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COMMISSION
CLERK



April 28, 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 the Prehearing Statement of Gulf Power Company to be filed in the above docket. Also enclosed is a Microsoft Word version prepared on a Windows XP operating system.

Sincerely,

Terry A. Davis

nbn

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- ISC _____
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- IPC _____
- LK _____

Enclosures

cc: Beggs & Lane
Jeffrey A. Stone, Esq.
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DOCUMENT NUMBER-DATE

02937 APR 29 =

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 U.S. mail this 28th day of April, 2011, on the following:

MS. LEIGH V. GRANTHAM
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Attorneys for Gulf Power Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Territorial Dispute between)
Choctawhatchee Electric Cooperative, Inc.) Docket No. 100304-EU
and Gulf Power Company) Date: April 28, 2011
)

PREHEARING STATEMENT OF GULF POWER COMPANY

Gulf Power Company, (“Gulf Power“, “Gulf”, or “the Company”), by and through its undersigned attorneys, and pursuant to Order No. PSC-10-0615-PCO-EU establishing the prehearing procedure in this docket, files this prehearing statement, saying:

A. APPEARANCES:

JEFFREY A. STONE, Esquire, RUSSELL A. BADDERS,
Esquire, and STEVEN R. GRIFFIN, Esquire, of Beggs &
Lane, P.O. Box 12950, Pensacola, FL 32591-2950
On behalf of Gulf Power Company.

B. WITNESSES: All witnesses known at this time, who may be called by Gulf Power Company, along with the subject matter and issue numbers which will be covered by the witness' testimony, are as follows:

	<u>Witness</u>	<u>Subject Matter</u>	<u>Issues</u>
(Direct)			
1.	P. B. Jacob (Gulf)	Gulf Power's service obligations to prospective customers and overview of Gulf Power's evidence in this case	9
2.	B. H. Johnson, Jr. (Gulf)	Nature of Freedom Walk development, planned load of Freedom Walk development and customer preference	3, 4, 8
3.	W. M. Fezell (Gulf)	Necessary facilities and associated costs for Gulf Power Company and Choctawhatchee Electric Cooperative, Inc. (CHELCO) to provide adequate, reliable service to the Freedom Walk development	4, 5A, 5B, 5C, 5D, 6, 7
4.	R. K. Harper (Gulf)	Non-rural nature of certain communities served by CHELCO across Northwest Florida	2B

DOCUMENT NUMBER-DATE

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5. T. S. Spangenberg, Jr (Gulf). Elements the Commission should consider in resolving this territorial dispute and information and data in support of Gulf Power's position 1, 2A, 2B, 2C, 3, 6, 7, 9

(Rebuttal)

1. W. M. Feazell (Gulf) Necessary facilities and associated costs for CHELCO to serve the Freedom Walk development 4, 5A, 5B, 5C, 5D, 6, 7
2. T. S. Spangenberg, Jr (Gulf). Nature of Freedom Walk development; issue of historical presence and facilities necessary for CHELCO to serve the Freedom Walk development 1, 2A, 2B, 2C, 3, 6, 7, 9

C. EXHIBITS:

<u>Exhibit Number</u>	<u>Witness</u>	<u>Description</u>
(BHJ-1)	Johnson	Letters from Freedom Walk developer requesting electric service from Gulf Power Company
(WMF-1)	Feazell	Gulf and CHELCO 3-phase circuit maps near Freedom Walk development
(WMF-2)	Feazell	CHELCO's engineering study dated July 7, 2010
(WMF-3)	Feazell	CHELCO's Normandy Road upgrade cost estimate
(WMF-4)	Feazell	CHELCO's Construction Work Plan 2010-2014
(WMF-5)	Feazell	CHELCO's Required Upgrades
(RKH-1)	Harper	Curriculum vitae and Bluewater Bay demographics
(TSS-1)	Spangenberg	Freedom Walk Community Development District Ordinance No. 1378; Maps and definitions of Bluewater Bay, Greater Crestview, Greater DeFuniak Springs, Greater Freeport; Number of persons served by CHELCO in non-rural areas
(TSS-2)	Spangenberg	Aerial Photo of Freedom Walk Area
(TSS-3)	Spangenberg	March 2008 Matthew Avery E-mail
(TSS-4)	Spangenberg	CHELCO's 2009 Load Forecast

D. STATEMENT OF BASIC POSITION:

Gulf Power Company's Statement of Basic Position:

It is the basic position of Gulf Power Company that the relief sought in CHELCO's petition should be denied and that the right to serve the Freedom Walk development should be awarded to Gulf Power Company. The Freedom Walk development will unquestionably be non-rural in nature and the land on which the development is to be built is presently non-rural in nature. Consequently, CHELCO lacks authority to serve the development under Chapter 425, Florida Statutes. Additionally, Gulf Power should be awarded the right to serve the development based on application of the factors contained in section 366.04(2)(e), Florida Statutes, and Rule 25-6.0441(2), Florida Administrative Code. Gulf Power is capable of extending adequate and reliable electric service to the development at a cost substantially below CHELCO's cost and the customer has unequivocally indicated its preference that Gulf Power provide electric service to the development.

E. STATEMENT OF ISSUES AND POSITIONS:

ISSUE 1: What are the boundaries of the area that is the subject of this territorial dispute known as Freedom Walk Development?

GULF: "[T]he disputed territory is a proposed new development, known as Freedom Walk...." (Petition ¶ 6). The boundaries of the development are as depicted within the bold black lines on Exhibit "A" to CHELCO's petition. "[T]he development is within the City of Crestview's corporate limits." (Petition ¶6) A metes and bounds description of the Freedom Walk Community Development District, which is coextensive with the boundaries of the development, is attached as page 7 of Schedule 1 of Exhibit TSS-1 to the direct testimony of Gulf Power witness Spangenberg. It is Gulf Power's position that the development does not include any parcels outside of the city of Crestview's corporate limits, as inclusion of any such parcels would conflict with CHELCO's petition, the boundaries of the Freedom Walk Community Development District and the developer's ownership interest in the property. (Spangenberg)

ISSUE 2A: Does the Commission have jurisdiction to enforce or apply provisions of Chapter 425, Florida Statutes, in the context of the instant territorial dispute?

GULF: Yes. In exercising its exclusive jurisdiction to resolve territorial disputes pursuant to section 366.04, Florida Statutes and Rule 25-6.0441, Florida Administrative Code, the Commission must necessarily determine, as a threshold matter, whether a utility seeking to serve the development possesses the authority to do so. 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. In fact, “[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). 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) (Spangenberg)

ISSUE 2B: If the Commission determines that it has jurisdiction to enforce or apply provisions of Chapter 425, Florida Statutes, is the Freedom Walk Development a “rural area” as defined in section 425.03(1), Florida Statutes?

GULF: No. 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. According to CHELCO’s own petition, the development will be located “within the City of Crestview’s corporate limits.” (Petition ¶ 6) The City of Crestview is an incorporated city having a population in excess of 2,500 persons. Consequently, the development will not be a “rural area” as defined by section 425.03(1), Florida Statutes. After filing its petition, CHELCO alerted the parties to its belief that the development will also encompass a small number of lots that are presently not located within the Crestview city limits. These lots, totaling approximately three percent of the entire development, are not owned by the developer of Freedom Walk, nor are they included within the boundaries of the Freedom Walk Community Development District that was formed for purposes of financing the development. However, even if the Commission was to accept CHELCO’s position that the development will include these outparcels, the outparcels would still be defined as being non-rural under the Commission’s own precedent. 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.”) (Spangenberg, Harper)

ISSUE 2C: If the Commission determines that it has jurisdiction to enforce or apply provisions of Chapter 425, Florida Statutes, and if the Freedom Walk Development is not found to be “rural” in nature, is CHELCO prohibited from serving the Freedom Walk Development by virtue of section 425.02 or 425.04, Florida Statutes?

GULF: Yes. 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 425.04(4), Florida Statutes, titled “*Powers*” further provides that a cooperative shall have 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. It is clear from the precedent cited in response to Issue 2A above that the Commission has repeatedly looked to whether a disputed area is “rural” as defined by Chapter 425 in determining whether a particular utility is “legally prohibited” from serving the area. Because Freedom Walk is, by definition not “rural”, Chapter 425 presents a complete bar to CHELCO’s serving the development. Further, even if section 425.04(4), Florida Statutes, could be interpreted to allow cooperatives to prospectively serve some persons in non-rural areas, CHELCO presently serves a number of persons in non-rural areas which number exceeds 10 percent of the number of CHELCO’s members. Thus, even under the most liberal interpretation of the statute, CHELCO is prohibited from serving the development. (Spangenberg)

ISSUE 3: What is the nature of the Freedom Walk Development 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?

GULF: The nature of the Freedom Walk development is non-rural. The proposed development lies within the City of Crestview’s corporate limits and a Community Development District has been established for the Freedom Walk development. The proposed development will include 489 single

family units, 272 multi-family and several commercial buildings. At a conservative two persons per household, the population of the development itself will be in excess of 1,500. CHELCO is a rural electric cooperative seeking to provide electric service to the development against the limitations placed on it by the purpose and powers set forth in Chapter 425, Florida Statutes. Gulf Power is an investor-owned public utility seeking to fulfill its obligation to provide electric service to the development at the request of the prospective customer. The Freedom Walk development is located within the urbanized city of Crestview and is located within one-half mile of other urban neighborhoods located within the municipal boundaries of Crestview. The development, in and of itself, is an urban development which is expected to encompass many urban characteristics including sidewalks, underground electric utilities, water, sewer, cable TV, phone, garbage services and municipal police and fire protection. (Spangenberg, Johnson)

ISSUE 4: What is the existing and planned load to be served in the Freedom Walk Development?

GULF: The existing load to be served in the Freedom Walk development is zero. The planned load to be served in the Freedom Walk development is approximately 4,700 kilowatts. (Johnson, Feazell)

ISSUE 5A: What are the necessary facilities and associated costs for CHELCO to extend adequate and reliable service to the Freedom Walk Development?

GULF: CHELCO will be required, at a minimum, to upgrade 1.3 miles of 394 AAC conductor, to upgrade several components of the Auburn substation, and to install additional capacitors and voltage regulators on its distribution feeder at an aggregate minimum estimated cost of \$377,786 to provide adequate and reliable service to the Freedom Walk development. (Feazell)

ISSUE 5B: What are the necessary facilities and associated costs for Gulf to extend adequate and reliable service to the Freedom Walk Development?

GULF: Gulf will be required to extend its existing three-phase line approximately 2,130 feet at a cost of \$89,738 to provide adequate and reliable service to the Freedom Walk development. Absent the implementation of the currently planned 46 KV to 115 KV conversion project at Gulf Power's Airport Road substation, Gulf would need to replace a bank of transformers at its Airport Road substation at a cost of \$40,000. (Feazell)

ISSUE 5C: What are the necessary facilities and associated costs for CHELCO to provide adequate and reliable service within the Freedom Walk Development?

GULF: Gulf Power is without sufficient information to respond to this issue at this time. Gulf Power expects to gain additional information relating to this issue prior to the Prehearing Conference and reserves the right to modify its Prehearing Statement at that time. (Feazell)

ISSUE 5D: What are the necessary facilities and associated costs for Gulf to provide adequate and reliable service within the Freedom Walk Development?

GULF: In order to provide adequate and reliable electric service within the development, Gulf Power will install typical underground distribution services equipment for a mixed-use development, including conductor, transformers, pedestals, services and meters at a cost of \$1,083,084. CHELCO and Gulf Power have agreed to a common set of assumptions for the exclusive purpose of determining the cost of installing the necessary facilities within the Freedom Walk development. (Feazell)

ISSUE 6: Will the provision of service to the Freedom Walk Development by CHELCO or Gulf result in uneconomic duplication of any existing facilities?

GULF: If service is provided by CHELCO: Gulf Power is without sufficient information to respond to this issue at this time. Gulf Power expects to gain additional information relating to this issue prior to the Prehearing Conference and reserves the right to modify its Prehearing Statement at that time.

If service is provided by Gulf Power: No. In order to provide service to the Freedom Walk development, Gulf Power will need to extend its existing three-phase feeder west along Old Bethel Road for approximately 2,130 feet at a cost of only \$89,738. CHELCO does own an existing three-phase feeder which, in its extremities, abuts the border of the development. However, CHELCO will, at a minimum, need to upgrade a 1.3 mile segment of its feeder and upgrade other distribution and substation facilities at an aggregate cost of no less than \$377,786 in order to adequately and reliably serve the development. Further, even if the costs of CHELCO's facility upgrades are not considered, Gulf Power's cost to provide service to the development would not constitute "uneconomic duplication" under section 366.04(5), Florida Statutes. The Florida Supreme Court has expressly held that not all duplication is "uneconomic." See, Gulf Coast Electric Cooperative, Inc. v. Clark, 674 So.2d 120, 123 (Fla. 1996). Moreover, subsequent Commission precedent has recognized that "uneconomic duplication" should be assessed based upon the costs and benefits accruing to the utility seeking to serve the area, such as

incremental cost to serve, expected revenues or other exclusive benefits. See, In Re: Petition to Resolve Territorial Dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power Company, 98 F.P.S.C. 1:647 at *649-50 (Docket No. 930885-EU, Order No. PSC-98-0174-FOF-EU, January 28, 1998) Gulf Witness Spangenberg discusses four tests for assessing uneconomic duplication and demonstrates that Gulf Power's expenditures would be deemed as not "uneconomic" under one or more of the tests. (Spangenberg Direct Testimony at pp. 26-28) (Spangenberg, Feazell)

ISSUE 7: Is each utility capable of providing adequate and reliable electric service to the Freedom Walk Development?

GULF: Each utility is physically capable of providing adequate and reliable service to the Freedom Walk development. However, CHELCO's cost of doing so will exceed Gulf Power's cost. (Feazell, Spangenberg)

ISSUE 8: What utility does the customer prefer to serve the Freedom Walk Development?

GULF: The customer, Emerald Coast Partners, LLC, has unequivocally indicated its preference that Gulf Power serve the Freedom Walk development. As the developer, Emerald Coast Partners, LLC, will be responsible for overseeing and orchestrating all aspects of the property's development on behalf of the residents who will ultimately reside within the development. Consequently, it is appropriate that Emerald Coast Partners, LLC's preference be given significant weight in the resolution of this dispute. See, In re Petition of West Florida Electric Cooperative Ass'n. to Resolve a Territorial Dispute with Gulf Power Company in Washington County, Florida, 86 F.P.S.C. 6:270 at *271 (Docket No. 850048-EU, Order No. 16246, June 17, 1986) (recognizing that it is "[a]cceptable to consider the preference of the developer, who in many cases pays for the CIAC for installed services before his lots are placed for sale....") (Johnson)

ISSUE 9: Which utility should be awarded the right to serve the Freedom Walk Development?

GULF: Gulf Power Company. (Jacob, Spangenberg)

F. STIPULATED ISSUES

GULF: Yet to be determined. Gulf is willing to stipulate that the testimony of all witnesses whom no one wishes to cross examine be inserted into the record as though read, cross examination be waived, and the witness's attendance at the hearing be excused.

G. PENDING MOTIONS:

1. On April 26, 2011 Gulf Power Company withdrew its pending Motion for Summary Final Order originally filed on February 11, 2011 (DN 01008-11). Gulf Power reserves the right to re-file a Motion for Summary Final Order upon the conclusion of discovery in this matter.

H. PENDING CONFIDENTIALITY REQUESTS

1. None at this time.

I. OTHER MATTERS:

GULF: To the best knowledge of counsel, Gulf has complied with all requirements set forth in the orders on procedure and/or the Commission rules governing this prehearing statement. If other issues are raised for determination at the hearings set for May 17-18, 2011, Gulf respectfully requests an opportunity to submit additional statements of position and, if necessary, file additional testimony.

Dated this 28th day of April, 2011.

Respectfully submitted,



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