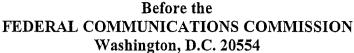
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FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC., COX COMMUNICATIONS GULF COAST, L.L.C., et. al.

E.B. Docket No. 04-381

Complainants,

v.

CL

GULF POWER COMPANY,

Respondent.

To: Office of the Secretary

Attn.: The Honorable Richard L. Sippel Chief Administrative Law Judge

## GULF POWER COMPANY'S REPLY TO COMPLAINANTS' OBJECTIONS TO MAINTAINING CONFIDENTIALITY OVER CERTAIN TRIAL EXHIBITS

Guif Power Company ("Gulf Power"), pursuant to the Presiding Judge's May 26, 2006
Memorandum Opinion and Order and June 6, 2006 Order, submits this Reply to "Complainants'
Objection to the Continued Confidential Treatment of Gulf Power Exhibit 11 and Complainants
Exhibit 5" (the "Objection") stating as follows:

The Presiding Judge's June 6, 2006 Order asked the parties to consider 1. PC \_\_\_\_\_ withdrawing Gulf Power Exhibit 11 - the Southern Company Overhead Distribution Construction Manual (the "Manual") -- and relying instead upon excerpts of the Manual contained in Complainants' Exhibit 5. Unfortunately, this suggestion is unworkable for at least two reasons. First, the excerpts contained in Complainants' Exhibit 5 do not contain all specifications discussed in Mr. Harrelson's testimony or that may be used in Gulf Power's

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proposed findings of fact and conclusions of law. Second, the Manual serves as evidence that: 1) Complainants' engineering expert, Mr. Harrelson, is wrong to suggest that Gulf Power's construction specifications and practices are in any way outdated, "lax," "unreasonable," "arbitrary" or out of line with the Southern Company specifications; and 2) Gulf Power's poles are inherently crowded and that existing electrical configurations demonstrate higher valued uses of Gulf Power's pole space. More than just the excerpts chosen by Complainants, as reflected in Complainants' Exhibit 5, are needed in evidence to support Gulf Power's case-in-chief and disprove Mr. Harrelson's erroneous assertions.

- 2. Complainants' Objection suggests that because Gulf Power shares the Manual with its third party contractors the Manual does not deserve confidential treatment. See Objection at 3. But, as explained in Gulf Power's June 6, 2006 filing and conceded in Complainants' Objection, Gulf Power requires that a Confidentiality Agreement be executed prior to sharing the Manual with any third party, thus maintaining the Manual's confidential nature. See Gulf Power's Notice of Confidential Treatment at pp 2-3; Objection at p. 3. It is axiomatic that Gulf Power's construction standards must be shared with those entities working on the pole network and the sharing of those standards, after obtaining a Confidentiality Agreement, in no way destroys the confidential and proprietary nature of the Manual.
- 3. At no point in their Objection do Complainants allege that they, another party or the general public will be prejudiced in any manner by maintaining the Manual as a confidential exhibit in the record.<sup>1</sup> To the contrary, Gulf Power's June 6 filing outlined the manner in which public disclosure of the Manual will result in harm to Gulf Power, its parent company and sister companies. *See e.g.* Gulf Power's Notice of Confidential Treatment at pp. 2-5. With Gulf Power

In a June 6, 2006 e-mail the Bureau indicated that it has no objection to Gulf Power's Notice of Cause to Maintain Confidentiality Over Certain Trial Exhibits -- Gulf Power Exhibit 11 and Complainants' Exhibit 5.

showing harm and Complainants not even alleging prejudice, maintaining the Manual as a confidential exhibit appears to be the only fair and just resolution.

In an effort to resolve this dispute, however, Gulf Power proposes that it withdraw all portions of the Manual that are not identified in either its proposed findings of fact/conclusions of law or its reply findings. Thus, at the close of the parties' submissions on proposed findings of fact and conclusions of law, those portions of the Manual not identified or relied upon by Gulf Power will be withdrawn from Exhibit 11 and a revised Confidential Exhibit 11 will be submitted. Gulf Power maintains its position, however, that the portions identified and relied upon by either party remain confidential, including all of Complainants' Exhibit 5. Complainants cannot possibly claim prejudice by this offer of compromise.

Respectfully Submitted,

J. Russell Campbell

Eric B. Langley

Allen M. Estes

BALCH & BINGHAM, LLP

1710 Sixth Avenue North

Birmingham, Alabama 35203-2015

Telephone: (205) 251-8100

Facsimile: (205) 226-8798

Ralph A. Peterson

BEGGS & LANE, LLP

P.O. Box 12950

Pensacola, Florida 32591-2950

Telephone (850) 432-2451

Facsimile: (850) 469-3331

Counsel for Respondent

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply to Complainants' Objection to Gulf Power's Notice of Cause to Maintain Confidentiality has been served upon the following by United States mail and E-mail on this the 9th day of June, 2006:

Lisa Griffin	Shiela Parker
Federal Communications Commission	Federal Communications Commission
445 12th Street, S.W.	445 12th Street, S.W.
Washington, D.C. 20554	Washington, D.C. 20554
Via E-mail	Via E-mail
Rhonda Lien	Marlene H. Dortch, Secretary
Federal Communications Commission	Federal Communications Commission
445 12th Street, S.W.	Office of the Secretary
Washington, D.C. 20554	445 12th Street, SW
Via E-mail	Washington, D.C. 20554
James Shook	David H. Solomon
Federal Communications Commission	Federal Communications Commission
445 12th Street, S.W.	445 12th Street, S.W.
Washington, D.C. 20554	Washington, D.C. 20554
Via E-mail	
Director, Division of Record and Reporting	Federal Energy Regulatory Commission
Florida Public Service Commission	Docket Room 1A-209
2540 Shumard Oak Blvd.	888 First Street, NE
Tallahassee, Florida 32399-0850	Washington, D.C. 20426
John D. Seiver	
Geoffrey C. Cook Rita Tewari	
Cole, Raywid & Braverman	
1919 Pennsylvania Avenue, N.W. Suite 200	
Washington, D.C. 20006 Via E-mail	
Y IA C-IIIAII	

OF COUNSEL