

Diamond Williams

100304-EU

From: Ann Bassett [abassett@lawfla.com]
Sent: Tuesday, November 02, 2010 2:52 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 100304-EU
Attachments: 2010-11-02, 100304, CHELCO's Response to Gulf's Motion to Compel.pdf

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The Docket No. is 100304-EU Territorial Dispute between Choctawhatchee Electric Cooperative, Inc. and Gulf Power Company

This is being filed on behalf of Choctawhatchee Electric Cooperative, Inc.

Total Number of Pages is

Choctawhatchee Electric Cooperative, Inc.'s Response to Motion to Compel

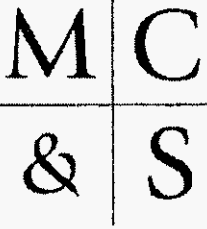
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November 2, 2010

BY ELECTRONIC FILING

Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 100304-EU

Dear Ms. Cole:

Enclosed for filing on behalf of Choctawhatchee Electric Cooperative, Inc. is an electronic version of Choctawhatchee Electric Cooperative, Inc.'s Response to Motion to Compel in the above referenced docket.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Norman H. Horton, Jr.', written in a cursive style.

Norman H. Horton, Jr.

NHH/amb
Enclosure

cc: Ms. Leigh V. Grantham
Parties of Record

CERTIFICATE OF SERVICE

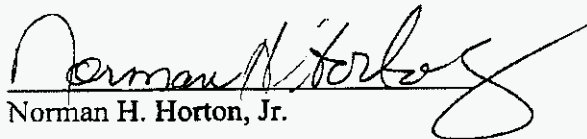
I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail and/or U.S. Mail this 2nd day of November, 2010.

Ralph Jaeger, Esq.
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Ms. Leigh V. Grantham
Choctawhatchee Electric Cooperative, Inc.
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DeFuniak Springs, FL 32435-0512

Ms. Susan D. Ritenour
Gulf Power Company
One Energy Place
Pensacola, FL 32520-0780

Steven R. Griffin, Esq.
Beggs and Lane
P.O. Box 12950
Pensacola, FL 32951-2950


Norman H. Horton, Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Territorial Dispute Between)
Choctawhatchee Electric Cooperative, Inc.) Docket No. 100304-EU
and Gulf Power Company) Filed: November 2, 2010
_____)

RESPONSE TO MOTION TO COMPEL

Choctawhatchee Electric Cooperative, Inc. ("CHELCO") by and through its undersigned attorney, hereby responds to Gulf Power Company's ("Gulf Power") Motion to Compel and states:

1. On August 24, 2010, Gulf Power issued its Second Set of Interrogatories to CHELCO to which CHELCO served responses and objections on September 23, 2010. On October 26, 2010 Gulf Power filed a Motion to Compel Responses to the Second Set.

2. The interrogatories to which CHELCO has objected seek the number of customers served in Bluewater Bay (#23-25); Greater Crestview (#29-31); City of Defuniak Springs (#32-34); Greater Defuniak Springs (#35-37); the City of Freeport (#38-40); Greater Freeport (#40-43); and Seagrove Beach (#44-46). Gulf Power also requested the number of customers served in the City of Crestview which was provided.

3. Neither Bluewater Bay nor Seagrove Beach are incorporated and are defined by a metes and bounds description in the Definitions portion of the Second Set of Interrogatories. Similarly and important to this motion and response, for each definition of "Greater (name) Gulf Power defined the term to mean ". . . those unincorporated areas of (name) county that abut the corporate municipal limits of the City of (name) . . . such that they are reasonably considered to be part of (name) . . ." These areas are also defined with a metes and bounds description.

4. In the motion, Gulf Power includes the definition of "rural area" as contained in Section 425.03(1), Florida Statutes, which says a "Rural area means any area not included within

the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of 2,500 persons.” Gulf Power also refers to Section 425.04(4), Florida Statutes, which permits rural electric cooperatives to provide service to “. . . other persons not in excess of 10 percent of the number of its members . . .” Based on these sections, Gulf Power then explains that responses to the interrogatories are necessary in order to determine whether CHELCO is serving in excess of 10% of its members in non-rural areas.

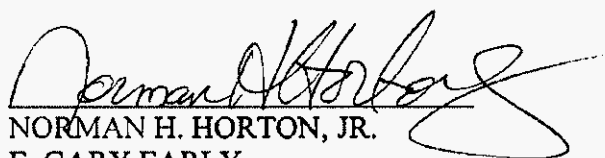
5. While CHELCO disagrees with the interpretation and argument which Gulf Power is or intends to make, that issue is not part of this Motion and CHELCO reserves the right to assert its position at a later date. Without waiving or abandoning any position, CHELCO will provide responses to Interrogatories 32-34, and 38-40 but restates its objections as to the remaining interrogatories. Information as to other areas is not relevant to resolution of the pending dispute. The Commission should deny the Motion as to the remaining interrogatories as not relevant to the issues in this docket as stated in the responses dated September 23, 2010 and attached to the Motion as Exhibit “B.”

6. The responses sought are also irrelevant to the argument which Gulf Power explains in their motion as the basis for their need for the information. The definition developed by Gulf Power for “Greater (name)” in the Interrogatory Definitions includes those areas that “. . . abut the corporate municipal limits . . .” These areas would be “rural” as that term is defined in Section 425.03, Florida Statutes, cited by Gulf Power since those areas are outside the boundaries of an incorporated city, town, village or borough. Bluewater Bay and Seagrove Beach, both would be considered rural under the definition as they are not incorporated. None would be an unincorporated city, town, village or borough; terms not defined in the statutes. Gulf Power is seeking to expand the definition of “rural area” in Section 425.03, Florida Statutes

and create a scenario whereby they can argue that the information in the interrogatories is relevant to a material fact and that simply is not the case. Gulf Power may want to argue the 10% restriction but they can only do so by using numbers that may be relevant to that argument and including customers that are, by the definition they cite, "rural" is not relevant to their argument.

DATED this 2nd day of November, 2010.

Respectfully submitted,



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