

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 930885-EU - Petition to resolve  
territorial dispute with Gulf Coast Electric  
Cooperative, Inc. by Gulf Power Company.

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BEFORE: COMMISSIONER J. TERRY DEASON  
COMMISSIONER BRAULIO L. BAEZ  
COMMISSIONER MICHAEL A. PALECKI

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 15

DATE: Tuesday, March 13, 2001

PLACE: 4075 Esplanade Way, Room 148  
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL  
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## PARTICIPANTS:

DEBORAH HART, on behalf of the Commission Staff.  
JOHN HASWELL, on behalf of Gulf Coast Electric  
Cooperative, Inc.  
JEFF STONE, on behalf of Gulf Power Company.

## STAFF RECOMMENDATION

Issue 1: Should the Commission grant the joint petition by Gulf Coast Electric Cooperative, Inc. and Gulf Power Company for approval of the Amended Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities?

Recommendation: Yes. The Commission should grant Gulf Coast Electric Cooperative, Inc. and Gulf Power Company's joint petition for approval of the Amended Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities. The parties should file at least two annual reports addressing the effectiveness of the proposal in avoiding uneconomic duplication and ensuring reliable service.

Issue 2: Should this docket be closed?

Recommendation: Yes. 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.

1           COMMISSIONER DEASON: Okay. We are now on  
2 Item 15.

3           MS. HART: This is a panel item.

4           Commissioners, as directed by the  
5 Commission previously in this docket, Gulf Power  
6 Company and Gulf Coast Electric Cooperative have  
7 submitted to the Commission their amended joint  
8 submission of procedures and guidelines for  
9 avoiding further uneconomic duplication of  
10 facilities. Staff recommends approval of this  
11 negotiated agreement, and the utilities and  
12 staff are available to answer any questions.

13           COMMISSIONER DEASON: Parties, are you here  
14 to address the Commission or answer questions?

15           MR. STONE: Commissioner, if I may  
16 briefly, I'm Jeff Stone of Beggs & Lane on  
17 behalf of Gulf Power Company, and I just want to  
18 say that we support the staff's recommendation.  
19 We urge the Commission to approve this agreement  
20 in its entirety. We recognize that the parties  
21 have gone through great labors to come to it and  
22 present an agreement to you, and it should be  
23 evaluated in whole cloth. Neither party has  
24 gotten exactly what they set out with  
25 originally, but on balance, they have been able

1 to reach an agreement, and we believe it's  
2 important to accept that agreement in its  
3 entirety in order to protect the balance that  
4 has been achieved by their agreements.

5 We also recognize that it has been a long  
6 time coming to this point, and we -- at least on  
7 behalf of Gulf Power Company, we would like to  
8 express to the Commission that we look forward  
9 to showing the Commission how this agreement  
10 works, and that we'll be able to establish a new  
11 relationship with our neighbor, Gulf Coast  
12 Electric Cooperative, and be able to demonstrate  
13 the benefits of such an agreement.

14 COMMISSIONER DEASON: Thank you, Mr. Stone.

15 MR. HASWELL: Commissioner Deason, my name  
16 is John Haswell, on behalf of Gulf Coast  
17 Electric Cooperative, and with me today is Roy  
18 Barnes.

19 I agree with what Mr. Stone just said.  
20 The Commission ordered the parties to establish  
21 detailed procedures and guidelines addressing  
22 subtransmission, distribution, and requests for  
23 new service. And after a lot of back and forth,  
24 that's exactly what these parties have done. And  
25 as Mr. Stone also said, neither party has got

1 what it really wanted, but we've worked out the  
2 best arrangement, the best procedures, and the  
3 best guidelines that we could do under the  
4 circumstances, and we would also urge the  
5 approval of the staff recommendation.

6 COMMISSIONER DEASON: Thank you.

7 I have a question, and it has to do with  
8 the agreement itself. And I'm looking at  
9 Section 2.3, part (d) as in David. And it says  
10 that upon agreement as to each utility's cost of  
11 service -- now, we're in the situation where  
12 there is going to be an evaluation of cost of  
13 service as opposed to what we find in Section  
14 2.2. So if there has been a cost of service  
15 evaluation made, then it says, "The requested  
16 utility may agree to provide service to the  
17 customer if either of the following conditions  
18 are met."

19 One is a \$15,000 threshold level; that if  
20 it's under 15,000, the requested utility can  
21 provide service. So, for example, if Utility A,  
22 the cost of service was 100,000, and Utility B  
23 was 90, Utility A still could serve because they  
24 were the requested utility and it's less than a  
25 15,000 increment. Do I understand that

1 provision?

2 MR. HASWELL: That's correct.

3 COMMISSIONER DEASON: Okay. And the  
4 15,000 number, I cannot help but think back to  
5 the Supreme Court decision, and apparently there  
6 was an amount determined in the Supreme Court  
7 decision with a territorial dispute that took  
8 place over in Washington County. There was an  
9 amount that was considered to be de minimis.  
10 wasn't that 15,000? Is that where this number  
11 came from?

12 MR. STONE: It rounded to 15,000.

13 MR. HASWELL: Yes. It was 14,900 and  
14 something.

15 COMMISSIONER DEASON: Okay.

16 MR. HASWELL: So essentially that's where  
17 that figure came from.

18 COMMISSIONER DEASON: Okay. So I have no  
19 problem with that. That's supported by the  
20 Supreme Court's decision, and I'm certainly not  
21 in a situation to question that.

22 The question that I have, though, is the  
23 next provision, where we have a 25% criteria,  
24 where if the difference in cost of service is  
25 within 25%, so let's say it cost a million

1 dollars for Company A, and for Company B it  
2 costs 800,000, and if Company A is the requested  
3 party, the utility that had the request to  
4 provide service, under this provision they still  
5 could provide service even though it cost them  
6 \$200,000 more than Company B. And I'm not so  
7 sure that the Supreme Court said that that was  
8 de minimis.

9 MR. STONE: No, Commissioner.

10 COMMISSIONER DEASON: So how do we mesh  
11 this with the Supreme Court decision?

12 MR. STONE: Commissioner, we're not  
13 contending that it constitutes de minimis at  
14 that point, but what we do contend is that that  
15 provision provides a reasonable proxy for what  
16 might be uneconomic duplication or might be the  
17 limit of uneconomic duplication, because, again,  
18 in the context that you just raised in that  
19 hypothetical, obviously, there is some  
20 significant load associated with that new  
21 service if it requires that level of investment  
22 by either party. And it's that load, taking  
23 into consideration that load that makes that 25%  
24 threshold a reasonable proxy about a limit of  
25 what might be the bounds when you start entering

1           into uneconomic duplication.

2           And so even though this provision has both  
3           language referring to de minimis -- and as  
4           indicated, its genesis comes from the Supreme  
5           Court's decision -- that other provision, the  
6           25% limitation, is not meant to imply that that  
7           differential is de minimis, but rather is  
8           intended to give the Commission, the parties,  
9           and most particularly the requesting customer,  
10          the comfort that we're not going to capture  
11          economic duplication in our threshold and  
12          prevent customer choice in that instance.

13          Again, this agreement was not designed to  
14          favor one utility over the other, but really did  
15          put in the forefront the customer choice when  
16          that choice is appropriate. And so that 25%  
17          threshold, if you will, provides a reasonable  
18          proxy on the outward limit of what might be  
19          economic duplication, if you will, and therefore  
20          trigger when you step into uneconomic  
21          duplication. And it takes into account loads  
22          and other factors that come into determining  
23          what might be economic duplication.

24          I'm reminded of the Commission's own order  
25          in this case. I guess it was the second order,



1 and it stated that the utilities are the  
2 entities with the best evidence of what their  
3 long-range plans are and what their systems are  
4 and what is the most economic way of providing  
5 additional service. And in recognition of that,  
6 that's how we've negotiated this agreement.

7 The Supreme Court even acknowledged that  
8 when it pointed out that the differing types of  
9 electric loads that might be associated with the  
10 as yet unknown future development are important  
11 considerations in determining whether or not to  
12 draw lines or whether or not to accept these  
13 guidelines is appropriate. And the Court went  
14 on to note that it is the flexibility that the  
15 utilities need to determine which one is in the  
16 most economic position to extend service is one  
17 of the reasons why they recognize the  
18 Commission's wisdom in taking the approach of  
19 adopting guidelines and procedures as opposed to  
20 lines on the ground.

21 We commend to you that those considerations  
22 are appropriate as to why this -- in this  
23 particular section, it should be accepted as  
24 part of the whole cloth, because it does give  
25 attention to both the de minimis provision in

1 paragraph (d), Roman numeral I, but also pays  
2 attention to the Commission's charge to prevent  
3 further uneconomic duplication and recognizes  
4 that there may be some level of duplication  
5 which is economic, and that determination is  
6 based on the actual loads involved.

7 COMMISSIONER DEASON: It does provide some  
8 recognition for customer choice?

9 MR. STONE: Absolutely. This whole  
10 provision is triggered by a customer choice.

11 MR. HASWELL: Right, the customer  
12 requesting the service. I would just add to  
13 that that the 25% recognizes that \$15,000 on a  
14 larger project may not be much of a difference  
15 at all. If you get a \$1 million project, one  
16 company comes in at a million and the other one  
17 comes in at 1,015,000, you know, is that really  
18 a significant difference? And these parties  
19 worked out a percentage that they thought they  
20 could live with.

21 COMMISSIONER DEASON: So, Mr. Haswell and  
22 Mr. Stone, I take it then that you feel like  
23 that we're on a sound legal basis for this  
24 agreement.

25 MR. HASWELL: Yes, sir.

1 MR. STONE: Yes, sir.

2 COMMISSIONER DEASON: Staff agrees?

3 MS. HART: Yes, Mr. Commissioner. In  
4 looking at the Supreme Court decision, it  
5 specifically says that actual cost is not the  
6 only factor to consider. Even though in that  
7 case there was a de minimis amount in the  
8 differences in actual cost, it goes on to state  
9 that the Commission states that lost revenues,  
10 esthetic and safety problems, proximity of  
11 lines, those sorts of concerns are -- must be  
12 considered in evaluating whether an uneconomic  
13 duplication has occurred. And the Court goes on  
14 to say, "we do not disagree that these factors  
15 must be considered."

16 COMMISSIONER DEASON: Further questions,  
17 Commissioners?

18 COMMISSIONER BAEZ: I can move staff.

19 COMMISSIONER PALECKI: Second.

20 COMMISSIONER DEASON: We have a motion and  
21 a second.

22 Before we actually vote on it, let me just  
23 take an opportunity as one who has lived through  
24 the history here to commend the parties. I  
25 think that this is a tremendous step forward.

1 I think it is very workable and that we have a  
2 situation where I think that we will prevent  
3 uneconomic duplication without having to draw  
4 lines on the ground, and I think that's the best  
5 scenario for the companies and their customers,  
6 and I look forward to having this implemented.  
7 we all can learn something from it.  
8 Congratulations to the parties.

9 We have a motion and a second. All in  
10 favor say "aye."

11 COMMISSIONER BAEZ: Aye.

12 COMMISSIONER PALECKI: Aye.

13 COMMISSIONER DEASON: Aye. Show that the  
14 motion carries unanimously.

15 That concludes today's agenda.

16 (Conclusion of consideration of Item 15.)  
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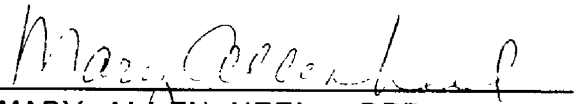
CERTIFICATE OF REPORTER

STATE OF FLORIDA)  
COUNTY OF LEON )

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1 through 12 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 20th day of March, 2001.

  
MARY ALLEN NEEL, RPR  
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