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October 13, 1993

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COPY

Mr. Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
Tallahassee, FL 32399-0870

RE: Docket [REDACTED]

Dear Mr. Tribble:

The original and fifteen copies of Response of Gulf Power Company to Gulf Coast Electric Cooperative's Motion to Dismiss and Response of Gulf Power Company to Gulf Coast Electric Cooperative's Motion to Strike are enclosed for official filing. Also enclosed is a double sided high density 3.5 inch floppy disk containing this document in WordPerfect 5.1 format as prepared on a MS-DOS based computer.

Please mark the extra copy of this letter enclosed herein with the date and time the material was accepted in your office for filing and return same to the undersigned. Thank you for your assistance in this matter.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG RHRjr/wjk
- LEG Enclosures
- LIN 4
- OCG _____
- ROH _____
- SEC 1
- WAS _____
- OTH _____

Very truly yours,

Robert H. Rigsby, Jr.
For the Firm

EX-107-91-11190
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IN RE: Petition of Gulf Power)
 Company to resolve a territorial)
 dispute with Gulf Coast Electric) Docket No. 930885-EU
 Cooperative, Inc.)
 _____)

RESPONSE OF GULF POWER COMPANY TO
 GULF COAST ELECTRIC COOPERATIVE'S MOTION TO DISMISS

Gulf Power Company ["Gulf Power", "Gulf", or "the Company"], by and through its undersigned attorneys, hereby responds to the motion of Gulf Coast Electric Cooperative [the "Co-Op"] to dismiss Gulf's petition.

The Co-Op infers that customer preference is the determining factor regarding the choice of an electrical service provider. In its motion, the Co-Op argues that since "the Department of Corrections, acting through its agent either directly or by delegation, has selected, that is, indicated a customer preference for Gulf Coast Electric Cooperative, Inc.," the matter should, without further discussion, be resolved in the Co-Op's favor. However, Florida law is directly contrary to the Co-Op's position. In Suwannee Valley Electric Cooperative, Inc. v. Florida Power Corporation, Docket No. 830271-EU, Order No. 12324, issued on August 4, 1983, the Florida Public Service Commission [the "Commission"], was confronted with the identical issue presented by the Co-Op in its motion. In Suwannee Valley, the Department of Corrections requested service from Florida Power Corporation ["FPC"] at a site in Lafayette County upon which a correctional facility was to be built. There FPC heavily relied on the fact that the Department of Corrections had requested their service over

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the Cooperative. The Commission, following the Florida Supreme Court's controlling precedent in Storey v. Mayo, 217 So.2d 304 (Fla. 1968), nevertheless, found such an argument to be unpersuasive, stating in pertinent part:

The fact that the DOC had requested service from FPC is not relevant to our decision. The DOC's choice was made strictly on the basis of the cost to it of getting service from FPC. * * * Florida case law is clear, a customer has no organic or economic right to service by a particular utility.

(Id., pp. 3-4) (emphasis supplied)

In its motion, the Co-Op mistakenly avers that Gulf "does not allege that its cost to provide the facilities necessary to serve the disputed area would be greater or lesser than the Cooperative's." In fact, Gulf Power has alleged that its cost to provide the facilities necessary to serve the disputed area will be less than that of the Co-Op. Specifically, Gulf alleged that "[t]he correctional institute will be strategically constructed adjacent to the intersection of two Gulf distribution lines," and therefore, "Gulf has facilities already in place. . . ." (Petition of Gulf Power Company, p. 3) In contrast, as Gulf stated, "[t]he Co-Op would be required to remove and relocate lines . . . and reconstruct additional lines . . . at an estimated cost of forty-two thousand dollars (\$42,000)." (Petition of Gulf Power Company, p. 4)

The Co-Op also alleges that the Company's petition "fails to allege any ultimate facts to support its legal conclusion[s]," related to the issues of reliable and economic expansion of services and the Co-Op's uneconomic duplication of distribution, transmission or generation facilities. Once again, Gulf Power does

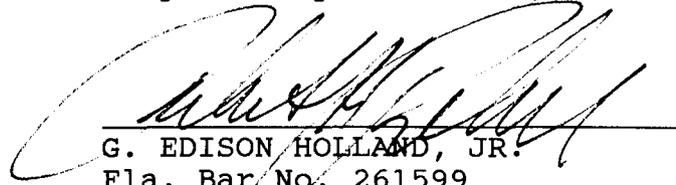
address these issues in its petition. Regarding reliable service and economic expansion, Gulf's petition expressly states that the correctional institute will be strategically constructed adjacent to the intersection of two distribution lines owned by Gulf Power which are fed from separate substation facilities, which allows Gulf to provide independent alternate electric service. (Petition of Gulf Power, p. 4) Regarding uneconomic duplication of distribution and transmission facilities, Gulf's petition clearly states that while the Company has the requisite distribution and transmission capabilities already in place, the Co-Op will be required to remove and relocate lines and to construct additional lines up to and along portions of the county right-of-way adjacent to the proposed site of the correctional facility. In fact, the Co-op admits that relocation of its existing facilities is necessary to access "the point of service preferred by the Department of Corrections". (Answer of Gulf Coast Electric, p.5) In addition, the Co-Op must actually cross Gulf's lines in order to serve the correctional site. (Petition of Gulf Power, p. 4).

The Co-Op also asserts in support of its motion that the Commission has no jurisdiction over the rates of the rural electric cooperatives. Gulf Power does not contend that the Commission has jurisdiction over the rates of the Co-Op in its petition, but cannot agree that the Commission has, as the Co-Op alleges, "refused to consider the rates charged by competing utilities in resolving a territorial dispute...." (Answer of Gulf Coast Electric, p.7) This allegation is flatly contradicted by controlling precedent. Rates are one of a number of factors which

the Commission has considered in resolving territorial disputes; in direct contradiction of the Co-Op's position, in virtually every territorial dispute to come before the Commission, the comparative rates of the parties has been an issue. See Gulf Power Company vs. Gulf Coast Electric Cooperative, Docket No. 830154-EU, Order No. 12858, issued January 10, 1984; Suwannee Valley Electric Cooperative, Inc. v. Florida Power Corporation, Docket No. 830271-EU, Order No. 12324, issued August 4, 1983; Florida Power & Light vs. Utilities Commission of the City of New Smyrna Beach, Docket No. 790380-EU, Order No. 10300, issued September 18, 1981; Peace River Electric Cooperative, Inc. vs. Florida Power & Light Company, Docket 840293-EU, Order No. 15210, issued October 8, 1985; Gulf Coast Electric Cooperative, Inc. vs. Gulf Power Company, Docket No. 830484-EU, Order No. 13668, issued September 10, 1984.

WHEREFORE, Gulf Power Company respectfully requests that the Commission deny the motion to dismiss.

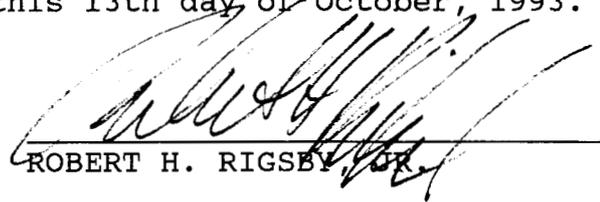
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy hereof has been furnished to John H. Haswell, of Chandler, Lang & Haswell, P.A., at P. O. Box 23879, Gainesville, Florida, 32602, J. Patrick Floyd, at 408 Long Avenue, Port St. Joe, Florida, 32456, Hubbard W. Norris, of Gulf Coast Electric Cooperative, Inc., at P. O. Box 220, Wewahitchka, Florida, 32465, and Mary Ann Helton, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida, 32399, by U.S. First Class Mail, this 13th day of October, 1993.



ROBERT H. RIGBY, SR.