

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to resolve) DOCKET NO. 930885-EU
territorial dispute with Gulf) ORDER NO. PSC-96-1191-PCO-EU
Coast Electric Cooperative, Inc.) ISSUED: September 23, 1996
by Gulf Power Company.)
_____)

ORDER DETERMINING ISSUES TO BE
RESOLVED AT EVIDENTIARY HEARING

In Order No. PSC-95-0271-FOF-EU, the Florida Public Service Commission resolved a territorial dispute between Gulf Power Company (Gulf) and Gulf Coast Electric Cooperative (Gulf Coast) concerning which utility should provide electric service to the Washington County Correctional Facility. In that Order, the Commission also decided that the territorial dispute between the two utilities extended beyond the prison site to all areas of south Washington and Bay Counties where the utilities' facilities were commingled and in close proximity. The Commission directed the parties to submit a report identifying all parallel lines and crossings of their facilities, and all areas of potential dispute in south Washington and Bay counties. The Commission directed the parties to negotiate in good faith to develop a territorial agreement to resolve duplication of facilities and establish a territorial boundary. If the parties were unable to resolve their differences, the Commission stated that it would conduct additional evidentiary proceedings to establish that boundary itself. In a Clarifying and Amendatory Order, the Commission reiterated that if the parties were unable to agree to a boundary, then the Commission would draw boundary lines. Order No. PSC-95-0913-FOF-EU, issued July 27, 1995.

On February 19, 1996, the parties filed their reports pursuant to Order No. PSC-95-0271-FOF-EU. They reported that they were unable to agree on a boundary. Thereafter, Order No. PSC-96-0466-PCO-EU was issued to establish the procedural schedule for a Commission hearing pursuant to the directive of Order No. PSC-95-0271-FOF-EU. Staff then met with the parties to discuss the issues to be resolved at the evidentiary hearing scheduled for February 11-12, 1997. The parties and the staff disagree as to the scope of those issues. To facilitate discovery and the prehearing process, staff requested that a preliminary prehearing conference be held with the prehearing officer to consider the simplification of issues. That conference was held on July 29, 1996.

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At the conference, Gulf Power argued that the threshold question of whether the Commission has authority to draw a territorial boundary when the parties are unable to reach a territorial agreement has never been addressed. Gulf further argued that Chapter 366, Florida Statutes, does not require the establishment of a boundary as the only means to resolve a territorial dispute. Gulf also claimed that a recent ruling by the Florida Supreme Court limits the Commission's authority to impose territorial boundaries when the parties are unable to reach an agreement on their own. In Gulf Coast Electric Cooperative Inc. v. Clark, 674 So.2d 120 (Fla. 1996), the Supreme Court reversed the portion of Order No. PSC-95-0271-FOF-EU awarding electric service to the prison to Gulf Power. Gulf has raised the same arguments regarding the effect of the Court's ruling in a motion to dismiss filed on July 23, 1996.

Staff has proposed several issues for the Commission's consideration at the hearing. Upon consideration, it appears that those issues, with certain revisions suggested by Gulf, are appropriate. The revised issues are shown below. If Gulf would like to offer creative solutions to the territorial dispute, other than establishing a territorial boundary line, it may do so in its positions on the issues. Gulf's arguments with regard to whether the Commission has the jurisdiction to establish territorial boundary lines will be tested in the motion to dismiss to be decided by the Commission panel assigned to this docket. Thus, for the reasons discussed above, the following issues are approved for consideration in the February hearing:

1. What are the areas of South Washington and Bay Counties where the electric facilities of Gulf Power and Gulf Coast are commingled and in close proximity?
2. What are the areas in South Washington and Bay Counties where further uneconomic duplication of electric facilities is likely to occur?
3. What is the expected customer load, energy, and population growth in the areas identified in response to issues 1 and 2 above?
4. What is the location, type and capacity of each utility's facilities in the areas identified in response to issues 1 and 2 above?
5. Is each utility capable providing adequate and reliable electric service to the areas identified in response to issues 1 and 2 above?

6. How should the Commission establish the territorial boundary between Gulf Power and Gulf Coast in South Washington and Bay Counties where the electric facilities are commingled and in close proximity and further uneconomic duplication of facilities is likely to occur?
7. Where should the territorial boundary be established?

Based on the foregoing, it is

ORDERED that the issues identified in the body of this Order are hereby approved.

By ORDER of Chairman Susan F. Clark, as Prehearing Officer, this 23rd day of September, 1996.


SUSAN F. CLARK, Chairman and
Prehearing Officer

(S E A L)

VDJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(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.

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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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