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June 8, 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 Objection and Motion for Protective Order concerning GCEC's First Request for Production of Documents and Notice of Taking Deposition.

Sincerely,

A handwritten signature in blue ink that reads "C. Shane Bryant for".

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 8, 2018

**GULF POWER COMPANY’S
OBJECTION AND MOTION FOR PROTECTIVE
ORDER CONCERNING GCEC’S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND NOTICE OF TAKING DEPOSITION**

Gulf Power Company (“Gulf Power,” “Gulf,” or “the Company”), by and through its undersigned counsel, and pursuant to Rule 28-106.305, Florida Administrative Code, and Rules 1.280(c) and 1.350 Florida Rules of Civil Procedure, hereby submits the Company’s Objection and Motion for Protective Order concerning Gulf Coast Electric Cooperative, Inc.’s (“GCEC”) First Request for Production of Documents and Notice of Deposition dated June 6, 2018, and respectfully states the following as grounds for the same:

PROCEDURAL HISTORY

1. On May 24, 2018, GCEC initiated these proceedings through the filing of a complaint pursuant to section 366.095, Florida Statutes, (“Complaint”) seeking expedited enforcement of the terms of a Procedures and Guidelines Agreement between Gulf Power and GCEC (the “Territorial Agreement”) which was approved by the Florida Public Service Commission (“Commission”) in Commission Order No. PSC-01-0891-PAA-EU and Order No. PSC-01-0891A-PAA-EU (collectively, the “Territorial Order”).

2. On May 30, 2018, Gulf Power filed its answer to GCEC’s Complaint (“Answer”). 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. 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.”

3. At 4:37 p.m. Eastern Time (ET) on June 6, 2018, Gulf Power filed a Motion for Summary Final Order and Motion for Protective Order. Therein, Gulf explained that “[t]he 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.” Motion at p. 1. Gulf further noted that:

[a]s 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.

Id. at p. 1-2.

4. Consistent with Rule 28-106.303, Florida Administrative Code, counsel for Gulf Power reached out to counsel for GCEC in advance of filing the motion. Specifically, on June 6, 2018, at 1:46 p.m. ET, counsel for Gulf Power emailed all attorneys of record for GCEC explaining in detail the nature of the filing and requesting GCEC's position with respect to the same. As of 4:00 p.m. ET, counsel for GCEC had not replied to Gulf's email inquiry. Therefore, at 4:02 p.m. ET and 4:05 p.m. ET respectively, counsel for Gulf placed calls to counsel at Holland & Knight. Voicemails were left with both individuals. Neither call was returned. Instead, at 4:17 p.m. ET, counsel for Gulf Power received an email from GCEC counsel attaching GCEC's First Request for Production of Documents ("First RFP") and a Notice of Taking Deposition for the Gulf Power employee who sent the October 20, 2017, notice issued by Gulf Power pursuant to section 2.3(a) of a Territorial Agreement. Copies of GCEC's First RFP and Notice of Taking Deposition are attached as Composite Exhibit "A." The foregoing email was immediately followed by a second email from GCEC counsel indicating that they had consulted with their client regarding Gulf's motion and that GCEC could not agree to the motion.

5. Gulf Power feels compelled to bring the foregoing exchange to the Commission's attention as yet another example of the tactics and gamesmanship being employed by GCEC in this proceeding.¹ Rather than timely responding to Gulf Power's meet and confer inquiry --which was intentionally and in good faith placed well in advance of close of business-- GCEC capitalized on the opportunity to engage in a "race to the courthouse." Simply put, these tactics are counterproductive and inconsistent with the spirit, if not the letter, of the Territorial

¹ Previous examples are described in Gulf Power's Answer at p. 1-2.

Agreement which contemplates that the parties will work together in good faith to resolve their disputes and, short of such a resolution, that such disputes will be resolved in an expedited manner before the Commission.

RELIEF REQUESTED

6. Pursuant to Rule 28-106.305, F.A.C. “[t]he presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case, including bifurcating the proceeding.”

7. Moreover, Rule 1.280(c), Florida Rules of Civil Procedure, provides in relevant part as follows:

[u]pon 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....

8. In its Motion for Final Summary Order and Motion for Protective Order, Gulf Power set forth a detailed basis for an expedited resolution of this dispute on the pleadings and requested that the Commission stay all discovery, as the Commission is plainly entitled to do under Rule 1.280(c), pending resolution of the motion. Gulf Power further requested that the Commission limit the scope of future discovery, should discovery be permitted, to matters concerning the parties’ respective cost of service.

9. For the same reasons articulated in its Motion for Final Summary Order and Motion for Protective Order, Gulf Power hereby objects to GCEC’s First RFP and Notice of

Taking Deposition. In its motion, Gulf explained that its:

[r]equest 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.... [Q]uestions 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 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.

Motion at p. 10-11.

10. As it turns out, Gulf's concerns were well founded. With the possible exception of question number six involving Gulf's March 12, 2018, cost estimate, each request included within GCEC's First RFP seeks precisely the type of irrelevant, unnecessary and inadmissible parol evidence that Gulf sought to foreclose via its Motion for Final Summary Order and Motion for Protective Order. None of this information, nor any of the information that could be gleaned from the deposition of a Gulf Power employee, is pertinent or necessary to resolution of the dispositive issue in this proceeding which is whether Gulf Power's October 20, 2017, notice of a customer request for service was adequate under the plain terms of the Territorial Agreement and whether GCEC is foreclosed from contesting Gulf Power's honoring the service request by virtue of GCEC's failure to respond to such notice. Resolution of the foregoing issue is a simple matter of contract interpretation which can, and should, be decided as a matter of law in an expedited fashion based on the undisputed facts presently before the Commission. In light of the foregoing, and in view of the undue burden and expense to be incurred by Gulf (and its customers) as a result of such discovery, issuance of a protective order pursuant Rule 28-106.305, F.A.C. and Rule 1.280(c) is a necessary and appropriate remedy.

MEET AND CONFER

11. Counsel for Gulf Power has conferred with counsel for GCEC regarding this motion and is authorized to represent that GCEC objects to the same.

WHEREFORE, Gulf Power Company formally objects to GCEC’s First RFP and Notice of Taking Deposition and requests that the Commission: (i) stay all discovery in this proceeding pending the Commission’s ruling on Gulf’s motion for a final summary order; and (ii) limit the scope of future discovery, should discovery be permitted, to matters concerning the parties’ respective cost of service.

Respectfully submitted this 8th day of June, 2018.

/s/ Steven R. Griffin

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Attorneys for Gulf Power

COMPOSITE EXHIBIT "A"

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No: 20180125-EU

Served: June 6, 2018

**GULF COAST ELECTRIC COOPERATIVE, INC.'S
FIRST REQUEST FOR PRODUCTION TO GULF POWER COMPANY**

Gulf Coast Electric Cooperative, Inc. ("GCEC"), pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.350, Florida Rules of Civil Procedure, hereby propounds its First Request for Production of Documents on Gulf Power Company ("Gulf Power"), to produce for inspection and copying the documents designated below within the time prescribed by the pertinent rule.

DEFINITIONS AND INSTRUCTIONS

1. "Document" includes all materials so defined in Rule 1.350(a) of the Florida Rules of Civil Procedure, as currently or hereafter construed by the appropriate courts, including, without limitation, the following: any written or graphic matter, and any electronic, photographic, digital or other means of recording, preserving or transmitting data, visual images, sounds, thought or expression, and all tangible things from which information can be processed or transcribed, including, but not limited to, all reports, memoranda, letters, minutes, correspondence, electronic mail or "email," notes, notebooks, manuals, books, brochures, lists, publications, computer printouts, printed forms, drawings, sketches, graphs, maps, charts, photographs, films, tapes, computer discs or drives, photo records, receipts, and other writings or data compilations of any kind from which information can be obtained, including drafts, typings, printouts and copies or reproductions which bear notation or are in any way different in content from the original, whether hand written, printed, or otherwise recorded, that is in the possession, custody or control of Gulf

Power Company. If the documents to be provided are maintained in a computer-readable format, provide a printed copy of the document or other means by which they can be accessed and reviewed by GCEC's counsel (i.e., if provided on a disc, the documents should be in a readily readable format).

2. When asked to produce an email, the email should be produced in "native format" with its metadata intact. Metadata includes but is not limited to message attributes such as file owner, creation date, routing details, the sender, all recipients including those that were blind-copied, and the subject line. When producing e-mail communications, the entire "chain" of the responsive email shall be produced, including all reply and forward messages, except for portions of any responsive messages that are protected by the attorney-client or any other applicable privilege.

3. The terms "relate to," "relates to," and "relating to" mean having any connection, association, or concern with or any relevance, relation, pertinence or applicability to, or any implication for or bearing upon the subject matter of the inquiry.

4. The term "person" means any natural person, firm, partnership, corporation, incorporated association, organization, joint venture, cooperative, governmental body, or other form of legal entity.

5. The terms "you," "your," "yours," and "Gulf Power" mean Gulf Power Company, including all subdivisions, divisions, agents, supervisors, employees, and all other persons acting or purporting to act on behalf of Gulf Power.

6. "Complaint" refers to the Complaint of Gulf Coast Electric Cooperative, Inc. for Expedited Enforcement of Territorial Order, filed in Docket No. 20180125-EU on May 23, 2018.

7. “Gulf Power’s Answer” or “Answer” refers to the Answer of Gulf Power Company to Complaint of Gulf Coast Electric Cooperative, Inc. for Expedited Enforcement of Territorial Order, filed in Docket No. 20180125-EU on May 30, 2018.

8. “GCEC” or “Gulf Coast Electric Cooperative” refers to Gulf Coast Electric Cooperative, Inc.

9. “Cost of Service” is defined to have the same meaning as the term is given in the Territorial Agreement and the Complaint.

10. “Territorial Agreement” refers to the Territorial Agreement between GCEC and Gulf Power attached as Composite Exhibit “A” to the Complaint and is defined to have the same meaning as the term is given in the Complaint.

11. “All” includes the word “any” and “any” includes the word “all.” “Each” includes the word “every” and “every” includes the word “each.” “And,” as well as “or,” shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the request for production documents that might otherwise be construed to be outside its scope.

12. “Communications” mean any and all communications by any method and using any device including, but not limited to, electronic mail or email (and attachments), voice messages, file transfer sites, Facebook or other social media messages, and text messages.

13. The term “representative” means any and all agents, employees, servants, officers, directors, attorneys, or other persons acting or purporting to act on behalf of Gulf Power.

14. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of the request for production documents that might otherwise be construed to be outside its scope.

15. A plural noun shall be construed as a singular noun, and a singular noun shall be construed as a plural noun, whenever necessary to bring within the scope of the request for production documents that might otherwise be construed to be outside its scope.

16. If production is withheld pursuant to a claim of privilege, please provide the following identifying information:

- (a) date;
- (b) author;
- (c) addressee;
- (d) brief description of the subject matter and form of the document and attachments, including number of pages;
- (e) statement of the basis upon which the privilege is claimed; and
- (f) the numbers of each specific request to which the document or thing would be responsive.

17. If there is any document or other tangible item described by this request which is no longer in your possession, custody, or control, or is no longer in existence or accessible to you, please indicate:

- (a) the date and nature of the disposition of such document or other tangible item, including, but not limited to, whether such: (i) is missing or lost, (ii) has been destroyed, or (iii) has been transferred to another person;
- (b) the circumstances surrounding such disposition, including any authorization therefore; and
- (c) where applicable, the person currently in possession, custody, or control of such document or item.

DOCUMENTS TO BE PRODUCED

1. The email from Joshua R. Rogers to plgeaton@gcec.com dated October 20, 2017, attached as Exhibit F to Gulf Power's Answer (the "October 20, 2017 Email"), in native format with its metadata intact. Metadata includes but is not limited to message attributes such as file owner, creation date, routing details, the sender, all recipients including those that were blind-copied, and the subject line. This request also requires the production of the entire "chain" of the email, including all reply and forward messages.

2. All drafts of the October 20, 2017 Email referenced in Request for Production No. 1. Such drafts should be produced in native format with metadata intact.

3. All communications or documents relied on by Joshua R. Rogers in stating in his October 20, 2017 Email that "Construction would not result in any duplication of facilities."

4. All communications or documents relating to the October 20, 2017 Email not otherwise responsive to Request for Production Nos. 1, 2, or 3.

5. All communications or documents relating to the decision to "provide[] written notice of the request for service to GCEC's Vice President of Engineering" referenced in Paragraph 4 of Gulf Power's Answer.

6. All communications or documents relating to Gulf Power's cost estimate dated March 12, 2018 attached as Exhibit "C" to GCEC's Complaint.

7. All communications or documents dated on or before October 20, 2017, relating to Gulf Power's belief that Cost of Service to serve the lift station at 1900 Highway 388 West in unincorporated Bay County Florida, would not be significantly more than GCEC's Cost of Service to serve that same lift station.

8. All communications or documents dated after January 7, 2018, but prior to May 23, 2018, relating to Gulf Power's decision to actually start construction to extend its facilities to serve the lift station at 1900 Highway 388 West in unincorporated Bay County, Florida.

9. All documents related to communications with representatives of or agents for The St. Joe Company relating to electric service to the lift station at 1900 Highway 388 West in unincorporated Bay County, Florida.

10. All documents related to communications with representatives of or agents for Bay County, Florida relating to electric service to the lift station at 1900 Highway 388 West in unincorporated Bay County, Florida.

Respectfully submitted on June 6, 2018.

HOLLAND & KNIGHT LLP

/s/D. Bruce May, Jr.

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(850) 224-7000 (Telephone)

Counsel for Gulf Coast Electric Cooperative, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by E-Mail this 6th day of June, 2018 to: Jeffrey A. Stone (jastone@southernco.com), Gulf Power Company, General Counsel, and Sandy Sims (SFSims@southernco.com), Eastern District General Manager, Gulf Power Company, One Energy Place, Pensacola, Florida 32520-0780, and Russell A. Badders (rab@beggslane.com) and Steve Griffin (srg@beggslane.com), Beggs & Lane, P.O. Box 12950, Pensacola, Florida 32591-2950, and Mary Anne Helton (mhelton@psc.state.fl.us), Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399.

/s/D. Bruce May, Jr.
Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No: 20180125-EU

Served: June 6, 2018

NOTICE OF TAKING DEPOSITION

PLEASE TAKE NOTICE that Gulf Coast Electric Cooperative, Inc. will take the deposition of **Joshua R. Rogers** upon oral examination before an officer duly authorized by law to record and transcribe depositions in the State of Florida on **June 28, 2018, at 1:30 p.m. CST at Pensacola Court Reporting, 220 West Garden Street, Suite 801, in Pensacola, Florida.** The deposition will continue from day to day until completed. The deposition is being taken for purposes of discovery, for use at hearing in this matter, and all such other purposes as are permitted under the Florida Rules of Civil Procedure.

Dated June 6, 2018.

HOLLAND & KNIGHT LLP

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Counsel for Gulf Coast Electric Cooperative, Inc.

CERTIFICATE OF SERVICE

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/s/D. Bruce May, Jr.
Attorney

cc: Pensacola Court Reporting

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 and U.S. mail this 8th day of June, 2018 to the following:

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/s/ Steven R. Griffin

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