

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to resolve) DOCKET NO. 930885-EU
territorial dispute with GULF) ORDER NO. PSC-95-0913-FOF-EU
COAST ELECTRIC COOPERATIVE, INC.) ISSUED: July 27, 1995
by GULF POWER COMPANY.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JULIA L. JOHNSON

CLARIFYING AND AMENDATORY ORDER

BY THE COMMISSION:

CASE BACKGROUND

On September 9, 1993, Gulf Power Company (Gulf Power) filed a petition to resolve a territorial dispute with Gulf Coast Electric Cooperative (Gulf Coast). The dispute arose over who was entitled to provide electric service to a new prison that the Department of Corrections was building in Washington County. The Commission held a two-day administrative hearing on the dispute on October 19 and 20, 1994, and issued Order No. PSC-95-0271-FOF-EU resolving the dispute on March 1, 1995.

In that Order, we held that Gulf Power would serve the Washington County Correctional Facility, because Gulf Coast had duplicated Gulf Power's existing facilities to serve the prison. We ordered Gulf Power to reimburse Gulf Coast for the cost Gulf Coast had incurred to relocate its Red Sapp Road line from the prison site. We also ordered the parties to return to the Commission within 180 days of the date the Order was issued with a report identifying all parallel lines and crossings of their facilities, and all areas of potential dispute, in south Washington and Bay counties. We directed the parties to negotiate in good faith during that time to develop a territorial agreement to resolve duplication of facilities and establish a territorial boundary in south Washington and Bay Counties. We stated that if the parties were unable to negotiate an agreement, we would conduct an additional evidentiary proceeding to resolve the continuing dispute in Washington and Bay counties.

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FPSC-RECORDS/REPORTING

On March 16, 1995, Gulf Power filed Exceptions to Order No. PSC-95-0271-FOF-EU and Request for Clarification. Gulf Power did not file a motion for reconsideration of the Order. Gulf Power did not ask for relief on its exceptions. Gulf Power only asked us to clarify that we did not intend the Order to limit the parties' negotiations to the establishment of a territorial boundary in Washington and Bay Counties. Gulf Coast filed a Response to Gulf Power's Exceptions and Request for Clarification on March 31, 1995.

AMENDMENT AND CLARIFICATION

We will not consider Gulf Power's exceptions in our discussion below. Neither the Florida Administrative Procedures Act, nor our procedural rules, provide for the filing of exceptions to a final order issued by an agency after a full evidentiary hearing. We will, however, amend Order No. PSC-95-0271-FOF-EU to correct the scrivener's error on page 9 of the order that attributed certain testimony at the hearing to the wrong witness. We will replace "Hodges" with "Norris", in order to attribute the testimony referred to on page 9 to the correct witness.

Gulf Power's Request for Clarification asks us to affirm that solutions other than the establishment of boundary lines may provide the basis for an agreement between the parties. Gulf Power also asks us to affirm that the range of possible solutions to the territorial dispute available to the Commission if the parties do not reach agreement should not be limited to the establishment of a territorial boundary. Gulf states:

[T]he 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.

In its response, Gulf Coast asserts that our Order intended to establish a territorial boundary between the parties. We agree to

some extent with both parties' interpretation of Order No. PSC-95-0271-FOF-EU, and therefore we believe it is necessary to clarify the nature and scope of the boundary we wish to see established for the utilities.

We agree with Gulf Coast that our Order does intend to establish a territorial boundary in the areas identified in the record where the utilities' facilities are commingled or are in close proximity, and where further territorial conflict and uneconomic duplication of facilities is likely to occur. The Order is clear on that point. See page 11 of the Order where we said:

We believe that both utilities, their ratepayers, and the public interest will be well served by a final, comprehensive resolution of these utilities' continuing dispute. Therefore we direct the parties to file a report within 180 days of the date of this order, advising the Commission of the location and proximity of all their facilities in south Washington and Bay counties. The report should identify all parallel lines and crossings, and all areas of potential dispute. During that time the parties shall conduct good faith negotiations to attempt to develop an agreement that will resolve duplication of facilities and create a territorial boundary. If the parties are not able to resolve their differences, we will conduct additional evidentiary proceedings to establish a boundary ourselves. We intend to resolve the continuing dispute between these utilities once and for all.

Our directive that the parties attempt to create a territorial agreement by defining geographical service areas is based on our established policy to encourage territorial agreements. That policy necessarily envisions a geographical division of territory. The concept is even incorporated into the definition of "territorial agreement" in our rules on territorial agreements and disputes. Rule 25-6.0439(1)(a), Florida Administrative Code, states:

'[T]erritorial agreement' means a written agreement between two or more electric utilities which identifies the geographical areas to be served by each electric utility party to the agreement...

Rule 25-6.0440(1), Florida Administrative Code requires that:

...Each territorial agreement shall clearly identify the geographical area to be served by each utility.

We believe that a territorial agreement implicitly, logically, and necessarily contemplates the establishment of a territorial boundary. That is clearly what we intend the parties to do in areas of South Washington and Bay Counties where facilities are commingled or are in close proximity and where further conflict is likely. A boundary is not necessarily required in areas where there is no conflict and none is reasonably foreseeable. In those areas, and in other areas of the Panhandle where there is no present conflict, we agree with Gulf Power that the utilities should be encouraged to consider a wide range of possible solutions to accommodate future growth and avoid future conflict. Also, there are numerous ways to define territorial boundaries, as the many and varied territorial agreements the Commission has approved for utilities throughout the State clearly demonstrate. We believe that with this clarification, Order No. PSC-95-0271-FOF-EU provides the utilities full opportunity to fashion an agreement that is "creative", practicable and beneficial to both sides, and to the public interest.

We encourage Gulf Power and Gulf Coast to consider a variety of possible solutions to avoid future conflict and accommodate future growth for two reasons. First, because there have been continuing disputes between these utilities, it is reasonable to plan to avoid further conflict in all areas where it might arise. Second, the record indicates that both utilities have demonstrated considerable interest in the future economic development of the Panhandle. We believe that Gulf Power and Gulf Coast now have a unique opportunity to work together to plan for, and contribute to, that development.

The parties should consider ideas on accommodating new commercial or industrial customers in currently undeveloped areas. Perhaps their agreement could include a provision which provided that territorial boundaries would be readdressed when a new commercial or industrial customer locates in an area and requires a significant upgrade of existing facilities - no matter who owns the existing facilities. For example, in Georgia, a new customer with a KW demand above a certain level has a one-time choice of serving utility. In Louisiana, no territorial boundary is set until utility electric lines are planned within a certain short distance of another utility's lines. Creative solutions such as these can encourage economic efficiency for all customers. The

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limit of one-time choice avoids undesirable rate shopping that could result in eventual duplication of facilities and increased costs to other ratepayers.

While we encourage the parties to explore creative solutions in their territorial agreement discussions, we emphasize that any unique arrangement the parties may develop would be subject to the Commission's careful review under applicable law and Commission policy. We also wish to reiterate that in areas of south Washington and Bay Counties, where conflict and further duplication of facilities is likely, Order No. PSC-95-0271-FOF-EU requires that the parties clearly define their geographical areas of service.

Based on the foregoing, it is, therefore,

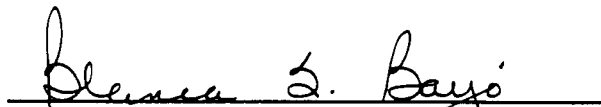
ORDERED by the Florida Public Service Commission that Order No. PSC-95-0271-FOF-EU is amended on page 9 to replace the name "Hodges" with the name "Norris". It is further

ORDERED that Order No. PSC-95-0271-FOF-EU is clarified as described in the body of this order. It is further

ORDERED that all other aspects of Order No. PSC-95-0271-FOF-EU remain in effect. It is further

ORDERED that this docket shall remain open pending completion of the events contemplated in Order No. PSC-95-0271-FOF-EU.

By ORDER of the Florida Public Service Commission, this 27th day of July, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 the Commission's final action in this matter may request 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.