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STATE OF FLORIDA



OFFICE OF COMMISSION CLERK  
CARLOTTA S. STAUFFER  
COMMISSION CLERK  
(850) 413-6770

# Public Service Commission

## NOTICE OF COMPLAINT

TO

**Gulf Power Company**  
**One Energy Place**  
**Pensacola, FL 32520**

(via Certified Mail No. 7015 0640 0001 2706 4636)

**Re: Docket No. 20180125-EU - Complaint against Gulf Power Company for expedited enforcement of territorial order, by Gulf Coast Electric Cooperative, Inc.**

Notice is hereby given, via certified U.S. mail, that the above-referenced complaint was filed with the Florida Public Service Commission on May 24, 2018. A copy of the complaint is attached for your convenience.

You may file a response to this complaint with the Office of Commission Clerk, with a copy sent to the complainant. Filing may be accomplished electronically via the Commission's website (see <http://www.floridapsc.com/ClerkOffice/EFilingRequirements>) or by mail at the address below.

NOTICED this 25th day of May, 2018.

Sincerely,

A handwritten signature in cursive script that reads "Carlotta S. Stauffer".

Carlotta S. Stauffer  
Commission Clerk

CSS/BNB

Enclosure

cc: Gulf Coast Electric Cooperative, Inc.  
Office of Public Counsel  
Office of General Counsel  
Office of Consumer Assistance & Outreach  
Docket File

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint by Gulf Coast Electric Cooperative, Inc. against Gulf Power Company for violation of a territorial order.

Docket No: \_\_\_\_\_

Filed: May 23, 2018

**COMPLAINT OF GULF COAST ELECTRIC COOPERATIVE, INC.  
FOR EXPEDITED ENFORCEMENT OF TERRITORIAL ORDER**

Gulf Coast Electric Cooperative, Inc. (“GCEC”) files this Complaint against Gulf Power Company (“Gulf Power”) for expedited enforcement of the territorial agreement between GCEC and Gulf Power (the “Territorial Agreement”) which was approved by, and became part of, Commission Order No. PSC-01-0891-PAA-EU and Order No. PSC-01-0891A-PAA-EU (collectively, the “Territorial Order”)<sup>1</sup>. As grounds for its Complaint, GCEC states:

1. The Complainant’s name and address are:

Gulf Coast Electric Cooperative, Inc.  
John Bartley, CEO and General Manager  
722 West Highway 22  
P.O. Box 220  
Wewahitchka, FL 32465  
Telephone: 850-639-5061

2. The names, addresses, and telephone numbers of the persons to whom all notices and other documents should be sent are:

D. Bruce May, Jr.  
Tiffany A. Roddenberry  
Holland & Knight LLP  
315 S. Calhoun St., Suite 600  
Tallahassee, FL 32301  
Telephone: 850-224-7000  
E-Mail: bruce.may@hklaw.com  
tiffany.roddenberry@hklaw.com

and

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<sup>1</sup> Copies of the Territorial Order and the Territorial Agreement are attached as Composite Exhibit “A”.

J. Patrick Floyd  
408 Long Avenue  
Post Office Drawer 950  
Port St. Joe, FL 32456-0950  
Telephone: 850-227-7413  
E-Mail: j.patrickfloyd@jpatrickfloyd.com

3. The name and address against whom this Complaint is lodged is:

Gulf Power Company  
One Energy Place  
Pensacola, FL 32520-0780

4. Section 366.095, Florida Statutes confers on the Commission the power to enforce its orders and to impose penalties on any entity subject to its jurisdiction under Chapter 366 that violates a Commission order.

5. Where the Commission finds violations of a territorial order approving a territorial agreement, the Commission may impose “appropriate penalties.”<sup>2</sup>

6. GCEC is an electric cooperative organized and existing under Chapter 425, Florida Statutes, and presently furnishes electric service to members in Bay, Walton, Washington, Jackson, Gulf, and Calhoun Counties.

7. Gulf Power is an investor-owned electric utility subject to the jurisdiction of the Commission pursuant to Chapter 366, Florida Statutes, and is engaged in the business of selling electric energy to customers in Northwest Florida, including certain customers in Bay, Walton, Washington, and Jackson Counties.

8. GCEC and Gulf Power are electric utilities subject to the jurisdiction under Chapter 366, Florida Statutes, including but not limited to sections 366.04 and 366.095, Florida Statutes.

9. In 1998, by Order No. PSC-98-0174-FOF-EU, the Commission directed Gulf Power and GCEC to enter into the Territorial Agreement after years of litigation between the parties

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<sup>2</sup> *In re: Petition of Florida Power and Light for a Declaratory Statement Regarding Territorial Agreement with the City of Homestead*, 89-2 F.P.S.C. 288 (1989) (Docket No.: 880986-EU, Order No.: 20803, Feb. 4, 1989).

over uneconomic duplication of facilities and “race to serve” issues. *See e.g., Gulf Coast Electric Coop. v. Clark*, 674 So. 2d 120 (Fla. 1996) (the court overturned Commission’s finding that GCEC had engaged in a “race to serve” a prison, and instructed Commission to award service to GCEC); *Gulf Power Co. v. Public Serv. Comm’n*, 480 So. 2d 97 (Fla. 1985) (Court upheld Commission’s award of service to GCEC and affirmed Commission’s ruling that Gulf Power had made “extravagant expenditures in providing reckless and irresponsible service” by extending 2.2 miles of power line to serve a location that GCEC could serve for less.).

10. In 2000, pursuant to the Commission’s direction, GCEC and Gulf Power entered into the Territorial Agreement for the purpose of avoiding uneconomic duplication of facilities. In 2002, the Territorial Agreement was approved by the Commission and thus became part of the Commission’s Territorial Order.

### **THE TERRITORIAL ORDER**

11. The Territorial Order delineates “enforceable” procedures for how Gulf Power and GCEC are to respond to a request for service in order to avoid uneconomic duplication of facilities. *See* Territorial Order No. PSC-01-0891-PAA-EU, p. 1.

12. The Territorial Order’s purpose of avoiding uneconomic duplication of facilities is founded upon the following principle:

“Whether or not a Utility’s provision of electric service to a Customer would result in further uneconomic duplication of the other Utility’s facilities is primarily dependent upon whether or not there is a significant difference in the Cost of Service<sup>3</sup> for each of the utilities. The likelihood of there being a significant difference in the Cost of Service is primarily a function of the size of

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<sup>3</sup> “Cost of Service” is defined in §1.1 of the Territorial Agreement to mean “the initial cost of the construction (including fully-loaded labor, materials, engineering and supervision overheads, etc.) of the modification or addition of facilities required to provide requested service to the Customer less any initial payments by the Customer as a contribution in aid to construction.”

the Load<sup>4</sup>, and the difference in distance between the Point of Delivery<sup>5</sup> and the Existing Facilities<sup>6</sup> of each utility.”

See § 2.1 of the Territorial Agreement. Accordingly, the Territorial Order specifies various load and distance criteria under which GCEC and Gulf Power may provide service in response to a prospective customer’s request. Those criteria are set forth in Section 2.2 of the Territorial Agreement, which provides:

2.2 Various Load and distance criteria under which a Utility may agree to provide service are as follows:

- (a) For any size Load where the requested Utility’s Existing Facilities are within 1,000 feet of the Point of Delivery or are no more than 1,000 feet further from the Point of Delivery than the Existing Facilities of the other Utility.
- (b) For a Load greater than 100 kVA where:
  - (i) the construction required is predominantly the addition of new pole line and the requested Utility’s Existing Facilities are no more than 1,500 feet further from the Point of Delivery than the Existing Facilities of the other Utility, or
  - (ii) the construction required is predominantly the upgrade of existing pole line (e.g. phase additions, reconductoring, etc.) and the requested Utility’s Existing Facilities are within 3,000 feet of the Point of Delivery.
- (c) For a Load greater than 500 kVA where:
  - (i) the construction required is predominantly the addition of new pole line and the requested Utility’s Existing Facilities are no more than 2,000 feet further from the Point of Delivery than the Existing Facilities of the other Utility, or

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<sup>4</sup> “Load” is defined in § 1.4 of the Territorial Agreement to mean “the connected Load stated in terms of kilovolt-amperes (kVa) of the building or facility for which electrical service is being requested.”

<sup>5</sup> “Point of Delivery” is defined in § 1.5 of the Territorial Agreement to mean “that geographical location where the Utility’s anticipated facilities that would be used to deliver electrical power to a Customer begin to constitute what is commonly referred to as the service drop or service lateral, i.e. it is the point at which the Utility’s primary or secondary facilities would terminate and the service drop or service lateral would commence.”

<sup>6</sup> “Existing Facilities” is defined in § 1.3 of the Territorial Agreement to mean “the Utility’s nearest facilities that are of a sufficient size, character (number of phases, primary voltage level, etc.) and accessibility so as to be capable of serving the anticipated Load of a Customer without requiring any significant modification of such facilities.”

- (ii) the construction required is predominantly the upgrade of existing pole line (e.g. phase additions, reconductoring, etc.) and the requested Utility's Existing Facilities are within 4,000 feet of the Point of Delivery.
- (d) For a Load greater than 1000 kVA where:
  - (i) the construction required is predominantly the addition of new pole line and the requested Utility's Existing Facilities are no more than 2,500 feet further from the Point of Delivery than the Existing Facilities of the other Utility, or
  - (ii) the construction required is predominantly the upgrade of existing pole line (e.g. phase additions, reconductoring, etc.) and the requested Utility's Existing Facilities are within 5,000 feet of the Point of Delivery.

13. If service by the requested Utility to a specific Point of Delivery would not meet the load and distance criteria in Section 2.2, but the requested Utility still believes that its cost to serve the Point of Delivery would not be "significantly more than that of the other utility" then the requested Utility is required to comply with the procedure delineated in Section 2.3 to determine whether it may provide service:

2.3 In any instance where the Load and distance criteria of Section 2.2 are not met but the requested Utility believes that its Cost of Service would not be significantly more than that of the other Utility, the following procedure shall be used to determine if the requested Utility may agree to provide service:

- (a) The requested Utility is to notify the other Utility of the Customer's request, providing all relevant information about the request.
- (b) If the other Utility believes that its facilities would be uneconomically duplicated if the request is honored, it has five (5) working days from receipt of notice to request a meeting or other method to be conducted within ten (10) working days for the purpose of comparing each Utility's Cost of Service. Absent such a request or upon notification from the other Utility of no objection to the requested Utility's providing the service, the requested Utility may agree to provide service.

- (c) At the meeting scheduled pursuant to 2.3(b) or in some other mutually acceptable method, each Utility is to present to the other Utility its estimated Cost of Service, including all supporting details (type and amount of equipment, labor rates, overheads, etc.). For Loads greater than 1,000 kVA, information as to the percentage of substation and feeder capacity that will be utilized and the amount and nature of the cost allocations of such utilization included in the Cost of Service are to be provided.
- (d) Upon agreement as to each Utility's Cost of Service, the requested Utility may agree to provide service to the Customer if either of the following conditions are met:
  - (i) The requested Utility's Cost of Service does not exceed the other Utility's Cost of Service by more than \$15,000.
  - (ii) The requested Utility's Cost of Service does not exceed the other Utility's Cost of Service by more than twenty-five percent (25%).
- (e) Notwithstanding the other provisions of this Section 2.3, no Utility shall agree to provide service to a Customer under the provisions of this Section 2.3 if the Load is less than or equal to 1000 kVA, the requested Utility's Existing Facilities are further than 10,000 feet from the Point of Delivery, and the other Utility's Existing Facilities are located in a roadway or other right-of-way abutting the Customer's premises.

14. In order for the cost comparisons required by the Territorial Order to be properly performed, the requested Utility seeking to invoke the cost comparisons under Section 2.3 is first required to calculate its Cost of Service and the other Utility's Cost of Service. If the requested utility "believes" that its Cost of Service is not "significantly more" than that of the other Utility, then it is required to "notify the other Utility of the Customer's request, providing all relevant information about the request." Territorial Order, § 2.3 of Territorial Agreement. (Emphasis added.)

15. Under the Territorial Order, the existence of uneconomic duplication depends on whether there is a significant difference in the Cost of Service for each of the utilities, which "is

primarily a function of the size of the Load, and the difference in distance between the Point of Delivery and the Existing Facilities of each Utility.” *Id.*, § 2.1 of Territorial Agreement. Thus, to ensure a proper Cost of Service comparison, the requested Utility, at a minimum, must provide the other Utility with notice of the size of the Load to be served, the precise location of the Point of Delivery, and the precise location of the requested Utility’s Existing Facilities. All of that information is absolutely imperative in order for the other Utility to calculate how far its Existing Facilities are from the Point of Delivery compared to the Existing Facilities of the requested Utility – a vitally important calculation for determining whether there is uneconomic duplication of facilities under the Territorial Order.

### **GULF POWER’S VIOLATION OF TERRITORIAL ORDER**

16. As described below, Gulf Power has violated and continues to violate the Territorial Order by racing to extend its electrical distribution facilities to serve a lift station located at 1900 Highway 388 West in unincorporated Bay County, Florida (“Lift Station”), that GCEC is entitled to serve under the Territorial Order.

17. On December 14, 2017, GCEC received an a request from Bay County regarding whether GCEC could serve the Lift Station. After receiving the request, and as required by the Territorial Order, GCEC reviewed the “customer load requirements, proximity to existing facilities of both utilities, capabilities of the existing facilities, and the cost to provide the requested service.” Territorial Order, PSC-01-0891-PAA-EU at p. 2. GCEC’s review shows that the Lift Station had a load requirement of 112.5 kVa, and the construction needed to serve it would predominantly require GCEC to add a new pole line.

18. GCEC’s review also shows that: (i) GCEC’s Existing Facilities are 7,920 feet from the Lift Station; (ii) GCEC’s Cost of Service for the Lift Station is \$17,393.28 (see Exhibit “B,”

attached hereto); (iii) Gulf Power's Existing Facilities are 11,088 feet from the Lift Station; and (iv) Gulf Power's own calculations show its Cost of Service for the Lift Station is \$76,000. See Exhibit "C," attached hereto.

19. It is undisputed that GCEC's Existing Facilities are 3,168 feet closer to the Lift Station than those of Gulf Power, and GCEC's Cost of Service is significantly less than Gulf Power's.

20. GCEC was not required to notify Gulf Power of the request it received to serve the Lift Station because "the construction required is predominantly the addition of new pole line and [GCEC's] Existing Facilities are no more than 1,500 feet further from the Point of Delivery than the Existing Facilities of [Gulf Power]." Territorial Order; § 2.2(b) of the Territorial Agreement.

21. Although not required to do so under Section 2.2, GCEC did alert Gulf Power, as a courtesy, regarding the request it received to serve the Lift Station on or around January 8, 2018.

22. Because of GCEC's proximity to the Lift Station and the size of the Load, GCEC has the unrestricted right to serve the Lift Station under the Territorial Order. *Id.*

23. GCEC has never knowingly and willingly waived or relinquished its right to serve the Lift Station under the Territorial Order.

24. At the time GCEC received the request regarding service to the Lift Station in December of 2017, GCEC was unaware that the prospective customer was also shopping for electric service from Gulf Power. Unbeknownst to GCEC at the time, Gulf Power received a similar request regarding service to the Lift Station in October of 2017. But Gulf Power never provided GCEC sufficient notice of that service request nor did it provide GCEC with any of the vitally relevant information GCEC needed to assess whether service by Gulf Power would

uneconomically duplicate GCEC's existing facilities in the area. Instead, a Gulf Power employee sent only an opaque two-sentence e-mail to a GCEC employee which mentioned in passing that Gulf Power had received a request to serve a "new lift station". See Exhibit "D", attached hereto. Gulf Power's opaque e-mail is not proper notice as required by the Territorial Agreement.

25. When the Territorial Agreement was entered in 2000, it was never agreed that notice under Section 2.3(a) could be properly effectuated by e-mail.

26. GCEC never consented that notice under Section 2.3(a) of the Territorial Agreement could be properly effectuated by e-mail.

27. The opaque e-mail sent by Gulf Power to GCEC failed to provide "all relevant information about the request" as required by Section 2.2(a) of the Territorial Agreement. Gulf Power's opaque e-mail only mentioned in passing that Gulf Power had received a request to serve "a new lift station" and did not provide any indication of the county in which the Lift Station was to be located, the actual location of the Point of Delivery to be served, the actual location of Gulf Power's Existing Facilities nearest to the Point of Delivery, the size of the Load to be served, or the customer name. All of that missing information was vitally relevant information for GCEC to perform the cost comparisons required by the Territorial Order.

28. Although the Territorial Order had been in place since 2002, the GCEC employee that received the opaque e-mail from the Gulf Power employee had never communicated with the Gulf Power employee prior to the October 2017 e-mail.

29. In correspondence regarding the Lift Station that Gulf Power had with others, Gulf Power went to great lengths to precisely identify the Lift Station as being located at 1900 Highway 388 West in Bay County, Florida. It was only in communications with GCEC that

Gulf Power chose to exclude the physical address, and instead provide a meaningless parcel number which contained none of the relevant information GCEC needed to assess the size of the Load and the Lift Station's distance from its Existing Facilities compared to the Existing Facilities of Gulf Power.

30. Upon information and belief, the opaque e-mail that Gulf Power sent to GCEC in October of 2017 regarding a "lift station" was deliberately vague and designed to cause GCEC to confuse service to this particular Lift Station with service to another lift station located in western Bay County, that was clearly closer to the Existing Facilities of Gulf Power than to those of GCEC.

31. Under the Territorial Order, " the requested Utility bears the primary responsibility in determining whether or not the provisions of Section 2.2 or 2.3 above have been met or if it otherwise believes that service can be provided to a Customer without uneconomic duplication." See §2.4 of the Territorial Agreement.

32. Upon information and belief, prior to sending the opaque e-mail to GCEC in October of 2017, Gulf Power had not calculated its Cost of Service, nor had it calculated GCEC's Cost of Service, for serving the Lift Station as required by Section 2.3. See Exhibit "E", attached hereto.

33. Upon information and belief, Gulf Power was still "finalizing cost estimates" to serve the Lift Station on February 7, 2018. See Exhibit "E", attached hereto.

34. Upon information and belief, Gulf Power did not calculate its Cost of Service for serving the Lift Station until on or around March 12, 2018. See Exhibit "C ", attached hereto.

35. Furthermore, under the express terms of Section 2.3(e) Gulf Power is not entitled to serve because the Load of the Lift Station is "less than 1,000 kVa", Gulf Power's Existing Facilities are "further than 10,000 feet from the Point of Delivery," and GCEC's Existing

Facilities are located in the right-of-way of Highway 388 West – “a roadway or other right-of-way abutting the Customer’s premises”.

36. Even assuming for the sake of argument that Section 2.3 did apply, a comparison of costs shows that Gulf Power’s cost of service for the Lift Station would be significantly more than GCEC’s Cost of Service.

37. Gulf Power’s own calculations – which were made in March of 2017 – show its Cost of Service for the Lift Station is \$76,000. See Exhibit “C,” attached hereto. By comparison, and as alleged above, GCEC’s Cost of Service is \$17,393.28, which is \$58,606.72 less than Gulf Power’s Cost of Service. The cost differential is not *de minimis*, and Gulf Power’s Cost of Service exceeds GCEC’s Cost of Service by 337%, which goes far beyond the “25% threshold ... the outer limit of economic duplication” under the Territorial Order. See Territorial Agreement § 2.3(d); see also Territorial Order No. PSC-01-0891-PAA-EU, pp. 3-4. Thus, service by Gulf Power to the Lift Station is a prima facie example of uneconomic duplication that the Territorial Order was specifically issued to avoid. *Id.*

38. Notwithstanding that GCEC’s existing facilities are significantly closer to the Lift Station than Gulf Power, and notwithstanding that GCEC’s costs to serve the Lift Station are significantly less than Gulf Power’s, Gulf Power is racing to extend its facilities to serve a location reserved for GCEC under the Territorial Order. Gulf Power’s willful action constitutes a blatant breach and an ongoing violation of the Territorial Order and the underlying Territorial Agreement.

39. Gulf Power’s ongoing violation of the Territorial Order creates further uneconomic duplication of GCEC’s facilities, deprives GCEC of its right to serve under the Territorial Order, and thus adversely affects GCEC’s substantial interests.

40. The Territorial Order requires the parties to make “every effort” to “resolve the dispute, up to and including mediation before Commission Staff and, if necessary, expedited hearing before the Commission.” In compliance with the Territorial Order, the parties have met on two occasions to resolve the disagreement but thus far have failed to resolve their differences. In addition, the parties have attempted to mediate their dispute before the Commission Staff, but the Commission Staff has advised that it currently does not have the capacity to mediate this matter. If, after this Complaint is filed, the Commission later determines that mediation is available under Section 120.573, Florida Statutes, GCEC is prepared to participate in that mediation in a good faith effort to resolve the Complaint.

**RELIEF REQUESTED**

**WHEREFORE**, to avoid unnecessary and further uneconomic duplication of facilities, GCEC respectfully requests that the Commission conduct an expedited hearing and enter an order:

- (1) Finding that Gulf Power has violated the Territorial Order;
- (2) Enforcing the Territorial Order and directing Gulf Power to cease and desist the extension of its electric distribution facilities to the Lift Station;
- (3) Finding that GCEC, and not Gulf Power, is the appropriate electric utility to provide service to Lift Station;
- (4) Imposing appropriate penalties on Gulf Power for ongoing violation of the Territorial Order; and,
- (5) Granting GCEC such other relief as the Commission deems appropriate.

Dated this 23rd day of May, 2018.

**HOLLAND & KNIGHT LLP**

/s/D. Bruce May, Jr. \_\_\_\_\_

**D. Bruce May, Jr.**

Florida Bar No. 354473

bruce.may@hklaw.com  
**Tiffany A. Roddenberry**  
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315 S. Calhoun St., Ste. 600  
Tallahassee, Florida 32301  
(850) 224-7000 (Telephone)

*Counsel for Gulf Coast Electric Cooperative, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. Mail and E-Mail this 23rd day of May, 2018 to: Sandy Sims (SFSims@southernco.com), Eastern District General Manager, Gulf Power Company, One Energy Place, Pensacola, FL 32520-0780 and Steve Griffin (srg@beggslane.com), Beggs & Lane, 501 Commendencia Street, Pensacola, Florida 32502.

/s/D. Bruce May, Jr. \_\_\_\_\_  
Attorney

**COMPOSITE  
EXHIBIT A**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to resolve territorial dispute with GULF COAST ELECTRIC COOPERATIVE, INC. by GULF POWER COMPANY.

DOCKET NO. 930885-EU  
ORDER NO. PSC-01-0891-PAA-EU  
ISSUED: April 9, 2001

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING PROCEDURES AND GUIDELINES FOR AVOIDING  
FURTHER UNECONOMIC DUPLICATION OF FACILITIES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Pursuant to Section 366.04(2)(d), Florida Statutes, we have jurisdiction "to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction." In Order No. PSC-98-0174-FOF-EU issued January 28, 1998, we directed Gulf Power Company and Gulf Coast Electric Cooperative, Inc., to establish detailed procedures and guidelines addressing subtransmission, distribution, and requests for new service which are enforceable with each respective utility. A joint submission of Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities was filed on July 24, 2000. On September 15, 2000, we received a letter requesting a 90-day extension for purposes of amending the July 24, 2000 filing. On January 26, 2001, pursuant to Section 366.04(2)(d), Florida Statutes, and Rule 25-6.0440, Florida Administrative Code, Gulf Power Company and Gulf Coast

DOCUMENT NUMBER-DATE

04323 APR-95

FPSC-RECORDS/REPORTING

Electric Cooperative Inc., filed an Amended Joint Submission of Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities. A copy of the Procedures and Guidelines is included as Attachment A to this Order and is incorporated by reference herein.

In interpreting our authority to review territorial agreements, the Florida Supreme Court has held that the appropriate standard is the "no-detriment test." Utilities Comm'n of City of New Smyrna v. FPSC, 469 So. 2d 731 (Fla. 1985). The Court stated that PSC approval should be based on the effect the territorial agreement will have on all customers in the territory, not just whether transferred customers will benefit. See id. at 732. "For PSC approval, any customer transfer in a proposed territorial agreement must not harm the public." Id. at 733.

Rule 25-6.0440(2), Florida Administrative Code, describes the standards of approval of territorial agreements as follows:

- (2) Standards for Approval. In approving territorial agreements, the Commission may consider, but not be limited to consideration of:
  - (a) the reasonableness of the purchase price of any facilities being transferred;
  - (b) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electrical service to the existing or future ratepayers of any utility party to the agreement; and
  - (c) the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

The above standards were adopted to ensure that the general body of ratepayers is not harmed by the approval of territorial agreements.

In this case, the proposed Amended Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities is the first territorial agreement between the parties. Section II of the proposed agreement outlines a utility's response to a request for service. Upon a request for service, a utility will review

customer load requirements, proximity to existing facilities of both utilities, capabilities of the existing facilities, and the costs to provide the required service. We find that a comparative analysis such as the one required by the proposed agreement will avoid future uneconomic duplication of facilities. Section III of the proposed agreement ensures that customer reliability and power quality will be considered in each request for new service. Section IV ensures utilities will not seek to serve customers currently being provided service by the other utility. Section V of the proposed agreement ensures that distribution system upgrades and extensions will not be put in place for speculative future loads.

The proposed territorial agreement does not establish a traditional "lines-on-the-ground" territorial boundary. However, the proposal addresses all the necessary standards required for approval. When necessary to compare cost of service, the agreement provides a test of two alternatives. First, if the difference between the costs of service of the two companies is less than \$15,000, that amount is to be considered *de minimis*, and the customer's choice of provider may prevail. This *de minimis* standard was derived from the Florida Supreme Court's decision in this docket in Gulf Coast Electric Cooperative, Inc. v. Susan F. Clark, et al., 674 So.2d 120 (Fla. 1996). However, the Supreme Court's opinion does not require that the *de minimis* standard be the only criterion for evaluating uneconomic duplication.

If the foregoing *de minimis* test is exceeded, the agreement provides an alternative comparison of the companies' respective costs of service. If the differential is not more than 25%, the utility with the higher cost of service may provide service according to the agreement, if chosen by the customer. This provision provides a reasonable means for establishing the limit of economic duplication. In the context of a project where there is a significant load associated with the new service, the level of investment necessary by either party would be substantial, as would be the revenues provided by that customer. In such a case, a differential of \$15,000 would likely not be a meaningful measure. Instead, the 25% threshold provides a reasonable measure of the outer limit of economic duplication and therefore the trigger for uneconomic duplication. It takes into account load and other factors that are a part of the determination of uneconomic

duplication, while preserving the customer's ability to initially choose his or her provider. We find the agreement to be in the best interests of the companies and their ratepayers, and we expect the agreement to prevent uneconomic duplication of services, as intended.

Because of the unique characteristics of the proposed territorial agreement, we believe the parties should file a report addressing the effectiveness of the agreement in avoiding future uneconomic duplication and ensuring reliable service. The report should be filed on a 12-month basis for at least the next two years. These reports will provide the appropriate basis to determine whether the proposed territorial agreement is effective.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Amended Joint Submission of Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities, attached and incorporated by reference herein, between Gulf Power Company and Gulf Coast Electric Cooperative Inc., is approved. It is further

ORDERED that Gulf Power Company and Gulf Coast Electric Cooperative Inc. shall file a report on a 12 month basis for at least the next two years, addressing the effectiveness of the agreement in avoiding uneconomic duplication and ensuring reliable service. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

ORDER NO. PSC-01-0891-PAA-EU  
DOCKET NO. 930885-EU  
PAGE 5

By ORDER of the Florida Public Service Commission this 9th day  
of April, 2001.

  
\_\_\_\_\_  
BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

DDH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 30, 2001.

ORDER NO. PSC-01-0891-PAA-EU  
DOCKET NO. 930885-EU  
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In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to resolve  
territorial dispute with GULF  
COAST ELECTRIC COOPERATIVE, INC.  
by GULF POWER COMPANY.

DOCKET NO. 930885-EU  
ORDER NO. PSC-01-0891A-PAA-EU  
ISSUED: March 26, 2002

AMENDATORY ORDER

On April 9, 2001, the Commission issued Order No. PSC-01-0891-PAA-EU, in Docket No. 930885-EU. After issuance, it was noted that due to a scrivener's error, Attachment A, which was incorporated into the Order by reference, was not attached. To correct this error, the Order shall be amended to include Attachment A, which is incorporated by reference. Order No. PSC-01-0891-PAA-EU is affirmed in all other respects.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. PSC-01-0891-PAA-EU is hereby amended as set forth in the body of this Order. It is further

ORDERED that Order No. PSC-01-0891-PAA-EU is affirmed in all other respects.

By ORDER of the Florida Public Service Commission this 26th day of March, 2002.



BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

KNE

DOCUMENT NUMBER DATE  
03440 MAR 26 8  
PSC-01-0891A-PAA-EU CLERK

## PROCEDURES AND GUIDELINES FOR AVOIDING FURTHER UNECONOMIC DUPLICATION OF FACILITIES

It is expected that the utilization of these procedures and guidelines will help Gulf Coast Electric Cooperative, Inc. ("GCEC") and Gulf Power Company ("Gulf Power") avoid further uneconomic duplication of the facilities of each other, in accordance with the policy and rules of the Florida Public Service Commission ("Commission"). Accordingly, these procedures and guidelines are intended for use by the parties to assist in determining whether or not they should agree to honor the request for electric service by a Customer or should otherwise proceed with the construction of additional facilities. If, by constructing the facilities to provide service to a Customer requesting such service, there is a reasonable expectation that uneconomic duplication of facilities would occur, a Utility may deny service to the Customer and direct the Customer to request service from the Utility whose provision of such service would not be expected to result in uneconomic duplication.

### SECTION I: DEFINITIONS

- 1.1 Cost of Service. As used herein, the term "Cost of Service" shall mean the initial cost of the construction (including fully-Loaded labor, materials, engineering and supervision overheads, etc.) of the modification or addition of facilities required to provide requested service to the Customer less any initial payments by the Customer as a contribution in aid to construction.
- 1.2 Customer. As used herein, the term "Customer" shall mean any person or entity requesting electrical service and who is intending to be responsible for or who is acting on behalf of the intended responsible party for a building or other facility (e.g. electro-mechanical equipment, contiguous group of premises, etc.) requiring such electrical service.
- 1.3 Existing Facilities. As used herein, the term "Existing Facilities" shall mean the Utility's nearest facilities that are of a sufficient size, character (number of phases, primary voltage level, etc.) and accessibility so as to be capable of serving the anticipated Load of a Customer without requiring any significant modification of such facilities.
- 1.4 Load. As used herein, the term "Load" shall mean the connected Load stated in terms of kilovolt-amperes (kVA) of the building or facility for which electrical service is being requested.
- 1.5 Point of Delivery. As used herein, the term "Point of Delivery" shall mean that geographical location where the Utility's anticipated facilities that would be used to deliver electrical power to a Customer begin to constitute what is commonly referred to as the service drop or service lateral, i.e. it is the point at which the Utility's primary or secondary facilities would terminate and the service drop or service lateral would commence. For a facility with multiple meter points, "Point of Delivery" shall mean that

geographical location at which the primary circuit to serve the facility begins to branch out into sub-circuits to reach the various meter points.

- 1.6 Utility. As used herein, the term "Utility" shall mean either GCEC or Gulf Power, each of which is an electric Utility under the provisions of Chapter 366 of the Florida Statutes having electrical facilities within the region of a Customer's location so as to be considered by that Customer as a prospective provider of electric energy delivery services.

## **SECTION II: AGREEING TO PROVIDE REQUESTED SERVICE**

- 2.1 Whether or not a Utility's provision of electric service to a Customer would result in further uneconomic duplication of the other Utility's facilities is primarily dependent upon whether or not there is a significant difference in the Cost of Service for each of the utilities. The likelihood of there being a significant difference in the Cost of Service is primarily a function of the size of the Load and the difference in distances between the Point of Delivery and the Existing Facilities of each Utility. Consequently, upon receiving a bona-fide request for service from a Customer, a Utility may agree to provide the requested service if the conditions of either Section 2.2 or Section 2.3 below are met. Otherwise, the Utility should direct the Customer to request service from the other Utility.
- 2.2 Various Load and distance criteria under which a Utility may agree to provide service are as follows:
- (a) For any size Load where the requested Utility's Existing Facilities are within 1,000 feet of the Point of Delivery or are no more than 1,000 feet further from the Point of Delivery than the Existing Facilities of the other Utility.
  - (b) For a Load greater than 100 kVA where:
    - (i) the construction required is predominantly the addition of new pole line and the requested Utility's Existing Facilities are no more than 1,500 feet further from the Point of Delivery than the Existing Facilities of the other Utility, or
    - (ii) the construction required is predominantly the upgrade of existing pole line (e.g. phase additions, reconductoring, etc.) and the requested Utility's Existing Facilities are within 3,000 feet of the Point of Delivery.
  - (c) For a Load greater than 500 kVA where:
    - (i) the construction required is predominantly the addition of new pole line and the requested Utility's Existing Facilities are no more than 2,000 feet further from the Point of Delivery than the Existing Facilities of the other Utility, or

- (ii) the construction required is predominantly the upgrade of existing pole line (e.g. phase additions, reconductoring, etc.) and the requested Utility's Existing Facilities are within 4,000 feet of the Point of Delivery.
  - (d) For a Load greater than 1000 kVA where:
    - (i) the construction required is predominantly the addition of new pole line and the requested Utility's Existing Facilities are no more than 2,500 feet further from the Point of Delivery than the Existing Facilities of the other Utility, or
    - (ii) the construction required is predominantly the upgrade of existing pole line (e.g. phase additions, reconductoring, etc.) and the requested Utility's Existing Facilities are within 5,000 feet of the Point of Delivery.
- 2.3 In any instance where the Load and distance criteria of Section 2.2 are not met but the requested Utility believes that its Cost of Service would not be significantly more than that of the other Utility, the following procedure shall be used to determine if the requested Utility may agree to provide service:
- (a) The requested Utility is to notify the other Utility of the Customer's request, providing all relevant information about the request.
  - (b) If the other Utility believes that its facilities would be uneconomically duplicated if the request is honored, it has five (5) working days from receipt of notice to request a meeting or other method to be conducted within ten (10) working days for the purpose of comparing each Utility's Cost of Service. Absent such a request or upon notification from the other Utility of no objection to the requested Utility's providing the service, the requested Utility may agree to provide service.
  - (c) At the meeting scheduled pursuant to 2.3(b) or in some other mutually acceptable method, each Utility is to present to the other Utility its estimated Cost of Service, including all supporting details (type and amount of equipment, labor rates, overheads, etc.). For Loads greater than 1,000 kVA, information as to the percentage of substation and feeder capacity that will be utilized and the amount and nature of the cost allocations of such utilization included in the Cost of Service are to be provided.
  - (d) Upon agreement as to each Utility's Cost of Service, the requested Utility may agree to provide service to the Customer if either of the following conditions are met:
    - (i) The requested Utility's Cost of Service does not exceed the other Utility's Cost of Service by more than \$15,000.
    - (ii) The requested Utility's Cost of Service does not exceed the other Utility's Cost of Service by more than twenty-five percent (25%).

- (e) Notwithstanding the other provisions of this Section 2.3, no Utility shall agree to provide service to a Customer under the provisions of this Section 2.3 if the Load is less than or equal to 1000 kVA, the requested Utility's Existing Facilities are further than 10,000 feet from the Point of Delivery, and the other Utility's Existing Facilities are located in a roadway or other right-of-way abutting the Customer's premises.
- 2.4 The requested Utility bears the primary responsibility in determining whether or not the provisions of Section 2.2 or Section 2.3 above have been met or if it otherwise believes that service can be provided to a Customer without uneconomic duplication of the other Utility's facilities. Should the other Utility dispute such determinations and believe that uneconomic duplication of its facilities will occur or has occurred, every effort should be made by the two utilities to resolve the dispute, up to and including mediation before the Commission Staff and, if necessary, expedited hearing before the Commission. During a period of unresolved dispute, the requested Utility may provide temporary service to the Customer or may elect to request the other Utility to provide temporary service to the Customer and either means of temporary service shall be without prejudice to either Utility's position in the dispute as to which Utility will provide permanent service.

### **SECTION III: CUSTOMER RELIABILITY AND POWER QUALITY**

While one Utility may have existing distribution facilities nearer to a Customer's Point of Delivery than the other Utility, reliability of service and power quality to the individual Customers are important. In the application of the provisions of Section II above, engineering criteria must be considered in the decision as to whether the requested Utility should agree to serve the Customer. Substation distance from the Point of Delivery and Load capacity of impacted substations in each case should be considered. Wire size and its capacity and capabilities should also be considered. All other system engineering design and criteria should be reviewed in each Utility's facilities.

### **SECTION IV: CUSTOMERS PRESENTLY SERVED BY ANOTHER UTILITY:**

A Utility shall not construct nor maintain electric distribution lines for the provision of electric service to any Customer then currently being provided electric service by the other Utility. If, however, a Customer that has historically required single-phase service disconnects and the new Customer locating there requires three-phase service, Section II above may apply.

### **SECTION V: DISTRIBUTION SYSTEM EXTENSIONS & UPGRADES**

A Utility will, from time to time, have distribution system extensions or upgrades necessary and prudent from an engineering standpoint for reliability and Customer service. While recognizing this, these extensions or upgrades should be performed only when necessary

for these reasons and not be put in place to position the Utility for future anticipated development. These system upgrades are defined to be capital projects justified and approved for construction following a Utility's normal administrative budgetary channels and procedures, and documentation for such will be provided to the other Utility upon written request. Connecting points on a Utility's distribution system must be for reliability and coordination purposes only. The connecting distribution line may not serve Customers within 1,000 feet of the Existing Facilities of the other Utility that were in place at the time of that system upgrade.

# **EXHIBIT B**

	<b>Gulf Power</b>	<b>Gulf Coast</b>
<b>Materials:</b>	\$ 44,000.00	\$ 30,326.06
<b>Labor:</b>	\$ 61,000.00	\$ 12,517.83
<b>Overheads:</b>	\$ 51,000.00	\$ 33,601.99
<b>Subtotal:</b>	\$ 156,000.00	\$ 76,445.88
<b>Cost per mile:</b>	\$ 74,285.71	\$ 50,963.92
<b>Difference from Gulf Power:</b>	\$ -	\$ (79,554.12)
<b>% Difference from Gulf Power:</b>	0%	-99%
<b>Less CIAC:</b>	\$ 80,000.00	\$ 59,052.60
<b>Cost of Service Per TA:</b>	\$ 76,000.00	\$ 17,393.28
<b>Difference from Gulf Power:</b>	\$ -	\$ (58,606.72)
<b>% Difference from Gulf Power:</b>	0%	-77%
<b>% Exceeds GCEC:</b>	337%	0%

# EXHIBIT C



Gulf Power

# Memo

To: Gulf Coast Electric Cooperative

From: Gulf Power

CC: Beggs and Lane

Date: March 12, 2018

Re: Highway 388 Lift Station

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This memo is in response to Gulf Coast Electric Cooperative's request for a cost comparison to provide service to 1900 West Highway 388 located on parcel 26597-000-000. Gulf Power's estimated costs are listed below. These costs are subject to change based upon a variety of factors including actual labor and material costs.

Materials:	\$44,000
Labor:	\$61,000
Overheads:	<u>\$51,000</u>
Labor and Material	
Total:	\$156,000
Less CIAC:	<u>\$80,000</u>
Total impact to Rate Payers:	\$76,000

# **EXHIBIT D**

## Peyton Gleaton

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**From:** Rogers, Joshua R. <JROGERS@southernco.com>  
**Sent:** Friday, October 20, 2017 1:22 PM  
**To:** Peyton Gleaton  
**Subject:** Electrical Service Request

Mr. Gleaton,

Pursuant to section 2.3(a) of the agreement between Gulf Power and GCEC, I am notifying GCEC of a customer's request for electrical service from Gulf Power for a new lift station on parcel 26597-000-000. Construction would not result in any duplication of facilities.

Thanks,

Joshua Rogers, PE  
Gulf Power Company • Engineering Supervisor II  
Office: 850.872.3309 • Cell: 850.554.6583  
MyGulfPower.com

*Stay connected with Gulf Power*



# **EXHIBIT E**

-----Original Message-----

From: Sims, Sandy (Gulf) <SFSims@southernco.com>

Sent: Wednesday, February 07, 2018 6:14 PM

To: John Bartley <jbartley@gcec.com>

Subject: Meeting

John,

Thanks for your note inquiring about dates to meet to discuss the lift station service. In view of the dispute resolution requirements of Section 2.4 of the territorial agreement between Gulf Power and GCEC , we do feel that a meeting would be in order.

Several of our key team members have extended conflicts during February. We are also in the process of finalizing cost estimates. Consequently, the earliest opportunity for a meeting would be March 2.<x-apple-data-detectors://1> Could we meet in Panama City at either your office or ours on 15th St?

Please let me know as soon as possible if this will work for your team.

Sandy Sims

Gulf Power