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100304-EU

From:	Ann Bassett [abassett@lawfla.com]
Sent:	Monday, January 03, 2011 2:49 PM
То:	Filings@psc.state.fl.us
Cc:	Steven Griffin; Matthew Avery; Leigh Grantham; Ralph Jaeger; Susan Ritenor
Subject:	Docket No. 100304-EU
Attachments	: 2011-01-03, 100304, Chelco's Response to Motion to Compel.pdf

The person responsible for this electronic filing is:

Norman H. Horton, Jr. Messer, Caparello & Self, P.A. P.O. Box 15579 Tallahassee, FL 32317 (850) 222-0720 nhorton@lawfla.com

The Docket No. is 100304-EU Territorial Dispute between Choctawhatchee Electric Cooperative, Inc. and Gulf Power Company

This is being filed on behalf of Choctawhatchee Electric Cooperative, Inc.

Total Number of Pages is 3

Choctawhatchee Electric Cooperative, Inc.'s Response to Motion to Compel

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FPSC-COMMISSION CLERM



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January 3, 2011

BY ELECTRONIC FILING

Ms. Ann Cole, Director Commission Clerk and Administrative Services Room 110, Easley Building Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850

Re: Docket No. 100304-EU

Dear Ms. Cole:

Enclosed for filing on behalf of Choctawhatchee Electric Cooperative, Inc. is an electronic version of Choctawhatchee Electric Cooperative, Inc.'s Response to Motion to Compel in the above referenced docket.

Thank you for your assistance.

Sincerely,

Norman H. Horton,

NHH/amb Enclosure cc: Ms. Leigh V. Grantham Parties of Record DOCUMENT NUMBER OF A

Regional Center Office Park / 2618 Centennial Place / Tallahassee, Florida 32308 Mailing Address: P.O. Box 15579 / Tallahassee, Florida 32317 Main Telephone: (850) 222-0720 / Fax: (850) 224-4359

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail and/or U.S. Mail this 3rd day of January, 2011.

Ralph Jaeger, Esq. Office of the General Counsel Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850

Ms. Leigh V. Grantham Choctawhatchee Electric Cooperative, Inc. P.O. Box 512 DeFuniak Springs, FL 32435-0512

Ms. Susan D. Ritenour Gulf Power Company One Energy Place Pensacola, FL 32520-0780

Steven R. Griffin, Esq. Beggs and Lane P.O. Box 12950 Pensacola, FL 32951-2950

Norman H. Horton, Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Territorial Dispute Between Choctawhatchee Electric Cooperative, Inc. and Gulf Power Company

Docket No. 100304-EU Filed: January 3, 2011

RESPONSE TO MOTION TO COMPEL

Choctawhatchee Electric Cooperative, Inc. ("CHELCO") by and through its undersigned attorney, hereby responds to Gulf Power Company's ("Gulf Power") Motion to Compel and states:

1. On December 22, 2010, Gulf Power filed a Motion to Compel seeking to have the Commission direct CHELCO to respond to Interrogatory No. 52 of the Third Set of Interrogatories served by Gulf Power. The interrogatory at issue requested the physical address of each member receiving service from CHELCO. In previous discovery requests CHELCO provided information relative to total members served and the number of members served within the incorporated areas of a municipality. CHELCO has objected – and continues to object to the relevance of requests for numbers of customers served in arbitrarily defined areas dictated by Gulf let alone addresses of <u>all</u> members served by CHELCO.

2. As has been copied in prior motions and responses, Section 425.04(4), Florida Statutes, authorizes cooperatives to provides "... electric energy in rural areas to its members . . . and to other persons not in excess of 10 percent of the number of its members" Again as has been recited "rural area" means "... any area not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of 2,500 persons." Gulf Power acknowledges in its Motion that Chelco may serve non-members, and in fact, this Commission has recognized that cooperatives are not prohibited from serving

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non-members. In re: Petition of Peace River Electric Cooperative Inc. against Florida Power & Light for resolution of a Territorial Dispute, Order No. 15210; Dkt. No. 840293-EU, October 8, 1985.

3. Gulf Power also acknowledges that the instant interrogatory is another, different, attempt to get information previously requested. For this reason, CHELCO would incorporate in this response the response to the pending Motion to Compel but would also note that CHELCO has provided responses to Gulf Power's requests for the number of customers served within the incorporated limits of several municipalities and this request for addresses of all members is not only not relevant to the issues but is repetitious and unnecessary.

4. In a footnote Gulf Power suggests that unincorporated areas can be "non rural" under certain circumstances but nowhere other than their own arbitrary definition of "greater area of (name)" does Gulf Power recite a definition of an unincorporated city, town, village, or borough. Indeed, there is no definition of these terms in the statutes. Instead, Gulf Power seeks to develop a definition that would preclude CHELCO, and other cooperatives in the state, from providing services to growing areas. This Commission has rejected arguments by Gulf Power that CHELCO should not be permitted to serve an area because it may someday lose the characteristics of a "rural area" (In re: *Choctawhatchee Electric Cooperative, Inc. v. Gulf Power Co.*, Order No. 7516, Dkt. No. 74551-EU, Nov. 19, 1976, cert. denied *Gulf Power Co. v. Hawkins*, et al., 375 So.2d 854, Fla. 1979)

5. CHELCO requests the Commission to deny the Motion to Compel the provision of addresses for all members. CHELCO has provided responses relative to the number of members in non-rural areas and the addresses of all members is unnecessary and not designed to lead to the discovery of admissible evidence.

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DATED this 3rd day of January, 2011.

Respectfully submitted,

NORMAN H. HORT

E. GARY EARLY MESSER, CAPARELLO & SELF P. A. Post Office Box 15579 Tallahassee, FL 32317 (850) 222-0720

Attorneys for Choctawhatchee Electric Cooperative, Inc