

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against Gulf Power Company
for expedited enforcement of territorial order,
by Gulf Coast Electric Cooperative, Inc.

DOCKET NO. 20180125-EU
ORDER NO. PSC-2018-0357-PCO-EU
ISSUED: July 23, 2018

ORDER SETTING PROCEDURE TO CONSIDER
MOTION FOR SUMMARY FINAL ORDER

I. Case Background

The purpose of this Order is to set the procedure for the Florida Public Service Commission to consider the Motion for Summary Final Order filed by Gulf Power Company (Gulf Power) seeking to resolve the complaint filed by Gulf Coast Electric Cooperative, Inc. (Gulf Coast) against Gulf Power.

On May 23, 2018, Gulf Coast filed its Complaint against Gulf Power seeking expedited enforcement of their 2001 “Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities” (“Territorial Agreement”) as approved by Order Nos. PSC-01-0891-PAA-EU, issued April 9, 2001, and PSC-01-0891A-PAA-EU, issued March 26, 2002, both of which were issued in Docket No. 930885-EU, *In re: Petition to resolve territorial dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power Company* (collectively, “Territorial Order”). The Territorial Order sets out several procedures Gulf Power and Gulf Coast must follow to determine which utility may provide electric service to a customer upon the customer’s request.

Gulf Power answered the complaint on May 30, 2018, and filed a Motion for a Summary Final Order and Motion for Protective Order on June 6, 2018, after which Gulf Coast served discovery on Gulf Power. On June 8, 2018, in response to Gulf Coast’s discovery requests, Gulf Power filed an Objection and second Motion for Protective Order. On June 13 and 15, 2018, Gulf Coast responded in opposition to Gulf Power’s Motion for Summary Final Order and Motions for Protective Orders. Gulf Coast filed a Motion for a Status Conference on July 13, 2018, to which Gulf Power responded in opposition on July 19, 2018.

Neither Gulf Power nor Gulf Coast dispute that a Gulf Power Engineering Supervisor sent to Gulf Coast’s Engineering Vice President, and that Gulf Coast received, an e-mail dated October 20, 2017, stating the following:

Pursuant to section 2.3(a) of the agreement between Gulf Power and GCEC, I am notifying GCEC of a customer's request for electrical service from Gulf Power for a new lift station on parcel 26597-000-000. Construction would not result in any duplication of facilities.

Gulf Power claims that the dispositive issue is whether the October 20, 2017, e-mail notice provided by Gulf Power to Gulf Coast under Section 2.3(a) of the Territorial Agreement concerning electric service to the lift facility was sufficient for Gulf Power to provide service. Having reviewed the pleadings filed by the parties, the threshold question for this dispute is whether the October 20, 2017, e-mail was sufficient notice under the terms of the Territorial Agreement. Although Gulf Power argues the complaint is now ripe for a resolution by a summary final order, Section 120.57(1)(h), Florida Statutes (F.S.), provides:

Any party to a proceeding in which an administrative law judge has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, *depositions, answers to interrogatories, and admissions on file, together with affidavits, if any*, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order.

(Emphasis added) When considering requests for summary final order, the Commission has found “it is premature to decide whether a genuine issue of material fact exists when [a party] has not had the opportunity to complete discovery and file testimony.”¹ In this case, Gulf Power objects to Gulf Coast’s discovery attempts and no prefiled testimony has been filed. To put this complaint in the proper posture to determine whether there are no genuine issues of material fact, which would allow a summary final order to be entered based on the pleadings, the limited process established below shall be used to bring the Motion for Summary Final Order before the Commission for a decision.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

II. General Filing Procedures

Filings pertaining to this docket must comply with Rule 28-106.104, F.A.C. Filing may be accomplished electronically as provided in the Commission’s Statement of Agency Organization and Operation and the E-Filing Requirements link, posted on our website, www.floridapsc.com. If filing via mail, hand delivery, or courier service, the filing should be addressed to:

¹ Order No. PSC-01-1554-FOF-WU, issued July 27, 2001, in Docket No. 991437-WU, *In Re: Wedgefield Utilities, Inc.*, citing *Brandauer v. Publix Super Markets, Inc.*, 657 So. 2d 932, 933–34 (Fla. 2d DCA 1995).

Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

The Commission strongly encourages electronic filing, which is available from the Commission's Home Page under the Clerk's Office menu and Electronic Filing web form. The filing party is responsible for ensuring that no information protected by privacy or confidentiality laws is contained in any electronic document. To the extent possible, when making an electronic filing, an electronic copy of all filings shall also be provided to parties and Commission staff in Microsoft Word format and all schedules shall be provided in Microsoft Excel format with formulas intact and unlocked.

III. Briefs on Issues for Consideration

In order to ensure the parties have had every opportunity to address any affidavits filed or discovery propounded under this Order, the parties may file briefs, which shall not exceed 40 pages, by September 7, 2018, that address the following issues:

- (1) Whether Section 2.3 of the Territorial Agreement is the proper procedure, pursuant to the Territorial Order, to determine which utility should provide electric service to the lift facility.
- (2) If Section 2.3 is the proper procedure, whether the October 20, 2017, e-mail notice provided by Gulf Power to Gulf Coast under Section 2.3 of the Territorial Agreement concerning electric service to the lift facility was sufficient for Gulf Power to provide service.
- (3) Should Gulf Power's Motion for Summary Final Order be granted?

IV. Affidavits in Lieu of Prefiled Testimony and Exhibits

No prefiled testimony and exhibits are required at this time. If the Commission determines that the notice issue is dispositive, no hearing would be necessary and thus there would be no need for the parties to incur the expense of prefiling testimony and exhibits. However, Section 120.57(1)(h), F.S., provides the Commission may entertain affidavits in ruling on a motion for summary final order. Accordingly, the parties may file by August 10, 2018, for the Commission's consideration, any affidavits relative to the notice issue.

V. Discovery Procedures and Ruling on Motions for Protective Orders

A. General Requirements

Discovery shall be conducted in accordance with the provisions of Chapter 120, F.S., and the relevant provisions of Chapter 366, F.S., Rules 25-22, 25-40, and 28-106, F.A.C., and the Florida Rules of Civil Procedure (as applicable), as modified herein or as may be subsequently modified by the Prehearing Officer. To limit the costs incurred by the parties, discovery shall be limited to the issue specified in Section III (2) above. If the Commission ultimately finds the notice was not sufficient and a hearing is set, the Commission shall enter an order revising the scope of discovery.

Unless subsequently modified by the Prehearing Officer, the following shall apply:

- (1) Discovery shall be completed by August 31, 2018.
- (2) Discovery requests and responses shall be served by e-mail, hand delivery, or overnight mail, and electronic service is encouraged. Discovery served via e-mail shall be limited to 5 MB per attachment, shall indicate how many e-mails are being sent related to the discovery (such as 1 of 6 e-mails), and shall be numbered sequentially. Documents provided in response to a document request may be provided via a CD, DVD, or flash drive if not served electronically.
- (3) Each electronic discovery response shall be given a separate electronic file name that is no longer than 60 characters.
- (4) Sets of interrogatories, requests for admissions, requests for production of documents, or other forms of discovery shall be numbered sequentially in order to facilitate identification.
- (5) Within each set, discovery requests shall be numbered sequentially, and any discovery requests in subsequent sets shall continue the sequential numbering system.
- (6) Discovery responses shall be served within 20 days (inclusive of mailing) of receipt of the discovery request.
- (7) Each page of every document produced pursuant to requests for production of documents shall be identified individually through the use of a Bates Stamp or other equivalent method of sequential identification. Parties should number produced documents in an unbroken sequence through the last discovery response.
- (8) Copies, whether hard copies or electronic, of discovery requests and responses shall be served on all parties and Commission staff. In addition, copies of all responses to requests for production of documents shall be provided to the Commission staff at its Tallahassee office unless otherwise agreed.
- (9) Parties shall file in the Commission Clerk's Office a notice of service of any interrogatories or requests for production of documents propounded and associated responses in this docket, giving the date of service and the name of the party to whom the discovery was directed.

Unless subsequently modified by the Prehearing Officer, the following shall apply:

- (1) Interrogatories, including all subparts, shall be limited to 30.
- (2) Requests for production of documents, including all subparts, shall be limited to 30.
- (3) Requests for admissions, including all subparts, shall be limited to 30.

When a discovery request is served and the respondent intends to seek clarification of any portion of the discovery request, the respondent shall request such clarification within 5 days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

B. Confidential Information Provided Pursuant to Discovery

Any information provided to the Commission staff pursuant to a discovery request by the staff or any other person and for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

Redacted versions of confidential filings may be served electronically, but in no instance may confidential information be electronically submitted. If the redacted version is served electronically, the confidential information (which may be on a CD, DVD, or flash drive) shall be filed with the Commission Clerk via hand-delivery, U.S. Mail, or overnight mail on the day that the redacted version was served via e-mail.

When a person provides information that it maintains as proprietary confidential business information to the Office of Public Counsel pursuant to a discovery request by the Office of Public Counsel or any other party, that party may request a temporary protective order pursuant to Rule 25-22.006(6)(c), F.A.C., exempting the information from Section 119.07(1), F.S.

When a party other than the Commission staff or the Office of Public Counsel requests information through discovery that the respondent maintains as proprietary confidential business information, or when such a party would otherwise be entitled to copies of such information requested by other parties through discovery (e.g., interrogatory responses), that party and respondent shall endeavor in good faith to reach agreement that will allow for the exchange of such information on reasonable terms, as set forth in Rule 25-22.006(7)(b), F.A.C.

C. Motions for Protective Orders

Both of Gulf's Motions for Protective Orders are denied to the extent that the parties may conduct discovery on the limited issue of whether Gulf Power provided sufficient notice to Gulf Coast under Section 2.3(a) of the Territorial Agreement. The Commission may consider discovery received on this issue when ruling on Gulf Power's Motion for Summary Final Order. If the Commission does not resolve this complaint by a summary final order, a separate order will be entered revising the discovery process.

VI. Status Conference

In its Response to Gulf Coast's Motion for Status Conference, Gulf Power asserts that neither a status conference nor an order establishing procedure is necessary at this juncture, and that the Commission can rule on Gulf Power's Motion for Summary Final Order based solely upon the pleadings in this docket. Given that this Order lays out the process for the Commission to consider the Motion for Summary Final Order as discussed herein, a Status Conference is not needed at this time, and thus, Gulf Coast's request for a Status Conference is moot. A separate order establishing procedure will be issued if the Commission does not resolve this complaint by a summary final order.

VII. Controlling Dates

The following dates are established to govern the key activities of this case:

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|--|-------------------|
| (1) Affidavits | August 10, 2018 |
| (2) Discovery deadline for limited discovery | August 31, 2018 |
| (3) Briefs | September 7, 2018 |
| (4) Consideration at Agenda Conference | October 9, 2018 |

In addition, all parties should be on notice that the Prehearing Officer may exercise the discretion to schedule conferences or meetings of the parties as deemed appropriate. Such meetings or conferences will be properly noticed to afford the parties an opportunity to attend.

Based upon the foregoing, it is hereby

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that the parties may conduct limited discovery as set forth in Section V, may file affidavits as set forth in Section IV, and file briefs on the issues raised in Section III as set forth above. It is further

ORDERED that Gulf Power Company's Motions for Protective Orders are denied as discussed herein. It is further

ORDER NO. PSC-2018-0357-PCO-EU

DOCKET NO. 20180125-EU

PAGE 7

ORDERED that Gulf Coast Electric Cooperative, Inc.'s Motion for Status Conference is moot. It is further

ORDERED that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 23rd day of July, 2018.



JULIE I. BROWN

Commissioner and Prehearing Officer

Florida Public Service Commission

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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KMS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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; or (2) 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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.