ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

GULF COAST ELECTRIC COOPERATIVE INC) Respondent/Appellant)	Docket Number: 930885-EU
v.)	
FLORIDA PUBLIC SERVICE COMMISSION)	
and)	
GULF POWER COMPANY,) Petitioner/Appellee)	

NOTICE OF APPEAL TO THE SUPREME COURT OF FLORIDA

NOTICE IS HEREBY GIVEN that Gulf Coast Electric Cooperative Inc. (Gulf Coast), Respondent/Appellant appeals to the Supreme Court of Florida, the Order of the Florida Public Service Commission rendered on January 28, 1998, Order Number PS-98-0174-FOF-EU. The nature of the Order is a final order resolving a territorial dispute between Gulf Coast and Gulf Power Company (Gulf Power). A copy of the Order appealed from is attached hereto in accordance with Rule 9.110(d).

The Supreme Court has jurisdiction in accordance with Article V, §3(b)(2) of the Constitution of the State of Florida, Florida Statute, §366.10 and Rule 9.030(a)(1)(B)(ii),

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Florida Rules of Civil Procedure. The action sought to be reviewed relates to the service of utilities providing electric service.

Respectfully submitted,

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Attorneys for Gulf Coast Electric Cooperative, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by regular U.S. mail to the following:

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Leslie J. Paugh, Esquire
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this 26 day of February, 1998.

John H. Haswell

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 ORDER NO. PSC-98-0174-FOF-EU ISSUED: January 28, 1998

The following Commissioners participated in the disposition of this matter:

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

ORDER RESOLVING TERRITORIAL DISPUTE BETWEEN GULF COAST ELECTRIC COOPERATIVE, INC. AND GULF POWER COMPANY

BY THE COMMISSION:

CASE BACKGROUND

On September 8, 1993, Gulf Power Company (Gulf Power) filed a petition to resolve a territorial dispute with Gulf Coast Electric Cooperative, Inc. (Gulf Coast). The issue to be resolved in that proceeding was whether electric service to the Washington County Correctional Facility should be provided by Gulf Power or Gulf Coast. The hearing was held on October 19 and 20, 1994, and Order No. PSC-95-0271-FOF-EU was issued on March 1, 1995, ordering Gulf Power to provide electric service to the Washington County Correctional Facility. The decision awarding service to Gulf Power was overturned by the Florida Supreme Court on May 23, 1996. Gulf Coast Electric Cooperative v. Clark, 674 So.2d 120 (Fla. 1996).

The Court's decision did not address the portions of Order No. PSC-95-0271-FOF-EU which directed Gulf Power and Gulf Coast "to negotiate in good faith to develop a territorial agreement to resolve duplication of facilities and establish a territorial boundary in south Washington and Bay Counties." Order No. PSC-95-0271-FOF-EU further stated that if Gulf Power and Gulf Coast "are unable to negotiate an agreement, then we will conduct an additional evidentiary proceeding to resolve the continuing dispute between them."

During the two years since we issued Order Nos. PSC-95-0271-FOF-EU and PSC-95-0913-FOF-EU, Gulf Power and Gulf Coast have been unable to agree on a territorial boundary. An evidentiary hearing was held on April 29 and 30, 1997. In addition, on June 18, 1997, we visited, along with the parties, 15 sites throughout south Washington and Bay Counties in order to view the extent of the commingling and possible duplication of facilities of the two

utilities. Having considered all the evidence and the arguments of the parties, we now render our decision.

DECISION

Commingled Electric Facilities

The first issue for resolution is a determination of the areas in south Washington and Bay Counties where the electric facilities of Gulf Power and Gulf Coast are commingled and in close proximity. Gulf Coast identified more areas than Gulf Power. The difference in the parties' positions appears to hinge on the definition of "close proximity." Gulf Power states that a minimum distance of 1,000 feet be used to determine close proximity. However, according to Gulf Coast, "close proximity" can simply mean the ability of both utilities to serve a given area or the presence of facilities of both utilities on the same map. Gulf Coast included an additional 13 maps based on a differing definition of "close proximity" as well as a desire to completely demonstrate a proposed territorial boundary between Gulf Coast and Gulf Power.

We are not persuaded by Gulf Coast's position that close proximity is the area addressed by any given map. Each map encompasses a substantial area of approximately 3.44 square miles. A definition which covers such a wide area does not appear to be practical or functional. We are also concerned with establishing definitions which could impact utilities which are not parties to this docket.

In this instance, the exact definition of "close proximity" is not necessary to the resolution of the issue. First, the parties agree that in at least 27 areas there are existing facilities which are commingled and in close proximity. Second, exclusion of the additional areas identified by Gulf Coast from the resolution of this issue does not impact the resolution of the other issues in this Docket.

It is clear from the record that there are multiple areas where Gulf Coast and Gulf Power have existing facilities which are commingled and in close proximity in south Washington and Bay Counties. The extent of the conflict, at a minimum, is the 27 areas both parties agree on. The map numbers identifying these areas are: 2218NE, 2218NW, 2218SE, 2218SW, 2220, 2221, 2320, 2321, 2322, 2518, 2519, 2618, 2533, 2534, 2632, 2633, 2634, 2639, 2731, 2733, 2828NW, 2828SW, 2828NE, 2828SE, 2830NE, 2830NW, and 2830SW. [Composite Exhibits 2 and 6] We find that these are the areas where the electric facilities of Gulf Power and Gulf Coast are commingled and in close proximity.

Uneconomic Duplication

We have found that there are 27 areas in south Washington and Bay Counties where electric facilities are commingled and in close proximity. However, it does not follow that those areas will automatically experience further uneconomic duplication.

The appropriate evidence to consider in determining whether uneconomic duplication will occur is the historical growth patterns of both utilities, whether these patterns are expected to continue, and the potential impacts on the general body of ratepayers. The record clearly supports the conclusion that actions of both utilities have resulted in the ability to serve many of the same customers. Gulf Coast states that uneconomic duplication may have occurred and is likely to continue in the identified areas. It has become a question of which company places a service drop. A review of many distribution line installation dates indicates that both companies entered areas already served by the other utility.

Gulf Power's Witness Weintritt agrees that duplication of facilities will likely occur in the identified areas. However, it maintains that the simple fact that facilities are side by side does not necessarily lead to the conclusion that facilities are or will result in uneconomic duplication. Gulf Power's Witness Holland argues that the amount of duplication that rises to the level of uneconomic duplication is best determined on a case-by-case basis. When asked to evaluate their service area in south Washington and Bay Counties, Gulf Power responded that there will be no areas where further uneconomic duplication of electric facilities is likely to occur as long as fixed boundaries are not established and their proposed territorial policy is adopted. Gulf Power's conclusion is based on its definition of "uneconomic duplication." Gulf Power defines "uneconomic duplication" in terms of the costs and benefits accruing solely to Gulf Power from serving or not serving a given area, load or customer such as the incremental cost to serve, expected revenues, or other exclusive benefits. Benefits are defined as additional revenues in excess of the cost of building facilities to reach the customer. Gulf Power's Witness Holland goes on to say that if a customer is willing to build, or pay Gulf Power to build the necessary facilities, this cost should not be considered in determining the cost to serve.

We agree with the evidence presented by Gulf Power. There is no dispute that there are areas in south Washington and Bay Counties where electric facilities are commingled. Any time two utilities are in close proximity, there are going to be duplicative facilities. However, further uneconomic investment will not occur in the instant case because the facilities and investment of both utilities are already in place. The record shows that the

incremental cost for either utility to serve additional customers is negligible. In this situation, customer choice will be a factor for future electric service. Customer choice will be based on a determination of which utility is the most efficient provider of service.

There are regulatory constraints on the incremental cost approach of utility expansion. If a utility we regulate engages in uneconomic expansion, it does so at its own risk. This Commission has disallowed investments made by Gulf Power in the past. To the extent that Gulf Coast engages in such activity, it must answer to its member owners if the rates increase to unacceptable levels. In addition, there is a body of decisional law of this Commission establishing the criteria to be applied in resolving territorial disputes. Those criteria should be used by the utilities in a cooperative effort to resolve the manner in which they will expand their facilities in the future.

Based on the foregoing, we find that further uneconomic duplication of the electric facilities in the 27 identified areas where the facilities of Gulf Power and Gulf Coast are commingled will not occur because of the negligible cost of incremental service expansion. In addition, future uneconomic duplication between these two utilities will be precluded through the application of and compliance with criteria for resolving territorial disputes previously established by this Commission and through refinements to those guidelines set forth in Gulf Power's Composite Exhibit 5.

Customer Load, Energy and Population Growth

The companies' forecasts of load, energy and population growth in the identified areas are reasonable. The discussion of future load and load growth in this proceeding centered around whether or not Gulf Power was forecasting the same growth which Gulf Coast was expecting to serve.

Gulf Coast presented testimony that the two utilities are forecasting the same growth which is the reason establishment of respective territorial service areas is appropriate. However, Gulf Power put on testimony demonstrating that it uses historical population growth rates and load additions in its planning process. A review of the customer load and energy forecasts states that Gulf Power and Gulf Coast both expect, on average, different shares of future residential, commercial and industrial customers. We agree that it is impossible to identify the specific locations where the actual loads materialize or to accurately forecast the specific locations where growth occurs. However, by evaluating past

substation loads and feeder additions, the utility can reasonably estimate future load growth in a given area.

Electric Facilities

The descriptions in the record of the location, purpose, type and capacity of each utility's facilities in the identified areas are reasonable and appropriate. Gulf Power's customers in the identified areas of south Washington County are served by two separate Gulf Power substations. Sunny Hills Substation is a 12 MVA, 115 KV to 25 KV substation located south of Gap Pond in Sunny Hills, Florida. Vernon Substation is an 11.5 MVA, 115 KV to 25 KV substation located south of Vernon, Florida. From each of these substations, 25 KV feeders provide the preferred and back-up sources for reliable service to the identified area. Local overhead and underground distribution lines, and transformers provide service to Gulf Power's customers as shown on the following Florida grid coordinated maps that are part of Composite Exhibit 6: map numbers 2218NE, 2218NW, 2218SE, 2218SW, 2220, 2221, 2320, 2321, 2322, 2518, 2519 and 2618.

Gulf Power's customers in the identified areas of Bay County are served by Gulf Power's Bay County Substation. Bay County Substation is a 13.75 MVA, 115 KV to 12.47 KV substation located in Bay Industrial Park, off Highway 231, north of Panama City, Florida. A 12.47 KV feeder from Bay County Substation provides the preferred source of feed with another 12.47 KV feeder from Highland City Substation providing the back-up source of feed. Local overhead and underground distribution lines, and transformers provide service to Gulf Power's customers as shown on the following Florida grid coordinated maps that are part of Composite Exhibit 6: map numbers 2533, 2534, 2632, 2633, 2634, 2639, 2731, 2733, 2828NW, 2828SW, 2828NE, 2828SE, 2830NE, 2830NW, and 2830SW.

In south Washington County, Gulf Coast customers in the identified areas are served primarily by the Crystal Lake subdivision which is located on the east side of State Road 77 near the Bay/Washington County line. This substation is 7,500KVA, 115KV to 25KV. South Washington County distribution facilities are served off of the substation circuit at 25KV (preferred service) with backup service available from the north circuit of the Southport substation in Bay County.

In Bay County, Gulf Coast customers in the identified areas are served by the following substations; Bayou George South 8,000KVA, 46KV to 25KV; Bayou George North 10,000KVA, 115KV to 25KV; Fountain 7,500KVA, 115KV to 25KV; Southport 15,000KVA, 115KV to 25KV. Bay and south Washington County distribution facilities are served off of the main distribution feeders as shown on Exhibit

2 (AWG-2, Bay County; AWG-5, Washington County) from the substations at 25KV (preferred and/or backup service) from a flexible switching distribution system.

There is no disagreement between the parties concerning the location, purpose, type and capacity of each utility's facilities. We find that the descriptions the distribution facilities proffered by the parties are reasonable and appropriate.

Reliability

Both utilities are capable of providing adequate and reliable electric service to the identified areas. Both parties state that they are able to serve the identified areas of south Washington and Bay Counties. Gulf Power maintains that its system is more reliable than Gulf Coast's. It also states that there is no assurance of reliable service with Gulf Coast because the customers of Gulf Coast have no effective means to protest the adequacy, reliability, and price of the service provided because they are not subject to the full regulatory jurisdiction of the Commission.

In addition, Gulf Power's Witness Weintritt presented data to show that Gulf Coast's reliability in terms of length of outages exceeded that of Gulf Power's. Gulf Coast's Witness Dykes maintains that Gulf Power's analysis of reliability using outage data is not appropriate because the basis upon which the percentages were computed was significantly different between the two utilities. Gulf Power's Witness Weintritt relied on data for Gulf Power's entire eastern district and Gulf Coast's total system rather than the data corresponding to the identified areas.

We agree with Gulf Coast that the analysis should be limited only to the comparable areas identified in this Docket. Exhibits 7 and 17 provide appropriate comparisons on the service interruption time statistics for the two utilities. These exhibits show that in the disputed area, Gulf Coast's customers experienced less outage time than Gulf Power's customers in 1991 and 1992.

Summary of Exhibits 7 and 17

	1991 Total Customers	1991 Hours of Interruption		1992 Total Customers	1992 Hours of Interruption	
		Total	Per Customer		Total	Per Customer
Gulf Power	1547	2474.45	1.6	1618	2329.63	1.4
Gulf Coast	858	155.25	0.2	1009	246.6	0.2

However, we do not believe that service interruption time statistics for the disputed area represented in Exhibits 7 and 17 provide conclusive evidence as to which utility is more reliable. That would require a full review of substations, feeders and forecasts.

Therefore, based on all the evidence adduced in this Docket, we find that both utilities are capable of providing adequate and reliable electric service to the identified areas.

Resolution of Territorial Dispute

The issue of whether a territorial boundary should be established was the most contested issue in this Docket. Gulf Power's Witness Holland states that no boundaries should be drawn at all, or if any, boundaries should be flexible and ever-changing with the ebb and flow of economics. Gulf Coast presents detailed maps showing a fixed and finite boundary between the two utilities using principles employed by the Commission in past decisions. Staff Witness Bohrmann proposes the Commission employ aspects from both positions and establish boundaries only in the developed areas.

Gulf Power

The various points and concerns raised by Gulf Power's witnesses Holland, Weintritt, Spangenberg and Pope can be condensed into three general concepts which they have advocated throughout this Docket. The nature of these basic concepts do not lend themselves well to establishing exclusive retail electric service territories and explain why Gulf Power believes that it is unnecessary, inappropriate and counterproductive to draw "lines on the ground" to delineate service territory. Gulf Power's concepts are as follows:

(1) Gulf Power believes that all customers should have a right to choose a service provider.

(2) Gulf Power believes that any method to allocate retail service area should be governed by the fact that distribution systems expand incrementally.

(3) Gulf Power believes that uneconomic duplication is any which results in a cost to the utility significantly above any corresponding exclusive benefit.

Under Gulf Power's proposal, the utilities will have to codify guidelines and procedures to address growth because no such

documentation currently exists. Once the guidelines are established, both utilities must consistently follow them. Both utilities agree that having formal written guidelines and procedures of this type would help. To make Gulf Power's policies work, both utilities will have to cooperatively develop the disputed area.

Gulf Coast

Gulf Coast witness Dykes states that drawing firm and permanent boundary lines is the only way to prevent future duplication of facilities. To construct its proposed lines, Gulf Coast utilizes criteria which have historically been used by utilities in setting service territory boundaries. In his direct testimony, Witness Gordon lists six criteria used to draw the boundary lines offered to the Commission for resolution of the disputed areas:

1. Natural topographical and geographical features which tend to discourage electrical facility commingling;

2. Land lines and property ownership;

3. Between existing commingled facilities;

4. Where historical service has been established and provided;

5. Areas providing additional development and load growth;

6. Areas where utilities have made a choice and/or commitment to provide (or decline to provide) service.

Gulf Coast witness Gordon maintains that where facilities are commingled, there will always be a potential for uneconomic duplication, and the proper way to resolve that is to establish specific boundaries. In contrast to Gulf Power's reliance on least cost determinations, Gulf Coast argues that facilities planning has long lead times and that it is incorrect to look simply at the cost of extending the last segment of distribution.

PSC Staff Witness Bohrmann

Witness Bohrmann suggested that we employ short, discrete territorial boundaries in areas where facilities are in close proximity, commingled or both to ensure the future uneconomic duplication does not occur. The only substantial difference between Gulf Coast's list of criteria and what Witness Bohrmann proposed is that boundaries do not need to be continuous and

enclose a given area if the area is not developed or reasonably expected to be. The disadvantage of this approach is that it does not fully address concerns of future uneconomic duplication in the undeveloped areas. This is a valid concern because the condition in the disputed area is in part due to the expansion practices of both utilities. We recognize that there may be economic advantages of not setting boundaries in undeveloped areas.

Conclusion

Upon consideration of all the evidence, we find that a territorial boundary should not be established in south Washington or Bay Counties between Gulf Power and Gulf Coast. There is no assurance that a territorial boundary is going to be the most economic way of providing service. We have established that the facilities are commingled and that the incremental cost to serve additional customers is negligible. Thus, in the congested areas, a 'line on the ground' will cure neither past nor future duplication. In the undeveloped areas, a line on the ground will eliminate the flexibility the utilities need to determine which one is in the most economic position to extend service. That flexibility will result in the least cost service provision. It is inappropriate for us to draw lines in undeveloped areas in south Washington and Bay Counties where we do not know what the expansion patterns are going to be. The utilities are the entities with the best evidence of what their long range plans are, what their systems are and what is the most economic way of providing additional service.

It is not our position that establishing a territorial boundary is never appropriate. In this instance, the purpose of the hearing was to explore the situation in south Washington and Bay Counties in its entirety. In Order No. PSC-95-0913-FOF-EU, issued July 27, 1995, we ordered the parties to establish a territorial boundary in those areas "where facilities are commingled...and where further conflict is likely. (Order page 4, emphasis in the original) As stated previously, the evidence in the record is that while the facilities are commingled, further conflict is not likely because the facilities are already in place. If a specific dispute occurs, such as a prison being built in an undeveloped area, we have jurisdiction to, on a case-by-case basis, draw a line within the given area and we will continue to appropriately exercise our jurisdiction to do so. This Order is limited to the identified areas of south Washington and Bay Counties and shall have no effect on established territorial boundaries throughout Florida that have heretofore been created and approved.

Order No. PSC-95-0913-FOF-EU also stated that "[a] boundary is not necessarily required in areas where there is no conflict and none is reasonably foreseeable." (Order page 4, emphasis in original) In those areas, the utilities were encouraged to consider a wide range of solutions to accommodate future growth. Gulf Power has suggested criteria for the delineation of service territory in south Washington and Bay Counties. Gulf Power's guidelines, along with the established Commission precedent for determining service areas, can provide the utilities with the flexibility they need to address growth and it will result in the most economic method of providing service. Carving up the two counties, in this instance, will not result in the most economic provision of electric service. Rather, drawing lines on the ground would result in centralized planning by this Commission which is not the most economic way to determine the service areas because it does not take into account market forces which will dictate the manner in which some of the expansion of facilities is going to take place.

Based on the forgoing, we find that the companies shall establish detailed procedures and guidelines addressing subtransmission, distribution, and requests for new service which are enforceable with the respective company. The procedures and guidelines shall take into account Commission precedent on resolving territorial disputes and shall be submitted to the Commission for review on or before July 31, 1998.

Findings of Fact and Conclusions of Law

On September 12, 1997, Gulf Coast filed proposed findings of fact and conclusions of law. After examining the record, including all citations to the transcript, and the applicable law, we hold as set forth in Attachment 1, incorporated herein by this reference.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that there are 27 areas in south Washington and Bay Counties where the electric facilities of Gulf Power Company and Gulf Coast Electric Cooperative, Inc. are commingled and in close proximity. The map numbers identifying these areas are: 2218NE, 2218NW, 2218SE, 2218SW, 2220, 2221, 2320, 2321, 2322, 2518, 2519, 2618, 2533, 2534, 2632, 2633, 2634, 2639, 2731, 2733, 2828NW, 2828SW, 2828NE, 2828SE, 2830NE, 2830NW, and 2830SW. [Composite Exhibits 2 and 6] It is further

ORDERED that future uneconomic duplication of electric facilities in the 27 areas will not occur because the facilities are already in place and the incremental cost to serve additional customers is minimal. In addition, future duplication can be

avoided by Gulf Power Company and Gulf Coast Electric Cooperative, Inc. through the application of and compliance with guidelines developed through the cooperative efforts of the two utilities and through application of service territory precedent of this Commission. It is further

ORDERED the Gulf Power Company and Gulf Coast Electric Cooperative, Inc.'s forecasts of load, energy and population growth in the 27 areas are reasonable. It is further

ORDERED that the descriptions of location, purpose, type and capacity of each utility's facilities in the 27 areas are reasonable and appropriate. It is further

ORDERED that both utilities are capable of providing adequate and reliable electric service to the 27 identified areas. It is further

ORDERED that Gulf Power Company and Gulf Coast Electric Cooperative, Inc. shall establish procedures and guidelines addressing subtransmission, distribution, and requests for new electric service as set forth in the body of this Order. It is further

ORDERED that the procedures and guidelines shall be submitted to the Commission for review on or before July 31, 1998. It is further

ORDERED that a territorial boundary shall not be established in the 27 identified areas of south Washington and Bay Counties between Gulf Power Company and Gulf Coast Electric Cooperative, Inc. and that territorial disputes will be resolved on a case-by-case basis. It is further

ORDERED that the Findings of Fact and Conclusions of Law set forth in Attachment 1 are adopted or rejected as set forth therein and incorporated herein by reference. It is further

ORDERED that this Docket shall remain open for the purpose of reviewing the procedures and guidelines developed by the two utilities as set forth in this Order.

By ORDER of the Florida Public Service Commission this 28th day of January, 1998.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

LJP

Dissent of Commissioner Clark

I disagree with the majority opinion on two important issues. First, the holding that the currently commingled electric facilities will not be subject to *future* uneconomic duplication because of the incremental cost to continue to expand service facilities is, at best, illogical. Second, I disagree with the majority's refusal to establish a delimited territorial boundary. In my opinion, the greater weight of evidence in this lengthy docket constrains us to resolve the historical race to serve between Gulf Power and Gulf Coast in south Washington and Bay Counties for the benefit of the ratepayers of both utilities.

That there will be future uneconomic duplication in the identified areas of south Washington and Bay counties is elemental. The appropriate evidence to consider in determining whether uneconomic duplication will continue to occur is the historical growth patterns of both utilities, whether the patterns are expected to continue, and the impacts on the general body of ratepayers. The record clearly supports the conclusion that actions of both utilities have resulted in the ability to serve many of the same customers. The duplication has become so pronounced that is has become a question of which company places a service drop first. We viewed examples of this along Highway 279 where both utilities have extended lines along the same road. A review of distribution line installation dates indicates that both companies entered areas already served by the other utility. It is intuitive that the current problematic conditions will become more pronounced as the utilities continue to compete for future load in the same area.

The majority's holding that future uneconomic duplication in the identified areas will not occur because of the low incremental cost to extend additional facilities is illogical and has the effect of institutionalizing uneconomic duplication. The majority's holding is unsound because of its narrow definition of 'uneconomic'. The position seems to be that if the incremental cost to add one additional service drop is de minimis, discrete events of duplication are not uneconomic. What the majority fails to consider is the systemic effect of repeated duplication. This case is not about the economics of adding one additional customer. Instead, it considers the long term effects of substantial,

historic duplicative utility investment. In essence, the majority is saying that because the duplication is already in place, it is acceptable to this Commission for the utilities to continue the practice. That is a significant departure from established Commission precedent.

Because I believe that future duplication of facilities in the identified areas will be uneconomic, I believe we have an obligation to prevent further duplication in the absence of the utilities doing so of their own accord. Our Order No. PSC-95-0271-FOF-EU, issued March 1, 1995, in this Docket mandated that a line on the ground be drawn if the facilities were found to be commingled and further conflict is likely. We stated on pages 3 and 4 of the Order that:

> [O]ur Order does intend to establish a territorial boundary in the areas identified in the record where the utilities' facilities are commingled or are in close proximity, and where further territorial conflict and uneconomic duplication of facilities is likely to occur....[A] territorial agreement implicitly, logically, and necessarily contemplates the establishment of a territorial boundary. That is clearly what we intend the parties to do in areas of South Washington and Bay Counties <u>where facilities are commingled or are in close proximity and were further conflict is likely.</u> (emphasis in the original)

Previously in this docket, we directed the parties to negotiate to develop a territorial agreement to resolve duplication of facilities and establish a territorial boundary between them. When challenged by Gulf Power regarding the necessity of establishing a boundary, we stated that our policy is to encourage territorial agreements and that the policy "necessarily envisions a geographic division of territory." Clarifying and Amendatory Order No. PSC-95-0913-FOF-EU, issued July 27, 1995. As support for our position in the Amendatory Order, we cited Rule 25-6.0440(1), Florida Administrative Code, which states "...**[e]ach territorial agreement shall clearly identify the geographical area to be served by each utility.**" (emphasis added)

To date, the parties have failed to develop any form of territorial agreement between them while continuing the race to serve the same customers. As such, it is our responsibility to cautiously but conclusively terminate the uneconomic duplication by establishing a territorial boundary between the utilities in the disputed area.

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ATTACHMENT 1

DOCKET NO. 930885-EU
FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROPOSED FINDINGS OF FACT:

1. The areas in South Washington and Bay Counties where the electric facilities of GPC and Gulf Coast are commingled and in close proximity are identified in Exhibit 2 (AWG-3 and AWG-6) and on the following maps: Washington County - 2218NW, 2218NE, 2218SW, 2218SE, 2220, 2221, 2320, 2321, 2322, 2418, 2419, 2420, 2421, 2518, 2519, 2520, 2521, 2618, 2619, 2620, 2717, 2718, 2719 AND 2720. BAY COUNTY - 2828NW, 2828NE, 2828SW, 2828SE, 2830NW, 2830NE, 2830SW, 2731, 2733, 2632, 2633, 2634, 2533, 2534, 2433 and 2639, and those areas shown on Exhibit 6 (WCW-1).

RULING: Reject. Statement of a conclusion.

2. The areas in South Washington and Bay Counties where further uneconomic duplication of electric facilities is likely to occur are those areas identified in the preceding prosed findings of fact (No. 1) together with those areas depicted in Exhibit 2(AWG-3 and AWG-5) where the facilities of the two utilities are clearly intermingled, inclose proximity or cross each other.

RULING: Reject. Statement of a conclusion

3. The position and practice of GPC in determining whether to serve a particular customer is based on whether it is economically beneficial for GPC to provide the service regardless of whether another utility is present (T-290/13-17, T-366/18-22, Exhibit 12, T-370/19-25)).

RULING: Reject. Statement of a conclusion. Transcript references simply explore Gulf Power's definition of uneconomic duplication.

4. It is the position and practice of Gulf Power Company in this area that the duplication of the facilities by GPC of Gulf Coast Electric in the service of a customer is not "Uneconomic" as long as Gulf Power determines that the economic benefit to it by serving the customer exceeds its cost to do so (T-370/19-25). Consequently, according to GPC each extension of facilities is "economic" since GPC has decided that service of that customer or customers is beneficial to Gulf Power Company.

RULING: Accept that GPC's position is as stated. Reject that GPC's practice is always as stated. The transcript citation does not support the statement of conclusion.

5. Both utilities have planned and built facilities to serve significant numbers of duplicate customers in the areas of South Washington and Bay Counties (Daniel T-110/19 to T-111/22).

RULING: Reject. Statement of an opinion.

6. It is not necessary to have two utilities in the same area to reliably meet the electric service requirements of a customer in the areas of South Washington and Bay Counties. (Daniel T-140/10).

RULING: Accept.

7. A territorial boundary located on the ground is necessary in South Washington and Bay Counties where the electric facilities of GPC and Gulf Coast are commingled, in close proximity, or there are further uneconomic duplication of facilities. (T-26/1-14, T-63/22 to T-64/1-15, T-65/19-23, T-66/1-23).

RULING: Reject. Statement of a conclusion.

8. Each utility has been planning for and installing more capacity than is needed at any particular point in time for the areas of South Washington and Bay Counties and consequently are building facilities capable of serving the same load in this area. (T-111/12-22, T-76-10 to T-77/19). (See also T-474/24 and T-475/3.)

RULING: Reject. Statement of a conclusion.

9. Gulf Power Company claims its territory as the ten COUNTY area of Northwest Florida (Holland T-190/7 and Spangenberg T-365/8-9). The position of GPC is that it has a right to serve all

it determines to be economical to it within this ten COUNTY area (T-190 to T-192, T-370/19-25, T-366/18-22).

RULING: Accept.

10. That the expected customer load, energy and population growth in the subject areas are as identified in Exhibit 2 (AWG-8) and Exhibit 4 (SPD-3, SPD-4 and SPD-5).

RULING: Reject. Statement of an opinion.

11. Both Gulf Coast and Gulf Power Company have the facilities and available capacity in place to serve the expected growth in the subject area in the next five years. [Exhibit 2 (AWG-2, AWG-5 and AWG-8), Exhibit 4 (SPD-3, SPD-4 and SPD-5), Exhibit 6 (WCW-1, and Exhibit 9 (Item 2)].

RULING: Reject. Statement of an opinion and conclusion.

12. Both Gulf Power Company and Gulf Coast are capable of providing adequate and reliable service to all areas of South Washington and Bay Counties. (Gordon T-428/4-8; Daniel T-86 to T-89/6; Holland T-211/21-25, T-272/1, Weintritt T-289/13-15).

RULING: Reject. Statement of an opinion and conclusion.

13. The average minutes of outage per customer for Gulf Coast in the disputed area for 1992 was 14.66. (Exhibit 17).

RULING: Accept.

14. The average minutes of outage per customer for Gulf Power Company in the disputed area for 1992 was 86.39 minutes (Exhibit 7, Page 2).

RULING: Accept.

15. For the Public Service Commission to establish the territorial boundary between GPC and Gulf Coast in South Washington and Bay Counties where the electric facilities are commingled and in close proximity and where further uneconomic duplication of facilities is likely to occur, the Commission should examine the exhibits furnished to it by the two utilities which include the location, type and capacity of each utility's facilities as well as the detailed maps submitted showing the location of these utility's facilities with respect to each other (Exhibits 2, 4 and 6) and then draw a territorial boundary on the ground between the utilities in the subject area in such a manner that further commingling, crossing, and construction of facilities in close proximity and where further uneconomic duplication is likely, will be avoided.

RULING: Reject. Statement of an opinion and conclusion.

16. The methodology to be utilized by the commission in arriving at the location of this line is established by the criteria set forth at Gordon T-26/1-14, Daniel T-63/22 to T-64/1-15.

RULING: Reject. Statement of an opinion.

17. If boundary lines are to be drawn on the ground, according to Gulf Powers (sic) proposed methodology by Mr. Spangenberg, from six to fifty different lines would be necessary and those would need to be changed as new facilities are built. (T-342; T-229/11, T-228/18-19, T-352/17-19).

RULING: Accept.

18. If boundary lines are to be drawn on the ground, Gulf Powers (sic) six level boundary proposal would allow continued crossings, parallel lines, facilities in close proximity and intermingled facilities (T-372/1-7).

RULING: Accept.

19. Gulf Power Company failed or refused to show where a territorial boundary line should be drawn or established by the Commission as requested under Issue 7.

RULING: Accept.

Accept that Gulf Power Company did not show where a territorial boundary line should be drawn or established by the Commission as requested under Issue 7. Reject that Gulf Power "failed or refused to" show where a territorial boundary line should be drawn.

20. The territorial boundary line on the ground between these two utilities in the areas of South Washington and Bay Counties should be established as described on Exhibit 2 (AWG-4 and AWG-7).

RULING: Reject. Statement of an opinion.

21. A continuous boundary line between these utilities is necessary to prevent further uneconomic duplication in the identified areas where facilities are commingled, parallel, cross each other or are in close proximity or where further uneconomic duplication is likely to occur, and to reduce or eliminate future territorial disputes between these two utilities in the subject area and for the benefit of the rate payers and utilities. (T-23/11-12, T-25/1-20, T-77/22 to 78/5 and T-20/17, T-20/19-21, T-110/19 to T-111/22, T-67 to T-80/6).

RULING: Reject. Statement of an opinion.

PROPOSED CONCLUSIONS OF LAW:

1. The Public Service Commission has the power and jurisdiction to determine that a territorial dispute exists whether or not one of the affected utilities chooses not to recognize it and has the power to impose geographical boundary lines on the ground between these two utilities in order to prevent further uneconomic duplication in areas where the electric facilities of each are crossing, commingled and in close proximity or where further uneconomic duplication is likely to occur. Florida Statutes 366.04(5), City Gas Co. v. Peoples Gas System, Inc., 182 So.2d 429, 436 (Fla. 1965), Florida Public Service Commission v. Bryson, 539 So.2d 1253, 1255 (FLA 1990), Lee County v. Marks, 501 So.2d 585, 587 (Fla. 1987).

RULING: Accept.

2. Chapter 366 speaks to "Territory", not to customers as the Florida Supreme Court has ruled, a customer has no organic, economic or political right to choose an electric supplier merely because he deems it to be to his advantage, (Story v. Mayo, 217 So.2d 304 (Fla 1968), Lee County v. Marks, 501 So.2d 585 (Fla 1987)).

RULING: Accept.

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February 27, 1998

Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oaks Boulevard
Tallahassee, Florida 32399-0850

Via Hand Delivery

RE: Gulf Coast Electric Cooperative, Inc., Respondent/Appellant
v. Florida Public Service Commission and Gulf Power Company,
Petitioner/Appellee; FPSC Docket Number: 930885-EU

Dear Ms. Bayo:

I am enclosing herewith a Notice of Appeal on behalf of Gulf Coast Electric Cooperative, Inc. related to Order Number PSC-98-0174-FOF-EU. Fifteen (15) copies of the enclosed Notice are also herewith submitted for filing.

Please call me, if you have any questions.

Very truly yours,

John H. Haswell

JHH/lez
Enclosures

cc: J. Patrick Floyd, Esquire
Leslie Paugh, Esquire
Russell Badders, Esquire

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