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March 13, 1998

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Ms. Blanca Bayo  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399

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:

Pursuant to Florida Rules of Appellate Procedure Rule 9.020(b)(1), Gulf Power Company designates the transcript accompanying this letter as an additional part of the record on appeal in the abovementioned matter. The transcript is of the agenda conference, item number 27, held on January 7, 1997. Please contact the undersigned in the event further action is necessary to ensure inclusion of this transcript in the record on appeal.

Very truly yours,

Russell A. Badders  
For the Firm

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
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- SEC \_\_\_\_\_
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

cc: John H. Haswell  
David Smith

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FPSC-RECORDS/REPORTING

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 13, 1998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by U.S.  
Mail this 13<sup>th</sup> day of March, 1998 on the following:

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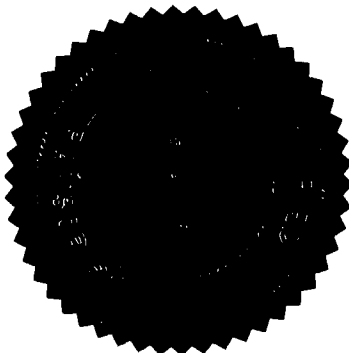
ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
TALLAHASSEE, FLORIDA

IN RE: Petition to resolve territorial dispute with Gulf  
Coast Electric Cooperative, Inc. by Gulf Power Company.

DOCKET NO. 930885-EU

BEFORE:



CHAIRMAN JULIA L. JOHNSON  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER SUSAN F. CLARK  
COMMISSIONER DIANE K. KIESLING  
COMMISSIONER JOE GARCIA

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

27\*\*

DATE:

January 7, 1997

PLACE:

4075 Esplanade Way, Room 148  
Tallahassee, Florida

JANE FAUROT, RPR  
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EPSC: PL/CRUS/REPORTING

1 PARTICIPATING:

2 Jeff Stone, Esquire, representing Gulf Power

3 \* \* \* \* \*

4 STAFF RECOMMENDATIONS

5 Issue 1: Recommendation that the Commission deny Gulf Power  
6 Company's Motion for Reconsideration. Gulf has not shown  
7 that the prehearing officer failed to follow the law, or  
8 overlooked a relevant fact.

9 Issue 2: Recommendation that this docket remain open.

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P R O C E E D I N G S

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CHAIRMAN JOHNSON: Item 27.

MS. JOHNSON: Commissioners, Item 27 is staff's recommendation to deny Gulf Power Company's motion for reconsideration of the order determining issues to be resolved in the evidentiary hearing. Gulf Power seeks approval of several issues which it claims would allow the Commission to consider options for resolving this territorial dispute other than establishing a territorial boundary. The prehearing officer has already ruled that Gulf could offer its creative solutions in its positions on the approved issues. Gulf Power has not shown that the prehearing officer failed to follow the law or overlooked some relevant fact when she approved certain issues to be resolved at the hearing. Thus, staff recommends that the motion for reconsideration be denied.

Gulf Power Company is here to answer any questions that you might have. Gulf Coast Electric Cooperative did not file a response to the motion, but they are here as well to answer any questions.

CHAIRMAN JOHNSON: The parties are just here to answer questions?

MS. JOHNSON: That's correct.

MR. STONE: I'm sorry, I do have some brief

1           comments I would like to make more than just simply to  
2           answer questions.

3                   CHAIRMAN JOHNSON: Very briefly.

4                   MR. STONE: Very briefly, if I may, and I  
5           appreciate your indulgence. For the record, I'm  
6           Jeffrey A. Stone of the law firm Beggs and Lane  
7           representing Gulf Power Company.

8                   I'm a little bit concerned about this being  
9           characterized as a motion for reconsideration. I  
10          realize that's how we filed it, but in point of fact  
11          when we had the preliminary prehearing conference, it  
12          is my recollection that Commissioner Clark, acting as  
13          prehearing officer, following her ruling specifically  
14          invited us to bring the matter to the full panel for  
15          resolution. And that is the vehicle we have chosen.  
16          So if procedurally it sounds a little strange for it to  
17          be a motion for reconsideration, that's our fault and I  
18          apologize for that. The main point that we are trying  
19          to address --

20                   COMMISSIONER CLARK: Let me interrupt you, Mr.  
21          Stone. I probably should have handled it a little  
22          differently in the sense of maybe deferred to you all.  
23          What happened, and I'm sure Mr. Stone is going to cover  
24          it, they have proposed issues that I felt were beyond  
25          what were contemplated by this panel when we made our

1 initial decision on this territorial agreement. They  
2 wanted to expand what we said we would do with respect  
3 to the territorial agreement. In effect, in one of the  
4 concluding paragraphs of our order we ordered them to  
5 resolve territorial matters within this particular  
6 location, and it was my view that when they couldn't  
7 resolve it that was the focus of this hearing is that  
8 the issues they were willing to -- wanted to bring up  
9 went beyond that limited purpose of the hearing. Go  
10 ahead.

11 MR. STONE: Thank you, Commissioner. Basically,  
12 our request is that we revise Issue 6 and 7 so that it  
13 allows the panel to make a decision after hearing the  
14 evidence whether it should establish territorial  
15 boundaries between the two utilities. We believe the  
16 current wording of Issue 6 presupposes that a  
17 territorial boundary will be the end result, and we  
18 think that decision really has not been based on  
19 evidence presented to the Commission as yet. That  
20 evidence will be presented in the hearings that will  
21 take place next month, and that's why we think the  
22 wording of the issue should not presuppose an outcome  
23 that has not really been addressed through evidence  
24 presented by the parties. And so we simply have asked  
25 that Issue 6 be reworded as stated in the staff

1 recommendation for Gulf's position, and our rewording  
2 would eliminate the need to have Issue 7 as a  
3 separately worded issue.

4 In addition, we have outlined seven additional  
5 issues that we think would help the Commission in  
6 reaching an ultimate resolution in this case. But our  
7 primary focus, quite frankly, is to have the wording of  
8 Issue 6 and 7 reworded so that the Commission has not  
9 prejudged the ultimate issue that the evidence is being  
10 presented in this case. It does not change the  
11 possible outcomes of this case, it simply rephrases the  
12 issue in a more neutral manner that allows the  
13 Commission to have the full range of options before it.  
14 I promised I would be brief, and that concludes my  
15 comments. I will be happy to answer any questions.

16 CHAIRMAN JOHNSON: You're a little too brief. You  
17 want to revise Issue 6, but you want the additional  
18 issues also, don't you? I mean, what is your position  
19 here today?

20 MR. STONE: Our primary concern is that Issue 6  
21 and 7 are worded in a fashion that presupposes an  
22 outcome that we think is still to be addressed at this  
23 hearing. We also feel that those additional seven  
24 issues that are on Page 3 of the staff recommendation  
25 would be helpful to the Commission in reaching the



1 ultimate resolution of this case. Quite frankly, we  
2 understand Commissioner Clark's ruling that those  
3 issues can be addressed in the other issues, and if  
4 Issue 6 was reworded the way we have requested we are  
5 comfortable with addressing those issues in that  
6 reworded issue. But we do think that those are  
7 legitimate issues for this proceeding.

8 CHAIRMAN JOHNSON: Any questions?

9 COMMISSIONER CLARK: Commissioners, the dilemma I  
10 had was we were dealing with a follow-up proceeding to  
11 the proceeding we already had with respect to this  
12 area, and the specific charge to the entities was to  
13 resolve the territorial problems in this particular  
14 area. And I did feel that the issues as developed  
15 allowed them to espouse some of these additional issues  
16 as part of their position. Some issues were more  
17 appropriate for a more generic hearing, such as Issue  
18 Number 2, is the Commission's present system for  
19 resolving territorial disputes adequate to resolve any  
20 future disputes that may arise. To me that is a more  
21 broad-reaching issue that might go beyond the parties  
22 in the case, and I just felt that we had tracked what  
23 we were supposed -- the additional proceedings we were  
24 supposed to hold pursuant to our final order in that  
25 case.

1           CHAIRMAN JOHNSON: Yes, I agree with you on the  
2 additional issues. Quite a few of them seemed a bit  
3 over-broad. And some of them broad legal issues and  
4 some of them I thought policy issues that perhaps  
5 should be handled by the full Commission. With respect  
6 to the revised Issue Number 6, I guess, Gulf, you may  
7 be able to help me, too. I don't see why the way they  
8 are framed we still can't -- we could still make a  
9 determination, could we not, if we got to the end of  
10 all of this and determined that there was no need to  
11 draw the line, not to have --

12           MR. STONE: Certainly that is within the  
13 Commission's power, and that's what we have been trying  
14 to bring to the Commission's attention, that the  
15 decision to draw lines in the ground has not been made  
16 because the evidence on that issue has not been  
17 presented to the Commission. And that is the reason we  
18 have been advocating a rewording of Issue 6, so that  
19 instead of saying how should it draw lines in the  
20 ground, it would ask the question of itself,  
21 Commission, should we establish territorial boundaries,  
22 should we draw lines. And if so, how? And that's all  
23 we have asked to do, is change that wording.

24           CHAIRMAN JOHNSON: I kind of see the predicament.  
25 Because I had thought, too, that kind of our directive

1 to ourselves was that, okay, you guys can't figure it  
2 out, we will do it. But I still see as an option  
3 through the proceedings we determine, huh, I guess we  
4 won't do it, kind of a thing that the option even as  
5 stated we would still have that kind of flexibility in  
6 order to address those concerns after we have looked at  
7 all of the evidence. I could go either way on the  
8 vote. Susan, did you --

9 COMMISSIONER CLARK: The staff recommendation in  
10 the clarifying order, to the extent Gulf or any other  
11 party determines that there are issues that were not  
12 previously considered in the prehearing conference,  
13 they can be taken up when -- I'm just -- I think what  
14 we said, in effect, you know, those are positions you  
15 can take on the issue.

16 MS. JOHNSON: That is correct, Commissioner  
17 Clark, you did say that in your order clarifying your  
18 order determining issues to be resolved at the hearing.  
19 And I will point out that although the Commission's  
20 original order resolving the territorial dispute that  
21 was issued in March of 1995, the Commission said that  
22 it would establish a boundary itself if the parties  
23 were unable to do so. And it again reiterated that in  
24 the order clarifying that order. And I also point out  
25 that Gulf Power Company has already filed a motion to

1 dismiss for lack of jurisdiction wherein it asserted  
2 that the Commission doesn't have the authority to  
3 establish a territorial boundary. That came before the  
4 Commission and you denied their motion to dismiss. I  
5 think that staff's position is that the prehearing  
6 officer has provided other means for them to address  
7 their concerns aside from having the issues  
8 specifically approved, and the parties have already  
9 filed testimony in that respect, and that we feel is  
10 sufficient.

11 CHAIRMAN JOHNSON: Is there a motion?

12 MR. STONE: If I may add just briefly. The  
13 parties have already filed testimony, but the parties'  
14 testimony addresses the question that is phrased in our  
15 revised version of Issue 6, which as I have indicated  
16 earlier, would take the place of staff's Issue 6 and  
17 Issue 7. And we are asking the Commission to make a  
18 determination of whether you should draw a territorial  
19 boundary. We have differences of opinion on whether  
20 you should, and we also have a difference of opinion  
21 that if you decide that you should, how you should go  
22 about doing that. Our wording of the issue gives the  
23 Commission the maximum amount of freedom to take action  
24 based on the evidence that is being presented in this  
25 case.

1           COMMISSIONER CLARK: Commissioners, my dilemma was  
2 we had an order where we said to the parties, you  
3 either set the boundaries or we will. And that was my  
4 -- and that was my view in having -- we had the  
5 prehearing -- we had a pre-prehearing actually to  
6 resolve this, and I felt as the prehearing officer I  
7 was bound by what the Commission had directed in the  
8 first place.

9           COMMISSIONER DEASON: But do you agree that the  
10 Commission has the authority as a result of hearing the  
11 evidence to choose not to draw a line?

12           COMMISSIONER CLARK: Yes.

13           COMMISSIONER DEASON: Well, with that  
14 understanding, I think that within Issue 6 that the  
15 Commission would have the discretion, if after hearing  
16 the evidence we so chose not to draw a line, that we  
17 could answer Issue 6, but when it says how we will,  
18 well, we are not going to do it. That's how we are  
19 going to do it. And that may be a little convoluted,  
20 but I think that is within our discretion. So given  
21 that understanding that Issue 6 is that broad, I would  
22 move staff's recommendation.

23           CHAIRMAN JOHNSON: Is there a second?

24           COMMISSIONER CLARK: Second.

25           CHAIRMAN JOHNSON: Show it approved without

1 objection.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )

COUNTY OF LEON )

I, JANE FAUROT, Court Reporter, do hereby certify that the foregoing proceedings was transcribed from cassette tape, and the foregoing pages numbered 1 through 12 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 15<sup>th</sup> day of January, 1997.



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