



Public Service Commission

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DATE: APRIL 22, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BELL)

FROM: DIVISION OF AUDITING AND FINANCIAL ANALYSIS (REVELL),
 MAUREY
 DIVISION OF COMMUNICATIONS (SIMMONS) SAS
 DIVISION OF ELECTRIC AND GAS (GOAD) OH
 DIVISION OF LEGAL SERVICES (COLLINS) RUC RUC

RE: DOCKET NO. 990167-EI - PETITION FOR APPROVAL, PURSUANT TO SECTION 34(I) OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, AS AMENDED, OF INTER-AFFILIATE AGREEMENT BETWEEN GULF POWER COMPANY AND SOUTHERN TELECOM, INC.

AGENDA: 05/04/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\AFA\WP\990167.RCM
 ATTACHMENT IS NOT AVAILABLE

CASE BACKGROUND

The Telecommunications Act of 1996 in part amended the Public Utility Holding Company Act of 1935 (PUHCA) to authorize exempt telecommunications companies. This enables registered holding companies such as Southern Company (Southern), to acquire those telecommunications companies. In accordance with revised Section 34, subpart (I) of PUHCA, a public utility company may enter into contracts with a telecommunications company that is an affiliate or associate company, only if "...every State commission having jurisdiction over the retail rates of such public utility approves such contract...". Gulf Power Company (Gulf) is seeking approval of a contract with Southern Telecom, Inc. (STI) Both companies are subsidiaries of the Southern, and contracts between these companies are governed by the provisions of Section 34.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DISCUSSION OF ISSUES

ISSUE 1: Should the contract between Gulf Power Company and Southern Telecom, Inc. be approved? (Attachment)

RECOMMENDATION: Yes. (REVELL, MAUREY)

STAFF ANALYSIS: Gulf is requesting approval of a contract with STI, a subsidiary of the Southern Company, to provide various communications services. These services will include fiber optic services, which will be joint ventures between STI and other outside parties. STI will not be providing any wireless communication services. The Company's petition states that its ratepayers will not be harmed by this agreement since any services obtained by the Company will be based on the market price for such services. A limitation on such pricing is that the price will be no more than STI's fully distributed costs for the provided services.

The Commission's approval of this contract between Gulf and STI does not indicate specific approval of rates, terms, or conditions associated with the contract. Such matters are properly reserved for review by the Commission within the context of a rate proceeding.

It is recommended that the contract be approved subject to the Commission's authority to disallow any of the costs for rate making purposes, including surveillance.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: This docket should be closed if no person whose interests are substantially affected by the proposed action files a protest within the 21-day protest period. (COLLINS)

STAFF ANALYSIS: At the conclusion of the protest period, if no protest is filed, this docket should be closed.

COMMUNICATIONS SERVICES AGREEMENT

THIS AGREEMENT is made as of May 4, 1999 ("Effective Date") between Gulf Power Company, a Maine corporation ("Customer"), and Southern Telecom, Inc., a Delaware corporation ("Contractor").

PREMISES

Both parties are Southern Company subsidiaries.

Contractor is an Exempt Telecommunications Company pursuant to Section 34 of the Public Utility Holding Company Act of 1935, as amended (the "PUHCA").

Contractor is authorized, pursuant to 15 U.S.C. § 79z-5c, to engage in the business of providing telecommunications and information services, as defined in the Communications Act of 1934, as amended, other services or products subject to the jurisdiction of the Federal Communications Commission, and other products or services related or incidental to the provision of those products or services (collectively, "Telecommunications Services").

Subject to the terms and conditions of this Agreement, Contractor is willing, upon Customer's request, to provide Telecommunications Services to Customer at costs determined in accordance with the applicable rules, regulations and orders of the Securities and Exchange Commission under the PUHCA.

Accordingly, the parties agree as follows:

TERMS AND CONDITIONS

1. Telecommunications Services.

1.1. (a) Subject to the terms and conditions of this Agreement, Contractor will provide Customer Telecommunications Services at such times, for such periods and in such manner as Customer may from time to time request and as Contractor may agree to provide. The price for such services shall be agreed upon by the parties at the time of each specific request and agreement to provide, subject to the limitation set forth in Section 2 of this agreement. Nothing contained herein imposes on Customer any obligation to purchase or request from Contractor Telecommunications Services.

(b) Contractor intends initially to offer Customer Telecommunications Services which include point-to-point transport of voice and data communications and call center services for such periods and in such manner as Customer may from time to time request and as Contractor may agree to provide. Contractor will notify the appropriate state and federal agencies as necessary when it intends to offer Customer additional Telecommunications Services.

1.2. Contractor will provide Customer Telecommunications Services after Contractor receives and accepts Customer's work order or other service request. Customer will give Contractor access without charge to Customer's premises and facilities to the extent Contractor needs that access to efficiently and reliably provide Telecommunications Services.

1.3. The Telecommunications Services Contractor provides under this Agreement are subject to all limitations contained in authorizations, rules and regulations of governmental agencies having jurisdiction over Contractor, Customer or the Telecommunications Services provided hereunder.

2. Costs.

2.1. As consideration for the Telecommunications Services Contractor provides hereunder, Customer will pay to Contractor an amount that is agreed upon for each specific request for Telecommunication Services subject to the limitation that such agreed upon compensation shall not be more than Contractor's fully distributed costs ("Costs") for those Telecommunications Services. Costs will be determined in accordance with standard Southern Company accounting procedures for inter-affiliate transactions. Contractor will invoice Customer for those Telecommunications Services on or before the 10th day of the succeeding month and Customer will pay those invoices on or before the 20th day of that month.

2.2. Contractor will notify Customer of any changes in Contractor's accounting procedures and any other change or event that materially affects the Costs (collectively "Events"), no later than 10 business days after the Event. Further, within 30 days after an Event occurs, Contractor will recalculate its Costs, provide Customer with documentation supporting the recalculation, and adjust all invoices for Telecommunications Services it thereafter renders to Customer to reflect such changes in Costs. Notwithstanding any of the foregoing, Contractor and Customer will review Contractor's Cost information every year.

3. Work Orders.

Contractor will provide Telecommunications Services to Customer in accordance with work orders or requests issued or made by or on Customer's behalf and accepted by Contractor. Customer may amend, alter or rescind any work order, provided that (a) Contractor agrees to any amendment or alteration that materially changes the scope of the work it must perform or equipment it must provide; (b) the Costs covered by the work order include any expense Contractor incurs as a result of the amendment, alteration or rescission; and (c) the amendment, alteration or rescission does not release Customer from liability for any costs already incurred or contracted for pursuant to the work order, regardless of whether contractor or its agent has completed the work associated with those Costs.

4. Warranty and Limitation of Liability.

4.1. Contractor will exercise due care to assure that the Telecommunications Services are performed in a workmanlike manner, meet the standards and specifications set forth in the applicable work order or request, and comply with any applicable legal standards. Contractor makes no other warranty with respect to the Telecommunications Services provided hereunder.

4.2. If Contractor fails to perform any Telecommunications Services as warranted, then Customer's sole and exclusive remedy will be re-performance by Contractor of the Telecommunications Services to comply with the applicable work order, request or standard.

5. Term. Subject to any required regulatory approval, this Agreement becomes effective on the Effective Date and terminates on the first anniversary thereof. This Agreement will automatically renew for successive one year terms unless either party provides the other with notice of nonrenewal at least 30 days prior to the end of the then current term.

6. Regulatory Requirements. This Agreement and all services provided hereunder are only effective in accordance with all legal requirements imposed by state or federal agencies having jurisdiction over this Agreement or the parties, and will be administered in accordance with the terms of such orders, rules and regulations.

7. Miscellaneous.

7.1. Assignment. This Agreement will bind the successors and assigns of the parties hereto, but Contractor may not assign any of its obligations under this Agreement or under any purchase order or work order issued hereunder without Customer's prior approval.

7.2. Choice of Law. The laws of the state of Florida, (excluding any choice of law principle that would result in the application of the laws of any other jurisdiction) govern the validity, construction, and enforcement of this Agreement and the determination of the parties' rights and duties hereunder.

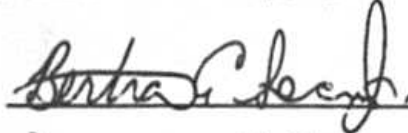
7.3. Notice. Unless otherwise provided in this Agreement, all notices, requests, demands and other communications in connection with this Agreement must be in writing and may be mailed or delivered via facsimile or by courier to the parties at the addresses shown on the signature page below (or at such other addresses as will be given in writing by the parties to one another) and will be effective when delivered.

7.4. Severability. If a court or agency of competent jurisdiction holds any one or more provisions of this Agreement or any application thereof to be invalid, illegal or unenforceable in any respect, such holding will not in any way affect or impair the validity, legality and enforceability of the remaining provisions in this Agreement and all other applications of the remaining provisions.

7.5. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any prior statement or writing not a part of this Agreement or otherwise referenced in this Agreement.

SIGNED AND DELIVERED.

SOUTHERN TELECOM, INC.



By: Bertram E. Sears, Jr.

Its: President

241 Ralph McGill Blvd., NE

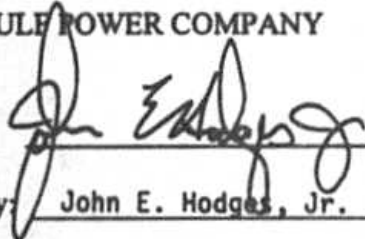
Atlanta, GA 30308

Facsimile No. 404-506-3090

ATTN: BERTRAM SEARS, JR.

Date: _____

GULF POWER COMPANY



By: John E. Hodges, Jr.

Its: Vice President

500 Bayfront Parkway

Pensacola, Florida 32501

Facsimile No. 850-444-6744

ATTN: John E. Hodges, Jr.

Date: April 15, 1999