

Gulf Power Company
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First Office, Room 111
Tallahassee, Florida 32301
Telephone 904-498-1111

**ORIGINAL
FILE COPY**

Susan D. Crammer
Assistant Secretary and
Assistant Counsel

the southern electric system

March 13, 1997

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0870

Dear Ms. Bayo:

RE: Docket No. 930885-EU

Enclosed are an original and fifteen copies of Gulf Power Company's Response to Gulf Coast Electric Cooperative's Second Motion to Compel Discovery to be filed in the above docket.

Also enclosed is a 3.5 inch double sided, high density diskette containing the Response in WordPerfect 5.0 format as prepared on a MS-DOS based computer.

Sincerely,

Susan D. Crammer

lw

Enclosures

cc: Beggs and Lane
Jeffrey A. Stone, Esquire

Legal-1
EAG
SEC-1
Mat-3

DOCUMENT NUMBER-DATE

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to resolve territorial dispute)
with Gulf Coast Electric Cooperative, Inc.)
by Gulf Power Company.)
_____)

Docket No. 930885-EU
Filed: March 14, 1997

GULF POWER COMPANY'S RESPONSE TO GULF COAST'S
SECOND MOTION TO COMPEL DISCOVERY

GULF POWER COMPANY ("Gulf Power" or "the Company"), by and through its undersigned attorneys, files the following response to Gulf Coast Electric Cooperative's second motion to compel discovery and argues:

1. Gulf Coast correctly states that on January 7, 1997, the undersigned attorney notified Mr. Haswell, counsel for Gulf Coast, that Gulf Coast's Third Set of Interrogatories and Request for Production of Documents to Gulf Power called for responses that would go beyond the deadline set at Gulf Coast's request by the Commission in Order PSC-96-1274-PCO-EU. At that time, Gulf Coast's counsel was notified that Gulf Power did not believe that it was required to respond to the aforementioned discovery request. Staff attorney Vicki Johnson was also present at the meeting.

2. Gulf Coast failed to file a motion to shorten the time in which Gulf Power would have to respond to the discovery request even though it was on notice that Gulf Power did not believe that the discovery request was valid as a result of the discovery deadline. Such a motion, if granted, would have brought that discovery request within the discovery deadline. As submitted, the discovery request called for a response from Gulf Power the week prior to the hearing in this matter. This would have required Gulf Power to spend its time answering

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discovery requests instead of preparing for the hearing. A discovery deadline is set to prevent such an occurrence. Gulf Power adhered to the discovery deadline and fairness requires that Gulf Coast be required to do the same.

3. Gulf Coast's argument that Gulf Power in some way waived the discovery deadline is without basis. The discovery deadline was set by the Commission and no rule or other source of law grants the parties the right to change that deadline without Commission approval.

4. Gulf Coast's belief that Gulf Power's acquiescence to deposition dates which fell after the discovery deadline is a waiver of the discovery deadline by Gulf Power is without basis. The deposition dates were mutually agreed to by Gulf Power, Gulf Coast and Staff counsel after Gulf Power was unable to schedule the depositions on the dates which Gulf Coast had initially requested. Gulf Coast's initial request came during the Christmas holiday at a time when the proposed deponents could not be reached. There was simply no way that the depositions could be performed prior to the deadline to accommodate the witnesses and counsel for the Commission, Gulf Power and Gulf Coast. After the holidays, counsel for Gulf Power, Gulf Coast and Staff were able to settle on dates for the depositions. It is unreasonable and without legal basis to argue that the accommodations made by Gulf Power in the scheduling of the depositions were in any way a waiver of the discovery deadline which was set by the Commission.

5. Gulf Power has not responded to any discovery request of a **party** to this proceeding where that request went beyond the discovery deadline set by this Commission. The Commission Staff, however, has propounded discovery which would require a response after the discovery deadline. Gulf Power has not objected to this request by the Commission's Staff. Gulf Power's actions in regard to Staff's discovery request do not have any bearing on its actions with regard to Gulf Coast's discovery request. Staff's discovery request has necessitated an extension of time for the parties to respond to that particular discovery. The joint Motion and Stipulation for Continuance of Final Hearing by Gulf Power Company and Gulf Coast Electric expressly states that the extension of time accompanying the continuance was not for the purpose of reopening discovery, but would only permit the parties to respond to discovery which had been propounded by the Commission's Staff. It has never been Gulf Power's position that the discovery deadline had been extended for all discovery or for Gulf Coast to conduct discovery on Gulf Power after the deadline set by the Commission.

6. Gulf Power should not be compelled to respond to Gulf Coast's Third Set of Interrogatories as that discovery request far exceeds the limit of 75 interrogatories set by the Commission. Gulf Coast argues that since Gulf Power has not complained that Staff exceeded the limit with its interrogatories to the parties numbered 22-97 that it waived the right to hold Gulf Coast to the discovery limitations set by this Commission. Gulf Power's actions related to Staff's interrogatories are irrelevant to Gulf Coast's interrogatories and do not constitute a waiver of the discovery limitations set by this Commission. Further, at the time Gulf Coast so blatantly ignored the Commission's limit on interrogatories Gulf Power had not responded to Staff's interrogatories numbered 22 through 97. Gulf Coast cannot say that it exceeded the limit

because Gulf Power had waived it, since the act that Gulf Coast claims constitutes a waiver had not happened at the time it served the discovery request. Simply, Gulf Coast is blatantly ignoring the rules and procedures of the Commission. Gulf Coast must not be permitted to ignore the rules of discovery at Gulf Power's expense.

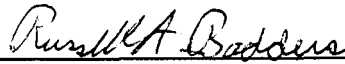
7. Gulf Coast cannot now come before the Commission and argue that it would be prejudiced by a denial of its Second Motion to Compel since it has had ample opportunity to have its questions answered during the depositions of Gulf Power's witnesses. As discussed in Gulf Coast's motion, depositions were taken of each of Gulf Power's witnesses during the month of January. Gulf Coast was on notice that Gulf Power did not feel compelled to respond to the interrogatories and therefore cannot argue that it failed to raise the questions in the depositions because it thought it would get answers in the form of interrogatory responses. Gulf Coast had full opportunity to explore the questions it submitted as interrogatories during those depositions.

8. Gulf Coast's motion to compel should be denied because it waived any rights which it had regarding its Third Set of Interrogatories and Third Request for the Production of Documents. On or about January 23, 1997, Gulf Coast filed a Prehearing Statement in this matter. The aforementioned Prehearing Statement was replaced by an amended Prehearing Statement that was filed by Gulf Coast on or about January 28, 1997. No mention of Gulf Coast's Third Set of Interrogatories or Request for Production of Documents appears in either document. Again, at the Prehearing Conference Gulf Coast failed to mention that there was any discovery from it to Gulf Power still outstanding. Gulf Coast was clearly aware that there was a

question about its third set of interrogatories and production of documents, but never mentioned that the discovery request was even in existence or outstanding. Gulf Coast's failure to speak to the questioned discovery should be deemed as a waiver of its rights.

WHEREFORE, Gulf Power Company respectfully requests that the Florida Public Service Commission deny Gulf Coast's Second Motion to Compel Discovery.

Respectfully submitted this 13th day of March, 1997



JEFFREY A. STONE

Florida Bar No. 325953

RUSSELL A. BADDERS

Florida Bar No. 7455

Beggs & Lane

Post Office Box 12950

Pensacola, Florida 32576-2950

(904) 432-2451

Attorneys for Gulf Power Company

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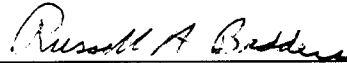
Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 13th day of March 1997 by hand delivery or U. S. Mail to the following:

Vicki Johnson, Esquire
Staff Counsel
FL Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0863

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Gulf Coast Electric Coop.
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Port St. Joe FL 32456

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the southern electric system

Susan D. Cranmer
Assistant Secretary and
Assistant Treasurer

March 13, 1997

Ms. Blanca S. Bayo, Director
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Florida Public Service Commission
2540 Shumard Oak Boulevard
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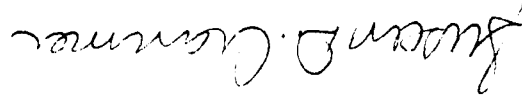
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Our business is customer satisfaction

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Russell A. Badders

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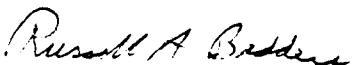
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