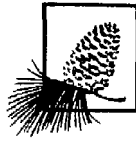


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REPLY TO: TALLAHASSEE

September 4, 2001

Via Hand Delivery

Public Employees Relations Commission
Records Clerk
2549 Shumard Oak Boulevard
Tallahassee, Florida 32399

RECEIVED-FPSC
01 SEP -4 PM 4:22
COMMISSION
CLERK

Re: *In Re: Territorial Dispute Between West Florida Electrical Cooperative Association, Inc. and Gulf Power Company in Washington County, Florida*, Docket No. 010441-EU

Dear Sir or Madam:

We represent Florida Gas Transmission Company ("FGT"), which is not a party to the above styled action, but has been served with a subpoena by West Florida Electrical Cooperative Association. Attached for filing are FGT's original Motion to Quash Subpoena or for Protective Order, Memorandum in Support of said Motion, and Motion for Expedited Consideration. Fifteen (15) copies are also provided as required. Should you have any questions regarding these filings, or this matter, please contact me.

Sincerely,

John W. Forehand

Motion to Quash = 10947-
Memorandum = 10948-
Motion for Expedited = 10949-

gal - 1 (each)
mem - 3 (each)
EC - 3 (each)

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HELPING SHAPE FLORIDA'S FUTURE™

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Territorial Dispute Between
West Florida Electrical Cooperative
Association, Inc. and Gulf Power
Company in Washington County,
Florida.

Docket No.: 010441-EU

Date Filed: September 4, 2001

**MOTION TO QUASH SUBPOENA OR
FOR PROTECTIVE ORDER**

Florida Gas Transmission Company ("FGT"), pursuant to Section 120.569(2)(k), Florida Statutes, Rules 1.280(c) and 1.410(e), Florida Rules of Civil Procedure, and Rule 28-106.212(3), Florida Administrative Code, files this Motion to Quash Subpoena or for Protective Order, and states:

1. On August 27, 2001, FGT's registered agent was served with a Subpoena for Deposition Duces Tecum by West Florida Electrical Cooperative Association, Inc. ("WFEC"). A copy of the Subpoena is attached hereto as "Exhibit 1".
2. WFEC is a party to the above styled proceeding, FGT is not.
3. A prehearing conference in this matter was held on August 30, 2001, and the matter is set for final hearing beginning September 19, 2001.
4. WFEC seeks to compel FGT to perform two acts: 1) to produce documents for inspection; and 2) to produce FGT officers, directors, managing partners, or other persons, to provide deposition testimony on FGT's behalf regarding certain topics.
5. No authority is cited for the requested document production. Rule 1.310(b)(6), Florida Rules of Civil Procedure, is cited as the basis for the requested designation of corporate representatives.

DOCUMENT NUMBER-DATE

10947 SEP-4 01

FPSC-COMMISSION CLERK

6. FGT objects to the subpoena as being oppressive, unduly burdensome, unreasonably broad, seeking irrelevant information not reasonably calculated to lead to the discovery of admissible evidence, and issued without legal authority. FGT seeks an order quashing the subpoena or a protective order prohibiting its enforcement.

7. Document Request: The Subpoena seeks to compel FGT to produce the following documents by September 7, 2001:

All documents, correspondence, e-mails, memos, contracts, and all other data whether in writing or any electronic format, involving, connected with, or any way related to West Florida Electrical Cooperative Association, Inc., Gulf Power Company, Florida Gas Transmission, Inc., Gulf Power Company [sic] and Enron Compression Services Company, as those matters relate to Florida Gas Transmission's Station 13, and the new equipment and services to be provided at Station 13-A in Washington County, Florida, from 1995 to date, including, but not limited to, the providing of electric services, compression services, or any other service between and among WFEC, GPC, ECS, and FGT.

8. This request is objectionable for three primary reasons: a) it places an undue burden on FGT to determine what documents are requested; b) the limited time provided for response is oppressive and places an undue burden on FGT; and c) it is so vague as to deprive FGT of the opportunity to identify and move to protect confidential documents.

9. First, the request fails to specify which documents are requested. Not only does the request fail to identify specific documents, it is so vague as to provide little to no guidance as to the category and type of documents requested. Instead, FGT must determine which documents in its possession involve, are connected with, or relate to, the subjects listed, including, apparently, anything having to do with a compressor station which has been in operation for some time, as well as a new station.

10. Second, WFEC seeks to circumvent the ordinary thirty (30) day period provided by the Florida Rules of Civil Procedure for responding to requests for production of documents, *see*

Fla. R. Civ. P. 1.350, and commands FGT to produce the requested documents within eight working days. Given the breadth of documents requested, it is highly unlikely that FGT could comply with this request within the time permitted even if the request were proper. Compliance would require an excessive number of employee hours to review all of FGT's files with little to no guidance as to what documents are responsive to the request. It also appears from initial FGT inquiry, that the vast majority of documents WFEC seeks are maintained outside of the State of Florida and, arguably, beyond the jurisdiction of a Public Service Commission subpoena. *See* Fla. R. Civ. P. 1.410(e) & (g).

11. Finally, the unlimited nature of WFEC's request undoubtedly seeks disclosure of documents containing confidential and trade secret information. Although there is a procedure in place for protecting such documents, Fla. Admin. Code R. 25-22.006(6), without some guidance as to the specific documents WFEC believes must be produced, it is impossible for FGT to identify those documents that need protection, rendering FGT unable to file an appropriate and specific motion for protective order.

12. Corporate Designation: The subpoena cites Rule 1.310(b)(6), Florida Rules of Civil Procedure, as authorization for WFEC's request that FGT designate a corporate representative to be deposed on the following topics:

[A]ll contracts, documents, transactions, and communications between and among Florida Gas Transmission Company, Gulf Power Company, Enron Compression Services Company, and West Florida Electric Cooperative Association, Inc. regarding or in anyway related to Florida Gas Transmission's Station 13 and the additional service and/or equipment identified by FGT as Station 13-A from 1995 to date.

13. This portion of the subpoena is also objectionable for three primary reasons: a) the failure to specifically identify topics for the deposition places an undue burden on FGT to identify appropriate officers, directors, or employees for deposition; b) there is no statute or rule

authorizing WFEC to require FGT to designate corporate representatives for deposition; and c) the failure to specifically identify topics for the deposition deprives FGT of the opportunity to identify and move to protect information of a confidential nature that may be the subject of inquiry.

14. First, as with the document request portion of the subpoena, the request for a designated corporate representative provides no guidance as to what specific topics WFEC wishes to discuss. The very broad designation of topics contained in the subpoena would require FGT to produce virtually every officer, director, or employee that has ever worked on the planning, implementation, or operation of Station 13 or Station 13-A so that a representative would be available to discuss every aspect of those projects and every topic that WFEC might raise at deposition. This is the very situation that Rule 1.310(b)(6) intends to prevent by requiring the subpoena to “designate with reasonable particularity the matter on which examination is requested.” Fla. R. Civ. P. 1.310(b)(6).

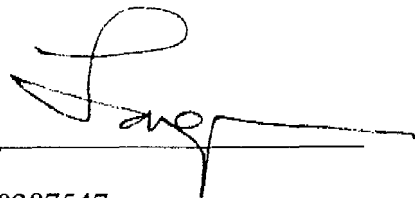

15. Second, it is likely that the corporate representatives that would be responsive to WFEC’s request work and reside outside of the State of Florida and are beyond the jurisdiction of a Public Service Commission subpoena. *See* Fla. R. Civ. P. 1.410(e) & (g). The possibility that such a situation may arise when dealing with potential corporate witnesses is perhaps one of the reasons that no statute or rule authorizes the issuance of a subpoena to a corporate non-party requiring the corporation to designate a corporate representative for deposition. The rule relied upon by WFEC, Rule 1.310(b)(6), provides only that in a notice of deposition, a party may require a corporate entity to designate a representative for the purposes of deposition testimony. *See* Fla. R. Civ. P. 1.310(b)(6)(“In the notice a party may . . .”). The rule does not authorize a party to issue a subpoena to a non-party corporation requiring the corporation to produce

designated representatives for deposition. This omission is important because while a party to a proceeding may be compelled to provide deposition testimony solely through issuance of a notice, a subpoena is required to compel the testimony of a non-party. *Anderson Investments Co., LTD, v. Lynch*, 540 So. 2d 832, 833 (Fla. 3rd DCA 1988). FGT is not a party to this proceeding, and its officers, directors, and employees may only be compelled to testify at deposition by subpoena, not by notice. As Rule 1.310(b)(6) only authorizes a party to require designations of a corporate representative in a notice of deposition, a party may only require such designations of another party to the proceeding. As non-parties, any FGT representatives that WFEC may desire to depose must be individually subpoenaed.

16. Finally, WFEC may well seek to depose FGT personnel on topics that are confidential in nature and that would properly be made the subject of a motion for protective order. However, the vague and unlimited nature of WFEC's designation of topics renders it impossible for FGT to specifically identify what subject may be addressed at the proposed deposition and prevents FGT from filing the appropriate motion for protective order.

WHEREFORE, for the above stated reasons, Florida Gas Transmission Company seeks entry of an order quashing the subpoena served on it by West Florida Electric Cooperative Association, Inc., or entry of a protective order prohibiting the enforcement of that subpoena.

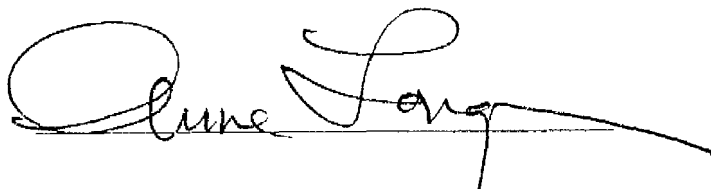
Respectfully submitted this 4th day of September, 2001.



Anne Longman
Florida Bar No. 0287547
Edwin A. Steinmeyer
Florida Bar No. 0883920
John W. Forehand
Florida Bar No. 0979813
LEWIS, LONGMAN & WALKER, P.A.
125 South Gadsden Street
Suite 300
Tallahassee, Florida 32301
(850)222-5702
(850)224-9242 – Fax

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served via United States Mail and facsimile transmission to John H. Haswell, Chandler, Lang, Haswell & Cole, P.A., 211 N.E. 1st Street, Gainesville, Florida 32602, and Frank E. Bondurant, Post Office Box 854, Marianna, Florida 32447, this 4th day of September, 2001.



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Territorial Dispute Between
West Florida Electric Cooperative
Association, Inc. and Gulf Power
Company in Washington County,
Florida.

Docket No.: 010441-EU
Date Filed: _____, 2001

SUBPOENA FOR DEPOSITION DUCES TECUM

THE STATE OF FLORIDA

TO: Florida Gas Transmission Company
NRIA Services, Inc., Registered Agent
526 East Park Avenue
Tallahassee, Florida 32301

SEAL
A TRUE COPY
Larry Campbell
SHERIFF, LEON CO., FLORIDA

YOU ARE HEREBY COMMANDED to appear before a person authorized by law to take depositions at Florida Public Service Commission, Room Number 154, 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0850, on September 7, 2001, at 1:30 P.M. o'clock for the taking of your deposition in the above-styled cause, and to have with you at that time and place the following:

All documents, correspondence, e-mails, memos, contracts, and all other data whether in writing or any electronic format, involving, connected with, or any way related to West Florida Electric Cooperative Association, Inc., Gulf Power Company, Florida Gas Transmission, Inc., Gulf Power Company and Enron Compression Services Company, as those matters relate to Florida Gas Transmission's Station 13, and the new equipment and services to be provided at Station 13-A in Washington County, Florida, from 1995 to date, including, but not limited to, the providing of electric services, compression services, or any other service between and among WFEC, GPC, ECS, and FGT.

Examination is requested pursuant to Florida Rules of Civil Procedure 1.310(b)(6) on the subject of all contracts, documents, transactions, and communications between and among Florida Gas Transmission Company, Gulf Power Company, Enron Compression Services Company, and West Florida Electric Cooperative Association, Inc. regarding or in anyway related to Florida Gas Transmission's Station 13 and the additional service and/or equipment identified by FGT as Station 13-A from 1995 to date. In response to this notice, FGT shall designate one or more officers, directors, or managing partners, or other persons, who consent to do so, to testify on behalf of FGT, and may state the matters on which each person designated shall testify.

SERVED THIS 27 DAY OF August
01 AT 10:15 A.M. _____ P.M.
ARMY CAMPBELL, SHERIFF OF LEON COUNTY, FL

Exhibit 1

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You have the right to object to the production pursuant to this Subpoena at any time before production by giving written notice to the attorney whose name appears on this Subpoena.

If you fail to: (1) appear as specified; or (2) furnish the records as provided above; or (3) object to this Subpoena, you may be in contempt of court. You are subpoenaed to appear by the following attorneys, and unless excused from this Subpoena by this attorney, or by the court, you shall respond to this Subpoena as directed.

DATED on August 23, 2001.

John H. Haswell
For the Court



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