

Diamond Williams

100304-EU

From: Ann Bassett [abassett@lawfla.com]
Sent: Thursday, November 04, 2010 10:49 AM
To: Filings@psc.state.fl.us
Subject: Docket No. 100304-EU
Attachments: 2010-11-04, 100304, Chelco's Supplemental Response to Gulf Power'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.

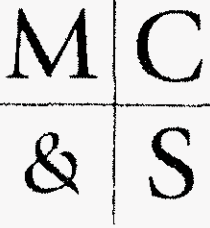
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Choctawhatchee Electric Cooperative, Inc.'s Supplemental Response to Motion to Compel

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November 4, 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

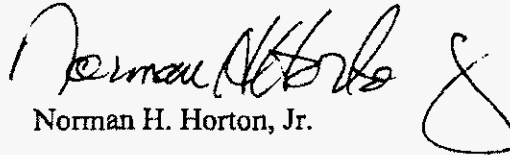
Re: Docket No. 100304-EU

Dear Ms. Cole:

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

Thank you for your assistance.

Sincerely,



Norman H. Horton, Jr.

NHH/amb

Enclosure

cc: Ms. Leigh V. Grantham
Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Territorial Dispute Between)
Choctawhatchee Electric Cooperative, Inc.)
and Gulf Power Company)
_____)

Docket No. 100304-EU
Filed: November 4, 2010

SUPPLEMENTAL RESPONSE TO MOTION TO COMPEL

Choctawhatchee Electric Cooperative, Inc. ("CHELCO") by and through its undersigned attorney, hereby files this Supplemental Response 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

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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. Moreover, in *Choctawhatchee Electric Co-op v. Gulf Power*, Docket No. 74551-EU, Order 7516 entered November 19, 1976, Gulf Power argued to this Commission that CHELCO should not serve the Bluewater Bay development because it was likely to become urbanized and if it ever

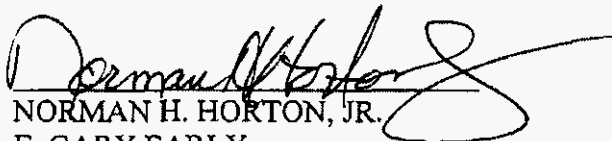
did lose the characteristics of a rural area, CHELCO would have to abandon service to the area. The Commission found that CHELCO should be the provider of service to Bluewater Bay and rejected Gulf's arguments saying "(w)e do not believe that such is the intent and meaning of the statutory provision." The Commission went on to say:

More importantly, any contention that the area might at some point be annexed or otherwise lose the characteristics of a "rural area" is speculative at best. We do not believe that Section 425.02, Florida Statutes, is an obstacle to service in the area by Chelco, where the criteria enumerated in Section 366.04(2), Florida Statutes and other relevant considerations indicate the such should be the result.

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 4th day of November, 2010.

Respectfully submitted,



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CERTIFICATE OF SERVICE

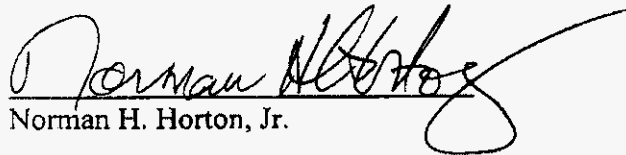
I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail and/or U.S. Mail this 4th day of November, 2010.

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