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July 19, 2018

Ms. Carlotta Stauffer, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Docket No. 20180125-EU

Dear Ms. Stauffer:

Attached for official filing in the above-referenced docket is Gulf Power Company's Response to Gulf Coast Electric Cooperative, Inc.'s Motion for Status Conference.

Sincerely,

A handwritten signature in blue ink that reads "Rhonda J. Alexander".

Rhonda J. Alexander
Regulatory, Forecasting and Pricing Manager

md
Attachments

cc: Gulf Power Company
Jeffrey A. Stone, Esq.
Beggs & Lane
Russell Badders, Esq.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 20180125-EU
Filed: July 19, 2018

**GULF POWER COMPANY'S
RESPONSE TO GULF COAST ELECTRIC
COOPERATIVE, INC.'s MOTION FOR STATUS CONFERENCE**

Gulf Power Company ("Gulf Power," "Gulf," or "the Company"), by and through its undersigned counsel, and pursuant to Rule 28-106.204, Florida Administrative Code, hereby submits the Company's Response to Gulf Coast Electric Cooperative, Inc.'s ("GCEC") Motion for Status Conference (the "Motion") in this docket.

1. On July 13, 2018, GCEC filed its Motion requesting, among other things, that the prehearing officer set a status conference and enter an order establishing procedure in the above-referenced docket. The Motion includes a "Proposed Expedited Case Schedule," "Proposed Expedited Discovery Procedures," and GCEC's "Proposed Issues for Resolution." GCEC's proposals contemplate a full evidentiary hearing including pre-filed direct/rebuttal testimony and wide-ranging discovery concerning matters which are not relevant to the resolution of the parties' dispute. See, e.g., GCEC's Proposed Issues for Resolution.

2. GCEC is correct in its assertion at page 1 of its Motion that Section 2.4 of the territorial agreement contemplates expedited resolution by the Florida Public Service Commission ("Commission") of any unresolved disputes between the parties under the agreement. To that end, and consistent with applicable law and the undisputed facts, Gulf Power has filed a Motion for Final Summary Order requesting resolution of the dispute based on the

content of the parties' pleadings and the plain language of the territorial agreement. See, Document No. 04110-2018, filed June 6, 2018. In conjunction with the foregoing motion, Gulf Power also sought a stay of fact discovery pending the motion's resolution. In response, GCEC has predictably identified a host of factual issues which GCEC claims warrant denial of Gulf's Motion for Final Summary Judgment and motions for protective order. However, none of the factual issues raised by GCEC are material to the dispositive issue in this proceeding. The dispositive issue is a very narrow one -- whether GCEC is foreclosed from objecting to Gulf Power's provision of electric service to its customer by virtue of GCEC's failure to respond in any way to Gulf Power's October 20, 2017 notice issued pursuant to Section 2.3(a) of the territorial agreement. This issue can and should be decided based on the plain language of the territorial agreement and the undisputed facts contained in the pleadings.

3. In light of the foregoing, Gulf Power is of the view that neither a status conference before the prehearing officer, nor an order establishing procedure, is necessary at this juncture. If it is ultimately determined that a procedural order is necessary, Gulf Power would propose following the more traditional approach of the parties vetting proposed schedules, dates and issues with Commission Staff and reaching consensus on, or at least crystallizing, matters which could then be presented to the prehearing officer for consideration. Gulf Power has not discussed any of GCEC's proposals with GCEC or Commission Staff and has concerns with several aspects of the proposals. For example, GCEC's proposed hearing date of November 1, 2018, falls in close proximity to previously scheduled hearing dates for the cost recovery clauses and other pending Commission matters. Additionally, many of GCEC's Proposed Issues for Resolution seek to introduce matters which are wholly irrelevant to any issues pertinent to these

proceedings. By way of illustration only and not limitation, GCEC has raised the following, among others, as issues:

- Whether GCEC knowingly and willingly waived its right to serve the Lift Station under the Territorial Order.

GCEC's mental state has no bearing on whether its failure to respond to Gulf's October 20th notice issued pursuant to Section 2.3(a) of the territorial agreement forecloses its right to object to Gulf Power's honoring a request for service. GCEC has acknowledged receiving Gulf Power's notice and acknowledged its failure to respond to the same. While, in hindsight, GCEC may wish that it had handled the situation differently, the inquiry should stop there from a contractual perspective. Under the plain terms of the agreement, Gulf Power was entitled to honor the request for service from its customer and GCEC's rationale for failing to respond is irrelevant. Section 2.3(b) of the territorial agreement clearly provides as follows:

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.

- Whether Peyton Gleaton, Jr. was authorized by GCEC to receive notice under the Territorial Order.

Peyton Gleaton, Jr., GCEC's Vice President of Engineering, was the recipient of Gulf Power's October 20th notice under the territorial agreement. It is undisputed that the territorial agreement is silent with respect to mode of delivery and who should receive contractual notice

on behalf of the parties.¹ It is also undisputed that Mr. Gleaton was, and presently is, listed as one of five contact persons on GCEC's website for purposes of receiving email notifications on behalf of the company. Whether Mr. Gleaton received internal authorization from GCEC concerning his receipt of notice under the territorial agreement has no bearing on this proceeding. Based on the plain language of the agreement and having received no instruction from GCEC to the contrary, Gulf Power logically and reasonably chose to notify the officer of the company who ostensibly had oversight of the very matter at issue --construction of distribution facilities.

- Whether Gulf Power failed to give notice to GCEC's counsel of record in Docket No. 930885-EU;
- Whether Gulf Power failed to give notice to GCEC's General Manager

As noted above, the territorial agreement is utterly silent with respect to who should receive notice on behalf of the parties. Nowhere in the agreement is any reference made to provision of notice to GCEC's counsel or General Manager. Notwithstanding this fact, GCEC has taken the extraordinary position that notice under the agreement must be provided to its General Manager and counsel of record listed in Docket No. 930885-EU. Docket No. 930885-EU involved a territorial dispute between the parties which ultimately gave rise to adoption of the territorial agreement at issue in this proceeding. This docket was closed nearly 17 years ago

¹ As an element of its exclusive jurisdiction pursuant to section 366.04(2)(d), Florida Statutes, to approve territorial agreements, the Commission retains the inherent authority to modify terms of existing territorial agreements on a prospective basis. See, Peoples Gas v. Mason, 187 So.2d 187, 189 (Fla. 1966). If the Commission believes that additional clarity around the notice provisions of the territorial agreement is warranted (e.g., form of notice, content of notice, mode of delivery, identification of recipients, etc.), Gulf Power believes it may be appropriate to consider inclusion of such modifications on a prospective basis. However, the fact remains that the current agreement contains no such directives, and it would be improper as a matter of law to interpret the plain language of the contract as though such directives presently exist.

in December 2001. GCEC rationalizes its remarkable assertion on an unremarkable fact that its Answer filed on September 30, 1993 in Docket No. 930885-EU contained a boilerplate statement -- as required by standard Commission pleading requirements -- providing that "Notices and communications with respect to this docket should be addressed to" its then General Manager and counsel of record. (emphasis added) See, Answer at p. 1. GCEC's attempt to bootstrap a boilerplate notice provision contained in an Answer filed nearly 25 years ago in a docket which was closed nearly 17 years ago speaks for itself.

4. Gulf's silence with respect to other issues included in GCEC's Proposed Issues for Resolution should not be construed as acquiescence or agreement with the same. Gulf has simply identified a handful of issues to illustrate the nature of the matters being debated in this proceeding. Should the Commission determine that a procedural order is needed, Gulf submits that the parties and the Commission could benefit from vetting these matters with Commission Staff prior to debating them in a status conference.

Respectfully submitted this 19th day of July, 2018.

/s/ Steven R. Griffin
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: **Complaint against Gulf Power Company**)
for expedited enforcement of territorial order,)
by Gulf Coast Electric Cooperative, Inc.)

Docket No.: 20180125-EU

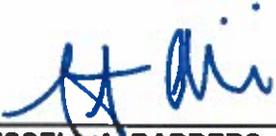
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by electronic and U.S. mail this 19th day of July, 2018 to the following:

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