



**Rhonda J. Alexander**  
Manager  
Regulatory, Forecasting & Pricing

One Energy Place  
Pensacola, FL 32520-0780  
850 444 6743 tel  
850 444 6026 fax  
rjalexad@southernco.com

June 6, 2018

Ms. Carlotta Stauffer, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

RE: Docket No. 20180125-EU

Dear Ms. Stauffer:

Attached for official filing in the above-referenced docket is Gulf Power Company's Motion for Summary Final Order and Motion for Protective Order.

Sincerely,

A handwritten signature in blue ink that reads "Rhonda J. Alexander".

Rhonda J. Alexander  
Regulatory, Forecasting and Pricing Manager

md  
Attachments

cc: Gulf Power Company  
Jeffrey A. Stone, Esq.  
Beggs & Lane  
Russell Badders, Esq.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of Gulf Coast Electric Cooperative, Inc. against Gulf Power Company for violation of a territorial order.

---

Docket No. 20180125-EU  
Filed: June 6, 2018

**GULF POWER COMPANY'S  
MOTION FOR SUMMARY FINAL ORDER  
AND MOTION FOR PROTECTIVE ORDER**

Gulf Power Company (“Gulf Power,” “Gulf,” or “the Company”), by and through its undersigned counsel, and pursuant to section 120.57(1)(h), Florida Statutes, Rule 28-106.305, Florida Administrative Code, and Rule 1.280(c), Florida Rules of Civil Procedure, hereby submits the Company’s Motion for Summary Final Order and Motion for Protective Order in this docket and respectfully states the following as grounds for the same:

**SUMMARY OF RELIEF REQUESTED**

The purpose of this motion is to forestall unnecessary discovery and expense, promote efficiency (both with respect to the Florida Public Service Commission and the parties), and further the stated objective of Gulf Coast Electric Cooperative, Inc. (“GCEC”) of expediting the resolution of the instant dispute. In particular, this motion pertains to the Complaint filed by GCEC pursuant to section 366.095, Florida Statutes, seeking to enforce a Territorial Order (as defined below) and a related request by GCEC to depose a Gulf Power employee.

As demonstrated in more detail below, and as illustrated through GCEC’s Complaint and Gulf Power’s Answer to the same, this matter is presently in a posture such that it can and should be decided solely on the pleadings. At its core, the resolution of this dispute boils down to a single issue involving a simple matter of contract interpretation: whether GCEC is foreclosed

from contesting Gulf Power's honoring a request for service from a customer by virtue of GCEC's failure to respond to a notice issued by Gulf Power pursuant to section 2.3(a) of a Territorial Agreement (as defined below) between the parties.

There is no dispute that Gulf Power issued notice pursuant to the Territorial Agreement. There is no dispute that GCEC received the notice and failed to respond to it. The parties disagree as to whether the notice was adequate in form and substance. However, there is no need to conduct discovery, nor would it be proper to introduce parol evidence, on that subject. The plain terms of the Territorial Agreement and Gulf Power's notice speak for themselves, and these materials are attached to the parties' pleadings in this docket. If, based on the plain terms of the Agreement and Gulf's notice, the Commission determines that Gulf's notice was sufficient, the dispute should be resolved in Gulf Power's favor. Only if the Commission determines otherwise, would it be proper to consider whether allowing further inquiry into other matters, such as the parties' respective cost calculations, may be appropriate. As a consequence, and in the interest of administrative efficiency, Gulf Power is requesting by this motion that the Commission enter a final summary order declaring that Gulf Power is entitled as a matter of law and contract to honor its customer's request for service. Gulf is further requesting that the Commission stay discovery pending its ruling on Gulf's request for a final summary order.<sup>1</sup>

---

<sup>1</sup> As an element of its exclusive jurisdiction pursuant to section 366.04(2)(d), Florida Statutes, to approve territorial agreements, the Commission retains the inherent authority to modify terms of existing territorial agreements on a prospective basis. See, Peoples Gas v. Mason, 187 So.2d 187, 189 (Fla. 1966). If the Commission believes that additional clarity around the notice provisions of the Territorial Agreement is warranted (e.g., form of notice, content of notice, mode of delivery, identification of recipients, etc.), Gulf Power believes it may be appropriate to consider inclusion of such modifications on a prospective basis. However, the fact remains that the current agreement contains no such directives, and it would be improper as a matter of law to interpret the plain language of the contract as though such directives presently exist.

## **BACKGROUND AND FACTUAL SUMMARY**

1. Gulf Power and GCEC are parties to a Procedures and Guidelines Agreement (the “Territorial Agreement”) which was approved by the Commission in Commission Order No. PSC-01-0891-PAA-EU and Order No. PSC-01-0891A-PAA-EU (collectively, the “Territorial Order”). A copy of the Territorial Agreement is attached for reference as Exhibit “A.”

2. The Territorial Agreement as approved by the Territorial Order provides a set of requirements and parameters governing Gulf Power’s and GCEC’s handling of new requests for electric service. In October 2017, Gulf Power received a request from the St. Joe Company (“St. Joe”) to provide electric service to a 112 kVA sewage lift station located on parcel ID 26597-000-000 in unincorporated Bay County that St. Joe was planning to construct and subsequently convey to the County (the “Lift Station”).

3. Under certain circumstances, the Territorial Agreement as approved by the Territorial Order requires that the utility receiving a request for electric service provide notice to the other utility, which then has a limited opportunity to respond to such notice. In the absence of a timely response, the requested utility has the right to honor the electric service request. Specifically, Section 2.3 of the Territorial Agreement provides in relevant part as follows:

In any instance where the Load and distance criteria of Section 2.2 are not met but the requested Utility believes that its Cost of Service would not be significantly more than that of the other Utility, the following procedure shall be used to determine if the requested Utility may agree to provide service:

- (a) The requested Utility is to notify the other Utility of the Customer’s request, providing all relevant information about the request.
- (b) If the other Utility believes that its facilities would be uneconomically duplicated if the request is honored, it has five (5) working days from receipt of notice to request a meeting or other method

to be conducted within ten (10) working days for the purpose of comparing each Utility's Cost of Service. Absent such a request or upon notification from the other Utility of no objection to the requested Utility's providing the service, the requested Utility may agree to provide service.

(emphasis added).

4. Because the load and distance criteria in Section 2.2 of the Territorial Agreement were not met, Gulf Power proceeded under Section 2.3 of the Territorial Agreement which, as noted above, required Gulf Power to provide notice of the customer request to GCEC. The Territorial Agreement is silent with respect to the form of notice and the notice recipient for either party.

5. In compliance with Section 2.3(a) of the Territorial Agreement, on October 20, 2017, Gulf Power's Panama City-based Engineering Supervisor provided written notice of the request for service to GCEC's Vice President of Engineering. A copy of this notice is attached for reference as Exhibit "B."

6. Despite receiving Gulf's October 20<sup>th</sup> notice, GCEC did not respond to the notice. As a consequence, and as clearly permitted under the plain terms of the Territorial Agreement, Gulf Power agreed to provide service to the Lift Station in response to the customer's request and began preparations to do so.

7. In January 2018, GCEC informed Gulf Power that it objected to Gulf Power providing electric service to the Lift Station. Gulf Power, in turn, informed GCEC that GCEC was foreclosed from objecting to Gulf Power's serving the subject location because GCEC did not respond to Gulf Power's notice within the timeframe required by Section 2.3(b) of the Territorial Agreement.

8. Gulf Power and GCEC met on two occasions in an attempt to resolve the dispute without Commission intervention. Additionally, based on its belief that pre-suit mediation was a path that GCEC seriously wanted to explore, Gulf Power offered in good faith to mutually engage a third-party mediator in an attempt to reach resolution.

9. Rather than agreeing to engage a third-party mediator, GCEC, on May 24, 2018, unilaterally and abruptly filed its Complaint in the above-referenced docket requesting that the Commission conduct an expedited hearing and enter an order:

- (1) Finding that Gulf Power has violated the Territorial Order;
- (2) Enforcing the Territorial Order and directing Gulf Power to cease and desist the extension of its electric distribution facilities to the Lift Station;
- (3) Finding that GCEC, and not Gulf Power, is the appropriate electric utility to provide service to Lift Station;
- (4) Imposing appropriate penalties on Gulf Power for ongoing violation of the Territorial Order; and,
- (5) Granting GCEC such other relief as the Commission deems appropriate.

See, Complaint at p. 12.

10. The sole statutory authority cited in GCEC's Complaint for the relief requested above is section 366.095, Florida Statutes. See, Complaint at para. 4. This statute provides in relevant part as follows: "[t]he commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter that is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$5,000, which penalty shall be fixed, imposed, and collected by the commission." Nowhere in its Complaint does GCEC cite section 120.57, Florida Statutes, or any other rule or statute governing the resolution of matters

involving disputed issues of material fact. Nor does GCEC specifically identify or list disputed issues of material fact.<sup>2</sup>

11. On May 30, 2018, Gulf Power filed its Answer to GCEC's Complaint. Gulf Power's Answer contains detailed responses and rebuttals to each allegation contained in the Complaint, as well as a recitation of other relevant and undisputed facts.

12. At page 2 of Gulf's Answer, Gulf noted as follows: "[i]n view of the undisputed facts as set forth in the Complaint and Answer, the plain terms of the Territorial Agreement, and the law, Gulf Power submits that this dispute is in a procedural posture such that judgement can be rendered expeditiously on the pleadings without the necessity of further fact-finding or discovery."

#### **APPLICABLE AUTHORITY**

13. 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. "[T]he purpose of summary judgment, or in this instance, summary final order, is to avoid the expense and delay of trial when no dispute exists concerning the material facts." Order No. PSC-01-1427-FOF-TP at p. 13.

14. Rule 28-106.206, F.A.C., provides that "[a]fter commencement of a proceeding, parties may obtain discovery through the means and in the manner provided in Rules 1.280

---

<sup>2</sup> This is significant insofar as Rule 28-106.201(2)(d) and (f), F.A.C. require that a petition include: (i) "a statement of all disputed issues of material fact. If there are none, the petition must so indicate"; and (ii) "a statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes."

through 1.400, Florida Rules of Civil Procedure. The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt.” The Commission has held that Rule 28-106.206, F.A.C., applies only to “[h]earings involving disputed issues of material fact pursuant to Section 120.57(1), F.S. ....” In re: Petition for declaratory statement regarding discovery in dockets or proceedings affecting rates or cost of service processed with the Commission’s proposed agency action procedure, Order No. PSC-15-0381-DS-PU at p. 8.

15. Rule 1.280(c), Florida Rules of Civil Procedure, provides as follows:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of rule 1.380(a)(4) apply to the award of expenses incurred in relation to the motion.

16. Florida law concerning contract interpretation provides that contract interpretation is a question of law. See, Whitley v. Royal Trails Property Owners’ Ass’n., 910 So.2d 381, 383 (Fla. 5<sup>th</sup> DCA 2005). Florida law further provides that it “[i]s axiomatic that when construing a document, courts should give effect to the plain meaning of its terms.” Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So.2d 126, 132 (Fla. 2000). See also, Columbia Bank v.



Columbia Developers, LLC et al., 127 So.3d 670, 673 (Fla. 1<sup>st</sup> DCA 2013) (“The cardinal rule of contractual construction is that when the language of the contract is clear and unambiguous, the contract must be interpreted and enforced in accordance with its plain meaning.”); Cleveland v. Crown Financial, LLC, 183 So.3d 1206, 1209 (Fla. 1<sup>st</sup> DCA 2016) (“The cardinal rule of contractual interpretation is that when the language of a contract is clear and unambiguous, the contract must be interpreted and enforced in accordance with the plain meaning.”); Maher v. Schumacher, 605 So.2d 481, 482 (Fla. 3<sup>d</sup> DCA 1992) (“When a contract is clear and unambiguous, ‘the actual language used in the contract is the best evidence of the intent of the parties, and the plain meaning of that language controls.’”); Burns v. Barfield, 732 So.2d 1202, 1205 (Fla. 4<sup>th</sup> DCA 1999) (It is fundamental that where a contract is clear and unambiguous in its terms, the court may not give those terms any meaning beyond the plain meaning of the words contained therein).

17. Florida law concerning contract interpretation is also clear that “parol” or extrinsic evidence is not admissible to vary or defeat the plain terms of an agreement. See, E.A. Turner Construction Co. v. Demetree Builders, Inc., 141 So.2d 312, 314 (Fla. 1<sup>st</sup> DCA 1962) (“Simply stated, the parol evidence rule is a rule declaring that parol evidence is inadmissible to vary the terms of a valid written instrument. J. M. Montgomery Roofing Co. v. Fred Howland, Inc., 98 So.2d 484 (Fla. 1957). It is not a rule of evidence but a rule of substantive law. Knabb v. Reconstruction Finance Corp., 144 Fla. 110, 197 So. 707 (1940). The rule rests upon a rational foundation of experience and policy and is essential to the certainty and stability of written obligations. Schwartz v. Zaconick, 68 So.2d 173 (Fla. 1953)”). See also, Nevel v. Monteleone, 514 So.2d 383, 384 (Fla. 4<sup>th</sup> DCA 1987) (parol evidence is not admissible to vary, contradict or defeat the terms of a complete and unambiguous written instrument)

## ARGUMENT AND ANALYSIS

18. The Commission clearly possesses authority pursuant to section 120.57(1)(h), Florida Statutes, to enter a final summary order in circumstances, such as the present, where a dispute can be resolved as a matter of law and contract interpretation based on the undisputed facts set forth in the parties' pleadings. As stated above and in Gulf's Answer to the Complaint, the dispositive issue in this proceeding is whether GCEC is foreclosed from objecting to Gulf Power's provision of electric service to the Lift Station by virtue of GCEC's failure to respond in any way to Gulf Power's October 20<sup>th</sup> notice issued pursuant to section 2.3(a) of the Territorial Agreement. Gulf Power submits that the plain language of the Territorial Agreement does, in fact, mandate such a result. GCEC, in turn, contends that Gulf Power's notice was insufficient because of an alleged failure to include information which GCEC now says should have been included.<sup>3</sup> While the parties are certainly at odds in their respective positions, this does not amount to a disputed issue of fact. The Territorial Agreement and Gulf Power's notice speak for themselves, and there is no need to conduct discovery or submit testimony on a simple matter of contract interpretation. Gulf Power's notice was either sufficient under the plain terms of the

---

<sup>3</sup> Section 2.3(a) of the Territorial Agreement simply provides that "the requested Utility is to notify the other Utility of the Customer's request, providing all relevant information." Gulf Power's October 20<sup>th</sup> notification clearly referenced section 2.3(a) of the parties' agreement, the existence of a request for electrical service, the type of load to be served and the approximate location of the lift station. Gulf Power's notice referenced a Parcel ID rather than a physical address because an internet search of the physical address depicts the location of the subject property as being more than four driving miles and three aerial miles away from its actual location. See, Exhibit "G" to Gulf's Answer. Gulf's notice was clearly sufficient to alert GCEC to the existence of a request under the Territorial Agreement, to enable GCEC to request additional information, if any, which it believed to be relevant, and/or to inform Gulf Power that it believed the notice to be deficient. Through inadvertence or otherwise, GCEC did not respond to Gulf Power's notice. Had it chosen to do so, and had it requested the information which GCEC's now claims is "absolutely imperative," Gulf Power would have endeavored to provide such information. Having failed to respond or object in any way, GCEC cannot now be permitted to attack the adequacy of the notice.

Territorial Agreement, or it was not, and the Commission presently has all of the information in its possession which is needed to make such a determination. Gulf Power, by this motion, and in the interest of administrative efficiency, is respectfully requesting that the Commission make such a determination.

19. In furtherance of the foregoing objective of promoting administrative efficiency and consistent with GCEC's repeated requests for expedited resolution of this dispute, Gulf Power is also requesting that the Commission exercise its authority under Rule 1.280(c)(1), Florida Rules of Civil Procedure, to impose a stay on all discovery in this proceeding pending a ruling on Gulf Power's request for a summary final order.

20. Should discovery be permitted at some future stage in this proceeding,<sup>4</sup> Gulf Power further requests that the Commission exercise its authority under Rule 1.280(c)(4), Florida Rules of Civil Procedure, to limit the scope of discovery to matters concerning the parties' respective costs of service. Gulf Power's request to limit the scope of discovery is driven by legitimate concerns that GCEC intends to embark upon a fishing expedition for irrelevant, unnecessary and inadmissible parol evidence. For example, GCEC has requested dates to take the deposition of the engineering supervisor who sent the October 20<sup>th</sup> notice to GCEC. While GCEC has not identified the subject areas it wishes to explore during this deposition, questions related to the content or sufficiency of the notice or the employee's mental state, intentions, or expectations with respect to the same would serve no legitimate purpose in this proceeding. The

---

<sup>4</sup> Given that GCEC has identified section 366.095, Florida Statutes, as the sole statutory authority for its Complaint, Gulf Power questions whether GCEC is entitled to conduct discovery at all. As noted in the body of this motion, the Commission has previously held that Rule 28-106.206, F.A.C., applies only to "[h]earings involving disputed issues of material fact pursuant to Section 120.57(1), F.S. ...." In re: Petition for declaratory statement regarding discovery in dockets or proceedings affecting rates or cost of service processed with the Commission's proposed agency action procedure, Order No. PSC-15-0381-DS-PU at p. 8.

plain terms of the Territorial Agreement and Gulf's notice speak for themselves. Consequently, extrinsic and parol evidence in the form of testimony or otherwise concerning the content of the notice would be unnecessary and improper.

#### **MEET AND CONFER**

21. Gulf Power has conferred with counsel for GCEC regarding this motion and is authorized to represent that GCEC 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.

**WHEREFORE**, Gulf Power Company respectfully requests that the Commission: (i) enter a final summary order declaring that Gulf Power Company, having provided written notice as required by section 2.3(a) of the Territorial Agreement and receiving no response or objection thereto within the contractually required timeframe, is entitled under the plain language of the Territorial Agreement to furnish electric service at the sewage Lift Station located on Parcel ID 26597-000-000 in Bay County, Florida; (ii) stay all discovery in this proceeding pending the Commission's ruling on Gulf's motion for a final summary order; and (iii) limit the scope of future discovery, should discovery be permitted, to matters concerning the parties' respective cost of service.

Respectfully submitted this 6th day of June, 2018.

/s/ Steven R. Griffin

**JEFFREY A. STONE**

**General Counsel**

Florida Bar No. 325953

jastone@southernco.com

**Gulf Power Company**

One Energy Place

Pensacola, FL 32520-0100

(850) 444-6550

**RUSSELL A. BADDERS**

Florida Bar No. 007455

rab@beggslane.com

**STEVEN R. GRIFFIN**

Florida Bar No. 0627569

srg@beggslane.com

**Beggs & Lane**

P. O. Box 12950

Pensacola FL 32591-2950

(850) 432-2451

**Attorneys for Gulf Power**

# EXHIBIT A

## PROCEDURES AND GUIDELINES FOR AVOIDING FURTHER UNECONOMIC DUPLICATION OF FACILITIES

It is expected that the utilization of these procedures and guidelines will help Gulf Coast Electric Cooperative, Inc. ("GCEC") and Gulf Power Company ("Gulf Power") avoid further uneconomic duplication of the facilities of each other, in accordance with the policy and rules of the Florida Public Service Commission ("Commission"). Accordingly, these procedures and guidelines are intended for use by the parties to assist in determining whether or not they should agree to honor the request for electric service by a Customer or should otherwise proceed with the construction of additional facilities. If, by constructing the facilities to provide service to a Customer requesting such service, there is a reasonable expectation that uneconomic duplication of facilities would occur, a Utility may deny service to the Customer and direct the Customer to request service from the Utility whose provision of such service would not be expected to result in uneconomic duplication.

### SECTION I: DEFINITIONS

- 1.1 Cost of Service. As used herein, the term "Cost of Service" shall mean the initial cost of the construction (including fully-Loaded labor, materials, engineering and supervision overheads, etc.) of the modification or addition of facilities required to provide requested service to the Customer less any initial payments by the Customer as a contribution in aid to construction.
- 1.2 Customer. As used herein, the term "Customer" shall mean any person or entity requesting electrical service and who is intending to be responsible for or who is acting on behalf of the intended responsible party for a building or other facility (e.g. electro-mechanical equipment, contiguous group of premises, etc.) requiring such electrical service.
- 1.3 Existing Facilities. As used herein, the term "Existing Facilities" shall mean the Utility's nearest facilities that are of a sufficient size, character (number of phases, primary voltage level, etc.) and accessibility so as to be capable of serving the anticipated Load of a Customer without requiring any significant modification of such facilities.
- 1.4 Load. As used herein, the term "Load" shall mean the connected Load stated in terms of kilovolt-amperes (kVA) of the building or facility for which electrical service is being requested.
- 1.5 Point of Delivery. As used herein, the term "Point of Delivery" shall mean that geographical location where the Utility's anticipated facilities that would be used to deliver electrical power to a Customer begin to constitute what is commonly referred to as the service drop or service lateral, i.e. it is the point at which the Utility's primary or secondary facilities would terminate and the service drop or service lateral would commence. For a facility with multiple meter points, "Point of Delivery" shall mean that



geographical location at which the primary circuit to serve the facility begins to branch out into sub-circuits to reach the various meter points.

- 1.6 Utility. As used herein, the term "Utility" shall mean either GCEC or Gulf Power, each of which is an electric Utility under the provisions of Chapter 366 of the Florida Statutes having electrical facilities within the region of a Customer's location so as to be considered by that Customer as a prospective provider of electric energy delivery services.

## **SECTION II: AGREEING TO PROVIDE REQUESTED SERVICE**

- 2.1 Whether or not a Utility's provision of electric service to a Customer would result in further uneconomic duplication of the other Utility's facilities is primarily dependent upon whether or not there is a significant difference in the Cost of Service for each of the utilities. The likelihood of there being a significant difference in the Cost of Service is primarily a function of the size of the Load and the difference in distances between the Point of Delivery and the Existing Facilities of each Utility. Consequently, upon receiving a bona-fide request for service from a Customer, a Utility may agree to provide the requested service if the conditions of either Section 2.2 or Section 2.3 below are met. Otherwise, the Utility should direct the Customer to request service from the other Utility.
- 2.2 Various Load and distance criteria under which a Utility may agree to provide service are as follows:
- (a) For any size Load where the requested Utility's Existing Facilities are within 1,000 feet of the Point of Delivery or are no more than 1,000 feet further from the Point of Delivery than the Existing Facilities of the other Utility.
  - (b) For a Load greater than 100 kVA where:
    - (i) the construction required is predominantly the addition of new pole line and the requested Utility's Existing Facilities are no more than 1,500 feet further from the Point of Delivery than the Existing Facilities of the other Utility, or
    - (ii) the construction required is predominantly the upgrade of existing pole line (e.g. phase additions, reconductoring, etc.) and the requested Utility's Existing Facilities are within 3,000 feet of the Point of Delivery.
  - (c) For a Load greater than 500 kVA where:
    - (i) the construction required is predominantly the addition of new pole line and the requested Utility's Existing Facilities are no more than 2,000 feet further from the Point of Delivery than the Existing Facilities of the other Utility, or



- (ii) the construction required is predominantly the upgrade of existing pole line (e.g. phase additions, reconductoring, etc.) and the requested Utility's Existing Facilities are within 4,000 feet of the Point of Delivery.
- (d) For a Load greater than 1000 kVA where:
- (i) the construction required is predominantly the addition of new pole line and the requested Utility's Existing Facilities are no more than 2,500 feet further from the Point of Delivery than the Existing Facilities of the other Utility, or
  - (ii) the construction required is predominantly the upgrade of existing pole line (e.g. phase additions, reconductoring, etc.) and the requested Utility's Existing Facilities are within 5,000 feet of the Point of Delivery.

2.3 In any instance where the Load and distance criteria of Section 2.2 are not met but the requested Utility believes that its Cost of Service would not be significantly more than that of the other Utility, the following procedure shall be used to determine if the requested Utility may agree to provide service:

- (a) The requested Utility is to notify the other Utility of the Customer's request, providing all relevant information about the request.
- (b) If the other Utility believes that its facilities would be uneconomically duplicated if the request is honored, it has five (5) working days from receipt of notice to request a meeting or other method to be conducted within ten (10) working days for the purpose of comparing each Utility's Cost of Service. Absent such a request or upon notification from the other Utility of no objection to the requested Utility's providing the service, the requested Utility may agree to provide service.
- (c) At the meeting scheduled pursuant to 2.3(b) or in some other mutually acceptable method, each Utility is to present to the other Utility its estimated Cost of Service, including all supporting details (type and amount of equipment, labor rates, overheads, etc.). For Loads greater than 1,000 kVA, information as to the percentage of substation and feeder capacity that will be utilized and the amount and nature of the cost allocations of such utilization included in the Cost of Service are to be provided.
- (d) Upon agreement as to each Utility's Cost of Service, the requested Utility may agree to provide service to the Customer if either of the following conditions are met:
  - (i) The requested Utility's Cost of Service does not exceed the other Utility's Cost of Service by more than \$15,000.
  - (ii) The requested Utility's Cost of Service does not exceed the other Utility's Cost of Service by more than twenty-five percent (25%).

(e) Notwithstanding the other provisions of this Section 2.3, no Utility shall agree to provide service to a Customer under the provisions of this Section 2.3 if the Load is less than or equal to 1000 kVA, the requested Utility's Existing Facilities are further than 10,000 feet from the Point of Delivery, and the other Utility's Existing Facilities are located in a roadway or other right-of-way abutting the Customer's premises.

2.4 The requested Utility bears the primary responsibility in determining whether or not the provisions of Section 2.2 or Section 2.3 above have been met or if it otherwise believes that service can be provided to a Customer without uneconomic duplication of the other Utility's facilities. Should the other Utility dispute such determinations and believe that uneconomic duplication of its facilities will occur or has occurred, every effort should be made by the two utilities to resolve the dispute, up to and including mediation before the Commission Staff and, if necessary, expedited hearing before the Commission. During a period of unresolved dispute, the requested Utility may provide temporary service to the Customer or may elect to request the other Utility to provide temporary service to the Customer and either means of temporary service shall be without prejudice to either Utility's position in the dispute as to which Utility will provide permanent service.

### **SECTION III: CUSTOMER RELIABILITY AND POWER QUALITY**

While one Utility may have existing distribution facilities nearer to a Customer's Point of Delivery than the other Utility, reliability of service and power quality to the individual Customers are important. In the application of the provisions of Section II above, engineering criteria must be considered in the decision as to whether the requested Utility should agree to serve the Customer. Substation distance from the Point of Delivery and Load capacity of impacted substations in each case should be considered. Wire size and its capacity and capabilities should also be considered. All other system engineering design and criteria should be reviewed in each Utility's facilities.

### **SECTION IV: CUSTOMERS PRESENTLY SERVED BY ANOTHER UTILITY:**

A Utility shall not construct nor maintain electric distribution lines for the provision of electric service to any Customer then currently being provided electric service by the other Utility. If, however, a Customer that has historically required single-phase service disconnects and the new Customer locating there requires three-phase service, Section II above may apply.

### **SECTION V: DISTRIBUTION SYSTEM EXTENSIONS & UPGRADES**

A Utility will, from time to time, have distribution system extensions or upgrades necessary and prudent from an engineering standpoint for reliability and Customer service. While recognizing this, these extensions or upgrades should be performed only when necessary

DOCKET NO. 930885-EU  
ORDER NO. PSC-01-0891A-PAA-EU  
PAGE 6

for these reasons and not be put in place to position the Utility for future anticipated development. These system upgrades are defined to be capital projects justified and approved for construction following a Utility's normal administrative budgetary channels and procedures, and documentation for such will be provided to the other Utility upon written request. Connecting points on a Utility's distribution system must be for reliability and coordination purposes only. The connecting distribution line may not serve Customers within 1,000 feet of the Existing Facilities of the other Utility that were in place at the time of that system upgrade.

## EXHIBIT B



**From:** Rogers, Joshua R.  
**Sent:** Friday, October 20, 2017 1:22 PM  
**To:** [pgleaton@gcec.com](mailto:pgleaton@gcec.com)  
**Subject:** Electrical Service Request

Mr. Gleaton,

Pursuant to section 2.3(a) of the agreement between Gulf Power and GCEC, I am notifying GCEC of a customer's request for electrical service from Gulf Power for a new lift station on parcel 26597-000-000. Construction would not result in any duplication of facilities.

Thanks,

Joshua Rogers, PE  
Gulf Power Company • Engineering Supervisor II  
Office: 850.872.3309 • Cell: 850.554.6583  
MyGulfPower.com  
*Stay connected with Gulf Power*



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: **Complaint against Gulf Power Company** )  
**for expedited enforcement of territorial order,** )  
**by Gulf Coast Electric Cooperative, Inc.** )

Docket No.: 20180125-EU

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing was furnished by electronic mail this 6th day of June, 2018 to the following:

D. Bruce May, Jr.  
Tiffany A. Roddenberry  
Holland & Knight LLP  
315 S. Calhoun Street, Suite 600  
Tallahassee, FL 32301  
[bruce.may@hklaw.com](mailto:bruce.may@hklaw.com)  
[tiffany.roddenberry@hklaw.com](mailto:tiffany.roddenberry@hklaw.com)

J. Patrick Floyd  
408 Long Avenue  
Post Office Drawer 950  
Port St. Joe, FL 32456-0950  
[j.patrickfloyd@jpatrickfloyd.com](mailto:j.patrickfloyd@jpatrickfloyd.com)

Mary Anne Helton  
Deputy General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
[mhelton@psc.state.fl.us](mailto:mhelton@psc.state.fl.us)



**JEFFREY A. STONE**  
General Counsel  
Florida Bar No. 325953  
[jastone@southernco.com](mailto:jastone@southernco.com)  
**Gulf Power Company**  
One Energy Place  
Pensacola, FL 32520-0100  
(850) 444-6550

**RUSSELL A. BADDERS**  
Florida Bar No. 007455  
[rab@beggslane.com](mailto:rab@beggslane.com)  
**STEVEN R. GRIFFIN**  
Florida Bar No. 0627569  
[srg@beggslane.com](mailto:srg@beggslane.com)  
**Beggs & Lane**  
P. O. Box 12950  
Pensacola FL 32591-2950  
(850) 432-2451  
**Attorneys for Gulf Power**