

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-01-0891-PAA-EU
ISSUED: April 9, 2001

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING PROCEDURES AND GUIDELINES FOR AVOIDING
FURTHER UNECONOMIC DUPLICATION OF FACILITIES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Pursuant to Section 366.04(2)(d), Florida Statutes, we have jurisdiction "to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction." In Order No. PSC-98-0174-FOF-EU issued January 28, 1998, we directed Gulf Power Company and Gulf Coast Electric Cooperative, Inc., to establish detailed procedures and guidelines addressing subtransmission, distribution, and requests for new service which are enforceable with each respective utility. A joint submission of Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities was filed on July 24, 2000. On September 15, 2000, we received a letter requesting a 90-day extension for purposes of amending the July 24, 2000 filing. On January 26, 2001, pursuant to Section 366.04(2)(d), Florida Statutes, and Rule 25-6.0440, Florida Administrative Code, Gulf Power Company and Gulf Coast

DOCUMENT NUMBER-DATE

04323 APR-98

FPSC-RECORDS/REPORTING

Electric Cooperative Inc., filed an Amended Joint Submission of Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities. A copy of the Procedures and Guidelines is included as Attachment A to this Order and is incorporated by reference herein.

In interpreting our authority to review territorial agreements, the Florida Supreme Court has held that the appropriate standard is the "no-detriment test." Utilities Comm'n of City of New Smyrna v. FPSC, 469 So. 2d 731 (Fla. 1985). The Court stated that PSC approval should be based on the effect the territorial agreement will have on all customers in the territory, not just whether transferred customers will benefit. See id. at 732. "For PSC approval, any customer transfer in a proposed territorial agreement must not harm the public." Id. at 733.

Rule 25-6.0440(2), Florida Administrative Code, describes the standards of approval of territorial agreements as follows:

- (2) Standards for Approval. In approving territorial agreements, the Commission may consider, but not be limited to consideration of:
 - (a) the reasonableness of the purchase price of any facilities being transferred;
 - (b) 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; and
 - (c) the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

The above standards were adopted to ensure that the general body of ratepayers is not harmed by the approval of territorial agreements.

In this case, the proposed Amended Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities is the first territorial agreement between the parties. Section II of the proposed agreement outlines a utility's response to a request for service. Upon a request for service, a utility will review

customer load requirements, proximity to existing facilities of both utilities, capabilities of the existing facilities, and the costs to provide the required service. We find that a comparative analysis such as the one required by the proposed agreement will avoid future uneconomic duplication of facilities. Section III of the proposed agreement ensures that customer reliability and power quality will be considered in each request for new service. Section IV ensures utilities will not seek to serve customers currently being provided service by the other utility. Section V of the proposed agreement ensures that distribution system upgrades and extensions will not be put in place for speculative future loads.

The proposed territorial agreement does not establish a traditional "lines-on-the-ground" territorial boundary. However, the proposal addresses all the necessary standards required for approval. When necessary to compare cost of service, the agreement provides a test of two alternatives. First, if the difference between the costs of service of the two companies is less than \$15,000, that amount is to be considered *de minimis*, and the customer's choice of provider may prevail. This *de minimis* standard was derived from the Florida Supreme Court's decision in this docket in Gulf Coast Electric Cooperative, Inc. v. Susan F. Clark, et al., 674 So.2d 120 (Fla. 1996). However, the Supreme Court's opinion does not require that the *de minimis* standard be the only criterion for evaluating uneconomic duplication.

If the foregoing *de minimis* test is exceeded, the agreement provides an alternative comparison of the companies' respective costs of service. If the differential is not more than 25%, the utility with the higher cost of service may provide service according to the agreement, if chosen by the customer. This provision provides a reasonable means for establishing the limit of economic duplication. In the context of a project where there is a significant load associated with the new service, the level of investment necessary by either party would be substantial, as would be the revenues provided by that customer. In such a case, a differential of \$15,000 would likely not be a meaningful measure. Instead, the 25% threshold provides a reasonable measure of the outer limit of economic duplication and therefore the trigger for uneconomic duplication. It takes into account load and other factors that are a part of the determination of uneconomic

duplication, while preserving the customer's ability to initially choose his or her provider. We find the agreement to be in the best interests of the companies and their ratepayers, and we expect the agreement to prevent uneconomic duplication of services, as intended.

Because of the unique characteristics of the proposed territorial agreement, we believe the parties should file a report addressing the effectiveness of the agreement in avoiding future uneconomic duplication and ensuring reliable service. The report should be filed on a 12-month basis for at least the next two years. These reports will provide the appropriate basis to determine whether the proposed territorial agreement is effective.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Amended Joint Submission of Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities, attached and incorporated by reference herein, between Gulf Power Company and Gulf Coast Electric Cooperative Inc., is approved. It is further

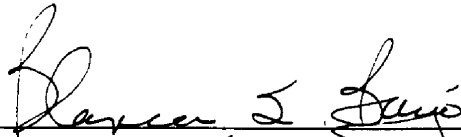
ORDERED that Gulf Power Company and Gulf Coast Electric Cooperative Inc. shall file a report on a 12 month basis for at least the next two years, addressing the effectiveness of the agreement in avoiding uneconomic duplication and ensuring reliable service. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

ORDER NO. PSC-01-0891-PAA-EU
DOCKET NO. 930885-EU
PAGE 5

By ORDER of the Florida Public Service Commission this 9th day
of April, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DDH

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 30, 2001.

ORDER NO. PSC-01-0891-PAA-EU
DOCKET NO. 930885-EU
PAGE 6

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.