

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to resolve) DOCKET NO. 930885-EU
territorial dispute with Gulf) ORDER NO. PSC-97-0420-PCO-EU
Coast Electric Cooperative, Inc.) ISSUED: April 15, 1997
by Gulf Power Company.)
_____)

ORDER ADDRESSING GULF COAST ELECTRIC COOPERATIVE INC.'S
MOTION TO COMPEL AS TO INTERROGATORY NOS. 31 AND 42

At the prehearing conference, Gulf Coast Electric Cooperative Inc.'s (Gulf Coast) first Motion to Compel as to Interrogatory Nos. 31 and 42 was not ruled on. Interrogatory No. 31 asked Gulf Power Company (Gulf Power) to identify each and every document, policy, or Commission order where the Commission has adopted a policy of "least cost of service" to resolve a territorial dispute. Gulf Power objected to Interrogatory No. 31 on the basis that it sought legal research and was protected as work product. Interrogatory No. 31 does seek documents that constitute legal research and attorney work product; therefore, the motion to compel as to this interrogatory is denied.

Interrogatory No. 42 asked Gulf Power to describe where the territorial boundary should be established or, if no boundary is described, to state under what circumstances Gulf Power intends to propose a boundary. At the prehearing conference, Gulf Power's attorney stated that Gulf Power had not established a proposed boundary and that the circumstances under which it would propose a boundary are protected as attorney work product.

The motion to compel an answer to Interrogatory No. 42 is granted insofar as Gulf Power is required to notify Gulf Coast if Gulf Power intends to proffer a proposed territorial boundary at the hearing. In addition, Gulf Power must provide discovery. It is an abuse of discretion to allow evidence where the opposing party first learns of the evidence during trial and suffers prejudice as a result. Department of Health and Rehabilitative Services v. J.B., (Fla. 4th DCA 1996), Grau v. Branham, 626 So.2d 1059 (Fla. 4th DCA 1993), Colonnell v. Mitchell, 317 So.2d 799 (Fla. 2d DCA 1975) J.B., Grau and Colonnell all involved independent medical examinations performed after the discovery deadline which the opposing party learned of during the physician's testimony.

DOCUMENT NUMBER-DATE

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Based on the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Gulf Coast Electric Cooperative, Inc.'s Motion to Compel as to Interrogatory Nos. 31 and 42 is resolved as addressed in the body of this Order.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 15th day of April, 1997.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)

VDJ

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.

Any party adversely affected by this order, which is preliminary, 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 Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060,

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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.

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