

Diamond Williams

100304-EU

From: Marchman, Vickie L. [VLMARCHM@southernco.com]
Sent: Friday, February 11, 2011 4:20 PM
To: Filings@psc.state.fl.us
Subject: Gulf Power Company's Motion for Summary Final Order
Attachments: 2-11-11 Motion for Summary Final Order.pdf

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- B. Docket No. 100304-EU
- C. Gulf Power Company
- D. Document consists of 40 pages.
- E. The attached document is Gulf Power Company's Motion for Summary Final Order.

Vickie Marchman

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2/11/2011

DOCUMENT NUMBER DATE
01008 FEB 11 =
FPSC-COMMISSION OF FIN

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February 11, 2011

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0850

Dear Ms. Cole:

RE: Docket No. 100304-EU

Enclosed is Gulf Power Company's Motion for Summary Final Order, filed by electronic mail in the above referenced docket.

Sincerely,

A handwritten signature in cursive script that reads "Terry A. Davis".

vm

Enclosure

cc: Beggs & Lane
Jeffrey A. Stone

DOCUMENT NUMBER DATE
01008 FEB 11 =
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 100304-EU

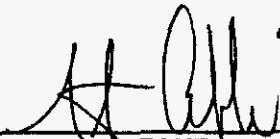
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by electronic mail this 11th day of February, 2011, on the following:

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FILED IN NUMBER DATE
1008 FEB 11 =
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 100304-EU
Date: February 11, 2011

GULF POWER'S MOTION FOR SUMMARY FINAL ORDER

COMES NOW, Gulf Power Company ("Gulf" or "Gulf Power"), pursuant to section 120.57(1)(h), Florida Statutes, Rule 28-106.204(4), Florida Administrative Code, and Rule 1.510, Florida Rules of Civil Procedure, and moves for a summary final order determining that Choctawhatchee Electric Cooperative, Inc. ("CHELCO") is prohibited, as a matter of law, from serving the area that is the subject of the instant territorial dispute.

SUMMARY OF RELIEF REQUESTED

Gulf Power seeks a summary final order determining that CHELCO is prohibited, as a matter of law, from serving the area that is the subject of the instant territorial dispute. The area in dispute is decidedly non-rural in nature. Due to the non-rural nature of the area, CHELCO is prohibited from serving it by virtue of the limitations contained in Chapter 425, Florida Statutes.

APPLICABLE STANDARD

Section 120.57(1)(h), Florida Statutes, provides that a summary final order shall be granted if it is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to entry of a final order. Similarly, Rule 28-106.204(4), Florida Administrative Code, states that "[a]ny party may move for summary final order whenever there is no genuine issue as to any material fact." Summary judgment is a device which "[a]llows courts and litigants to avoid full-blown trials in unwinnable

cases, thus conserving the parties' time and money and permitting the courts to husband scarce judicial resources." 11 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE, ¶ 56.02 (3d ed. 1999).

FACTUAL SUMMARY

The relevant facts for purposes of this motion are not subject to dispute. Gulf Power is an investor-owned electric utility subject to the jurisdiction of the Florida Public Service Commission (the "Commission") pursuant to Chapter 366, Florida Statutes. (CHELCO Petition at ¶ 4) CHELCO is a rural electric cooperative organized and existing under Chapter 425, Florida Statutes. (CHELCO Petition at ¶ 2) The Commission has jurisdiction over CHELCO, pursuant to section 366.04(5), Florida Statutes, for the planning, development and maintenance of a coordinated electric power grid to avoid uneconomic duplication of distribution, transmission and generation facilities. (CHELCO Petition at ¶ 5) Moreover, pursuant to section 366.04(2)(e), Florida Statutes, the Commission possesses exclusive jurisdiction to resolve territorial disputes between rural electric cooperatives and investor-owned utilities. (CHELCO Petition at ¶ 5)

This territorial dispute involves a proposed mixed-use development known as Freedom Walk. According to CHELCO's petition, Freedom Walk is located entirely within the municipal boundaries of the City of Crestview, Florida. (CHELCO Petition at ¶ 6 and Exhibit "A" thereto) Section 425.03(1), Florida Statutes, defines a "rural area" as "[a]ny 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." § 425.03(1), Fla. Stat. Crestview, Florida is an incorporated municipality with a population in excess of 2,500 persons. (Affidavit of Theodore

S. Spangenberg, Jr. at ¶ 4)¹ Gulf Power serves approximately 9,965 customers within the City of Crestview pursuant to a franchise agreement. (Gulf Answer at ¶ 6 and Affidavit of Spangenberg at ¶ 4) Gulf has provided continuous service to the City of Crestview since 1928 –nearly thirteen years before CHELCO’s formation. (Id.) In its First Request for Admissions to CHELCO (Nos. 1-10), Gulf Power asked CHELCO to admit that the Freedom Walk Development does not constitute a “rural area” as defined by section 425.03(1), Florida Statutes. (Request No. 4)² In response to this request, CHELCO stated the following:

Without admitting or denying whether the term “rural area” as Gulf Power has defined it is dispositive of any issue in this territorial dispute, CHELCO admits that a majority of the Freedom Walk Development (with the exception of a portion of the proposed Development bordering the south side of Old Bethel Road between Jones Road and Normandy Road) does not constitute a “rural area” as Gulf Power has defined that term in the Definitions section of its First Request for Admissions.

(CHELCO’s Response to Request No. 4 of Gulf’s First Request for Admissions)³ (emphasis supplied)

The area described as an “exception” in CHELCO’s response consists of three contiguous parcels, totaling approximately five acres, which are surrounded on the south, west, and east by property owned by Emerald Coast Partners, L.L.C. --which is the developer of Freedom Walk-- and on the north by Old Bethel Road. (Affidavit of Spangenberg at ¶ 5) The parcels are owned, respectively – going from east to west, by Shirley Burt, James Moore, and Ruby Hughes. (Id.) The parcels are not currently within the municipal limits of the City of Crestview, are not reflected as part of the disputed area on Exhibit “A” to CHELCO’s petition and are not included

¹ A true and correct copy of the affidavit of Theodore S. Spangenberg, Jr., is attached hereto and incorporated herein as Exhibit “A.”

² A true and correct copy of Gulf Power’s First Request for Admissions to CHELCO (Nos. 1-10) is attached hereto and incorporated herein as Exhibit “B.”

³ A true and correct copy of CHELCO’s Response to Gulf Power’s First Request for Admissions to CHELCO (Nos. 1-10) is attached hereto and incorporated herein as Exhibit “C.”

within the boundaries of the Freedom Walk Community Development District that was formed by the developer and the City of Crestview pursuant to Chapter 190, Florida Statutes, for the purpose of financing the infrastructure for the development. (Id.) However, even if these excepted parcels were to be included in the “disputed area” for the purposes of the summary relief requested in this motion, no less than approximately 97% --substantially all-- of the land area on which the Freedom Walk Development will be located, will lie within the municipal limits of the City of Crestview and is subject to CHELCO’s admission as not constituting a “rural area.”⁴ (Id.)

ARGUMENT AND ANALYSIS

The issue presented in this motion hinges solely on a basic question of statutory interpretation, and is therefore particularly appropriate for summary resolution. Chapter 425, Florida Statutes, is known as the Rural Electric Cooperative Law. See, § 425.01, Fla. Stat. The Rural Electric Cooperative law sets forth the purpose, powers, and duties of rural electric cooperatives operating in the State of Florida. Section 425.02, Florida Statutes, titled “*Purpose*” provides that rural electric cooperatives such as CHELCO are organized for the sole purpose “[o]f supplying electric energy and promoting and extending the use thereof in rural areas.” § 425.02, Fla. Stat. (emphasis supplied) Section 425.03(1), Florida Statutes, defines a “rural area” as “[a]ny 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.” § 425.03(1), Fla. Stat. Section 425.04(4), Florida Statutes, titled “*Powers*” further provides that a cooperative shall have

⁴ The remaining three percent of the land area would still be considered non-rural under section 425.03(1), Florida Statutes. See, In Re: Complaint of Suwannee Valley Electric Cooperative, Inc. against Florida Power & Light Company, 77 F.P.S.C. 321 at * 2 (Docket No. 760510-EU, Order No. 7961, Sept. 16, 1977) (“A subdivision located in the unincorporated area of an immediately adjacent urban area does not exist as a social, economic or commercial unit separate and apart from the adjoining municipality. Such an area would normally be considered part of the suburban territory of the municipality and therefore would not fall within the definition of ‘rural area’ as stated in section 425.03(1) F.S.”)

the power “[t]o generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10 percent of the number of its members.” § 425.04(4), Fla. Stat. (emphasis supplied) “Where the words of a statute are clear and unambiguous, judicial interpretation is not appropriate to displace the expressed intent.” Citizens v. Public Service Commission, 435 So.2d 784, 786 (Fla. 1983).

Chapter 425, Florida Statutes, clearly and unambiguously places limitations on the purpose and powers of Florida’s rural electric cooperatives. The Commission and Florida’s courts have a rich history of recognizing these purposeful limitations. Indeed, “[t]he case law is clear that the intent of Chapter 425, Florida Statutes, should be strongly considered in determining whether a cooperative should serve a particular area.” In re: Petition of Suwannee Valley Electric Cooperative, Inc. for Settlement of a Territorial Dispute with Florida Power Corporation, 83 F.P.S.C. 90 at *4 (Docket No. 830271-EU, Order No. 12324, Aug. 4, 1983). (emphasis supplied)

This rich history dates back to at least 1960. In Tampa Electric Co. v. Withlacoochee River Coop., the Florida Supreme Court held that

[i]t is a matter of common knowledge that the real purpose to be served in the creation of REA was to provide electricity to those rural areas which were not being served by any privately or governmentally owned public utility. It was not intended that REA should be a competitor in those areas in which as a matter of fact electricity is available by application to an existing public utility holding a franchise for the purpose of selling and serving electricity in a described territory.

122 So.2d 471, 473 n.6 (Fla. 1960) (emphasis supplied)

The Florida Supreme Court re-affirmed the principles articulated in Withlacoochee in Escambia River Electric Cooperative, Inc. v. Florida Public Service Commission, 421 So.2d 1384 (Fla. 1982). Escambia River involved a territorial dispute between Gulf Power and EREC over provision of electrical service to the Exxon Blackjack Creek Miscible Gas Displacement Project in Escambia County, Florida. The Commission awarded service to Gulf Power. In its order, the Commission expressly relied on Withlacoochee, and the “plain language and spirit” of Chapter 425 Florida Statutes:

The Commission is basically confronted in this case with a policy decision as to whether a privately owned utility or a rural electric cooperative should serve requirements of this nature when no factual or equitable distinction exists in favor of either party. The Commission concludes the dispute must be resolved in favor of Gulf Power....[W]hile we recognize the valuable service performed by the cooperatives, we believe that this case too presents an example of the type of electrical requirements that is beyond the basic intent and purpose of cooperatives, especially when a privately owned utility can reasonably meet those requirements.

Id. at 1384-85. (emphasis supplied)

In In Re: Complaint of Suwannee Valley Electric Cooperative, Inc. against Florida Power & Light Company, 77 F.P.S.C. 321 (Docket No. 760510-EU, Order No. 7961, Sept. 16, 1977)

the Commission reached a similar conclusion:

Rural electric cooperatives are organized for the purpose of supplying, promoting and extending the use of electric energy in rural areas. A cop cannot sell or distribute electric energy to any person not located in a rural area who is receiving adequate service from any municipally or privately owned utility. It is a matter of common knowledge that the real purpose to be served in the creation of REA was to provide electricity to those rural areas which were not being served by any privately or governmentally owned public utility, and it was not intended that REA should be a competitor in those areas in which as a matter of fact electricity is available by application to an existing public utility holding a franchise for the purpose of selling and serving electricity in a described territory.

Id. at 3. (emphasis supplied)

In clear recognition of the statutory purpose of, and limitations on, rural electric cooperatives, the Commission has repeatedly required a threshold determination in cooperative territorial disputes of whether the area in dispute is “rural” in nature. For example, in In Re: Territorial dispute between Gulf Power Company and Gulf Coast Electric Cooperative, Inc. 84 F.P.S.C. 9:121 (Docket No. 830484-EU, Order No. 13668, Sept. 10, 1984), the Commission observed as follows: “In the past, we have looked to whether the area is urban in determining whether a cooperative is precluded from serving the area. In this case, because the area is rural, we find that the cooperative is not legally prohibited from serving the area.” Id. at 2. (emphasis supplied) In the “Conclusions of Law” section of the same order, the Commission reiterated that “[e]vidence was presented at the hearing that the disputed area is a ‘rural area.’ (TR 247). As such, Chapter 425 would permit Gulf Coast to serve the disputed area.” Id. at 7. (emphasis supplied)

Similarly, in In Re: Petition of Gulf Power Company Involving a Territorial Dispute with Gulf Coast Electric Cooperative, 84 F.P.S.C. 146 (Docket No. 830154-EU, Order No. 12858, Jan. 10, 1984), the Commission concluded that “[b]ecause the disputed area has been determined to be rural for purposes of this proceeding, Chapter 425 does not prohibit the cooperative from serving it.” Id. at 5. (emphasis supplied)

In Petition of Gulf Coast Electric Cooperative to resolve territorial dispute with Gulf Power Company in Washington County, 86 F.P.S.C. 5:132 (Docket No. 850247-EU, Order No. 16105, May 13, 1986) the Commission found that:

The area has no urban characteristics at all. It is unincorporated, and has less than 2500 inhabitants; the nearest urban centers are Chipley and Southport, which are approximately 18 miles away. There is only one paved road within the subdivision boundary. There are no municipal

services such as fire protection, water systems, sewer systems, sanitary systems, police protection, storm water drainage, post offices and no other utilities, except possibly telephone service. The “nature of the area” is raised as an issue because of its reference in Section 366.04(2)(e), Florida Statutes. We find that the disputed area is rural for the purposes of this docket. In the past, we have looked to whether the area is urban in determining whether a cooperative is precluded from serving the area. In this case, because the area is rural, we find that the cooperative is not legally prohibited from serving the area.

Id. at 2-3. (emphasis supplied)

In In Re: Petition of West Florida Electric Cooperative Association, Inc. to Resolve a Territorial Dispute with Gulf Power Company in Washington County, 85 F.P.S.C. 11:12 (Docket No. 850048-EU, Order No. 15322, Nov. 1, 1985) the Commission found as follows: “In the past, we have looked to the urbanization of a disputed service territory in determining whether a Cooperative is precluded from serving the area. We find that the area lacks sufficient urban characteristics which would exclude electric service by the Cooperative.” Id. at 2. (emphasis supplied)

In In Re: Petition of Gulf Power Company to Resolve a Territorial Dispute with West Florida Electric Cooperative, Inc. in Holmes County, 88 F.P.S.C. 2:184 (Docket No. 870235-EI, Order No. 18886, Feb. 18, 1988) the Commission determined that “[t]he rural nature of the area, although somewhat mitigated by the area’s proximity to the Town of Ponce de Leon, qualifies it as an area that both utilities are able to serve.” Id. at 4. (emphasis supplied)

The clear import of the precedent and statutory authority outlined above is that a rural electric cooperative lacks statutory authority under Florida law to prospectively serve non-rural areas. Rather, the organic intended purpose of rural electric cooperatives is to serve rural areas which cannot otherwise reasonably be served by existing public utilities. In the present case, the Freedom Walk Develop is plainly not a “rural area” as defined by section 425.03(1), Florida

Statutes. Consequently, CHELCO is prohibited, as a matter of law, from serving it. In response to this motion, CHELCO will undoubtedly note that it --and other rural electric cooperatives in Florida-- currently provide electric service in some limited non-rural areas. To Gulf's knowledge, those limited areas were rural in nature at the time service was initially commenced. (Affidavit of Spangenberg at ¶ 6) Areas do change in character over time and some change from rural to non-rural. (Id.) Section 425.04(4), Florida Statutes, has been interpreted to allow cooperatives to continue to serve a number of persons in non-rural areas which does not exceed 10 percent of the cooperative's total membership. The most specific evidence of this can be found in a ruling by the United States Court of Appeals for the Eleventh Circuit in the case of Alabama Electric Cooperative v. First National Bank of Akron, 684 F.2d 789 (11th Cir. 1982). Clearly, however, a distinction must be drawn between initiating service to an existing, non-rural area and maintaining service to a rural area which, over time, develops non-rural characteristics. The former instance being in clear contradiction to the existing statutory scheme and the Commission's interpretation of the same. By this motion, Gulf Power is not seeking a determination that CHELCO must relinquish service to non-rural areas which it presently serves. Rather, Gulf simply requests that the Commission determine that CHELCO is not entitled to extend service to this additional non-rural area --a result clearly in keeping with Chapter 425, Florida Statutes, and the Commission's territorial dispute precedent.

COMMISSION JURISDICTION

CHELCO has previously suggested that the Commission lacks jurisdiction to interpret and apply Chapter 425, Florida Statutes, in resolving this territorial dispute. See, CHELCO's Response to Gulf Power's Motion for Reconsideration and Cross-Motion for Reconsideration (Document No. 00588-11) Gulf Power respectfully submits that this contention is belied by the

plain language and purpose of Chapter 366, Florida Statutes and an abundance of Commission precedent.

Chapter 366, Florida Statutes, provides the Commission with exclusive jurisdiction to resolve territorial disputes between rural electric cooperatives and other utilities. See, § 366.04(2)(e), Fla. Stat. and Re Florida Power Corporation, 1992 WL 457462 at *3 (Docket No. 920949-EU, Order No. PSC-92-1468-FOF-EU (Fla. P.S.C. Dec. 17, 1992)) (Chapter 366 grants the Commission “[e]xclusive jurisdiction over rates and charges of investor-owned electric utilities, exclusive jurisdiction over the rate structures of all electric utilities in the state, and exclusive jurisdiction over territorial agreements and disputes between all electric utilities.”) (emphasis supplied)

Chapter 366, Florida Statutes, also provides the Commission with jurisdiction over cooperatives and other electric utilities for the planning, development and maintenance of a coordinated electric power grid to avoid uneconomic duplication of distribution, transmission and generation facilities. See, § 366.04(5), Fla. Stat. and In Re: Petition to Resolve Territorial Dispute in Clay County between Clay Electric Cooperative, Inc. and Florida Power & Light Company, 90 F.P.S.C. 10:529 at * 1 (Docket No. 900284-EU, Order No. 23653, Oct. 23, 1990)

In its cross-motion for reconsideration, CHELCO cited to selected portions of section 366.04(2)(e), Florida Statutes, as support for its jurisdictional argument --the intended implication being that section 366.04(2)(e), Florida Statutes, precludes the Commission from consideration of Chapter 425 in resolving territorial disputes. (CHELCO Motion at ¶ 3)⁵

⁵ CHELCO also cited In re: Petition of Gulf Power Company to resolve a territorial dispute with West Florida Electric Cooperative, Inc. in Holmes County, Docket No. 870235-EI, Order No. 18886, issued February 18, 1988, as support for the proposition that the Commission lacks jurisdiction to consider Chapter 425 in resolving territorial disputes. (CHELCO Motion at ¶ 5) However, a review of the order suggests that the Commission’s jurisdiction to consider or apply Chapter 425 in the context of a territorial dispute was not at issue in that case. The language cited by CHELCO appears in the last sentence of the order without significant explanation. While not clear from the order, it appears that the cooperative may have argued that it should be entitled to serve the high school because the

Section 366.04(2)(e), Florida Statutes, provides guidance as to the factors the Commission may consider in resolving territorial disputes:

In resolving territorial disputes, the commission may consider, but not be limited to consideration of, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population, the degree of urbanization of the area, its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services.

§ 366.04(2)(3), Fla. Stat. (emphasis supplied)

The plain language of section 366.04(2)(e), Florida Statutes, appropriately recognizes that the Commission is not limited to consideration of the factors delineated in the statute in resolving territorial disputes. See, West Florida Electric Coop. v. Jacobs, 887 So.2d 1200, 1203, 1205 (Fla. 2004) (“The statute also outlines certain factors that the commission ‘may consider, but not be limited to consideration of,’ in resolving a territorial dispute...[B]ecause the listed factors are not exclusive, the commission is free to consider other factors....”) The same is equally true of Rule 25.6.0041, Florida Administrative Code.

Chapter 425, Florida Statutes, is clearly a factor which the Commission has considered in past disputes --and must consider in the present dispute-- in exercising its jurisdiction to resolve territorial disputes under section 366.04(2)(e) and to plan, develop and coordinate the electric power grid under section 366.04(5), Florida Statutes. Chapter 425, Florida Statutes, sets forth the purpose and powers of Florida’s rural electric cooperatives. In the instant dispute, Gulf Power contends, among other things, that CHELCO is precluded from serving the Freedom Walk Development by virtue of the limitations contained in sections 425.02 and 425.04, Florida Statutes. In order for the Commission to fulfill its exclusive statutory duty to determine which

Holmes County school board was a member of the cooperative. The Commission determined that this fact was not dispositive. Any question of whether the foregoing order stands for the proposition that the Commission lacks jurisdiction to consider Chapter 425 in resolving territorial disputes is resolved by the multitude of Commission orders --cited infra--which clearly interpret and apply Chapter 425.

party --CHELCO or Gulf-- should serve the Freedom Walk Development, it must determine, as a threshold matter, whether CHELCO possesses the authority under law to even be considered a candidate utility for service. CHELCO's suggestion that the Commission is precluded from making such a fundamental determination ignores the plain language of section 366.04(2)(e), Florida Statutes, and the Commission's plenary jurisdiction to resolve territorial disputes pursuant to Chapter 366, Florida Statutes.

In re: Petition of Peace River Electric Cooperative, Inc. against Florida Power and Light Company, 85 F.P.S.C. 10:120 (Docket No. 840293-EU, Order No. 15210, Oct. 8, 1985) ("Peace River") is instructive. Peace River involved a territorial dispute between PRECO and FPL over a proposed development in unincorporated Manatee County, Florida. Id. at 1-2. FPL contended, among other things, that FPL should be entitled to serve the development because the Commission lacked jurisdiction over PRECO. Id. at 8. In resolving the issue, the Commission held as follows:

The central legal issue before the Commission is whether it has jurisdiction over PRECO. The answer to that question is clearly yes, pursuant to section 366.04(2)(e), Florida Statutes. The Florida Legislature specified that the Commission shall resolve territorial disputes between investor-owned utilities, municipal utilities, and rural electric cooperatives. Although FPL argues that the Commission does not have jurisdiction over PRECO and that it cannot award the disputed area to PRECO, FPL ignores the clear language of Section 366.04(2)(e). That is not to say that the PSC has full jurisdiction over PRECO in all respects. Such is not the case under the statutes. However, Section 366.02 clearly states for what purposes the Commission does have jurisdiction over PRECO and one of those purposes is to resolve territorial disputes. Where a dispute is brought before the Commission and a cooperative is a party to the matter, the cooperative is holding itself out as ready, willing and able to serve any potential customer in the disputed area. This is particularly true in a case such as the present one where the cooperative is the petitioning party. In order for the Commission to carry out its authority to resolve such a dispute, the Commission must, of necessity, have the authority to enforce its decision...[T]he Commission's jurisdiction over cooperatives for certain

stated purposes cannot be diminished because the Commission does not have full and complete jurisdiction over cooperatives. Moreover, the Florida Supreme Court has stated that the Commission should not consider the extent of its jurisdiction over cooperatives in exercising its jurisdiction pursuant to section 366.04(2)(e). Escambia River Electric Cooperative v. Florida Public Service Commission, 421 So.2d 1384 (Fla. 1982).

Id. at 9-10. (emphasis supplied)

Having voluntarily subjected itself to the jurisdiction of the Commission through initiation of the present dispute, CHELCO cannot now invoke the Commission's limited jurisdiction over rural electric cooperatives as an impediment to resolution of the dispute.

CHELCO's contention that the Commission lacks jurisdiction to determine issues under Chapter 425, Florida Statutes, in the context of territorial disputes is further belied by the sheer number of Commission orders which do just that. The Commission has routinely interpreted and applied Chapter 425, Florida Statutes, in resolving territorial disputes. Indeed, the Commission has explicitly held that "[t]he intent of Chapter 425, Florida Statutes, should be strongly considered in determining whether a cooperative should serve a particular area." In re: Petition of Suwannee Valley Electric Cooperative, Inc. for Settlement of a Territorial Dispute with Florida Power Corporation, 83 F.P.S.C. 90 at *4 (Docket No. 830271-EU, Order No. 12324, Aug. 4, 1983). (emphasis supplied) See also, In Re: Petition of Gulf Power Company Involving Complaint and Territorial Dispute with Alabama Electric Cooperative, Inc., 84 F.P.S.C. 12:103 (Docket No. 830428-EU, Order No. 13926, Dec. 21, 1984) (interpreting Chapter 425, Florida Statutes, as a whole, including an analysis of "the purpose behind it" in determining that cooperative was not precluded from changing wholesale suppliers under section 425.04(4), Florida Statutes); In Re: Territorial Dispute between Gulf Power Company and Gulf Coast Electric Cooperative, Inc., 84 F.P.S.C. 9:121 (Docket No. 830484-EU, Order No. 13668, Sept.

10, 1984) (interpreting section 425.04(4) and rejecting argument that GCEC was prohibited from serving the disputed area by virtue of Chapter 425, Florida Statutes); In Re: Petition of Gulf Power Company Involving a Territorial Dispute with Gulf Coast Electric Cooperative, 84 F.P.S.C. 146 (Docket No. 830154-EU, Order No. 12858, Jan. 10, 1984) (interpreting sections 425.02 and 425.03, Florida Statutes, and determining that GCEC was not barred from serving the disputed area by virtue of Chapter 425, Florida Statutes); In re: Complaint of Suwannee Valley Electric Cooperative, Inc. against Florida Power & Light Company, 77 F.P.S.C. 321 (Docket No. 760510-EU, Order No. 7961, Sept. 16, 1977) (interpreting section 425.03(1), Florida Statutes and determining that a subdivision in unincorporated Suwannee County, Florida was not “rural” in nature); In re: Choctawhatchee Electric Cooperative v. Gulf Power Company, Docket No. 74551-EU, Order No. 7516, Nov. 19, 1976 (interpreting sections 425.02 and 425.03, Florida Statutes, and rejecting argument that CHELCO was barred from serving the disputed area by virtue of Chapter 425, Florida Statutes); In re: Complaint of Clay Electric Cooperative against Gainesville-Alachua County Regional Electric, Water and Sewer Utilities Board, Docket No. 74585-EU, Order No. 7040, Dec. 9, 1975 (determining area in dispute was “rural” as defined by section 425.03(1), Florida Statutes).


The Commission clearly has the authority to interpret and apply Chapter 425, Florida Statutes, in the context of resolving territorial disputes and in complying with its duty to plan, coordinate and maintain a coordinated electric power grid. In fact, in the present case, application of Chapter 425, Florida Statutes, is an integral component of the Commission’s exercise of its exclusive jurisdiction under Chapter 366, Florida Statutes.

CONCLUSION

Gulf Power requests that the Commission enter an order determining that CHELCO is prohibited, as a matter of law, from serving the Freedom Walk Development. The relevant facts for the purpose of this motion are not subject to dispute. The resolution of the instant territorial dispute hinges entirely on a threshold question of law and is therefore particularly appropriate for disposition pursuant to a summary final order. Issuance of a summary final order will conserve the parties' and the Commission's valuable resources and, to the extent appellate resolution is sought, will facilitate appellate resolution of the threshold legal issues without the necessity of an evidentiary hearing.

Gulf Power has conferred with counsel for CHELCO regarding this motion and is authorized to represent that CHELCO objects to the relief requested herein. Gulf Power submits that the factual and legal issues are sufficiently clear that oral argument on this motion is not necessary. However, if the Commission determines that oral argument would be helpful, Gulf Power would welcome the opportunity to participate.

Respectfully submitted this 11th day of February, 2011.



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EXHIBIT "A"

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 100304-EU
Date: February 11, 2011

AFFIDAVIT OF THEODORE S. SPANGENBERG, JR.

BEFORE ME, the undersigned authority, personally appeared Theodore S. Spangenberg, Jr., who is sworn and says the following information is true and correct according to Affiant's best knowledge and belief:

1. I am competent to testify, and have personal knowledge of the facts herein.
2. I am the Director of Military Affairs and Special Projects for Gulf Power Company. My business address is One Energy Place, Pensacola, Florida 32520.
3. As the Director of Military Affairs and Special Projects for Gulf Power Company, I have been closely involved with the instant territorial dispute and have advised the Company in connection with various other territorial disputes in which Gulf Power has been a party over the past thirty years.
4. I am personally familiar with the area that is the subject of the instant dispute known as the Freedom Walk Development. The Freedom Walk Development is located in Crestview, Florida. Crestview, Florida is an incorporated municipality with a population in excess of 2,500 persons. Gulf Power serves approximately 9,965 customers within the City of Crestview pursuant to a franchise agreement. Gulf has provided continuous service to the City of Crestview since 1928 – nearly thirteen years before the formation of Choctawhatchee Electric Cooperative (CHELCO).
5. In its First Request for Admissions to CHELCO (Nos. 1-10), Gulf Power asked CHELCO to admit that the Freedom Walk Development does not constitute a "rural area" as defined by section 425.03(1), Florida Statutes. (Request No. 4) In response to this request, CHELCO stated the following:

Without admitting or denying whether the term “rural area” as Gulf Power has defined it is dispositive of any issue in this territorial dispute, CHELCO admits that a majority of the Freedom Walk Development (with the exception of a portion of the proposed Development bordering the south side of Old Bethel Road between Jones Road and Normandy Road) does not constitute a “rural area” as Gulf Power has defined that term in the Definitions section of its First Request for Admissions.

(CHELCO’s Response to Request No. 4 of Gulf’s First Request for Admissions) (emphasis supplied).

The area described as an “exception” in CHELCO’s response consists of three contiguous parcels, totaling approximately five acres, which are surrounded on the south, west, and east by property owned by Emerald Coast Partners, L.L.C. --which is the developer of Freedom Walk-- and on the north by Old Bethel Road. The parcels are owned, respectively – going from east to west, by Shirley Burt, James Moore, and Ruby Hughes. The parcels are not currently within the municipal limits of the City of Crestview, are not reflected as part of the disputed area on Exhibit “A” to CHELCO’s petition and are not included within the boundaries of the Freedom Walk Community Development District that was formed by the developer and the City of Crestview pursuant to Chapter 190, Florida Statutes, for the purpose of financing the infrastructure for the development.¹ Even if these excepted parcels were to be included in the “disputed area” for the purposes of the summary relief requested in Gulf Power’s Motion for Summary Final Order, no less than approximately 97% --substantially all-- of the land area on which the Freedom Walk Development will be located will lie within the municipal limits of the City of Crestview and is subject to CHELCO’s admission as not constituting a “rural area.”

6. CHELCO -- and other rural electric cooperatives in Florida-- currently provide electric service in some limited non-rural areas. To Gulf’s knowledge, those limited areas were

¹ A true and correct copy of the Crestview ordinance establishing the Freedom Walk Community Development District is attached hereto and incorporated herein as Exhibit “1.”

rural in nature at the time service was initially commenced. Areas do change in character over time and some change from rural to non-rural.


FURTHER AFFIANT SAITH NOT:


THEODORE S. SPANGENBERG, JR.

STATE OF FLORIDA

COUNTY OF ESCAMBIA

SWORN TO AND SUBSCRIBED BEFORE ME this 11th day of February, 2011, by affiant, who is personally known to me or who produced _____ driver's license as identification, and who took an oath.


Notary Public, State of Florida
My Commission Expires: June 26, 2013



Vickie L. Marchman
COMMISSION # DD866249
EXPIRES: JUN. 26, 2013
WWW.AARONNOTARY.com

EXHIBIT "1"

To Affidavit of Theodore S. Spangenberg, Jr.

ORDINANCE NO. 1378

AN ORDINANCE ESTABLISHING THE FREEDOM WALK COMMUNITY DEVELOPMENT DISTRICT PURSUANT TO CHAPTER 190, FLORIDA STATUTES; NAMING THE DISTRICT; DESCRIBING THE EXTERNAL BOUNDARIES OF THE DISTRICT; DESCRIBING THE FUNCTIONS AND POWERS OF THE DISTRICT; DESIGNATING PERSONS TO SERVE AS THE INITIAL MEMBERS OF THE DISTRICT'S BOARD OF SUPERVISORS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Emerald Coast Partners, LLC, (hereinafter "Petitioner"), having obtained written consent to the establishment of the District by the owner of one hundred percent (100%) of the real property to be included in the District, petitioned The City of Crestview (the "City") to adopt an ordinance establishing the Freedom Walk Community Development District (the "District") pursuant to Chapter 190, Florida Statutes (2004); and

WHEREAS, Petitioner is a Limited Liability Company authorized to conduct business in the State of Florida and whose address is 4598 Paradise Isles, Destin Florida 32541; and

WHEREAS, all interested persons and affected units of general-purpose local government were afforded an opportunity to present oral and written comments on the Petition at a duly noticed public hearing conducted by the City on December 10, 2007; and

WHEREAS, upon consideration of the record established at that hearing, The City of Crestview determined that the statements within the Petition were true and correct, that the establishment of the District is not inconsistent with any applicable element or portion of the state comprehensive plan or the local government comprehensive plan, that the land within the District is of sufficient size, is sufficiently compact, and sufficiently contiguous to be developable as a functionally interrelated community, that the District is the best alternative available for delivering community development services and facilities to the area served by the District, that the services and facilities of the District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities, and that the area to be served by the District is amenable to separate special-district governance; and

WHEREAS, establishment of the District will constitute a timely, efficient, effective, responsive and economic way to deliver community development services in the area described in the Petition.

NOW THEREFORE BE IT ORDAINED by the City of Crestview, Florida.

SECTION 1. AUTHORITY.

This ordinance is adopted in compliance with and pursuant to the Uniform Community Development District Act of 1980, Chapter 190, Florida Statutes as amended (the "Act").

SECTION 2. DISTRICT NAME.

There is hereby created a community development district situated entirely within The City limits of Crestview Florida, which District shall be known as "Freedom Walk Community Development District."

SECTION 3. EXTERNAL BOUNDARIES OF THE DISTRICT.

Encompassing approximately 179 acres, the external boundaries of the District are described in Exhibit A attached hereto.

SECTION 4. FUNCTION AND POWERS.

Pursuant to general law, the exclusive charter for each independent community development district established under Chapter 190, Florida Statutes, is the uniform community development district charter (the "Uniform Charter") as set forth in §190.006 through §190.041, Fla. Stat. This Uniform Charter is not subject to modification pursuant to §190.005(2)(d), Fla. Stat. The Uniform Charter grants certain general and special powers among which include the following:

- (A) General Powers. The District and the District's Board of Supervisors are authorized to exercise all powers granted pursuant to the Uniform Charter of the Act as amended through the date hereof and as such may be amended from time to time. Said powers include, but are not limited to the power:
- (1) To sue and be sued in the name of the district; to adopt and use a seal and authorize the use of a facsimile thereof; to acquire, by purchase, gift, devise, or otherwise, and to dispose of, real and personal property, or any estate therein, and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.
 - (2) To apply for coverage of its employees under the state retirement system in the same manner as if such employees were state employees, subject to necessary action by the District to pay employer contributions into the state retirement fund.
 - (3) To contract for the services of consultants to perform planning, engineering, legal, or other appropriate services of a professional nature. Such contracts shall be subject to public bidding or competitive negotiation requirements as set forth in §190.033, Florida Statutes.
 - (4) To borrow money and accept gifts; to apply for and use grants or loans of money or other property from the United States, the state, a unit of local government, or any person for any district purposes and enter into agreements required in connection therewith; and to hold, use, and dispose of such moneys or property for any district purposes in accordance with the terms of the gift, grant, loan, or agreement relating thereto.
 - (5) To adopt rules and orders pursuant to provisions of Chapter 120, Florida Statutes, prescribing the powers, duties, and functions of the officers of the district; the conduct of the business of the district; the conduct of the business of the district; the maintenance of records; and form of certificates evidencing tax liens and all other documents and records of the district. The board may also adopt administrative rules with respect to any of the projects of the district and define the area to be included therein. The board may also adopt resolutions which may be necessary for the conduct of district business.

- (6) To maintain an office at such place or places as it may designate within the county in which the district is located or within the boundaries of a development of regional impact or a Florida Quality Development, or a combination of a development of regional impact and a Florida Quality Development, which includes the district, which office must be reasonably accessible to the landowners. Meetings pursuant to §189.417(3), Florida Statutes, of a district within the boundaries of a development of regional impact of Florida Quality Development, or a combination of a development of regional impact and a Florida Quality Development, may be held at such office.
- (7) (a) To hold, control, and acquire by donation, purchase, or condemnation, or dispose of, any public easements, dedications to public use, platted reservations for public purposes, or any reservations for those purposes authorized by this act and to make use of such easements, dedications, or reservations for any of the purposes authorized by this act.
- (b) When real property in the district is owned by a governmental entity and subject to a ground lease as described in §190.003(13), Florida Statutes, to collect ground rent from landowners pursuant to a contract with such governmental entity and to contract with the county tax collector for collection of such ground rent using the procedures authorized in §197.3631, Florida Statutes, other than the procedures contained in §197.3632, Florida Statutes.
- (8) To lease as lessor or lessee to or from any person, firm, corporation, association, or body, public or private, any projects of the type that the district is authorized to undertake and facilities or property of any nature for the use of the district to carry out any of the purposes authorized by this act.
- (9) To borrow money and issue bonds, certificates, warrants, notes, or other evidence of indebtedness as hereinafter provided; to levy such tax and special assessments as may be authorized; and to charge, collect, and enforce fees and other user charges.
- (10) To raise, by use charges or fees authorized by resolution of the board, amounts of money which are necessary for the conduct of the district activities and services and to enforce their receipt and collection in the manner prescribed by resolution and not inconsistent with law.
- (11) To exercise within the district, or beyond the district with prior approval by resolution of the governing body of the county, if the taking will occur in an unincorporated area or with prior approval by resolution of the governing body of the municipality if the taking will occur within a municipality, the right and power of eminent domain, pursuant to the provisions of Chapters 73 and 74, Florida Statutes, over any property within the state, except municipal, county, state and federal property, for the uses and purposes of the district relating solely to water, sewer, district roads, and water management, specifically including, without limitation, the power for the taking of easements for

the drainage of the land of one person over and through the land of another.

- (12) To cooperate with, or contract with, other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized herein or by the Act.
- (13) To assess and impose upon lands in the district ad valorem taxes as proved by the Act.
- (14) To determine, order, levy, impose, collect, and enforce special assessments pursuant to the act and Chapter 170, Florida Statutes. Such special assessments may, in the discretion of the district, be collected and enforced pursuant to the provisions of §197.3631, 197.3632, and 397.3635, or Chapter 170, Florida Statutes.
- (15) To exercise all of the powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by the Act.
- (16) To exercise such special powers as may be authorized by this Section and the Act.

(B) Special Powers. The District and the District's Board of Supervisors are authorized to exercise all special powers granted pursuant to the Uniform Charter of the Act as amended through the date hereof and as such may be amended from time to time.

- (1) To finance, fund, plan, establish, acquire, construct, reconstruct, enlarge or extend, equip, operate, and maintain systems, facilities, and basic infrastructures for the following:
 - (a) Water management and control for the lands within the district and to connect some or any of such facilities with roads and bridges.
 - (b) Water supply, sewer and wastewater management, reclamation, and reuse or any combination thereof, and to construct and operate connecting intercepting or outlet sewers and sewer mains and pipes and water mains, conduits, or pipelines in, along, and under any street, alley, highway, or other public place or ways, and to dispose of any effluent, residue, or other byproducts of such system or sewer system.
 - (c) Bridges or culverts that may be needed across any drain, ditch, canal, floodway, holding basin, excavation, public highway, tract, grade, fill, or cut and roadways over levees and embankments, and to construct any and all of such works and improvements across, through, or over any public right-of-way, highway, grade, fill, or cut.
 - (d) 1. District roads equal to or exceeding the specifications

of the city in which such district roads are located, and street lights.

2. Buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, and related signage.

(e) Investigation and remediation costs associated with the cleanup of actual or perceived environmental contamination within the district under the supervision or direction of a competent governmental authority unless the covered costs benefit any person who is a landowner within the district and who caused or contributed to the contamination.

(f) Conservation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property.

(g) Any other project within or without the boundaries of a district when a local government issued a development order pursuant to §380.06 or §380.061, Florida Statutes, approving or expressly requiring the construction or funding of the project by the district, or when the project is the subject of an agreement between the district and a governmental entity and is consistent with the local government comprehensive plan of the local government within which the project is to be located.

(C) Additional Powers. Consent is hereby given to the District and the District's Board of Supervisors to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for parks and facilities for indoor and outdoor recreational, cultural, and educational uses as authorized and described by Section 190.012(2), Florida Statutes.

SECTION 5. BOARD OF SUPERVISORS.

The five [5] persons designated to serve as initial members of the District's Board of Supervisors are as follows: BRUCE HOULE, JAMES MOORE, DAN MARCH, SAM COBB, and KEN WRIGHT. All of the above-listed persons are residents of the State of Florida and citizens of the United States of America.

SECTION 6. SEVERABILITY.

If any provision of this ordinance is held to be illegal or invalid, the other provisions shall remain in full force and effect.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall take effect pursuant to general law.


DONE AND ADOPTED in regular session this 10th day of December, 2007.

THE CITY OF CRESTVIEW, FLORIDA



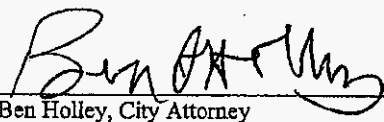
Charles J. Wells, Council President

Attest:



Janice Young, City Clerk

Approved as to form by The City of Crestview Attorney



Ben Holley, City Attorney

Approved as to form by The City of Crestview Mayor



David Cadle, Mayor

EXHIBIT 'A'

LEGAL DESCRIPTION:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 5, TOWNSHIP 3 NORTH, RANGE 23 WEST; THENCE S 00°15'29" W A DISTANCE OF 2642.79'; THENCE S 89°50'53" E A DISTANCE OF 2628.52'; THENCE N 00°07'46" E A DISTANCE OF 2585.48'; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 11413.80', WITH A DELTA ANGLE OF 00°11'58", WITH AN ARC LENGTH OF 39.74', WITH A CHORD BEARING OF S 87°30'36" W, WITH A CHORD LENGTH OF 39.74', THENCE S 87°26'46" W A DISTANCE OF 782.02'; THENCE N 39°16'39" W A DISTANCE OF 130.26'; THENCE N 89°59'59" W A DISTANCE OF 523.66'; THENCE N 39°49'00" W A DISTANCE OF 118.40'; THENCE N 50°11'00" E A DISTANCE OF 104.61'; THENCE N 39°49'00" W A DISTANCE OF 430.00'; THENCE N 50°11'00" E A DISTANCE OF 305.93'; THENCE N 39°16'39" W A DISTANCE OF 2.45'; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 764.31'; WITH A DELTA ANGLE OF 18°11'53", WITH AN ARC LENGTH OF 242.76', WITH A CHORD BEARING OF N 49°09'12" W, WITH A CHORD LENGTH OF 241.74'; THENCE S 17°19'58" W A DISTANCE OF 330.91'; THENCE S 72°50'58" W A DISTANCE OF 256.05'; THENCE N 17°09'02" W A DISTANCE OF 80.00'; THENCE N 72°50'58" E A DISTANCE OF 213.95'; THENCE N 17°19'58" E A DISTANCE OF 304.98'; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 768.40'; WITH A DELTA ANGLE OF 29°11'04", WITH AN ARC LENGTH OF 391.39', WITH A CHORD BEARING OF N 78°51'32" W, WITH A CHORD LENGTH OF 387.17'; THENCE S 87°54'29" W A DISTANCE OF 484.47'; THENCE S 00°23'59" W A DISTANCE OF 940.53'; THENCE N 90°00'00" W A DISTANCE OF 33.00'; WHICH IS THE POINT OF BEGINNING, HAVING AN AREA OF 179.06 ACRES.

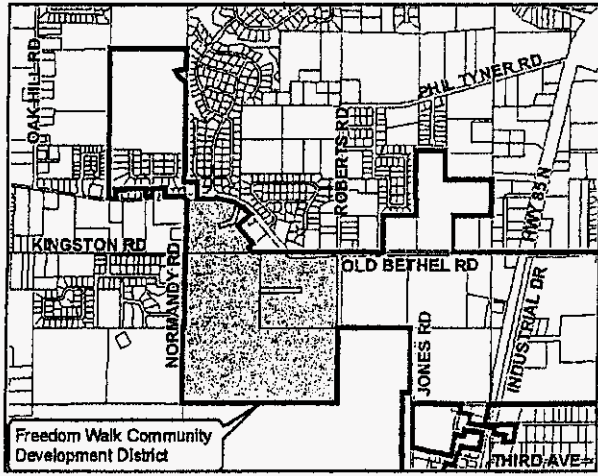


EXHIBIT "B"

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 100304-EU

Date: June 30, 2010

**GULF POWER'S FIRST REQUEST FOR ADMISSIONS TO
CHOCTAWHATCHEE ELECTRIC COOPERATIVE INC. (NOS. 1-10)**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.370, Florida Rules of Civil Procedure, Gulf Power Company ("Gulf Power") requests that Choctawhatchee Electric Cooperative, Inc. ("Chelco") submit separate and complete written responses to Gulf Power's request for admissions within thirty (30) days after service.

DEFINITIONS

"You," "your," "Company" or "Chelco" refers to Choctawhatchee Electric Cooperative, Inc., its employees and authorized agents.

"Freedom Walk Development" or "Development" means the land area described as the "Freedom Walk Property" on Exhibit "A" to the petition filed by Chelco in this proceeding.


"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.

REQUEST FOR ADMISSIONS

1. Both Gulf Power and Chelco have served customers within the corporate boundaries of the City of Crestview and customers surrounding the Freedom Walk Development for in excess of ten years.

2. Both Gulf Power and Chelco are capable of providing reliable electric service to the Freedom Walk Development.

3. The "disputed area" referenced in paragraph 7 of Chelco's petition is limited to the boundaries of the Freedom Walk Development.
4. The Freedom Walk Development does not constitute a "rural area" as those terms are defined above.
5. The owner of the Freedom Walk Development has requested that Gulf Power Company provide electric service to the Freedom Walk Development.
6. Gulf Power's stated \$90,000 cost to extend its existing three-phase power line to the eastern border of the Freedom Walk Development is de minimis in comparison to the nature of the project and projected load of the Development.
7. With the exception of the single residence identified in paragraph 9(c) of Chelco's petition, Chelco has not served, and does not currently serve, any members within the boundary of the Freedom Walk Development.
8. The single residence identified in paragraph 9(c) of Chelco's petition does not currently receive electric service from Chelco.
9. The Freedom Walk Development has not been platted.
10. The Freedom Walk Development has not received a development order from the City of Crestview or Okaloosa County.



JEFFREY A. STONE
Florida Bar No.: 325953
RUSSELL A. BADDERS
Florida Bar No.: 007455
STEVEN R. GRIFFIN
Florida Bar No.: 0627569
Beggs & Lane
P.O. Box 12950
Pensacola, Florida 32591
(850) 432-2451
Attorneys for Gulf Power Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE:
Territorial Dispute Between)
Choctawhatchee Electric Cooperative, Inc.)
And Gulf Power)

Docket No.: 100304-EU

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by electronic mail and U.S. Mail this 30 day of June, 2010, on the following:

CHOCTAWHATCHEE ELECTRIC COOP.,
INC.
Ms. LEIGH V. GRANTHAM
P. O. Box 512
DEFUNIAK SPRINGS, FL 32435-0512

MESSER LAW FIRM (10c)
NORMAN H. HORTON, JR./G. EARLY
POST OFFICE BOX 15579
TALLAHASSEE, FL 32317

RALPH R JAEGER, ESQ.
FL PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BLVD
TALLAHASSEE, FLORIDA 32399-7019



JEFFREY A. STONE
Florida Bar No. 325953
RUSSELL A. BADDERS
Florida Bar No. 007455
STEVEN R. GRIFFIN
Florida Bar No. 0627569
BEGGS & LANE
P. O. Box 12950
Pensacola FL 32591-2950
(850) 432-2451
Attorneys for Gulf Power Company

EXHIBIT "C"

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition to resolve territorial dispute with Gulf Power) Docket No.: 100304-EU
Company in Okaloosa County by Choctawhatchee)
Electric Cooperative, Inc.)
_____)

**CHOCTAWHATCHEE ELECTRIC COOPERATIVE, INC.'S RESPONSES TO
GULF POWER COMPANY'S FIRST REQUEST FOR ADMISSIONS (NOS. 1-10)**

Comes Now, Choctawhatchee Electric Cooperative, Inc. ("CHELCO") and serve these responses to Gulf Power Company's First Request for Admissions.

REQUEST FOR ADMISSIONS

1. Both Gulf Power and Chelco have served customers within the corporate boundaries of the City of Crestview and customers surrounding the Freedom Walk Development for in excess of ten years.

CHELCO'S RESPONSE:

CHELCO admits that both Gulf Power and CHELCO have served customers within the corporate boundaries of the City of Crestview for in excess of ten years.

Gulf Power has not provided a description or definition of the term "surrounding the Freedom Walk Development" and as a result CHELCO is unable to admit or deny. To the extent that "surrounding the Freedom Walk Development" is construed to mean that the Freedom Walk Development is within the historic service area of Gulf Power and CHELCO, the request for admission is denied as to Gulf Power and admitted as to CHELCO.

2. Both Gulf Power and Chelco are capable of providing reliable electric service to the Freedom Walk Development.

CHELCO'S RESPONSE:

Admitted.

3. The "disputed area" referenced in paragraph 7 of Chelco's petition is limited to the boundaries of the Freedom Walk Development.

CHELCO'S RESPONSE:

Admitted that the "disputed area includes all of the projected Freedom Walk Development as depicted by the street and lot layout on Exhibits "A" through "D" to the petition filed by CHELCO in this proceeding, which Development includes all of the property bordering the south side of Old Bethel Road between Jones Road and Normandy Road.

4. The Freedom Walk Development does not constitute a "rural area" as those terms are defined above.

CHELCO'S RESPONSE:

Without admitting or denying whether the term "rural area" as Gulf Power has defined it is dispositive of any issue in this territorial dispute, CHELCO admits that a majority of the Freedom Walk Development (with the exception of a portion of the proposed Development bordering the south side of Old Bethel Road between Jones Road and Normandy Road) does not

constitute a "rural area" as Gulf Power has defined that term in the Definition section of its First Request for Admissions.

5. The owner of the Freedom Walk Development has requested that Gulf Power Company provide electric service to the Freedom Walk Development.

CHELCO'S RESPONSE:

CHELCO is without direct knowledge of whether the "owner" of the Freedom Walk Development has requested that Gulf Power Company provide electric service to the Freedom Walk Development. CHELCO admits that Gulf Power has provided it with a copy of a letter purported to be from Emerald Coast Partners, LLC by which that entity requested that Gulf Power Company provide electric service to the Freedom Walk Development.

6. Gulf Power's stated \$90,000 cost to extend its existing three-phase power line to the eastern border of the Freedom Walk Development is de minimis in comparison to the nature of the project and projected load of the Development.

CHELCO'S RESPONSE:

Denied.

7. With the exception of the single residence identified in paragraph 9(c) of Chelco's petition, Chelco has not served, and does not currently serve, any members within the boundary of the Freedom Walk Development.

CHELCO'S RESPONSE:

Denied.

8. The single residence identified in paragraph 9(c) of Chelco's petition does not currently receive electric service from Chelco.

CHELCO'S RESPONSE:

Admitted.

9. The Freedom Walk Development has not been platted.

CHELCO'S RESPONSE:

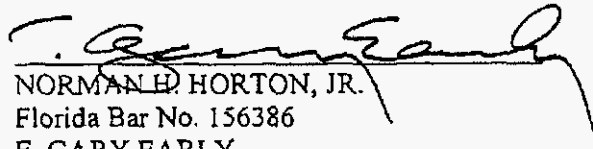
CHELCO is without direct knowledge of whether the Freedom Walk Development has been platted, and the request for admission is therefore denied.

10. The Freedom Walk Development has not received a development order from the City of Crestview or Okaloosa County.

CHELCO'S RESPONSE:

CHELCO is without direct knowledge of whether the Freedom Walk Development has received a development order from the City of Crestview or Okaloosa County, and the request for admission is therefore denied.

RESPECTFULLY SUBMITTED this 29th day of July, 2010.



NORMAN H. HORTON, JR.

Florida Bar No. 156386

E. GARY EARLY

Florida Bar No 325147

MESSER, CAPARELLO & SELF, P.A.

2618 Centennial Place

Tallahassee, FL 32308

Telephone: (850) 222-0720

E-mail: nhorton@lawfla.com

Attorneys for Choctawhatchee Electric Cooperative, Inc.