

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
ORDER NO. PSC-2019-0134-PAA-EI
ISSUED: April 16, 2019

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
DONALD J. POLMANN
ANDREW GILES FAY

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING SETTLEMENT AGREEMENT
AND REVISIONS TO TERRITORIAL AGREEMENT
AND
ORDER VACATING PREVIOUS COMMISSION VOTE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein, except for vacating our previous vote, 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 (F.A.C.).

Background

This docket pertains to a territorial dispute between Gulf Coast Electric Cooperative (GCEC) and Gulf Power Company (Gulf Power) over new service to a sewage treatment lift facility (Lift Facility) that was constructed by St. Joe Company. The ultimate customer of the Lift Facility is Bay County, and the Lift Facility was transferred to Bay County after the completion and commissioning of the facility.

To resolve a long-standing dispute between GCEC and Gulf Power regarding electric service in certain areas of Washington and Bay Counties, GCEC and Gulf Power entered into a Territorial Agreement (Territorial Agreement). The Territorial Agreement set out procedures and guidelines by which the parties were to address sub transmission, distribution, and new requests for service. This Commission approved this Territorial Agreement by Order Nos. PSC-01-0891-PAA-EU, issued April 9, 2001, and PSC-01-0891A-PAA-EU, issued March 26, 2002 (collectively referred to herein as the Territorial Order).¹

¹ See Order No. PSC-01-0891-PAA-EU, issued April 9, 2001, in Docket No. 930885-EU, In re: Petition to resolve territorial dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power Company; Order No. PSC-01-0891A-

The Territorial Agreement does not use a traditional “lines-on-the-ground” territorial boundary. Rather, the Territorial Agreement establishes procedures for the parties to follow upon receiving a request for service from a customer.

On May 23, 2018, GCEC filed a complaint against Gulf Power in the instant docket alleging, in essence, that Gulf Power did not comply with the notice procedures of the Territorial Agreement and seeking expedited enforcement of the Territorial Order in GCEC’s favor to service the new Lift Facility. After filing an answer to GCEC’s complaint, Gulf Power filed a Motion for Summary Final Order on June 6, 2018. At the December 11, 2018 Agenda Conference, we voted to grant Gulf Power’s Motion for Summary Final Order and denied GCEC’s Motion for Summary Final Order as moot. Prior to the issuance of an order on that vote, Commission staff filed a recommendation on February 21, 2019, stating that staff believed it had incorrectly advised us on Gulf Power’s Motion for Summary Final Order and recommended that we vacate our December 11, 2018, votes to grant Gulf Power’s Motion for Summary Final Order and deny GCEC’s Motion for Summary Final Order, and reconsider the parties’ motions. Commission staff’s recommendation, ultimately, was to deny both Gulf Power’s and GCEC’s Motions for Summary Final Order. At the request of the parties, and in order to allow for further discussion of settlement of this matter, we deferred consideration of the Commission staff recommendation until the April 2, 2019, Agenda Conference.

On March 20, 2019, GCEC and Gulf Power filed a Joint Motion to Approve Settlement Agreement and Amendment to Territorial Agreement (Joint Motion) to resolve all matters in this docket and clarify current language in the notice procedure for future application.²

We have jurisdiction in this matter pursuant to Section 366.04, Florida Statutes (F.S.).

Decision

The parties’ proposed settlement resolves the question regarding which electric utility will serve the Lift Facility and also proposes to revise the Territorial Agreement. The parties state that the proposed Settlement Agreement and revisions to the Territorial Agreement are null and void unless we approve them in their entirety by “non-appealable” final order.³

The proposed Settlement Agreement provides that:

1. Gulf Power relinquish service to the Lift Facility to GCEC.

PAA-EU, issued March 26, 2002, in Docket No. 930885-EU, In re: Petition to resolve territorial dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power Company.

² On March 22, 2019, the parties filed a revised page 2 of the Settlement Agreement, correcting an inadvertent typographical error.

³ The nature of our decision herein is a Proposed Agency Action that will become a final order 21 days after the PAA order is issued, if there is no request for a hearing. We do not have the authority to enter a “non-appealable” final order.

2. Gulf Power remove 3,000 linear feet of lines beginning at the Lift Facility and extending west to a demarcation point bisecting the right-of-way on a specified highway.
3. GCEC be permitted to extend westerly its lines and facilities 11,000 linear feet, beginning at its existing facilities.
4. GCEC agree not to assess any additional charges to the Lift Facility as a result of GCEC taking over service to that facility.
5. The parties agree to not further extend lines from a demarcation point along the right-of-way of a specified highway.

The Settlement Agreement also calls for GCEC to withdraw its complaint in this docket if we grant the Joint Motion in its entirety.

The parties state that the proposed revisions to the Territorial Agreement are intended to forestall future disputes regarding interpretation of that Agreement and avoid further uneconomic duplication of facilities. In summary, the proposed revisions:

1. Provide that, for certain service requests from a customer, the requested utility must deliver notice of their intent to fulfill such a request to the other utility by certified mail. The proposed revisions also provide the persons to whom such a notice must be sent.
2. Define the term “all relevant information” to clarify what information must be provided in the notice to the other utility about a service request from a customer.
3. Revise the deadline for the other utility to reply to the notice from the requested utility from five to ten days.
4. Require the utility responding to the notice to do so in writing.

The parties’ Settlement Agreement (incorporating the parties’ corrected page 2 of the Settlement Agreement that was filed on March 22, 2019) and the First Amendment to Territorial Agreement are attached as Appendix A.

Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440, F.A.C., we have the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless we determine that the agreement will cause a detriment to the public interest, the agreement should be approved.⁴

After our review of the Joint Motion and the proposed revisions to the Territorial Agreement, we find that the proposed amendments to the Territorial Agreement are in the public interest and will enable Gulf Power and GCEC to serve their customers in an efficient manner. We also find that the proposed amendments will avoid uneconomic duplication of facilities and will not cause a decrease in the reliability of electric service to the customers. The joint movants state that they have worked together to resolve the issues in this docket and voluntarily have entered into the Settlement Agreement. We agree that the Settlement Agreement fairly and

⁴ Utils. Comm’n of the City of New Smyrna Beach v. Fla. Pub. Serv. Comm’n, 469 So. 2d 731, 732–33 (Fla. 1985).

reasonably balances the various positions of the parties regarding the issues in this docket, and it serves the best interests of Gulf Power's and GCEC's customers and the public interest in general. As such, Gulf Power and GCEC's Settlement Agreement (as corrected on March 22, 2019) and proposed revisions to the Territorial Agreement are approved in the public interest.

Upon this Proposed Agency Action becoming a Final Order, the Settlement Agreement provides that GCEC must withdraw its complaint in this matter. Because the Motions for Summary Final Order filed by Gulf Power and GCEC are moot with our approval of the Settlement Agreement, we also vacate our votes from the December 11, 2018, Agenda Conference regarding those Motions.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Gulf Coast Electric Cooperative, Inc. and Gulf Power Company's Joint Motion to Approve Settlement Agreement and Amendment to Territorial Agreement is granted. It is further,

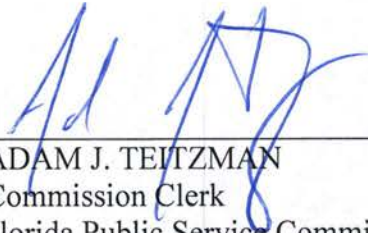
ORDERED that the Settlement Agreement and the First Amendment to the Territorial Agreement are approved as attached as Appendix A to this Order. It is further,

ORDERED, that our votes from the December 11, 2018, Agenda Conference, regarding the granting of a Motion for Summary Final Order for Gulf Power and denying of a Motion for Summary Final Order for GCEC, are hereby vacated. 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 Commission Clerk, 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 if no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the order, a consummating order shall be issued and the docket shall be closed.

By ORDER of the Florida Public Service Commission this 16th day of April, 2019.



ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KMS

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action herein, except for vacating our previous votes, 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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 7, 2019. If such a petition is filed, 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. In the absence of such a petition, this order shall become effective and final 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.

Any party adversely affected by the vacation of the December 11, 2018, Agenda Conference Commission votes, which is procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

SETTLEMENT AGREEMENT

Gulf Power Company ("Gulf Power") and Gulf Coast Electric Cooperative ("GCEC") hereby stipulate and agree as follows:

WITNESSETH

WHEREAS, by Order No. PSC-98-0174-FOF-EU, dated January 28, 1998, the Florida Public Service Commission ("PSC") directed Gulf Power and GCEC to "establish detailed procedures and guidelines addressing subtransmission, distribution, and requests for new service which would be enforceable with the respective company", and which would "take into account [PSC] precedent on resolving territorial disputes".

WHEREAS, pursuant to Order No. PSC-98-0174-FOF-EU, the Parties entered into an agreement entitled "Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities", which was approved by the PSC as a territorial agreement in Orders Nos.: PSC-2001-0891-PAA-EU and PSC-2001-0891A-PAA-EU (the "Territorial Agreement").

WHEREAS, the Parties are currently involved in a territorial dispute before the PSC in Docket No. 20180125-EU over service to a lift station in Bay County, Florida located at Lat. 30° 19' 45.16" N, Long. 85° 42' 53.86" W (the "Customer").

WHEREAS, during the pendency of the dispute Gulf Power extended its lines and facilities approximately 11,000 feet from the west to provide temporary service to the Customer (the "Gulf Power Lines").

WHEREAS, the Parties have negotiated in good faith to identify a mutually agreeable resolution to the pending territorial dispute which will avoid unnecessary duplication of electric service.

NOW, THEREFORE, the Parties, in consideration of the mutual benefits contained herein, agree as follows:

1. The above recitals are true and correct and incorporated herein.
2. This Agreement shall begin as of the date it is fully executed by all Parties and the conditions precedent set forth in paragraph 6 are satisfied ("Effective Date").
3. Gulf Power and GCEC shall enter into an agreement attached as Exhibit A, to amend their existing Territorial Agreement ("2019 Amendment").
4. To avoid uneconomic duplication of facilities, Gulf Power shall relinquish service to the Customer and remove 3000 linear feet of the Gulf Power Lines beginning at the Customer's lift station located at GPS coordinate: Lat. 30° 19' 45.16"N, Long. 85° 42' 53.86" W and extending west along Highway 388 W to a point that bisects the right-of-way on that highway (the "Demarcation Point"). GCEC shall be permitted to extend its lines and facilities 11,000 linear feet beginning at its existing facilities on Highway 388 W and extending west (the "GCEC Lines"),

and provide permanent service to the Customer. GCEC agrees that the Customer shall not be required to pay additional charges at its lift station as a result of permanent service being provided by GCEC.

5. To further avoid uneconomic duplication of facilities: (i) Gulf Power agrees not to extend the Gulf Power Lines along Highway 388 W east of the Demarcation Point; and (ii) GCEC agrees not to extend the GCEC Lines along Highway 388 W west of the Demarcation Point. It is the express intention of the Parties that this Section 5 shall operate solely to prevent either Party from further extending the Gulf Power Lines and GCEC Lines along the right-of-way of Highway 388 W.

6. The Parties agree that this Settlement Agreement along with the attached First Amendment to the Territorial Agreement will be submitted to the PSC for approval as quickly as possible. If the Settlement Agreement, and the attached Amendment to the Territorial Agreement, are not approved by the PSC in their entireties through a final and non-appealable PSC order, then the settlement and amendment shall be null and void and the Parties will resume their territorial dispute currently pending in Docket No. 20180125-EU.

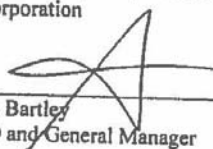
7. GCEC shall withdraw its Complaint for Enforcement of Territorial Order previously filed in Docket No. 20180125-EU within two (2) business days of the date that a PSC order approving the Settlement Agreement and Amendment to the Territorial Agreement in their entireties becomes final and non-appealable.

[Remainder of space intentionally left blank. Signature page follows.]

DATED this 19 day of March 2019.

GULF COUNTY ELECTRIC
COOPERATIVE, INC., a Florida not-for-
profit corporation

By: _____


John Bartley
CEO and General Manager

DATED this 19 day of March 2019.

GULF POWER COMPANY,
a Florida corporation

By: 

Michael G. Spoor
Vice President, Power Delivery

**FIRST AMENDMENT TO THE TERRITORIAL AGREEMENT
BETWEEN
GULF POWER COMPANY
AND
GULF COAST ELECTRIC COOPERATIVE**

This Amendment to a territorial agreement, dated as of March 17, 2019, ("2019 Amendment") is entered into by Gulf Power Company ("Gulf Power") and Gulf Coast Electric Cooperative ("GCEC"), each of which is a corporation organized and existing under the laws of the State of Florida and an electric utility as defined in section 366.02(2), Florida Statutes, and which corporations are herein collectively referred to as the "Parties".

WITNESSETH

WHEREAS, the Parties have an existing agreement entitled "Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities" relating to their respective retail service areas, which was approved by the Florida Public Service Commission (the "PSC") as a territorial agreement in Orders Nos. PSC-01-0891-PAA-EU and PSC-01-0891A-PAA (the "Territorial Agreement");

WHEREAS, the Parties now desire to make minor changes to the Territorial Agreement to clarify the process by which the Parties are to respond to requests for service to avoid confusion and achieve further operational efficiencies in their respective retail service areas, while continuing to eliminate circumstances giving rise to uneconomic duplication of facilities;

WHEREAS, the Commission has previously recognized that uneconomic duplication of facilities results in needless and wasteful expenditures and may create hazardous conditions, both being detrimental to the public interest; and

WHEREAS, the Commission is empowered by section 366.04(2)(d), Florida Statutes, to approve territorial agreements and resolve territorial disputes between rural electric cooperatives

and other electric utilities under its jurisdiction, and has held such territorial agreements are advisable in proper circumstances, and, indeed, in the public interest.

NOW THEREFORE, in consideration of the following mutual covenants and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, subject to and upon the terms and conditions herein set forth, do hereby agree to the following:

1. Subsections (a) and (b) of Section 2.3 of the Territorial Agreement are amended to read:

- (a) The requested Utility is to notify the other Utility of the Customer's request, providing all relevant information about the request. For purposes of this Section 2.3(a), "all relevant information" means: (1) the Utility's best estimate of the Global Positioning System (GPS) coordinates of the Point of Delivery; (2) the Utility's best estimate of the size of the requesting Customer's Load; and, (3) the GPS coordinates of the requested Utility's Existing Facilities.
- (b) If the other Utility believes that its facilities would be uneconomically duplicated if the request is honored, it has ~~five (5)~~ ten (10) working days from receipt of notice to deliver a written request for 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.

2. Section 2.4 is amended to read:

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.

3. Section VI of the Territorial Agreement is created to read:

SECTION VI: NOTICES

All notices and other written communications contemplated by this Agreement, including but not limited to the notifications required under Section 2.3, shall be deemed to have been given if sent by certified mail or by prepaid private courier with confirmed receipt. Notices and other communications to or between the Parties shall be addressed to:

To GCEC:

John Bartley
CEO/General Manager
722 West Highway 22
P.O. Box 220
Wewahitchka, FL 32465

J. Patrick Floyd, Esq.
408 Long Avenue
P.O. Box 950 (32457-0950)
Port St. Joe, FL 32456

To Gulf Power:

Michael G. Spoor
Vice President, Power Delivery
One Energy Place
Pensacola, FL 32520-0100

Sandra Sims
Regional External Affairs Manager
1230 East 15th Street
Panama City, FL 32405-0015

Either Party may change its designated representative or address to which such notices or communications shall be sent by giving written notice thereof to the other Party in the manner herein provided.

4. Section VII of the Territorial Agreement is created to read:

SECTION VII: SETTLEMENT AGREEMENT

The Parties agree that the terms of their Settlement Agreement attached hereto as Appendix "A", including but not limited to Section 4 thereof, shall be incorporated in, and become part of, the Territorial Agreement.


5. Condition Precedent. The approval of this 2019 Amendment by the PSC without modification, unless otherwise agreed to by the Parties, shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This 2019 Amendment shall have no effect whatsoever until such approval has been granted by

the PSC, and the date that the PSC's order, if any, granting such approval becomes final and non-appealable shall be deemed to be the effective date of the 2019 Amendment.

6. Existing Territorial Agreement. All other parts of the Territorial Agreement shall remain in full force and effect.


IN WITNESS WHEREOF, this 2019 Amendment has been caused to be executed by Gulf Power in its name by its Vice President, Power Delivery, and by GCEC in its name by its Chief Executive Officer, on the day and year first written above.

GULF POWER COMPANY

By: 
Date: 3/19/19

Name: Michael G. Spoor
Title: Vice President, Power Delivery

GULF COAST ELECTRIC COOPERATIVE

By: 
Date: 3/19/19

Name: John Bartley
Title: Chief Executive Officer

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 mail this 20th day of March, 2019 to the following:

D. Bruce May, Jr.
Tiffany A. Roddenberry
Holland & Knight LLP
315 S. Calhoun Street, Suite 600
Tallahassee, FL 32301
bruce.may@hklaw.com
tiffany.roddenberry@hklaw.com

J. Patrick Floyd
408 Long Avenue
Post Office Drawer 950
Port St. Joe, FL 32456-0950
j.patrickfloyd@jpatrickfloyd.com

Office of the General Counsel
Jennifer Crawford
Kurt Schrader
Andrew King
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
jcrawfor@psc.state.fl.us
kschrade@psc.state.fl.us
aking@psc.state.fl.us



RUSSELL A. BADDERS
VP & Associate General Counsel
Florida Bar No. 007455
Russell.Badders@nexteraenergy.com
Gulf Power Company
One Energy Place
Pensacola FL 32520-0100
(850) 444-6550

STEVEN R. GRIFFIN
Florida Bar No. 0627569
srg@beggslane.com
Beggs & Lane
P. O. Box 12950
Pensacola FL 32591-2950
(850) 432-2451
Attorneys for Gulf Power