

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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FPSC-RECORDS/REPORTING

DATE: AUGUST 24, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (ISAAC) *RNS mad*
 DIVISION OF SAFETY AND ELECTRIC RELIABILITY (BREMEN, *JB*
 MATLOCK, MCNULTY) *sum WBM* **UDJ**

RE: DOCKET NO. 000805-EU - JOINT PETITION FOR APPROVAL OF
 TERRITORIAL AGREEMENT BETWEEN GULF POWER COMPANY AND
 CHOCTAWHATCHEE ELECTRIC COOP., INC.

AGENDA: 09/05/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
 INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\000805.RCM

CASE BACKGROUND

On July 3, 2000, pursuant to Section 366.04(2)(d), Florida Statutes, and Rule 25-6.0440, Florida Administrative Code, Choctawhatchee Electric Cooperative, Inc. ("Chelco") and Gulf Power Company ("Gulf") filed a Joint Petition for Approval of Territorial Agreement. A copy of the proposed agreement is included as Attachment A to this recommendation and is incorporated by reference herein.

DOCUMENT NUMBER-DATE
10423 AUG 24 8
FPSC-RECORDS/REPORTING

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the Joint Petition for Approval of a Territorial Agreement between Choctawhatchee Electric Cooperative, Inc. and Gulf Power Company?

RECOMMENDATION: Yes, the Territorial Agreement between Choctawhatchee Electric Cooperative, Inc. and Gulf Power Company is in the public interest and should be approved. (ISAAC, BREMAN)

STAFF ANALYSIS:

I. Statutory Authority

Section 366.04(2)(d), Florida Statutes, gives the Commission the express authority to approve "territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction." The Commission has enacted Rule 25-6.0440, Florida Administrative Code, to administer its statutory authority to approve territorial agreements. This rule governs the approval process. Pursuant to this rule, utilities wishing to have territorial agreements approved by the Commission must petition for approval. In the petition, utilities must set forth the following information:

1. the geographical area to be served by each utility
2. a map and a written description of the area
3. the terms and conditions pertaining to the implementation of the agreement, and any other terms and conditions pertaining to the agreement
4. the number and class of customers to be transferred
5. assurance that the affected customers have been contacted and the difference in rates explained
6. information with respect to the degree of acceptance by affected customers
7. an official Florida Department of Transportation (DOT) General Highway County map for each affected county depicting boundary lines established by the territorial agreement.

In approving territorial agreements, the Commission may consider, but is not limited to consideration of the following:

1. the reasonableness of the purchase price of any facilities being transferred

DATE: August 24, 2000

2. the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electrical service to the existing or future ratepayers of any utility party to the agreement
3. the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

II. The Proposed Agreement

The agreement for which Chelco and Gulf seek approval establishes a territorial boundary for each utility's respective retail territory. The territorial boundary line is proposed between the utilities' existing service area such that no existing customers are affected and no transfer of facilities are required. The agreement clearly describes the geographical areas to be served by each utility in Exhibit A to the agreement. Exhibit A to the agreement is a map of the area affected by the agreement. Section 2 of the agreement describes the terms and conditions pertaining to the implementation of the agreement. Section 2.2 of the agreement contains guidelines for providing service to new customers. The parties agree that neither of them will knowingly serve or attempt to serve any new customer whose point of use is located within the territorial area of the other party. Section 2.3 of the agreement provides for temporary service to a new customer when exceptional circumstances, economic constraints, or good engineering practices indicates an exception is necessary. In such instances, one party may submit a written request to the other party to temporarily provide service to the new customer. The utilities agree to notify the Commission of any such arrangement that is anticipated to last for more than one year.

Based upon information contained in the petition and the agreement, staff believes that the agreement between Chelco and Gulf complies with the requirements of Rule 25-6.0440, Florida Administrative Code.

III. Conclusion

Staff recommends that the territorial agreement between Chelco and Gulf be approved. There does not appear to be any reasonable likelihood that the agreement will cause a decrease in the reliability of electric service to the existing or future ratepayers of Chelco and Gulf. Staff believes that the agreement is in the public interest and consistent with the Commission's goal to eliminate all existing and potential uneconomic duplication of electrical facilities in the State of Florida. Staff recommends

DOCKET NO. 000805 LU
DATE: August 24, 2000

that the new territorial agreement should become effective on the date the Commission order approving it becomes final.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a Consummating Order. (ISAAC)

STAFF ANALYSIS: If no protest is filed within 21 days of the issuance of the order, this docket should be closed upon the issuance of the Consummating Order.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Joint Petition for Approval of)
Territorial Agreement between Gulf Power) Docket No.: _____
Company and Choctawhatchee Electric) Submitted: June 30, 2000
Cooperative, Inc.)
_____)

**JOINT PETITION FOR
APPROVAL OF TERRITORIAL AGREEMENT**

GULF POWER COMPANY ("Gulf Power", "Gulf", or "the Company") and Choctawhatchee Electric Cooperative, Inc. ("Chelco"), by and through the undersigned counsel for Gulf Power, hereby jointly petition this Commission for approval of a territorial agreement dated June 27, 2000 ("the Agreement"), entered into by and between Gulf Power and Chelco. In support of the requested approval of the Agreement, the joint petitioners respectfully state:

1. Gulf Power and Chelco each own and operate electric facilities in southern Walton County, Florida. Gulf Power is an investor-owned electric utility operating under the jurisdiction of this Commission. Chelco is an electric cooperative organized and existing under Chapter 425, Florida Statutes and under Chapter 31 of Title 7, United States Code and is an electric utility pursuant to the provisions of Chapter 366 of the Florida Statutes.

2. Notices and communications with respect to this matter should be served on the following:

FOR GULF POWER COMPANY

Jeffrey A. Stone
Russell A. Badders
Beggs & Lane
P. O. Box 12950
Pensacola, FL 32576-2950

Susan D. Ritenour
Assistant Secretary and Assistant Treasurer
Gulf Power Company
One Energy Place
Pensacola, FL 32520-0780

FOR CHOCTAWHATCHEE ELECTRIC COOPERATIVE, INC.

E. Allan Ramey, Esquire
P. O. Box 369
DeFuniak Springs, FL 32435

J. E. Smith
CEO & General Manager
P. O. Box 512
DeFuniak Springs, FL 32435

3. On June 27, 2000, Gulf and Chelco entered into the Agreement in an effort to define the parties' respective service territories in a portion of southern Walton County, Florida. The Agreement provides expressly that it is contingent upon the subsequent approval of the Florida Public Service Commission ("Commission"). Attached hereto as Exhibit No.1 is a copy of the Agreement dated June 27, 2000, which embodies the agreement reached between Gulf and Chelco.

4. The Commission is authorized by Section 366.04(2)(d), Florida Statutes, to approve territorial agreements by and between electric utilities. The Commission has found that such agreements, when properly presented to the Commission, are advisable and in the public interest in certain circumstances.

5. Gulf and Chelco have discussed the provision of electric service to customers in certain geographic areas and have reached an agreement, subject to Commission approval, as to which of the two utilities would be the most appropriate to serve the area and should provide electric service to customers requesting such service.

6. Attached to the Agreement is an Exhibit (Exhibit A) containing a metes and bounds description and maps that define the territorial boundaries which the parties seek to have the Commission approve in this proceeding.

7. No transfer of existing customers will occur as a result of the Agreement.

8. There is no reasonable likelihood that the Agreement will cause a decrease in the reliability of electric service to the existing or future customers of Gulf or Chelco. The parties believe that the provisions of the Agreement will help avoid further uneconomic duplication of facilities.

9. Gulf and Chelco believe that the Commission's approval of the Agreement would be consistent with the criteria set forth in Section 366.04, Florida Statutes, and would further the Commission's objective of assuring an adequate and reliable source of energy in Florida and avoiding further uneconomic duplication of generation, transmission and distribution facilities.

WHEREFORE, Gulf Power Company and Choctawhatchee Electric Cooperative, Inc. jointly request the Florida Public Service Commission to enter its order approving the Agreement attached hereto as Exhibit No. 1.

Respectfully submitted the 30th day of June, 2000.

**Gulf Power Company and
Choctawhatchee Electric Cooperative, Inc.,
Joint Petitioners**

By: _____

JEFFREY A. STONE

Florida Bar No. 325933

RUSSELL A. BADDERS

Florida Bar No. 7455

Beggs & Lane

P. O. Box 12950

Pensacola, Florida 32576-2950

(850) 432-2451

Attorneys for Gulf Power Company

TERRITORIAL AGREEMENT

This agreement is made and entered into this 27th day of June, 2000, by Choctawhatchee Electric Cooperative, Inc., a Florida Corporation, herein "Chelco" and Gulf Power Company, a Maine Corporation qualified to do business in the State of Florida, herein "Gulf Power" for submittal to and review and approval by the Florida Public Service Commission, herein "Commission" to establish geographic service territories between Chelco and Gulf Power in the southern portions of Walton County, Florida. Chelco and Gulf Power shall collectively be referred to as "the Parties."

WITNESSETH:

WHEREAS, Chelco is an electric cooperative organized and existing under Chapter 425, Florida Statutes and under Chapter 31 of Title 7, United States Code and is an electric utility pursuant to the provisions of Chapter 366 of the Florida Statutes; and

WHEREAS, Gulf Power is an electric utility subject to regulation as a public utility by the Commission pursuant to the provisions of Chapter 366 of the Florida Statutes; and

WHEREAS, the Parties each own and operate electric facilities in southern Walton County, Florida; and

WHEREAS, the Commission has authority pursuant to Chapter 366 of the Florida Statutes to approve territorial agreements between electric utilities as part of the Commission's jurisdiction to assure the avoidance of further uneconomic duplication of generation, transmission and distribution facilities;

NOW, THEREFORE, in fulfillment of the purposes herein stated and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the parties hereto, subject to and upon the terms and conditions herein set forth, do hereby agree as follows;

1. DEFINITIONS

Section 1.1: Territorial Boundary Line. As used herein, the term "Territorial Boundary Line" shall mean the boundary lines so defined in the descriptions and labeled on the maps attached hereto as Exhibit "A," designating the boundary between the Gulf Power Territorial Areas; as defined in Section 1.2; and the Chelco Territorial Areas, as defined in Section 1.3. Those portions of southern Walton County which are subject to the terms of this Agreement are identified as the areas marked in the maps included in Exhibit "A."

Section 1.2: Gulf Power Territorial Area. As used herein, the term "Gulf Power Territorial Area" shall mean the area so defined and labeled on Exhibit "A" in southern Walton County, Florida.

Section 1.3: Chelco Territorial Area. As used herein, the term "Chelco Territorial Area" shall mean the area so defined and labeled on Exhibit "A" in southern Walton County, Florida.

Section 1.4: Point of Use. The point of use and not the point of connect or metering shall be determinative as to who shall be the provider of electric service under this Agreement.

Section 1.5: Transmission Lines. As used herein, the term "Transmission Lines" shall mean all electric lines of either party having a rating of 69 kV or greater.

Section 1.6: Distribution Lines. As used herein, the term "Distribution Lines" shall mean all electric lines of either party having a rating up to but not including 69 kV.

Section 1.7: New Customers. As used herein, the term "New Customers" shall mean those customers applying for electric service during the term of this Agreement at a point of use in the Territorial Area of either party which has not previously been served by either utility.

Section 1.8: Existing Customer. As used herein, the term "Existing Customer" shall mean a customer receiving retail electric service from either Gulf Power or Chelco at a point of use for which the service is existent on the effective date of this Agreement.

Section 1.9: Person. As used herein, the term "Person" shall have the same inclusive meaning given to it in Section 1.01(3), Florida Statutes.

2. RETAIL ELECTRIC SERVICE

Section 2.1: In General. Except as otherwise specifically provided herein, Gulf Power shall have the exclusive authority to furnish retail electric service to all New Customers within the Gulf Power Territorial Area; and Chelco shall have the exclusive authority to furnish retail electric service to all New Customers in the Chelco Territorial Area. Each of the parties shall have the exclusive authority to furnish retail electric service to any of their respective Existing Customers, including those that may have a point of use located within the Territorial Area of the other party. The Territorial Boundary Line shall not be affected by any change that may occur in the corporate limits of any municipality lying within the Gulf Power Territorial Area or the Chelco Territorial Area.

Section 2.2: Service to New Customers. The Parties agree that neither of them will knowingly serve or attempt to serve any New Customer whose point of use is located within the Territorial Area of the other party, except as specifically provided in this Section 2.3 of this Agreement. In the event that a New Customer or prospective New Customer requests or applies for service from either party whose point of use is located in the Territorial Area of the other party, the party receiving such a request or application shall refer the New Customer or prospective New Customer to the other party with citation to this Agreement as approved by the Commission, and shall notify the other party of such request or application.

Section 2.3: Temporary Service. The Parties recognize that in exceptional circumstances, economic constraints or good engineering practices may indicate that a customer's point of use facilities either cannot or should not be immediately served by the party in whose Territorial Area they are located. In such instances, upon written request by the party in whose Territorial Area the point of use facilities are located, to the other party, the other party has the right, but not the obligation, to agree in writing to temporarily provide service to such customer's point of use facilities. Any such agreement for temporary service which is anticipated to last for more than one year shall be submitted to the Commission for approval in accordance with Article V, Section 5.1 hereof, provided, however, the party providing temporary service hereunder shall not be required to pay the other party for any loss of revenue associated with the provision of such temporary service.

Section 2.4: Change in Regulation. The Parties intend and agree that the obligations set forth in this Agreement with regard to the Parties' obligation to construct distribution lines to serve retail customers within their respective territorial areas is to survive and continue in the event that "retail choice" or "retail wheeling" is adopted as a matter of public policy at either the federal or state level. The Parties' further intend and agree that in the event that "retail choice" or "retail wheeling" occurs, the determination as to what entity will provide central station electric energy supply to a retail customer will be determined not by this Agreement, but by the then prevailing law on "retail choice" or "retail wheeling" regardless of where that retail customer is located.

3. BULK POWER SUPPLY

Section 3.1 Bulk Power for Resale. Nothing herein shall be construed to prevent either party from providing a bulk power supply for resale purposes, regardless of where the purchaser for resale may be located. Further, no other section or provision of this Agreement shall be construed as applying to a bulk power supply for resale purposes.

4. OPERATION AND MAINTENANCE

Section 4.1: Facilities to Remain. No generating plant, transmission line, substation, distribution line or related equipment shall be subject to transfer or removal hereunder, provided, however, that each party shall operate and maintain its lines and facilities in such a manner as to minimize any interference with the operations of the other party.

5. REGULATORY APPROVAL:

Section 5.1: Regulatory Approval. This Agreement is subject to the regulatory authority of the Commission, and appropriate approval by that body of the provisions of this Agreement shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This Agreement shall have no effect whatsoever until that approval has been obtained, and the date of the Commission's final order, if any, granting Commission approval of this Agreement

shall be deemed to be the effective date of this Agreement. Any proposed modification to this Agreement shall be submitted to the Commission for approval. In addition, the parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the parties performance of this Agreement.

Section 5.2: Liability in the Event of Disapproval. In the event approval pursuant to Section 5.1 is not obtained, neither party will have any claim against the other arising under this Agreement.

6. DURATION

Section 6.1: Term. This Agreement shall continue and remain in effect for a period of fifteen (15) years from the date of the Commission's final Order approving this Agreement and shall automatically continue in effect from year to year thereafter unless either Party shall provide the other Party written notice of termination at least one hundred eighty (180) days prior to the anniversary date of this Agreement. Either Party may request that the Commission rescind its approval of this agreement upon good cause having been shown and upon such Commission action the provisions of this agreement shall terminate.

7. CONSTRUCTION OF AGREEMENT

Section 7.1: Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Agreement shall be interpreted and construed, among other things, to further this State's policy of actively regulating and supervising the service territories of electric utilities; supervising the planning, development, and maintenance of a coordinated electric power grid throughout Florida; avoiding further uneconomic duplication of generation, transmission and distribution facilities; and encouraging the installation and maintenance of facilities necessary to fulfill the Parties' respective obligations to serve.

Section 7.2: Negotiations. Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this Agreement, the only ones agreed upon are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the parties hereto unless the same shall be in writing attached hereto, signed by both parties, and approved by the Commission.

8. MISCELLANEOUS

Section 8.1: Successors and Assigns. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon or give to any person or corporation, other than the parties hereto, any right, remedy or claim under or by reason of this Agreement or any provision or conditions hereof, and all of the provisions, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding only upon the parties hereto and their respective representatives, successors and assigns.

Section 8.2: Notices. Notices given hereunder shall be deemed to have been given to Gulf Power if mailed by certified mail, postage prepaid, to the Corporate Secretary, and to Chelco if mailed by certified mail, postage prepaid, to the CEO and General Manager. Such address to which such notice shall be mailed may be, at any time, changed by designating such new address and giving notice thereof in writing in the manner as herein provided.

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be executed in duplicate in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.

Choctawhatchee Electric Cooperative, Inc.,

By: J. E. Smith
J. E. Gene Smith
Its: CEO & General Manager

Gulf Power Company

By: F. M. Fisher, Jr.
F. M. Fisher, Jr.
Its: Vice President – Power Delivery and
Customer Operations

EXHIBIT A

For that portion of Walton County lying south of the Intracoastal Waterway Chelco shall be the utility to provide retail electric service to new customers with premises lying to the East of Boundary "A" and to the West of Boundary "B" and Gulf Power shall be the utility to provide retail electric service to new customers with premises lying to the West of Boundary "A" and to the East of Boundary "B", with such boundaries described below and graphically depicted below.

Boundary A shall be as follows:

Begin where the East line of Section 6, Township 3 South, Range 20 West, Walton County, Florida intersects the Gulf of Mexico, thence run North along said line and continue North along the East line of Section 31, T2S, R20W, to the Southeast corner of Lot 1, Section 31, T2S, R20W, Santa Rosa Plantation as recorded in Plat Book 2, Page 4; thence run West along the South lot line of Lot 1, Lot 32, and Lot 33 Santa Rosa Plantation to a point 620 feet, more or less, West of the Southwest corner of Lot 32, to the Southwest corner of that certain parcel of land recorded in O.R. Book 619, Page 336 (A.K.A. Donut Hole II Parcel); thence run North along the West side of said parcel to the South right-of-way of U.S. Highway 98; thence continue due North to the centerline of said highway; thence run Easterly along said centerline to the intersection of West Hewett Road and U. S. Highway 98; thence run North along the centerline of West Hewett Road to the North line of Lot 45, Section 30, T2S, R20W, Santa Rosa Plantation; thence run West along said North line to the Northwest corner of said lot; thence run North along the West lot lines of Lots 33 through 44 inclusive, Section 30, T2S, R20W, Santa Rosa Plantation to the North line of said Section 30; thence run East along said section line to the center of Hewett Bayou; thence go Northerly along the centerline of Hewett Bayou to the midpoint of the Intracoastal Waterway, said point being the terminus of this Territorial Boundary.

Boundary B shall be as follows:

Begin at that point in Section 27, Township 3 South, Range 18W, Walton County, Florida, where the Western edge of that parcel of land known as Sand Cliffs Condominium intersects with the Gulf of Mexico, said edge being approximately 300 feet West of the North-South midsection line of Section 27; thence run North on said edge line to the Southern Boundary of St. Joe Company's Camp Creek North planned development, such St. Joe boundary being near or about the East-West midsection line of said Section 27; thence run West along said line to the Eastern edge of Seacrest Subdivision; thence run North along said edge to the Northeast corner of said subdivision, such corner being on the Southern section line of Section 22; thence run West on said section line Southwest corner of Section 22; thence run North along the Western boundaries of Sections 22 and 15 until reaching the centerline of U.S. Highway 98; thence run in a generally Northwest direction along said highway centerline to the Western section line of Section 9; thence run North along said line to the Southern edge of Gulf Power Company's transmission line right-of-way; thence run generally Northwest along said edge of right-of-way to the Western section line of Section 5; thence run North along said line to the midpoint of the Intracoastal Waterway, said point being the terminus of this Territorial Boundary, such Boundary being totally contained in Township 3 South, Range 18W of Walton County, Florida.



