230 BUT WE THINK THAT WE WANT TO TEST 115, AND THAT WOULD BE A PUBLIC DETRIMENT. THAT WOULD AND INSUFFICIENTLY-RELIABLE POWER SOURCE FOR THIS FACILITY. THIS IS A SPECIALIZED NEED, AND ONLY GULF POWER UNDERSTOOD THAT RIGHT FROM THE BEGINNING. THEY ARE STILL AMBIVALENT ABOUT IT.

SO YOU ARE SAYING IT IS NOT REALLY EVEN A CUSTOMER PREFERENCE. YOU ARE SAYING THE

PSC MADE IT, THERE IS ANOTHER QUALITATIVE DECISION ABOUT THE RELIABILITY OF THE SERVICE.

THAT'S CORRECT. WE ACCEPTED THEIR STIPULATION THAT EITHER COULD SERVE RELIABLY, BUT THAT DOESN'T MEAN THAT THEIR WITNESSES ARE ALL IN A ROW WITH THAT. THEY ARE NOT. AND THERE IS ANOTHER GREAT BARRIER.

WAIT A MINUTE. IS THIS THE BASIS THAT THIS CASE WAS TURNED ON? THAT IS WHAT YOU ARE SUGGESTING TO US, THAT THIS TURNED ON THE BASIS THAT THE UTILITY SERVING THAT AREA WAS NOT CAPABLE OF SUPPLYING WHAT NEEDED TO BE SUPPLIED, SO THEREFORE THAT IS A FACTOR TO BE TAKEN IN FAVOR OF GULF?

NO. WE SAID THAT THEY WERE CAPABLE OF IT BUT THEIR WITNESSES ARE AMBIVALENT ABOUT WHETHER THEY ACTUALLY WILL.

IS IT SOMETHING FOR US TO CONSIDER? I AM TRYING TO UNDERSTAND IS THAT A BASIS FOR THIS DECISION OR NOT?

IT IS ONLY AN ISSUE, IF YOU GO BEYOND THE FACTORS THAT WE CONSIDERED. IF YOU GO TO THE WHOLE RECORD, THEIR CASE GETS WEAKER NOT STRONGER. WHAT WE ARE SAYING IS THEY STIPULATED THE CASE AWAY, AND NOW THEY ARE TRYING TO ADD IRRELEVANCIES BACK INTO IT. THE HISTORIC PRESENCE IS IRRELEVANT, BECAUSE IT DOESN'T CUT EITHER WAY.

ON THAT HISTORIC PRESENCE, WAS THERE ANY TESTIMONY OR SHOULD, DOES THE PSC CONSIDER WHETHER IT WOULD BENEFIT THE EXISTING CUSTOMERS, IN TERMS OF --

IT WILL HURT THE EXISTING CUSTOMERS, WHAT THEY WANT TO DO, BECAUSE ON PAGE 4, THEY ARE TRYING TO LOOK FOR A PAPER ISSUE TO UPSET THE RULE ANALYSIS, AND HERE IS WHAT THEY SAY ON PAGE 4 OF THE INITIAL BRIEF. WEST FLORIDA, QUOTE, WOULD SEEK TO INTEGRATE THE NEW FACILITIES WITH THE CURRENT, THOSE CURRENTLY USED TO SERVE EXISTING CUSTOMERS IN THE AREA. THE -- CUSTOMERS IN THE AREA. THE MOST IMPORTANT THING IS TO KEEP THESE TWO DISCREET POWER LIVES ISOLATED FROM EACH OTHER NOT TO COMINGLE THEM.

THERE WAS TESTIMONY, THAT IS IN THE RECORD?

THAT IS WHAT THEY SAID IN THEIR BRIEF THEY WANT TO DO, AND SUPPOSEDLY TO GET SOME BENEFIT OUT OF THE SPARE TRANSFORMER. THEY CAN'T GET ANY BENEFIT OUT OF THE SPARE TRANSFORMER, UNLESS THEY DEGRADE THE RELIABILITY ON THE DEDICATED USE OF THAT. AND IT WAS FOUND IF YOU TRIED TO DO THIS, THERE WOULD BE A LOT OF EXPENSE TO TRY TO BUFFER THE TWO THINGS AND THE COMMISSION WOULDN'T APPROVE OF IT. IT IS A PUBLIC DETRIMENT.

ARE YOU SAYING THAT, AS FAR AS HISTORIC PRESENCE, THEN, THAT HISTORIC PRESENCE IS ONLY RELEVANT INSOFAR AS IT WOULD AFFECT NONECONOMIC DUPLICATION OF SERVICES?

EXACTLY. EXACTLY.

DID THEY STIPULATE THAT THERE WOULD BE NO NONECONOMIC DUPE INDICATION?

THEY DID STATE -- DEPP INDICATION?

THEY DID -- DONELY INDICATION?

THEY DID STATE THAT AND THAT IS WHY THE GULF COAST PRISON CASE, SO ADD JAYSANCY IS NOT AN ISSUE. HISTORIC PRESENCE IS NOT AN ISSUE, AND THEIR WHOLE CUSTOMER PREFERENCE

RETAIL TYPE OF THING IS LIKE ALL OF THEIR ARGUMENTS, RESULT-ORIENTED. WHEN THEY COME OPEN WAS THE PREFERRED UTILITY AS IN GULF COAST VERSUS CLARK, THEY DIDN'T TELL THE COURT THAT THAT WAS ILLEGAL UNDER LEE COUNTY VERSUS MARKS OR IN STORY V MAYO. IT IS ONLY IF THE GULF POWER IS PREFERRED AND ALL OF THEIR ARGUMENTS ARE LIKE THAT THEY DIDN'T SAY THAT AWARDED THE SINGLE CUSTOMER, THE PRISON, TO THEMSELVES, ELEVATED CUSTOMERS OVER TERRITORY, ONLY WHEN THE CUSTOMER PREFERS GULF POWER THAT ELEVATING CUSTOMERS OVER TERRITORY.

IF YOU DID NOT HAVE THE LEASE ARRANGEMENT WITH THIS COMPRESSION SYSTEM AND ENRON'S INVOLVEMENT, WITH THAT LEASE-BACK KIND OF THING, WOULD THAT ALTER THE EQUATION AT ALL?

WELL, THE, THEY ARE TRYING TO GET THAT REWEIGHED, WHETHER IT IS REALLY A NEW CUSTOMER, BUT THAT IS ANOTHER, THAT IS ANOTHER PROBLEM THAT IS THE DOUBLE STANDARD. THE RESULT-ORIENTED. THEY ARE NOT SAYING THEY ARE GOING TO SERVE FGT. IN FACT, WHAT THEIR OWN WITNESS SAID, ON PAGE 80 OF THE TRANSCRIPT, MR. CURRIE TESTIFYING FOR WEST FLORIDA SAID, THE NEW HENSONS CROSSROADS DELIVER POINT IS BEING -- DELIVER POINT IS BEING CONSTRUCTED TO SERVE THE NEED OF THE CONSUMER, SO EVEN THEIR OWN WITNESS BELIEVES THAT IT IS THE CUSTOMER.

CHIEF JUSTICE: I NEED TO REMIND YOU THAT YOU HAVE USED YOUR ALLOTTED TEN MINUTES, IF YOU ALL ARE GOING TO SPLIT YOUR TIME.

COULD I GET YOU TO ANSWER WOULD IT BE A DIFFERENT SITUATION OR NOT, IF WE WOULD JUST HAVE THE SAME, WITHOUT ENRON'S INVOLVEMENT?

I DON'T THINK THE ANALYSIS WOULD CHANGE BECAUSE OF THE CHARACTER OF THE SERVICE IS THE LEADING FACTOR OF THE CASE.

CHIEF JUSTICE: GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM JEFF RAY OF THE LAW FIRM BEGGS AND LANE IN PENSACOLA AND I REPRESENT THE POWER COMPANY. THIS IS NOT A DISPUTE ABOUT ANY CUSTOMER IN THE FOUR-MILE RADIUS OF THE MOTORS IN THIS CASE. THIS CASE IS ABOUT WHICH UTILITY WILL BE ALLOWED TO SERVE A NEW LOAD AT A NEW FACILITY THAT ONLY ONE OF THE TWO UTILITIES HAS ACTIVELY WORKED TO BRING INTO WASHINGTON COUNTY, AND THE ELECTRIC LOAD --

YOU ARE SAYING, I TAKE IT, THAT THIS IS A VERY SPECIALIZED NEED, AND THAT --

ABSOLUTELY.

-- GULF POWER HAS THE IMMEDIATE ABILITY TO MEET THAT VERY SPECIALIZED -- SPECIALIZED NEED AND DO IT EFFECTIVELY, IS THAT RIGHT, AND THIS IS THE BASIS FOR THE DECISION HERE.

IT IS THE BASIS FOR THE DECISION HERE AND ALSO THAT GULF POWER DEMONSTRATE ADD WILLINGNESS TO INFORM THE CUSTOMER AND HELP THE CUSTOMER REACH THE DECISION ABOUT WHETHER THE NEWCOMBE PRESSION WOULD BE POWERED BY GAS OR ELECTRICITY. THAT IS THE COMPETITION THAT EXISTED IN THIS CASE, AND IT IS CLEAR IN THE BODY OF THE LAW, THAT THERE IS NO ORGANIC RIGHT BY A CUSTOMER TO CHOOSE ELECTRIC SUPPLIERS, BUT IN A CASE SUCH AS THIS ONE, WHERE THE CUSTOMER HAS THE OPPORTUNITY TO CHOOSE ENERGY SUPPLIERS BETWEEN GAS OR ELECTRICITY, IT HAS THE OPPORTUNITY TO MAKE THAT CHOICE, AND GULF POWER -- THAT CHOICE, AND GULF POWER'S WILLINGNESS TO WORK WITH THE CUSTOMER OVER A NUMBER OF YEARS ENABLED THAT CUSTOMER TO MAKE THAT DECISION. THAT IS WHY THERE IS A ELECTRIC LOAD AT THIS FACILITY. THERE IS SOME DISCUSSION ABOUT

THE FACILITY AND THE FACT THAT THE COOPERATIVE SERVES THE EXISTING FACILITY. THE EXISTING FACILITY CONSISTED OF GAS-POWERED COMPRESSION. ASSURE, SELVES SOME -- SURE, THERE WAS SOME ELECTRIC ANSWER LATER SERVICES BUT THOSE WERE OF A -- ANCILLARY SERVICES BUT THOSE WERE OF A NATURE THAT SURROUNDED THE HENSON CROSSROADS AREA. THE TYPE OF SERVICE ANNOUNCED IS SIMILAR TO A STRAW WHEREAS THE TYPE OF SERVICE SERVED IS AKIN TO A FIRE HOSE.

I WENT THROUGH THE BRIEFS AND ASSUMED THAT YOUR CLIENT CHALLENGER WOULD HAVE TO CONSTRUCT THE NECESSARY TOWERS AND INSTALL THE WIRES AND ALL OF THAT, AND SO THAT WAS NOT REALLY WHAT THIS TURNS ON. IF YOU ARE SAYING THAT THEY NEGOTIATED AND WORKED WITH ENRON AND ALL OF THIS IN THE YEARS PAST, IF THAT IS A FACTOR TO CONSIDER, WHERE IS THAT IN THE REGULATION THAT IS WE ARE TRYING TO FOLLOW HERE SOME WE ARE TALKING, IT SEEMS TO BE THIS MORNING, ABOUT APPLES AND ORANGES AND NOT TALKING ABOUT THE SAME ELEMENTS.

JUSTICE LEWIS, UP UNTIL THE POINT THAT ECS ACTUALLY SIGNED A CONTRACT WITH GULF, THERE WAS ALWAYS A RISK THAT THIS COMPRESSION WOULD BE POWERED BY GAS. THERE WOULD NOT HAVE BEEN ANY TOWERS TO HAVE TO BE CONSTRUCTED INTO THE SITE. IT WAS ONLY AFTER THE CUSTOMER WAS COMFORTABLE WITH THE FACT THAT IT WAS AN ECONOMIC ADVANTAGE TO GO WITH ELECTRICITY SUPPLIED BY GULF POWER COMPANY COMPARED TO GAS AS THE MORE TRADITIONAL MEANS OF SERVING COMPRESSION IN THIS AREA, THAT THEY ENTERED INTO A CONTRACT WITH GULF, IDEA SERVICE FROM GULF, AND -- REQUESTED SERVICE FROM GULF AND GULF BEGAN THE CONSTRUCTION OF FACILITIES IN ORDER TO BEGIN PROVIDING THE FIRE HOSE, IF YOU WILL, TO POWER THESE FACILITIES.

BUT THAT IS NOT PART OF THE REGULATORY ELEMENTS.

ABSOLUTELY IT IS PART OF THE REGULATORY ELEMENTS.

WHICH PART, A, B, C OR D SNP.

PART OF THE CAPABILITY TO SERVE AND ALSO PART OF CUSTOMER PREFERENCE AND PART OF THE ECONOMICS INVOLVED, AND WE TALKED ABOUT THE FACT THAT THE HISTORIC --

HOW IS THE ECONOMICS INVOLVED? WHAT IT SEEMS YOU SAYERING TO ME IS THEY NEGOTIATED A DEAL TO HAVE IT BE ELECTRICITY AND THEREFORE THE COMPANY THAT DOES THAT IS THE ONE ON WHO GETS TO SERVICE IT. YOU ARE RIGHT. IT MAY BE AN ELEMENT, BUT IS THAT BECAUSE ARE SAY SOMETHING.

I AM SAYING ONLY IN THE CONTEXT OF WHERE THERE WOULD BE NO ECONOMIC DUPLICATION. YOU SEE IN THIS CASE IT HAS BEEN STIPULATED AWAY THAT THERE IS NO ECONOMIC DUPLICATION. IN FACT THE LINE TO SERVE THIS CUSTOMER, NEEDED -- GIVEN THE FACT THAT IT NEEDS TO BE 230 KILOWATTS OF SERVICE, NEEDS TO BE THE SAME. BECAUSE OF THE HISTORICAL PRESENCE OF THE SODA STRAW IN THE AREA THAT HAS NO BEARING ON WHETHER OR NOT YOU HAVE TO BUILD A FIRE HOSE IN THE AREA TO SERVE THIS NEW LOAD. THE FACT OF THE MATTER EARLIER AND THE QUESTION YOU ASKED EARLIER OF WHETHER THE ANALYSIS TURNS ON THE FACT THAT THERE ARE DIFFERENT ENTITIES THAT CONTROL THE LOAD, AND I WOULD ARGUE TO YOU THAT THE BASIS OF THE COMMISSION'S RULE IS SUCH THAT THERE IS A DIFFERENT POINT OF SERVICE, GIVEN THE DIFFERENT CHARACTER OF THE LOAD. THE FACT OF THE MATTER IS YOU CAN'T SERVE THESE ELECTRIC MOTORS THROUGH THE SAME TYPE OF SERVICE OR THE SAME METER THAT SERVES THE LIGHTS AND OTHER FACILITIES OF THE CHARACTER THAT IT PREVIOUSLY EXISTED ON THE SITE. IT IS IMPORTANT TO NOTE THAT, ON THIS PARTICULAR PARCEL OF LAND, WHICH IS NOT THE SIZE OF THIS TABLE BUT RATHER IS THE SIZE OF THIS ROOM, THESE MOTORS, NOTHING EXISTED. THOSE MOTORS WERE BUILT ON THAT PARCEL OF LAND. THE 230 KV SERVICE WAS BROUGHT INTO A NEW SUBSTATION BUILT IN AN ADJACENT AREA SO IT

COULD SERVE THOSE MOTORS AND A NEW BUILDING WAS BUILT. WE ARE NOT TAKING ANYTHING AWAY FROM WEST FLORIDA COOPERATIVE. TO THE CONTRARY THEY HAVE HAD GROWTH IN LOAD AS A RESULT OF THIS NEW DEVELOPMENT, BECAUSE OF THE FACT THAT THERE IS NOW A NEW BUILDING THAT REQUIRES NEW SERVICE. THE FACT OF THE MATTER IS THE MOTORS ARE A DIFFERENT CHARACTER, AND THEY ARE DIFFERENT POINT OF SERVICE, AND THE COMMISSION HAS RECOGNIZED THAT, AND THERE IS NO ECONOMIC ADVANTAGE FOR ONE UTILITY OR ANOTHER, AND THEREFORE THE CUSTOMERS' PREFERENCE SHOULD BE GIVEN GREAT WEIGHT.

YOU ARE SAYING THE NEGOTIATION OCCURRED, SO YOU ALREADY WENT, THE PLANT, GULF POWER'S PLANT WAS BUILT, BASED ON THAT NEGOTIATION? IS THAT, I GUESS I THOUGHT THAT THERE HAD TO BE PSC APPROVAL, EVEN FOR THE BUILDING OF THE PLANT.

THE TYPE OF PLANT WE ARE TALKING ABOUT IS TRANSMISSION LINES. WE ARE TALKING ABOUT, AND WE HAVE HAD A LONG STANDING HISTORY OF SERVICE IN WASHINGTON COUNTY. GULF POWER COMPANY'S FIRST ELECTRIC SERVICE WAS IN WASHINGTON COUNTY IN 1926, PREDATING EVEN THE VERY EXISTENCE OF WEST FLORIDA, AND AS MENTIONED EARLIER, IF YOU EXPAND THE FOOTPRINT, IF YOU WILL, TO TEN SQUARE MILES, WE HAVE MORE CUSTOMERS IN THE AREA THAN THEY DO, SO THE ISSUE, REALLY, IS, IF IT TAKES A DIFFERENT TYPE OF SERVICE, WHAT HISTORICAL PRESENCE OF ANY SIGNIFICANCE? NO, THE COMMISSION DID NOT HAVE TO PREAPPROVE THE CONSTRUCTION OF THE TRANSMISSION LINE, BUT IT ACKNOWLEDGED THE FACT THAT, BUT FOR THE CUSTOMERS' DECISION TO GO ELECTRICITY VERSUS GAS, THERE WOULD HAVE BEEN NO NEED TO BUILD THE SIX-MILE TAP INTO THE LAND.

BUT YOU WOULDN'T HAVE BUILT WHAT YOU BUILT, IF IT WEREN'T FOR YOUR BELIEVE THAT YOU WERE GOING TO BE ABLE TO SERVE THIS --

WE WOULD NOT HAVE BUILT IT IF THE CUSTOMER HAD NOT ASKED FOR THE SERVICE FROM US.

I GUESS IT SEEMS IT IS SORT OF, I MEAN I GUESS IT WAS A FOREGONE CONCLUSION THEN.

WELL, AGAIN, WE DID NOT START BUILDING ANYTHING, UNTIL THE CUSS -- UNTIL THE CUSTOMER HAD REQUESTED SERVICE FROM US.

I AM SORT OF SURPRISED. IT SEEMS, IN OTHER WORDS IF WE REVERSED, WHAT YOU ARE SAYING, ARE YOU ALREADY SERVICING THESE COMPRESSORS, AND WHAT WOULD HAPPEN AS A RESULT OF A REVERSAL AT THIS TIME, AND AWARDING IT TO PSC AWARDED IT TO WEST FLORIDA?

OBVIOUSLY AT THIS POINT IN TIME, MORE TIME HAS PASSED SINCE THE HEARING, AND THE LINE HAS BEEN CONSTRUCTED, AND THERE IS SERVICE TO THE FACILITY AND WE ARE SERVING THE CUSTOMER.

SO YOU WOULD JUST, AND THAT WAS, THAT WAS AN INVESTMENT OF HOW MUCH MONEY?

MILLIONS OF DOLLARS. I THINK IT APPROACHES \$10 MILLION.

WOW. IS THAT COMMON FOR, WHERE A UTILITY GOES OUT AND BUILDS AND STRETCH AND STRINGS THEIR LINES BEFORE THE PUBLIC SERVICE COMMISSION'S INVOLVEMENT? IS THAT NORMAL?

JUSTICE LEWIS, WE FILED A PETITION FOR DECLARATORY STATEMENT, BEFORE THAT CONSTRUCTION COMMENCED, IN ORDER TO RESOLVE ANY QUESTION ABOUT THIS CASE.

SO YOU DID IT WHILE THERE WAS, UNDER CONTROVERSY THEN.

WE KNEW, AS WE WERE ENTERING INTO THE CONTRACT, WE KNEW THAT THE COOPERATIVE WAS

DISPUTING OUR RIGHT TO SERVE. THEY WERE DISPUTING THE QUESTION OF WHETHER OR NOT THE CUSTOMER'S PREVALANCERERENCE HAD ANY BEARING -- PREFERENCE HAD ANY BEARING IN THIS CASE. BASICALLY THE COOPERATIVE, SINCE 1995, CONCLUDED THAT THERE WAS NO OPPORTUNITY TO SERVE ELECTRIC LOAD ON THIS PARCEL OF LAND, THAT GAS WAS GOING TO BE THE OPTION CHOSEN. IN THE INTERIM, WE CONTINUED TO WORK WITH THE CUSTOMER TO PERSUADE THEM THAT THE ELECTRIC WAS THE OPTION, AND AS A RESULT OF OUR WILLINGNESS TO CONTINUE WORKING THE CASE AND CONTINUE SHOWING THEM THE MERITS OF ELECTRICITY VERSUS GAS AND THE FACT THAT WE DID HAVE THE 230 KV AND COULD MEET THE DEADLINES THAT WERE NECESSARY IN ORDER TO MAKE THIS PROJECT WORK, THE CUSTOMER CHOSE GULF POWER COMPANY. I APPRECIATE YOUR TIME. I SEE MINE IS CONCLUDED.

CHIEF JUSTICE: THANK YOU VERY MUCH. COUNSEL.

THANK YOU, SIR. WELL, WHAT I THINK WE JUST HEARD IS A LOT OF MISS DIRECTION ABOUT WHAT, REALLY, WAS GOING ON. THE 230 ISSUE WAS A DEAD ISSUE. IT WAS A NONISSUE AT THE COMMISSION. THE COMMISSION AGREED AND THE PARTIES AGREED THAT BOTH UTILITIES HAD ACCESS TO THAT 230 LINE AT THE SAME COST. THE FACT THAT GULF POWER MAY HAVE ACTUALLY LOANED THE LINE OR THROUGH SOUTHERN COMPANY SERVICES, MANAGED THE LINE

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WHAT ABOUT THE COMMISSION'S CITATION TO SOME OF YOUR PEOPLE'S TESTIMONY THAT, WELL, WE ARE NOT SO SURE THAT THEY REALLY NEED THAT MUCH POWER.

THAT IS ANOTHER MISCONCEPTION. THAT IS PART OF THEIR LACK OF INTEREST ARGUMENT, AND THAT IS BEFORE OUR CLIENTS, BEFORE WEST FLORIDA AND AEC COULD DETERMINE WHAT THE SERVICE CHARACTERISTICS ARE, THEY HAD TO GET INFORMATION FROM ENRON. THEY HAD TO GET INFORMATION, AND OUR TESTIMONY IS AND IT IS IN THE RECORD, IS THAT ENRON WAS SLOW IN PROVIDING THAT INFORMATION. WHEN THEY FINALLY DID, THIS BECAME A NONISSUE. IT IS, THEY GIVE YOU THE IMPRESSION THAT, AS OF RIGHT NOW, THE WEST FLORIDA AND AEC FOLKS STILL DON'T KNOW WHETHER IT SHOULD BE 115 OR 2306789 WE AGREED IT WAS 230 -- OR 230. WE AGREED IT WAS 230, BY THE TIME WE GOT ALL OF THE INFORMATION WE NEEDED FROM THEM, AND BY THE TIME IT GOT TO A HEARING, THAT ISSUE WAS GONE.

ARE YOU SAYING THAT DEALING WITH THIS CASE THAT, HISTORIC PRESERVATION IS AN ELEMENT THAT HAS TO BE CONSIDERED, AND THEY SEEM TO BE SUGGESTING THAT WE ARE REALLY THE ONES THAT BROUGHT THIS INTO BEING. WE GAVE BIRTH TO THIS CHILD THAT NEEDS TO BE SERVED NOW, SO IS THAT AN ELEMENT THAT HAS BEEN DISCUSSED IN CASES IN THE PUBLIC SERVICE COMMISSION?

THAT WAS AN ELEMENT DISCUSSED IN THE GULF COAST ONE CASE, THE WASHINGTON COUNTY PRISON, AND IT IS KIND OF LIKE THE BUT-FOR ISSUE, WHICH IS NOT AN ISSUE IN THIS CASE.

WHY SHOULD THAT BE DIFFERENT THAN THIS CASE?

TWO THINGS. THE BUT-FOR ISSUE IN THAT CASE WAS BUT-FOR THE COOP WENT OUT AND SECURED A LOAN FOR THE WASHINGTON COUNTY COMMISSION TO BUY LAND TO GIVE TO THE PSC AND GULF POWER HAD FULL KNOWLEDGE OF IT AND SAT AROUND AND WAITED UNTIL IT WAS SECURED, AND ONCE IT WAS SECURED AND THE COOP BUILT A LINE, THEN IT WAS REJECTED N -- REJECTED. IN THIS CASE FLORIDA POWER -- WEST FLORIDA WAS OUT OF THE LOOP. IN THIS CASE THE COMMISSIONER SAID HE DIDN'T KNOW GULF WAS SERVING WASHINGTON COUNTY UNTIL AFTER ENRON. IT WAS A LACK OF KNOWLEDGE THAT THEY DIDN'T KNOW ENRON WAS REALLY SERVING WEST FLORIDA AND THEY DIDN'T KEEP WEST FLORIDA IN THE LOOP. TO US THAT IS A PHONY ARGUMENT. THE ONLY REFERENCE TO REGARDING THE LACK OF INTEREST WAS FROM WITNESS ANTHONY, WHO SAID WEST FLORIDA LACKED ENERGETIC INTEREST, BUT AS WE POINTED OUT IN OUR REPLY BRIEF, ANTHONY HAD NO KNOWLEDGE THAT THEY HAD ASKED WEST

FLORIDA ANYTHING BY THE PSC, SO WHAT THEY ARE BASICALLY TRYING TO SAY IS WE WILL KEEP SOMEONE OUT OF THE LOOP AND THEN USE THAT AGAINST THEM BY SAYING, WELL, THEY DIDN'T DO ANYTHING.

WHAT ABOUT THE STIPULATION?

THE STIPULATION. THE STIPULATION STIPULATES AWAY NOTHING. AS A MATTER OF FACT I WOULD ARGUE THE OPPOSITE. THAT THE STIPULATION ON THE 230 LINE AND THE COST TO THE TWO UTILITIES TO EXTEND SERVICE WOULD BE THE SAME, THEN WEIGHS EVERYTHING IN FAVOR OF WEST FLORIDA BECAUSE THIS IS WEST FLORIDA'S HISTORIC SERVICE AREA. THIS ISSUE IS ISSUE NUMBER 6, AND IT WAS A STIPULATION THAT SAID WHAT IS THE NATURE OF THE DISPUTED AREA WITH RESPECT TO ITS POPULATION, THE TYPE OF UTILITY SEEKING TO SERVE IT, THE DEGREE OF YOU SHALLIZATION. THIS IS 2-B OF THE DISPUTE RESERVATIONLUTION RULES -- RESOLUTION RULES, AND THE ANSWER WAS AND WE AGREE WITH THAT THAT THE NATURE OF THE DISPUTED AREA IS RURAL, AS DEFINED BY SECTION 231, AND RETAIL TO 13-A IS THE ONLY REASONABLE REQUIREMENT OF THE AREA IN DISPUTE, A THAT THE GENERAL FACILITY IS EXPECTED TO REMAIN RURAL, WITH SLOW AGRICULTURAL AND ROAD GROWTH. IT IS NINE MILES FROM VERNON AND 12 MILES FROM BONIFAY. THAT STIPULATES AWAY NOTHING.

AS FAR AS THE POLICY THAT IS EITHER BEING SERVED OR NOT SERVED BY THIS, AS YOU MENTIONED AND HAS BEEN MENTIONED, THIS COUNTY, THERE HAS BEEN SEVERAL DISPUTES INVOLVING SERVICE. IS THIS IN WASHINGTON COUNTY?

YES, MA'AM.

AND SO WHAT WE HAVE GOT ARE WE HAVE GOT SEVERAL UTILITIES THAT ARE JUST SORT OF, I DON'T WANT TO SAY FALLING ALL OVER EACH OTHER, BUT THEY ALL WANT TO SERVE THIS COUNTY THAT IS A VERY SLOW-GROWING COUNTY, BUT I GUESS PEOPLE MUST SEE THAT IT HAS GOT POTENTIAL, AND I GUESS THAT ONCE THE PSC LOOSE AND SAYS, LISTEN, THIS IS DISCREET. THIS IS A VERY LARGE VOLUME CAPACITY THAT IS NOT AS IF GULF POWER ISN'T IN THE COUNTY. I MEAN, THEY ARE A COUPLE OF MILES AWAY. WHAT IS THE, YOU KNOW, FOR THIS COURT TO OVERTURN THAT, WHAT IS, I MEAN, WHAT IS THE OVERWHELMING PUBLIC POLICY THAT WOULD BE SERVED BY INTERFERING WITH THE PSC'S ENORMOUS DISCRETION IN THIS AREA?

YES, MA'AM. I WOULD SAY THAT THE DISSENT BY COMMISSIONER POLAEY. THIS IS A POLICY THAT SHOULD BE DONE AT LEAST THROUGH THE EXISTING RULE-MAKING. THIS IS NOT AN EXCEPTION. THERE IS 230 LINES ALL OVER THE STATE OF FLORIDA, AND THEY STIPULATED THAT WE HAVE ACCESS TO THIS SPECIAL LINE JUST LIKE THEY DO. THAT REALLY WAS A NONISSUE. THIS IS NOT SUCH A SPECIAL LINE OR FACILITY THAT ONLY GULF CAN PROVIDE. THIS IS SIMPLY BASICALLY ENDED UP A NO PLUSES OR MINUSES ON EITHER SIDE FOR THE FOLKS FOR EITHER UTILITY, SO WE GET BACK TO THE OTHER CRITERIA, AND THE MAIN ONE FOR US IS HISTORIC SERVICE AREA. IF WE DO AWAY WITH HISTORIC SERVICE AREA, THEN WE HAVE OPENED UP THE STATE TO RETAIL COMPETITION.

AGAIN, HISTORIC SERVICE AREA IS NOT ONE OF THE ENUMERATED FACTORS IN THE RULE. RIGHT?

IT IS A FACTOR THAT THE COMMISSION AS CONSIDERED IN THE PAST BUT IT IS NOT IN THE RULE.

YES.

SO YOU SEEM TO BE TELLING US THAT WE HAVE TO REVERSE, THAT THE COMMISSION ESSENTIALLY VIOLATED THE ESSENTIAL REQUIREMENTS OF LAW BY NOT ONLY FAILING TO CONSIDER HISTORICAL PREFERENCE OR PRESENCE IN THE AREA, BUT GIVING THAT WEIGHT MORE THAN ANY OF THE OTHER FACTORS THAT ARE ACTUALLY ENUMERATED IN THE RULE.

YES. BECAUSE OUR VIEW IS THOSE OTHER RULES, THE RULES THAT THEY HAVE ACTUALLY ENUMERATED ARE PREMISED ON AND ARE FUNDAMENTAL TO HISTORIC SERVICE AREA P IF THE UTILITY DOES NOT HAVE THE INTEGRITY OF ITS SERVICE AREA, WHAT DOES IT HAVE LEFT? THAT MEANS EVERYBODY --

CAN YOU RESPOND TO THEIR ARGUMENT THAT HISTORICAL PRESENCE IS RELEVANT ONLY TO THE EXTENT THAT IT AFFECTS NONECONOMIC DUPLICATION AND HERE, BECAUSE THE PARTIES STIPULATED OR EVEN IF THEY DIDN'T THEY FOUND THAT THERE WOULD BE NO NONECONOMIC DUPLICATION, HISTORICAL PRESENCE IS IRRELEVANT.

I DISAGREE. THE STIPULATION ON NONECONOMIC DUPE INDICATION IS IN ANOTHER ZFX THE RULE. IF YOU NOTICE, THE DISPUTE RESOLUTION RULE DOESN'T REFER TO THAT, SO THAT IS OUT. WE ARE NOT GOING TO HAVE NONECONOMIC DUPE INDICATION IF GULF POWER, IF EITHER ONE OF THEM PROVIDES THE SERVICE. SO THAT IS OUT OF THE EQUATION. NOW WE ARE BACK TO HISTORIC SERVICE AREA. WE ARE STILL BACK TO THAT. THE CRUELTY ILLUSTRATE THAT SHOULD BE PROVIDING -- THE UTILITY THAT SHOULD BE PROVIDING THE SERVICE ON THIS SITE, SINCE EVERYTHING ELSE REGARDING COSTS IS SIMILAR, IS WEST FLORIDA. IN FACT THE WITNESSES FROM GULF POWER CONCEDED THAT THEY CAN PROVIDE SERVICE ON THAT LINE TO CUSTOMERS, NOTWITHSTANDING THEIR INITIAL STANDING IN DIRECT TESTIMONY THAT THEY WOULDN'T. THEY ARE GOING TO ONLY DO THIS ONE SPECIALIZED LINE. WELL, THEY CAN, IN FACT, PROVIDE SERVICE, AND THIS WILL SIMPLY CREATE MORE TERRITORIAL DISPUTES IN THIS AREA AND ON TOP OF THAT THE COMMISSION SAID THE ENTIRE FOUR-MILE RADIUS AREA OF HENSON CROSSROADS IS THE AREA, BUT WE ARE GOING TO ONLY RESOLVE THE SMALL PIECE THAT COUNSEL SAID IS THE SIZE OF THIS ROOM, BUT I THINK IT IS SMALLER THAN THAT BUT STILL A ROOM-SERVICE SIZE AREA SERVED BY ANOTHER UTILITY?

THE COMMISSION DID CONFINE ITSELF TO A DISCREET GEOGRAPHIC AREA. IS THAT WHAT YOU ARE SAYING? THAT IS CONSISTENT WITH WHAT YOUR OPPOSITION SAID.

I AM NOT FOLLOWING YOU. THERE WAS NO STIPULATION ON THE, MY UNDERSTANDING, ON THE DISPUTED AREA. WE SAID IT WAS A FOUR-MILE-RADIUS OF HENSON CROSSROADS, WEST FLORIDA D THEY SAID, NO, IT IS A FOOTPRINT OF THE MOTORS. THE COMMISSION FOUND IT WAS IN FACT, A FOUR-MILE RADIUS OF HENSON CROSSROADS.

CHIEF JUSTICE: WE ARE GOING TO HAVE TO ASK YOU TO END ON THAT NOTE. WE THANK ALL OF YOU VERY MUCH AND THE COURT IS GOING TO TAKE ITS MORNING 15-MINUTE RECESS AT THIS TIME, BEFORE WE HEAR THE LAST TWO CASES. WE WILL BE IN RECESS FOR 15 MINUTES.