

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to resolve) DOCKET NO. 930885-EU
territorial dispute with Gulf) ORDER NO. PSC-96-0467-FOF-EU
Coast Electric Cooperative, Inc.) ISSUED: April 3, 1996
by Gulf Power Company)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER GRANTING MOTION FOR STAY PENDING JUDICIAL REVIEW

BY THE COMMISSION:

On September 8, 1993, Gulf Power Company (Gulf Power) filed a petition to resolve a territorial dispute with Gulf Coast Electric Cooperative (Gulf Coast). Gulf Power asserted that it had the right to serve a new correctional facility in Washington County, and Gulf Coast had constructed facilities that duplicated Gulf Power's existing facilities in order to provide service to the prison. We held a hearing on the petition on October 19 and 20, 1994. On March 1, 1995, we issued Order No. PSC-95-0271-FOF-EU resolving the dispute. On July 27, 1995, we issued Order No. PSC-95-0913-FOF-EU to clarify certain portions of our earlier order. On March 31, 1995, Gulf Coast filed a notice of appeal of Order No. PSC-95-0271-FOF-EU to the Supreme Court of Florida. Gulf Power filed a notice of cross-appeal on September 14, 1995. Thereafter, on September 26, 1995, Gulf Coast filed a Motion for Stay Pending Judicial Review of Order No. PSC-95-0271-FOF-EU, as clarified by Order No. PSC-95-0913-FOF-EU. On October 11, 1995, Gulf Power filed a response in opposition to Gulf Coast's motion.

We grant Gulf Coast's motion and we stay the operation of Order No. PSC-95-0271-FOF-EU pending review by the Florida Supreme Court, pursuant to the provisions of Rule 25-22.061(2), Florida Administrative Code. That rule provides that in the exercise of our discretion to grant a stay of an order pending judicial review, we may, among other things, consider three factors in determining whether to grant the stay:

- (a) Whether the petitioner is likely to prevail on appeal;
- (b) Whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and
- (c) Whether the delay will cause substantial harm or be contrary to the public interest.

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Gulf Coast asserts that it is reasonably likely to prevail on appeal because Order No. PSC-95-0271-FOF-EU does not address the following areas: 1) the necessity for Gulf Coast to construct a replacement line on County Road 279; 2) the reasonableness of and economic justification for upgrading the line to 3 phase; 3) the cost differential; 4) customer choice in the area; and 5) the "equities" of the case. Gulf Coast asserts that there is no evidence in the record that Gulf Coast's actions were unnecessary or uneconomic; thus, it has a reasonable chance to prevail on appeal. Gulf Power's response does not address these assertions.

While we believe that Order No. PSC-95-0271-FOF-EU is soundly based on competent, substantial evidence in the record, and sufficiently addresses all issues required by Section 366.04, Florida Statutes, and Rule 25-6.0441, Florida Administrative Code, we recognize that the Supreme Court may take a different view of the effect of the applicable statute and rules. It therefore appears to us that there is at least a reasonable possibility that Gulf Coast may prevail on its appeal.

Gulf Coast is currently serving the correctional facility. Gulf Coast asserts that it will suffer irreparable harm if the stay is not granted, because it has made a substantial investment to serve the Washington County Correctional Facility. The loss of that investment, Gulf Coast argues, would be detrimental to the cooperative's ratepayers. Gulf Power does not address this assertion in its response.

Gulf Coast may well lose some of its investment to serve the prison if, when the case is concluded, the Court affirms the Commission's decision to award service to the correctional facility to Gulf Power. The loss would be the outcome of the final decision in the case, however, not the outcome of a decision to deny a stay pending the Court's decision. We do not agree that Gulf Coast will be irreparably harmed if a stay is denied. The real harm in denying a stay in this case is the disruption that would be caused to the customer from switching electric suppliers temporarily, with the reasonable chance that the customer would then have to switch suppliers again when the Court makes its decision on the appeal.

Gulf Coast asserts that the delay that would result from a stay will not cause substantial harm to either Gulf Power or the public interest. Gulf Coast also asserts that Gulf Power would benefit from the delay because it would allow Gulf Power to refrain from reimbursing Gulf Coast for the relocation of its facilities. Gulf Power argues that although it will have to reimburse Gulf Coast for relocation of facilities, the substantial revenues accrued by serving the correctional facility will more than make up

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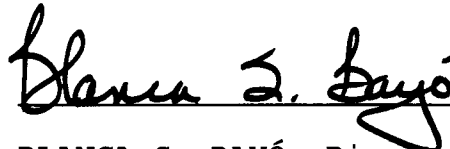
for the amount of the reimbursement. Gulf Power suggests that if a stay is granted Gulf Coast should be required to post a bond or corporate undertaking, as provided for in Rule 25-22.061, Florida Administrative Code.

It is our view that further delay in the operation of Order No. PSC-95-0271-FOF-EU will not cause substantial harm to the parties or the public. The delay may, in fact, prevent unnecessary disruption to the customer should Gulf Coast prevail on appeal. We find that it is appropriate to preserve the status quo until Gulf Coast's appeal is resolved. While Gulf will not receive revenues from service to the prison until the case is finally resolved, it also will not incur any costs to serve the prison. Gulf Coast is expending the funds necessary to serve the Washington County Correctional Facility and should be allowed retain any revenues derived from that service until the case is finally decided. It is therefore

ORDERED by the Florida Public Service Commission that Gulf Coast Electric Cooperative's Motion for Stay Pending Judicial Review is granted. It is further

ORDERED that this docket shall remain open pending resolution of the remaining substantive issues in the case.

By ORDER of the Florida Public Service Commission, this 3rd day of April, 1996.



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 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, 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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