

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to resolve territorial dispute with Gulf Power Company in Washington County by West Florida Electric Cooperative Association, Inc.

DOCKET NO. 010441-EU  
ORDER NO. PSC-01-1825-PHO-EU  
ISSUED: September 11, 2001

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on August 30, 2001, in Tallahassee, Florida, before Commissioner Lila A. Jaber, as Prehearing Officer.

APPEARANCES:

JOHN HASWELL, ESQUIRE, Chandler, Lang & Haswell Law Firm, P. O. Box 23879, Gainesville, Florida, 32602-3879, and FRANK E. BONDURANT, ESQUIRE, Post Office Box 854, Marianna, Florida 32447  
On behalf of West Florida Electric Cooperative Association (WEST FLORIDA).

RUSSELL A. BADDERS, ESQUIRE, Beggs & Lane Law Firm, 700 Blount Building, 3 West Garden Street, P. O. Box 12950, Pensacola, Florida 32576-2950  
On behalf of Gulf Power Company (GULF).

MARLENE K. STERN, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Commission Staff (STAFF).

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE

11319 SEP 11 01

FPSC-COMMISSION CLERK

## II. CASE BACKGROUND

On April 10, 2001, pursuant to Sections 366.04(2)(e), 366.04(5), and 366.055(3), Florida Statutes, and Rule 26-6.0441, Florida Administrative Code, West Florida Electric Cooperative Association, Inc. (West Florida or WFEC) filed a Petition to Resolve Territorial Dispute between West Florida and Gulf Power Company (Gulf). Gulf filed its Answer to the Petition on May 8, 2001. Subsequently, Staff attempted to mediate a resolution between the parties, but no agreement could be reached. The parties and Staff agree that a hearing is the most expeditious way to resolve the dispute, and accordingly, the matter is set for hearing.

On February 26, 2001, Gulf and Enron Compression Services filed a Joint Petition for Declaratory Statement concerning Gulf's eligibility to serve Enron, a potential customer located in the disputed area. That Petition was assigned Docket No. 010265-EI. On April 30, 2001, Gulf and Enron waived the 90 day deadline for action on the Petition. A decision on the Petition for Declaratory Statement will not be made until a decision on the Petition to Resolve Territorial Dispute is made.

## III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Commission Clerk and Administrative Service's confidential files.

#### IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions by October 10, 2001. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed by October 10, 2001.

#### V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. Each witness shall prepare an errata sheet incorporating all changes and corrections to his or her

prefiled testimony, if necessary. Each errata sheet will be marked as an exhibit, to be offered at the same time as the prefiled testimony and exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

As a result of discussions at the prehearing conference, each witness whose name is followed by an asterisk (\*) has been excused from this hearing if no Commissioner assigned to this case seeks to examine the particular witness. **The parties and staff have waived cross-examination of these witnesses and have agreed that their testimony may be admitted.** Parties shall be notified by September 6, 2001, as to whether any such witness will be required to be present at the hearing. The testimony of an excused witness shall be inserted into the record as though read, and all exhibits submitted with such witness's testimony shall be identified as shown in Section IX of this Prehearing Order and be admitted into the record.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
William Rimes	WFEC	1,2,7,9,11

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Russell L. Dunaway	WFEC	1,2,3,7,9,11
Gary F. Clark	WFEC	1,2,3,6,7,11
Jeff Parish	WFEC	3,4,9,11
Joseph E. Perry, III, P. E.	WFEC	3,4,5,8,11
Damon Morgan*	WFEC	2
James A. Brook*	WFEC	2
T. S. Anthony	Gulf	2,7,11
M. W. "Bill" Howell	Gulf	3,4,5,8,9,11
T. S. Spangenberg	Gulf	1,2,3,4,6,7,8,11

Rebuttal

Jeff Parish	WFEC	3,5,7,9,11
Michael K. Moore	WFEC	8,9,11
Joseph E. Perry, III, P. E.	WFEC	1,3,5,8,9,11
Russell L. Dunaway	WFEC	1,2,7,11
Mark A. Cicchetti	WFEC	1,3,4,5,6,8,11
M. W. Howell	Gulf	9
T. S. Spangenberg	Gulf	1, 2, 6, 7, 8

VII. BASIC POSITIONS

WEST FLORIDA:

Gulf Power's six-mile planned extension into West Florida's territory is an attempt by Gulf to take an existing customer and territory from West Florida. The disputed area is the Florida Gas Transmission (FGT) site (Station 13) and an area within a four-mile radius of the site, which geographically constitutes the historic and

current service area of West Florida. FGT is and has been a customer of West Florida at Station 13 in the disputed area for over 40 years. It is planning to expand its facilities, and whether it has signed contracts for "mechanical services" or not, the ultimate customer is FGT. WFEC itself and with its power supplier, Alabama Electric Cooperative (AEC), of which WFEC is a partial owner, are wholly capable of providing the service needs of the disputed area, including ECS/FGT/Enron at no more cost than Gulf. Service to the area by WFEC will be a benefit to WFEC's members.

**GULF:** Enron Compression Services Company ("ECS") has chosen Gulf to provide electric service to the new ECS electric load at Station 13A. Gulf has the only source in the area capable of providing adequate service to the two 15,000 horsepower motors that will comprise the ECS electric load at Station 13A. Gulf's planned construction to serve this new electric load as requested by the customer does not uneconomically duplicate any facilities belonging to either West Florida or AEC. Under the circumstances of this case, the customer's choice of Gulf as the electric supplier for Station 13A should be honored by this Commission and Gulf should be granted the right to provide service to this new electric load.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

#### VIII. ISSUES AND POSITIONS

**ISSUE 1:** Pursuant to Rule 25-6.0441(1), Florida Administrative Code, what is the service area that is the subject of this territorial dispute?

**POSITIONS**

**WEST FLORIDA:**

An area within a four-mile radius of Hinson Crossroads, an FGT site identified as Station 13, in Washington County, Florida. (Rimes, Dunaway, Clark, Cicchetti)

**GULF:** ECS Station 13A which is located adjacent to FGT's existing Station 13 site in Washington County, Florida. (Spangenberg)

**STAFF:** No position at this time.

**ISSUE 2:** Dropped.

**ISSUE 3:** What is the existing and planned load to be served in the disputed area?

**POSITIONS**

**WEST FLORIDA:**

The existing West Florida load is approximately 3000kW. The load is projected to grow approximately 2% per year, reaching the level 4500kW in the next 18 to 20 years. (Perry, Parish, Clark)

**GULF:** Gulf has received a request for electric service from ECS to serve two 15,000 horsepower electric motors at Station 13A that will be started "across the line". No utility currently provides electric service to Station 13A and there are no customers in that area. Gulf knows of no future planned load within the disputed area. (Howell, Spangenberg)

**STAFF:** No position at this time.

**ISSUE 4:** Stipulated. See Section X, Proposed Stipulations

**ISSUE 5:** Are the planned electrical facility additions and other utility services to be provided within the disputed area reasonably expected to cause a decline in the reliability of service to existing and future utility customers?



**POSITIONS**

**WEST FLORIDA:**

No, and if service is provided by West Florida, it can be reasonably expected to cause an increase in the reliability of service as well as benefits to WFEC's members. (Perry, Cicchetti)

**GULF:** No. (Howell)

**STAFF:** No. The planned electrical facility additions and other utility services are not expected to cause a decline in the reliability to existing and future customers of either West Florida or Gulf.

**ISSUE 6:** Stipulated. See Section X, Proposed Stipulations

**ISSUE 7:** Stipulated. See Section X, Proposed Stipulations

**ISSUE 8:** Stipulated. See Section X, Proposed Stipulations

**ISSUE 9:** Stipulated. See Section X, Proposed Stipulations

**ISSUE 10:** As a matter of law or policy, is it permissible for an existing customer of an electric utility to enter into a contract with a third party to provide electric service to the existing customer through another electric utility?

**POSITIONS:**

**WEST FLORIDA:**

No. A customer already receiving adequate and reliable central station service from the utility(Host Utility) serving the area where the customer's end use facilities are located may not bypass the Host Utility by contracting with a third party for such service, where the third party will take service from a utility other than the Host Utility. Neither may the customer or the other utility claim that the third party is the real customer who may or may not have had prior service from the Host Utility, when the basic purpose of the third

party's contract with the customer is the providing of energy, power, BTU's, or mechanical services to run the customers's facilities, when in the final analysis it is electricity - electric service- that is driving the whole project. No customer has the right in Florida to chose his or its electric power supplier as a matter of law.

**GULF:** Gulf does not believe that a decision on this issue is necessary for the Commission to resolve this territorial dispute. No existing customer is being or will be provided electric service by a third party regardless of the outcome of this proceeding. The only electric service to be provided in this matter is to ECS for the new electric load at station 13a. In the context of this matter, FGT is the only existing customer of either Gulf Power or WFEC that is currently receiving electric service. That electric service will remain with WFEC and is unaffected by the outcome of this proceeding. ECS will not be providing electric service to any entity.

**STAFF:** No Position at this time.

**ISSUE 11:** Which utility should be awarded the service area in dispute?

**POSITIONS**

**WEST FLORIDA:**

West Florida should be awarded the service area in dispute. Briefly, the service area is within West Florida's historic service area; the specific site is currently being served by West Florida; the service is an expansion of the existing customer's load; the claim that by using a third party arranger (ECS), FGT is not the customer, is just that - a claim, when in fact this is service to an existing customer of West Florida, and West Florida can provide service adequately and reliably at no more cost than Gulf Power.

**GULF:** No uneconomic duplication of facilities will occur if Gulf provides the electric service to Station 13A. No other factors exist favoring either utility over the

other with respect to serving Station 13A. The customer's choice of Gulf as its electric supplier for Station 13A should therefore be controlling in this case and the right to serve Station 13A be awarded to Gulf. (Anthony, Howell, Spangenberg)

**STAFF:** No position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
William S. Rimes	WFEC	_____	Four county service area map
		(WR-1)	
		_____	Hinson Crossroads area.
		(WR-2)	
		_____	Easement from Mr. Lee to West Florida
		(WR-3)	
Russell L. Dunaway	WFEC	_____	GPC letter to City of Sneads
		(RD-1)	
		_____	West Florida's proposal to Enron - 1995
		(RD-2)	
		_____	Enron (Brown) letter to Smith
		(RD-3)	
		_____	Smith letter to Enron
(RD-4)			
_____	Smith letter proposal to Enron		
(RD-5)			
_____	Large power rate		
(RD-6)			
_____	Withdrawal of tariff filing - PSC		
(RD-7)			

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Gary F. Clark	WFEC	_____	Clark letter to
		(GC-1)	Spangenberg-March
		_____	14, 2001
		(GC-2)	AEC/Morgan summary
		_____	of call from Enron
		(GC-3)	Enron's e-mail
		_____	description of
		(GC-4)	project
		_____	Detailed
(GC-5)	description of		
_____	disputed area		
(GC-6)	FGT's Station		
_____	13/Station 13-A		
(GC-7)	diagram		
_____	Composite Exhibit		
(GC-8)	of Photos of		
_____	Station 13		
(GC-9)	Arial view of site		
_____	Title Report to		
(GC-8)	the FGT site		
_____	FGT's facilities		
(GC-9)	peak monthly		
_____	demand		
Jeff Parish	WFEC	_____	AEC letter to
		(JP-1)	Southern Company
_____	Services		
(JP-2)	Southern Company		
_____	(Lucas) letter to		
(JP-2)	AEC		

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
T. S. Anthony	Gulf	_____ (TSA-1)	Joint Petition of Enron Compression Services Company and Gulf Power Company in Docket No. 010265-EI
<u>Rebuttal</u>			
Michael K. Moore, P. E.	WFEC	_____ (MKM-1)	Statement of Qualifications
Russel L. Dunaway	WFEC	_____ (RD-8)	Excerpts from FGT's FERC Phase V Expansion Project filing
		_____ (RD-9)	Large power rate approved by PSC
Mark A. Cicchetti	WFEC	_____ (MAC-1)	Statement of Qualifications
T. S. Spangenberg	Gulf	_____ (TSS-1)	Copy of affidavit from Chris Hilgert regarding relationship of ECS and FGT as provided to Gulf by WFEC in the course of discovery
		_____ (TSS-2)	Copy of letter from Enron to WFEC dated 12/22/95 as provided to Gulf by WFEC in the course of discovery

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

1. **Issue 4: What is the estimated cost for electric utility facilities to adequately and reliably serve the planned load in the disputed area?**

The estimated cost of \$5.5 million for electric utility facilities is approximately the same for either utility to provide service. This amount includes a 230KV switching station, approximately 6 miles of 230 KV transmission cable and poles from the new switching station to a new substation located at Station 13A, a new substation at Station 13A, land purchases, and one transformer.

2. **Issue 6: What is the nature of the disputed area with respect to its population, the type of utilities seeking to serve it, degree of urbanization, proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services?**

The nature of the disputed area is rural as defined by Section 425.03(1), Florida Statutes. Retail service to Station 13A is the only present and reasonably foreseeable future requirement of the area in dispute. The general vicinity is expected to remain rural with slow residential and agricultural load growth. Station 13A is approximately 9 miles from Vernon, 12 miles from Bonifay, 10 miles from Caryville, and 18 miles from Chipley.

3. **Issue 7: What utility does the customer prefer to serve the disputed area?**

The customer, ECS, prefers retail service from Gulf.

4. **Issue 8: Will the actions of either West Florida or Gulf cause uneconomic duplication of electric facilities with regard to serving the load in the disputed area?**

The construction of the facilities identified in proposed stipulation 1 by either West Florida or Gulf, will not cause uneconomic duplication of electric facilities with regard to serving the new retail load at Station 13A.

5. **Issue 9: Does West Florida have the right of access, through its wholesale power provider or otherwise, to the same transmission facilities that Gulf proposes to tie into to provide service to the disputed area?**

Yes. Gulf does not have exclusive access to the existing and future electric transmission system necessary to serve the new retail load at Station 13A.

XI. PENDING MOTIONS

1. On August 24, 2001, West Florida filed a Motion to Compel Discovery of the contracts between Gulf and ECS. The time for filing a response ends on September 5, 2001. No response was filed. The Motion was withdrawn on September 10, 2001.

2. Subsequent to the Prehearing Conference, on September 4, 2001, Florida Gas Transmission Company filed a Motion to Quash Subpoena or for Protective Order, and a Motion for Expedited Consideration of the Motion to Quash.

XII. PENDING CONFIDENTIALITY MATTERS

1. Subsequent to the Prehearing Conference, on September 4, 2001, Gulf filed a Request for Confidential Classification. The Request pertains to documents submitted in response to Staff's First Set of Interrogatories and First Request for Production of Documents to Gulf.

XIII. RULINGS

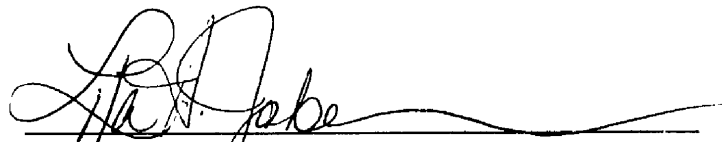
Opening statements, if any, shall not exceed ten minutes per party.

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It is therefore,

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer, this 11th day of September, 2001.



LILA A. JABER  
Commissioner and Prehearing Officer

( S E A L )

MKS

#### 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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida



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Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.