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March 16, 1995

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Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
Tallahassee, FL 32399-0870

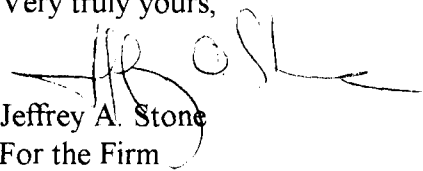
Re: Docket No. ~~920885-EU~~

Dear Ms. Bayo:

The original and fifteen copies of Gulf Power Company's Exceptions to Order Resolving Territorial Dispute and Request for Clarification are enclosed for official filing with the Commission. Also enclosed is a double sided double density 3.5 inch computer diskette containing this document in WordPerfect for Windows 6.0a format as prepared on a MS-DOS/Windows 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.

Very truly yours,


Jeffrey A. Stone
For the Firm

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAC Dudley
- LEG 1
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Enclosure

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DOCUMENT NUMBER-DATE

02884 MAR 16 95

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to resolve territorial dispute)
with Gulf Coast Electrical Cooperative, Inc.)
by Gulf Power Company.)
_____)

Docket No. 930885-EU
Filed: March 16, 1995

**GULF POWER COMPANY'S EXCEPTIONS TO ORDER RESOLVING
TERRITORIAL DISPUTE AND REQUEST FOR CLARIFICATION**

GULF POWER COMPANY ["Gulf Power", "Gulf", or "the Company"], by and through its undersigned attorneys, files the following exceptions to Order No. PSC-95-0271-FOF-EU ["the Order"] issued March 1, 1995 by the Florida Public Service Commission ["Commission"] and further seeks clarification from the Commission as to the scope or form of an agreement between Gulf Power and Gulf Coast Electric Cooperative, Inc. ["the Coop"] that the Commission would find acceptable to enable the parties to avoid further uneconomic duplication of facilities in the areas where the two utilities are in close proximity with each other. In support hereof, the Company states:

EXCEPTIONS

1. At page 1, the Order states:

After the grant and loan were consummated and the prison site procured, and after Gulf Coast was chosen to provide service and incurred the cost to move its Red Sapp Road line off the site, Gulf Power informed the Department of Corrections that it wanted to serve the prison. Gulf Power had not given Gulf Coast, the Washington County Commission, or the Department of Corrections official in charge of the project, any prior indication that it wished to serve the prison. [emphasis added]

The evidence in the record of this proceeding is at variance with this statement in the Order.

First, there is no evidence in the record as to the date on which the Coop actually incurred the

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FPSC-RECORDS/REPORTING

cost to move the Red Sapp Road line off the site.¹ The record instead indicates that the Coop continued to use the Red Sapp Road line as part of its temporary service to the Department of Corrections ["DOC"] during the construction of the correctional facility at issue in this proceeding. (Tr. at 399; 409-410) This temporary service continued well beyond the filing of Gulf Power's petition.² Second, the record in this proceeding shows that Gulf Power firmly indicated its interest in serving the new prison to be located in Washington County at least as early as April 9, 1993 when Vic Jones sent a letter and attachments to Marvin Moran, one of the DOC's project managers for the Washington County Correctional Facility. This letter and its attachments set forth Gulf Power's proposal that it provide electric service to the new prison. (Tr. at 601-02; Ex. 2) In addition, the deposition testimony of John Dougherty, a Gulf Power Company manager responsible for certain activities within Washington County, demonstrates that Gulf Power communicated its desire to serve the prison to individual members of the Washington County Commission before any decision was made.³ (Ex. 35 at pp. 37-39) Furthermore, Gulf Power filed its petition within a two or three days of the commencement of

¹The record does indicate that the Coop apparently offered to remove the Red Sapp Road line from the site at its own expense as part of its efforts and monetary contributions to provide an economic development incentive to encourage the location of the prison in Washington County. (Tr. at 338) At page 5 of the Order, the Commission states that it considers such activities to be ". . . a non-refundable contribution to the entire community, regardless of who provides the electric service."

²In his prefiled testimony filed in May 1994, Mr. Dykes states that the Coop will eventually have to remove the Red Sapp Road line which was then being used to provide temporary service to the construction activities at the DOC's new correctional facility. (See Tr. at 398-99)

³Gulf Power stated its willingness to participate in a community wide fund raising campaign to raise funds necessary to secure the prison for Washington County. Gulf Power did not want its willingness to participate in such economic development efforts to be construed as an attempt to "buy" the prison land by attempting to match or better the Coop's offer or by implying that the offer of such economic development grants was tied to receiving an award of the right to serve the new correctional facility.

construction for the new correctional facility. That is the earliest date by which the issues of "racing to serve" and uneconomic duplication of facilities became ripe as an actual territorial dispute susceptible of resolution before this Commission.

2. At page 9, the Order erroneously attributes certain statements made by Mr. Norris, the Coop's witness, to Mr. Hodges, one of Gulf Power's witnesses. These statements were to the effect that the utilities are often in conflict, but that the Coop was not financially able to litigate every incident and that Gulf Power had crossed the Coop's facilities to serve a real estate office subsequent to the filing of the petition in this proceeding. (See Tr. at 364-366)

3. At pages 11-12, the Order appears to imply that an agreement resolving existing duplication of facilities and creating a territorial boundary must be submitted by the parties to avoid having the Commission conduct additional evidentiary proceedings in order for the Commission itself to establish a territorial boundary between the parties. Although Gulf Power is uncertain that such an interpretation was the intention of the Commission, the Company takes exception to any notion that an agreement resolving presently existing duplication of facilities is necessary to ". . . assure an adequate and reliable source of energy . . . and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities." See §366.04(5) Fla. Stat. (1993). To the extent that the Order is susceptible of such an interpretation, Gulf would (and does) object to any notion or presupposition that can be taken from the Order that a territorial boundary agreement is the only acceptable means of resolving a territorial dispute between two competing electric utilities. Statements susceptible of such interpretations serve only to chill and otherwise impede the efforts of willing parties to fashion creative

solutions that will enable utilities to successfully avoid the "further uneconomic duplication" of facilities caused by a "race to serve" such as that engaged in by the Coop in this case. Other solutions should not be foreclosed to the parties before they have been fully explored in the context of good faith negotiations.

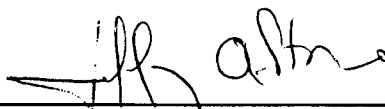
REQUEST FOR CLARIFICATION

Although the Company does not agree that there is presently a territorial dispute between Gulf Power and the Coop that is susceptible to Commission resolution on its own motion, Gulf Power wants to assure the Commission that the Company fully intends to meet with representatives of the Coop in a good faith effort to reach an agreement that will enable the two utilities to avoid further uneconomic duplication of facilities as well as unnecessary, time consuming, and costly litigation before this Commission. Nevertheless, as noted in exception number 3 above, the Order appears to presuppose that the scope or form of agreement that the parties might reach during the period of good faith negotiations called for in the Order must include a territorial boundary in order to be acceptable to the Commission. Gulf Power is concerned that this perception of the Commission's intent would serve to chill or otherwise impede the efforts of willing parties to fashion creative solutions that will enable the utilities to successfully resolve their differences in a manner that is in the best interests of all present and potential electric service customers and the utilities themselves. Gulf Power believes that solutions other than the establishment of boundary lines may provide the basis for an agreement between it and the Coop and that the range of possible solutions to this dispute should not be limited to the establishment of a territorial boundary. The Commission should not limit the parties in this regard nor should it limit the range of solutions available to the Commission itself in the event the parties are unable to reach an agreement amongst themselves. In prior meetings

concerning proposed legislation regarding the establishment of territories for electric utilities, the Commission has not endorsed mandatory permanent territorial boundaries for electric utilities as the best mechanism for avoiding the further uneconomic duplication of facilities. The Commission certainly should not make such a determination now, in this case, based on the evidentiary record that has been developed thus far in this proceeding.

WHEREFORE, Gulf Power Company seeks clarification from the Commission that it does not intend by its Order No. PSC-95-0271-FOF-EU to limit the scope or form of agreement that might be reached by the parties to resolve their differences or to predetermine at this time that the failure of the parties reach an agreement will necessarily mean that the Commission will impose a territorial boundary between the two competing utilities as opposed to other solutions that may enable the utilities and the Commission to avoid further uneconomic duplication of facilities and time consuming, costly litigation of disputes. Such other solutions may prove to better accommodate the best interests of the public, present and potential electric service customers, and the utilities themselves than would be accomplished by the establishment of territorial boundaries.

Respectfully submitted this 16th day of March, 1995.



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to resolve)
territorial dispute with Gulf)
Coast Electric Cooperative, Inc.) Docket No. 930885-EU
by Gulf Power Company)
_____)

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 16th day of March 1995 by U.S. Mail or hand delivery to the following:

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