

STATE OF FLORIDA

Commissioners:
E. LEON JACOBS, JR., CHAIRMAN
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DIVISION OF APPEALS
DAVID SMITH
DIRECTOR
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Public Service Commission

March 5, 2001

Mr. Carroll Webb
Joint Administrative Procedures
Committee
Room 120 Holland Building
Tallahassee, Florida 32399-1300

Re: PSC Docket No. 010265-EI

Dear Mr. Webb:

The Commission has received a Petition for Declaratory Statement from Gulf Power Company and Enron Compression Services Company. A copy of the petition is enclosed. A notice will be published in the Florida Administrative Weekly on Friday, March 16, 2001.

Sincerely,

A handwritten signature in cursive script that reads "Richard C. Bellak".

Richard C. Bellak
Associate General Counsel

cc: Division of Records and Reporting
Enclosure

DOCUMENT NUMBER - DATE
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Joint petition of Enron Compression)
 Services Company and Gulf Power Company)
 for Declaratory Statement Concerning) Docket No.: 010265 -EI
 Eligibility of Public Utility to Serve Customer) Filed: February 26, 2001
 Pursuant to Section 366.03, Florida Statutes.)
 _____)

JOINT PETITION FOR DECLARATORY STATEMENT

ENRON COMPRESSION SERVICES COMPANY ("ECS" or "the Customer"), by and through its undersigned counsel, and GULF POWER COMPANY ("Gulf Power"), by and through its undersigned counsel, hereby jointly petition the Florida Public Service Commission ("Commission") pursuant to Section 120.565, Florida Statutes and respectfully request the Commission's declaration that, on the facts set forth below, the Customer's request for electric service from Gulf Power is controlling in this case and, pursuant to that request, Gulf Power, the only public utility operating in the vicinity, is both obligated and entitled to furnish ECS with electric service pursuant to the rules and regulations of the Commission and the rates and other statements set forth in Gulf Power's Tariff for Retail Electric Service on file with and approved by the Commission. As grounds for the relief requested by this petition, ECS and Gulf Power (collectively "the Petitioners") respectfully show:

1. Notices and communications with respect to this petition should be addressed to:

For ECS:

Bill L. Bryant
 Katz, Kutter, Haigler, Alderman,
 Bryant & Yon, P.A.
 106 E. College Avenue, Suite 1200
 Tallahassee, FL 32301

with a copy to:

Gerald Nemece, Esquire
 Enron Compression Services Company
 1400 Smith Street
 Houston, TX 77002-7361

For Gulf Power:

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

with a copy to:

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

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 FLORIDA PUBLIC SERVICE COMMISSION

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BACKGROUND

2. ECS is a wholly owned subsidiary of Enron North America Corp. with corporate headquarters located at 1400 Smith Street, Houston, Texas. ECS provides compression services to natural gas pipelines. As part of a planned expansion of pipeline capacity owned and operated by Florida Gas Transmission (“FGT”) scheduled to go into commercial operation in the Spring of 2002 known as the Phase V Expansion, FGT is building new pipeline segments and adding new compression capability to its pipeline system. FGT’s Phase V Expansion will require a new compression support facility to be known as Station 13a that will be located adjacent to an existing compression support facility known as Station 13 already located in Washington County as a support facility for an existing mainline. The existing compression capability at Station 13 is natural gas fired. Station 13a will be installed on a mainline that is separate from the mainline that is currently served by Station 13. ECS has a contractual obligation to provide compression services to FGT at Station 13a. The compression services ECS is to provide to FGT requires ECS to operate two new electric motors to be installed at Station 13a. Prior to the development of the new electric motor compression equipment at Station 13a which ECS will be using to provide compression services to FGT, ECS has neither required nor received electric service from any electric utility within Washington County, Florida or, more generally, within any of the counties of Northwest Florida.

3. Gulf Power is an investor-owned electric utility with corporate headquarters located at 500 Bayfront Parkway, Pensacola, Florida. Gulf Power owns, maintains and operates an electric generation, transmission and distribution system within the state of Florida through which it provides retail electric service to customers applying therefore upon terms as required by the Commission. Gulf Power began serving customers within Washington County in January 1926 when Houston Power Company assigned its franchise rights for Chipley, Florida, the county seat of Washington County, to Gulf Power. Gulf Power also began providing electrical service to customers in the unincorporated areas of Washington County, Florida in 1926 and has

consistently provided electric service to such customers for the more than seventy-six years since.

DECLARATORY STATEMENTS SOUGHT

4. Based on the background and facts set forth in this petition, ECS and Gulf Power respectfully request the Commission's declaration that:

The Customer's request for electric service from Gulf Power is controlling in this case and, pursuant to that request, Gulf Power is both obligated and entitled to furnish ECS with electric service pursuant to the rates, rules, regulations and other statements set forth in Gulf Power's Tariff for Retail Electric Service on file with and approved by the Commission.

STATUTES, RULES AND ORDERS INVOLVED

5. ECS and Gulf Power seek the Commission's declaratory statement regarding the obligation and eligibility of Gulf Power to honor the Customer request for electric service from Gulf Power. The requested declaratory statement involves the following statutes, rules and orders:

- a. Section 366.03, Florida Statutes, which provides that Gulf Power, as a public utility, shall furnish to each person applying for electric service, such service upon terms as required by the Commission.
- b. Section 366.04(5), Florida Statutes, which provides the Commission with jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure the avoidance of further uneconomic duplication of generation, transmission and distribution facilities.
- c. Section 366.04(2)(e), Florida Statutes, which provides the Commission with authority to resolve on its own motion any territorial dispute involving service areas between and among rural electric cooperatives, and other electric utilities under the Commission's jurisdiction.
- d. Rule 25-6.0441(2)(d), Florida Administrative Code, which allows the Commission to consider customer preference when resolving territorial disputes involving electric utilities under the Commission's jurisdiction, if all other factors are substantially equal.
- e. Gulf Coast Electric Cooperative v. Clark, 674 So.2d 120 (Fla., 1996), in which the Florida Supreme Court ruled that a utility, which built new facilities in order to serve

a new customer based on that customer's preference as to which of two competing utilities should provide electric service, had not engaged in a race to serve the customer requesting such electric service. The court further ruled that in the absence of (1) a utility's uneconomic duplication of facilities belonging to another utility or (2) the first utility having engaged in a "race to serve" a customer, the customer's preference or choice of utilities should be considered by the Commission as a significant factor in awarding the right to serve, despite small differences in other factors that may fall in the favor of the other utility.

FACTS

6. FGT owns and operates a natural gas pipeline running through Florida. FGT is in the process of expanding the capacity of its natural gas pipeline facilities through the construction of new pipeline segments and adding new compression capability. Part of this pipeline capacity expansion is intended to serve new natural gas-fired electric generating facilities known as Smith Unit 3 being built at Gulf Power's Smith Plant outside Panama City, Florida. The expanded pipeline capacity and the new Smith Unit 3 are both expected to begin commercial operation in the Spring of 2002. FGT's Phase V Expansion is also a critical component in the supply of natural gas to new natural gas-fired electric generating capacity being developed elsewhere in Florida. More than 95% of the volume of natural gas to be transported through the new pipeline expansion is going to natural gas-fired electric generating plants in Florida which contributes to the critical nature of meeting the Customer's requested in-service date for the new electric service.

7. As part of the pipeline facilities owned and operated by FGT, there is a pumping station in Washington County, Florida known as Station 13. The new expansion of FGT's pipeline capacity requires a new pumping station for the new pipeline to be located adjacent to Station 13. The new pumping station, to be known as Station 13a, plays a critical role in maintaining the flow of natural gas into Florida through the new pipeline addition. As noted

earlier in this petition, over 95% of the natural gas volume to flow through the new pipeline and compression facilities, including Station 13a, is destined for natural gas-fired electric generating plants in Florida including Smith Unit 3 being developed at Gulf Power's Smith Plant. The expansion of FGT's pipeline capacity requires the addition of new compression equipment at the new Station 13a. As an alternative to additional compression facilities fueled by natural gas, ECS has contracted with FGT to supply the needed compression through the use of new electric motor compressor drivers to be installed at Station 13a as part of the Phase V pipeline capacity expansion. The new electric motor driver equipment will be operated by ECS in order that ECS can fulfill its contractual obligations to supply compression services to FGT. Due to the reliability requirements under its contract with FGT, ECS will require electric service from a new electric substation to be built at Station 13a which must be connected to and fed by a 230 kilovolt transmission system. Due to the critical role that Station 13a will play in maintaining the flow of natural gas into Florida and the firm commitment by ECS for compression services to FGT, ECS requires the higher degree of reliability associated with service from a networked 230 kilovolt transmission system which is generally much more reliable than a 115 kilovolt transmission system. In addition, the newly installed electric motors ECS will use to supply compression services pursuant to its contract with FGT must, in accordance with the manufacturers recommendations, be started "across the line" which causes high current in-rush at the time of starting, resulting in voltage drop on the circuit connected to the motors. Due to this reduced voltage at the motor terminals during starting, it is unlikely that the motors could be started successfully on a reliable basis if service were provided from a transmission source operating at 115 kilovolts or less. In order to meet its service obligation to FGT, ECS needs to begin receiving electric service sufficient to begin testing the electric motors on or before

February 1, 2002.

8. Gulf Power owns and operates the only existing 230 kilovolt transmission line that runs through Washington County, Florida. Gulf Power's existing 230 kilovolt transmission line runs approximately six miles south of Station 13a. Gulf Power's existing 230 kilovolt transmission line is the only such facility within the immediate area of Station 13a. In fact, Gulf Power owns, maintains and operates all existing 230 kilovolt transmission facilities that are located in Northwest Florida, including those in Washington County. Based on ongoing negotiations and discussions with ECS and in anticipation of ECS's formal request for electric service from Gulf Power at Station 13a which was signed on February 13, 2001, Gulf began pre-engineering the required line extension, planning for required acquisition of required easements and rights-of-way, and tentative procurement of long lead time equipment such as transformers, etc. in October 2000. Without such preliminary efforts, Gulf Power would have no opportunity to meet the Customer's requested in-service date of the new electric service facilities. Based on such preliminary efforts, and ECS's formal request for electric service from Gulf Power dated February 13, 2001 Gulf has begun right-of-way acquisition, project engineering and equipment procurement in a concerted effort to meet the customer's requested in-service date. Due to the critical need for ECS to meet the required in-service date of its commitment to FGT and the lead times required to design and construct the required electric service facilities, Gulf Power could not delay such efforts pending final resolution of this petition for declaratory statement.

9. FGT is presently an electric service customer of West Florida Electric Cooperative ("WFEC") at Station 13, taking such service from a three phase 25 kilovolt distribution line fed primarily from a substation belonging to Alabama Electric Cooperative ("AEC") located near Bonifay, Florida in neighboring Holmes County, approximately 14 miles

away from Station 13. WFEC's present electric service to FGT at Station 13 will continue without change despite the new electric service ECS has requested from Gulf Power at Station 13a. The existing electric service to Station 13 is not adequate for and will not support the electric service requirements of the new electric motor compressor drivers for which ECS has requested electric service from Gulf Power. Despite the inadequacy of existing electric service facilities belonging to either WFEC or AEC to serve the anticipated electric load associated with the new electric motor compressor drivers to be installed at Station 13a, and notwithstanding any decision by ECS to request electric service from Gulf Power through an extension of facilities from Gulf Power's existing 230 kilovolt transmission system, WFEC put ECS on notice by letter dated January 29, 2001 that WFEC may dispute both ECS's right to choose electric supplier in this instance and Gulf Power's entitlement to provide electric service in response to that choice. WFEC's letter is surprising given the apparent lack of interest WFEC has previously displayed since first contacted about the possibility of serving the new electric load of Station 13a.

10. ECS contacted both WFEC and Gulf Power to discuss the proposed compression project at FGT's Station 13a in approximately December 1998. General discussions concerning the project were conducted. Shortly thereafter, ECS decided to focus its efforts on obtaining electric service from Gulf Power given those general discussions. ECS and Gulf Power have been involved in discussions and negotiations since that time. Although ECS had not made a final decision to request electric service from Gulf Power, the discussions with Gulf Power culminated in Gulf Power agreeing in October 2000 to move forward with pre-engineering the required line extension, planning for the acquisition of required easements and rights-of-way, and tentative procurement of long lead-time equipment such as transformers, etc. In late November 2000, Alabama Electric Cooperative (AEC) contacted ECS on behalf of

WFEC to express interest in serving the load. ECS indicated to AEC that ECS would review any proposal they wanted to send, but that the timing was late and ECS was expecting to formalize arrangements for electrical service very shortly and they would need to respond quickly with the general details of their proposal. ECS provided AEC a load profile on December 7, 2000. No proposal has been received from AEC or WFEC to date in response to the load profile sent on December 7, 2000.

DISCUSSION

11. As stated earlier in this petition, in order to meet the reliability requirements associated with the compression services ECS is to supply to FGT, a new tap into Gulf Power's existing 230 kilovolt transmission line and the construction of new facilities from the new tap to a new substation to be built at Station 13a is required. The availability of Gulf Power's existing 230 kilovolt transmission line in relatively close proximity to the site and Gulf Power's willingness to work with ECS during the pre-engineering phase of this project to ensure timely delivery of reliable electric service of sufficient character for the new electric motors has been instrumental to the creation of the new electric motor driven facility in Washington County.

12. Despite the foregoing, and notwithstanding the Customer's choice of Gulf Power as the utility to supply electric service to the new electric motor driven compression equipment, WFEC has threatened to delay the project through litigation that disputes both ECS's right to choose electric supplier in this instance and Gulf Power's entitlement to provide electric service in response to that choice. WFEC's threat of litigation creates uncertainty as to whether Gulf Power has the obligation and entitlement to furnish ECS with electric service as requested pursuant to the rates, rules, regulations and other statements set forth in Gulf Power's Tariff for Retail Electric Service on file with and approved by the Commission. Timely availability of the

requested electric service to ECS is critical to the ability of ECS to meet its contractual commitment to FGT which in turn is critical to the increased flow of natural gas associated with the Phase V expansion that is necessary to supply new natural gas-fired electric generating plants being built in Florida, including the new Smith Unit 3 at Gulf Power's Smith Plant. Therefore, in order to ensure that electric service is available in a timely manner consistent with the needs of ECS as the party requesting electric service, it is vitally important that the Commission resolve this uncertainty in an expedited manner as is contemplated by Section 120.565, Florida Statutes.

13. ECS's choice of Gulf Power as the electric supplier for the electric load associated with the new electric motor driven compression equipment to be located at Station 13a is consistent with the policy against further uneconomic duplication of generation, transmission and distribution facilities within Florida embodied within Section 366.04(5), Florida Statutes. Service of the new electric load from Gulf Power's existing 230 kilovolt system avoids the need for WFEC and/or AEC to construct duplicative 230 kilovolt transmission facilities in order to connect electric generation from outside of Florida to the new load in lieu of existing generation owned and operated by Gulf Power and the new generation being built at Gulf Power's Smith Plant which will itself be served by the enlarged natural gas pipeline capacity to which the new electric motor compressor drivers ECS will use to supply compression services is such an integral component. The electric service requirements of ECS cannot be met by WFEC and/or AEC through any of their existing facilities and any cost incurred to upgrade their existing electric facilities to 230 kilovolt capability would clearly be uneconomic in light of Gulf Power's existing electric facilities already in close proximity to the Customer's site that are presently fully capable of providing the required level of electric service.

14. Resolution of this matter through the issuance of the requested declaratory statement is consistent with administrative efficiency. As the only public utility providing electric service in Washington County, Gulf Power does not have discretion under Section 366.03, Florida Statutes to deny ECS's request for electric service as presented in this case. Failure to honor the request for electric service pursuant to the terms and conditions approved and required by the Commission as set forth in Gulf Power Company's Tariff for Retail Electric Service would expose Gulf Power to a possible complaint by ECS regarding the public utility's failure to fulfill the statutory obligation of service. Such a filing would entail further administrative proceedings to resolve the complaint and would likely result in failure to meet the required in-service date. The need for such adversarial litigation is avoided through this joint petition. In addition, the Commission has the power to preempt time consuming and costly litigation regarding any dispute that may be raised by WFEC regarding ECS's choice of Gulf Power as its electric supplier. This power of the Commission is not only inherent to Section 366.03, Florida Statutes which requires public utilities such as Gulf Power to provide electric service to any applicant upon terms as required by the Commission, but is also contemplated by Section 366.04(2)(e), Florida Statutes, which provides the Commission with authority to resolve on its own motion any territorial dispute involving service areas between and among rural electric cooperatives, and other electric utilities under the Commission's jurisdiction.

15. As in the case before the court in Gulf Coast Electric Cooperative v. Clark, 674 So.2d 120 (Fla., 1996), there has not been nor will there be any uneconomic duplication of existing facilities belonging to either WFEC or AEC if Gulf Power is allowed to honor the request of ECS that Gulf Power provide electric service to the new electric motor driven compression equipment to be located at Station 13a. There has not been any "race to serve" by

Gulf Power. As a result, the Customer's preference for electric supplier should be the controlling factor to be considered by the Commission in this case as it ultimately was in the case of the new prison built in Washington County decided by the Florida Supreme Court in Gulf Coast.

CONCLUSION

16. Timely resolution of any uncertainty through the issuance of the requested declaratory statement is consistent with meeting the interrelated needs of ECS for timely provision of electric service and Gulf Power's general body of customers who will be served by the new generation provided by Smith Unit 3 that will be served by the expanded natural gas pipeline capacity to which the new electric motor driven equipment operated by ECS is to be an integral component. An order by the Commission setting forth the declaration requested herein allows the petitioners to move forward with the project in a timely manner without the financial and regulatory uncertainty that would exist if the question raised by WFEC's threat of litigation is either left unresolved or is pursued through a territorial dispute. Consistent with the policy against further uneconomic duplication of generation, transmission and distribution facilities, ECS has chosen the only electric supplier with existing facilities adequate to serve the Customer's electric load in close proximity to the Customer's site. As the only public utility providing electric service in Washington County, Gulf Power is obligated under Section 366.03, Florida Statutes to provide electric service to ECS consistent with the Customer's request for electric service for the following reasons:

- ECS is a new customer whose electric service requirements constitutes new electric load not currently being served in Washington County, Florida;
- the reliability requirements of ECS are such that the most reasonable means of providing

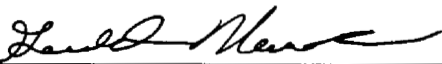
the requested electric service is from a new substation fed from a networked 230 kilovolt electric transmission system;

- the proposed new substation and related 230 kilovolt transmission line tap would not constitute duplication of any existing electric transmission or distribution facilities in Washington County;
- in order to meet its service obligation to FGT, ECS needs to be capable of receiving the requested electric service for purposes of testing the new electric motors by February 1, 2002;
- Gulf Power owns and operates the only existing 230 kilovolt transmission system in Northwest Florida, including Washington County;
- Gulf Power has worked with and continues to work with the Customer in an effort to meet its requested in-service date for the new electric service facilities.


Under the relevant case law, there has been no “race to serve” nor will there be uneconomic duplication of existing facilities; therefore, the Customer’s preference of electric supplier is controlling in this case. Given the instrumental role played by Gulf Power in facilitating ECS bringing this new electric load to Washington County, and Gulf Power’s 75 years of history providing electric service to customers within Washington County, the Commission should grant the joint request of the Petitioners and issue the declaration sought herein.

WHEREFORE, Enron Compression Services Company and Gulf Power Company jointly request that the Commission declare that the Customer's request for electric service from Gulf Power is controlling in this case and, pursuant to that request, Gulf Power is both obligated and entitled to furnish ECS with electric service pursuant to the rates, rules, regulations and other statements set forth in Gulf Power's Tariff for Retail Electric Service on file with and approved by the Commission, or grant similar other relief as is just and reasonable consistent with this joint petition.

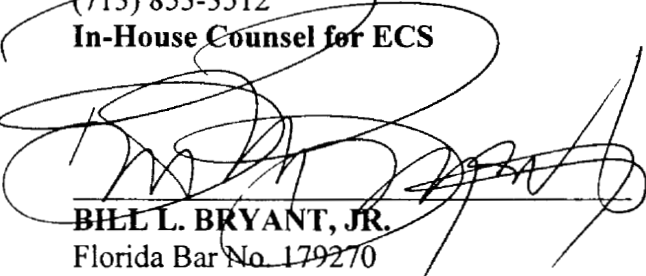
Respectfully submitted this 26 day of February, 2001.



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