

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to resolve) DOCKET NO. 930885-EU
territorial dispute with GULF) ORDER NO. PSC-94-1191-PCO-EU
COAST ELECTRIC COOPERATIVE, INC.) ISSUED: September 29, 1994
by GULF POWER COMPANY.)
_____)

ORDER ON PROCEDURAL MOTIONS

This Order will dispose of the following motions filed by the parties to this Docket:

- 1) Gulf Power Company's Motion to Strike Portions of the Testimony of H.W. Norris and Archie W. Gordon;
- 2) Gulf Power Company's Motion to Limit Scope of Issues, or, in the Alternative, to Extend the Time for Filing Rebuttal Testimony;
- 3) Gulf Coast Electric Cooperative's Motion for Continuance.

Motion No. 1

In its Motion to Strike Portions of the Testimony of H.W. Norris and Archie W. Gordon, Gulf Power Company (Gulf) states that the testimony in question describes settlement negotiations between the parties to establish a territorial agreement and resolve their territorial dispute. Gulf contends that Section 90.408, Florida Statutes, prohibits the admission of evidence of such negotiations, because the evidence is irrelevant to prove the validity of a party's claim or defense, and because admission of it would have a chilling effect on parties' settlement efforts. Gulf Coast responds that Section 90.408 does not apply to the testimony in question because that testimony does not relate to the liability of either party, and it does not suggest that there were any offers or concessions made to settle any liability issue in the case.

Section 90.48, Florida Statutes, Compromise and Offers to Compromise, states:

Evidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements

DOCUMENT NUMBER-DATE

09975 SEP 29 84

FPSC-RECORDS/REPORTING

made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value.

Gulf's interpretation of the applicability of this statute appears somewhat broad with respect to this administrative territorial dispute proceeding. Nevertheless, Gulf's reasoning is persuasive. Evidence of territorial agreement negotiations is not relevant to determine any of the factual issues in this case, and it is detrimental to the negotiation and settlement process.

The area of dispute is one of the contested issues in this case. Gulf Power contends that the area in dispute is only the new Washington County Correctional facility. Gulf Coast contends that the area in dispute is all areas in Washington and Bay Counties where the utilities' electric facilities are contiguous and the potential for uneconomic duplication exists. Gulf Coast's testimony uses facts about the territorial agreement negotiations to show that the area in dispute extends beyond the correctional facility. There is not a sufficient nexus between the negotiations and the area of dispute in this case. More importantly, the negotiation process would suffer if evidence of the negotiations were used against Gulf to resolve a contested issue in the case. For these reasons Gulf's Motion to Strike Portions of the Testimony of H.W. Norris and Archie W. Gordon is granted. Lines 9-15, page 22 of Mr. Norris' testimony and lines 24-25 of page 12 through lines 1-13 of page 13 of Mr. Gordon's testimony shall be stricken from the record of this proceeding.

Motion No. 2

In its Motion to Limit Scope of Issues, or, in the Alternative, to Extend the Time for Filing Rebuttal Testimony, Gulf Power contends that the area in dispute in this case is only the Washington County Correctional Facility. Gulf asks that the Commission only consider that specific area. Gulf proposes that the Commission should not address other areas of Washington and Bay Counties as Gulf Coast suggests. Also, Gulf requests that the Commission refrain from considering issues relating to the nature and purpose of Rural Electric Cooperatives. If the Commission does consider those issues, Gulf requests that it be permitted to file additional rebuttal testimony on those issues.

The extent of the area of territorial dispute between these utilities has been identified as an issue in this case. It is a reasonable question for the Commission to resolve in any

ORDER NO. PSC-94-1191-PCO-EU
DOCKET NO. 930885-EU
PAGE 3

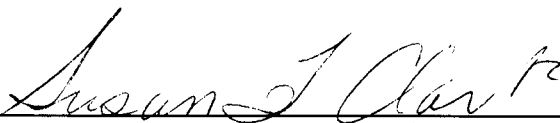
territorial dispute proceeding. Section 366.04, Florida Statutes, gives the Commission considerable authority and responsibility to ensure the adequacy and reliability of Florida's electric grid, and specifically to avoid uneconomic duplication of facilities. The issue should be addressed in this case. Gulf will have the opportunity to file rebuttal testimony on the area of dispute only by October 10, 1994.

Regarding Gulf's concern over testimony relating to the nature and purpose of Rural Electric Cooperatives, there do not appear to be any specific issues raised in this case on that subject. Gulf Coast contends that its testimony on the subject is offered as background information only. Since there are no specific issues raised regarding this subject, there is no reason to limit their scope. Gulf will have the opportunity to object to the relevance of Gulf Coast's testimony at the hearing. No additional rebuttal testimony on this subject is necessary.

Motion No. 3

Gulf Coast's Motion for Continuance of the hearing until February, 1995 is denied. The hearing has been rescheduled for two days in October, which will be adequate time to address all the evidence in the case.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 29th day of September, 1994.



SUSAN F. CLARK, Commissioner
and Prehearing Officer

(S E A L)

MCB

ORDER NO. PSC-94-1191-PCO-EU
DOCKET NO. 930885-EU
PAGE 4

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 25-22.038(2), 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.