

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

Filed: June 15, 2018

**GULF COAST ELECTRIC COOPERATIVE, INC.'S
RESPONSE IN OPPOSITION TO GULF POWER COMPANY'S
OBJECTION AND MOTION FOR PROTECTIVE ORDER**

Gulf Coast Electric Cooperative, Inc. ("GCEC"), pursuant to Rule 28-106.204, Florida Administrative Code, responds to the Objection and Motion for Protective Order Concerning GCEC's First Request for Production of Documents and Notice of Taking Deposition filed by Gulf Power Company ("Gulf Power") on June 8, 2018 (the "New Motion").

Gulf Power's New Motion is simply a retread of its Motion for Final Summary Order and Motion for Protective Order filed on June 6, 2018 (the "First Motion"), to which GCEC responded on June 13, 2018 ("June 13 Response in Opposition"). In its New Motion, Gulf Power does no better than its first to justify the entry of a protective order, as Gulf Power again fails to affirmatively establish the good cause necessary to entitle it to such an order. *See Bush v. Schiavo*, 866 So. 2d 136, 138 (Fla. 2d DCA 2004); *Maris Distrib. Co. v. Anheuser-Busch, Inc.*, 710 So. 2d 1022, 1025 (Fla. 1st DCA 1998). Despite the tenor of the New Motion, the burden is on Gulf Power to show why it is entitled to a protective order, not on GCEC to show why it is entitled to discovery. *Medine v. Yoder Auto Sales, Inc.*, 743 So. 2d 621, 623 (Fla. 2d DCA 1999) (finding reversible error where the trial court placed burden on party seeking discovery rather than party seeking to prevent discovery).

Gulf Power does not bother to actually state objections to any particular discovery request; instead, Gulf Power repeats its *ipse dixit* reasoning that because it does not believe any

further discovery is necessary then discovery should not be had. As elaborated upon further in GCEC's June 13 Response in Opposition, Gulf Power's attempt to shut down discovery is unprecedented as the Commission has authorized broad-ranging discovery by parties in similar complaint proceedings. *See, e.g., In re: Complaint of Allied Universal Corp. & Chem. Formulators, Inc.* Order No. PSC-00-0392-PCO-EI (establishing broad discovery procedure); *In Re: Emergency complaint by Peoples Gas Sys., Inc. against Tampa Elec. Co. for providing unauthorized incentives for electric water heating appliances*, Docket No. 941165-PU, Order No. PSC-95-1418-S-PU, at 10 (Fla. PSC Nov. 21, 1995) (in stipulation, noting that parties had engaged in "considerable discovery"); *In re: Complaint of Builders Ass'n of S. Fla. v. Fla. Power & Light Co.*, Docket No. 760545-EU, Order No. 8130, at 1 (Fla. PSC Jan. 9, 1978).

Gulf Power has failed to otherwise show that proceeding with the requested discovery will cause annoyance, embarrassment, oppression, or undue burden or expense as required by Florida Rule of Civil Procedure 1.280(c); all that Gulf Power suggests is that additional discovery is irrelevant in its view of the case. But a simple review of the discovery requests attached to the New Motion shows this is no fishing expedition. GCEC's discovery requests primarily concern what Gulf Power contends is the central issue—whether a single, short October 2017 email sent by Gulf Power employee Joshua Rogers to a GCEC employee provided the notice of a customer service request required by the Commission's territorial order and thus caused GCEC to waive its right to contest Gulf Power's service of a lift station. The discovery requests also seek basic information regarding Gulf Power's cost to serve the lift station, an issue that even Gulf Power appears to concede is relevant. New Motion ¶ 10.

Having failed to justify its unprecedented attempt to bar all discovery, Gulf Power repeatedly resorts to rhetoric claiming GCEC and its counsel have engaged in

“gamesmanship”—a not-so-subtle attempt to deflect the Commission’s attention from what actually is going on in this docket. GCEC has previously refrained from responding to that rhetoric in hopes that the parties would move forward with an expeditious hearing to resolve this matter. Unfortunately, that has not occurred, and GCEC sees no alternative but to set the record straight. For Gulf Power to suggest that GCEC has engaged in “gamesmanship” is misleading at best. The game is being played by Gulf Power, not GCEC.

That game began on October 20, 2017, when Gulf Power employee Mr. Rogers sent a short, opaque email to a GCEC employee, Mr. Gleaton, purportedly to “notify” GCEC of a request for service to a lift station as required by the parties’ territorial agreement. As explained in GCEC’s June 13 Response in Opposition, Mr. Gleaton was not authorized to receive notices and communications under the territorial agreement, and in fact knew nothing about that agreement. Making matters more murky, Mr. Rogers’ email failed to provide the location of the lift station and made no mention that Gulf Power intended to claim that GCEC would waive its right to serve the lift station if Mr. Gleaton failed to respond within five days.

But Gulf Power’s game doesn’t stop there. When, in January 2018, it came to light that GCEC and Gulf Power sought to serve the same lift station, the parties then entered discussions and met on two separate occasions to try to resolve the matter. In the midst of those discussions, and without notice to GCEC, Gulf Power began construction to extend its facilities to the disputed lift station. When settlement discussions reached impasse, the parties attempted to mediate the matter before Commission staff as contemplated in the territorial order but were advised staff did not have mediation capability at the present time. Although not required to do so under the territorial order, the parties discussed the possibility of retaining a third-party mediator. During those discussions Gulf Power’s counsel advised that finding a date and a

corporate representative from Gulf Power to participate in any mediation session in the near term would be a “real challenge” since Gulf Power’s management was consumed with work on the potential sale of the utility. It was only after it became apparent that mediation would not occur any time soon if at all and that Gulf Power was intent on continuing construction to extend new facilities to the lift station that GCEC moved forward with filing its Complaint.

After the Complaint was filed, counsel for GCEC delivered a courtesy letter to Gulf Power’s counsel on May 25, 2018, advising that GCEC wished to conduct a short deposition of Mr. Joshua Rogers, and proposing that the deposition take place in Mr. Rogers’ hometown on either June 26, 27, or 28, 2018 (Exhibit “A”).

After Gulf Power did not respond to the May 25 letter, GCEC’s counsel sent Gulf Power’s counsel an email on May 31, again inquiring of Mr. Rogers’ availability for deposition on June 26, 27 or 28, 2018, and stating “since this is on an expedited track we’d like to get the deposition notice out and on our respective calendars soon.” (Exhibit “B.”) Gulf Power’s counsel responded on June 1 stating that he had a “meeting with Gulf Power this afternoon to discuss this matter.” (Exhibit “C.”) Counsel for GCEC heard nothing more from Gulf Power about the deposition until June 6, 2018, when Gulf Power’s counsel advised that Gulf Power intended to file a motion to suspend all discovery in the case. (Exhibit “D.”) It was only then that GCEC set a short deposition of Mr. Rogers in his hometown on June 28, 2018, and propounded ten requests for production of documents.

This is hardly “gamesmanship” on part of the GCEC, and the discovery sought is not abusive. GCEC and its counsel in good faith are using accepted discovery practices under the rules to prepare for hearing in order to protect GCEC’s rights to serve a customer under the territorial order.

For all these reasons, as well as those in GCEC's June 13 Response in Opposition, GCEC asks the Commission to deny Gulf Power's New Motion, and after hearing, to award GCEC its expenses, including attorney's fees, incurred in responding to this New Motion and the First Motion.

Respectfully submitted on June 15, 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 15th day of June, 2018 to: Jeffrey A. Stone (jastone@southernco.com), Gulf Power Company, General Counsel, Sandy Sims (SFSims@southernco.com), Eastern District General Manager, Gulf Power Company, and Rhonda J. Alexander (rjalexad@southernco.com), 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, Mary Anne Helton (mhelton@psc.state.fl.us), Deputy General Counsel, and Jennifer Crawford (jcrawfor@psc.state.fl.us) and Kurt Schrader (kschrade@psc.state.fl.us), Staff Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399.

/s/D. Bruce May, Jr. _____
Attorney

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May 25, 2018

Via E-Mail (srg@beggslane.com)

Steven R. Griffin, Esq.
Beggs & Lane
501 Commendencia Street
Pensacola, Florida 32502

Re: In re: Complaint against Gulf Power Company for expedited
enforcement of territorial order, by Gulf Coast Electric Cooperative, Inc.
Docket No. 20180125-EU

Dear Steve:

In order to move this matter along, my client would like to depose Joshua R. Rogers. The deposition will not require a significant amount of time. We would propose that it be conducted sometime in the block of 2:30-4:30 EST (1:30-3:30 CST) on June 26, 27, or 28, 2018, in Pensacola, Florida.

Please let me know at your earliest convenience what date works best. Thank you for your consideration.

Sincerely,

HOLLAND & KNIGHT LLP



D. Bruce May, Jr.

DBM:kjg

cc: John Bartley
Patrick Floyd, Esq.
Tiffany A. Roddenberry

From: [May, D Bruce \(TAL - X35607\)](#)
To: [Steven Richard Griffin \(srg@beggslane.com\)](#)
Cc: [mhelton@psc.state.fl.us](#); [John Bartley](#); [John Patrick Floyd \(j.patrickfloyd@jpatrickfloyd.com\)](#); [Roddenberry, Tiffany A \(TAL - X35658\)](#)
Subject: Docket 20180125 -- Complaint against Gulf Power Company for expedited enforcement of territorial order, by Gulf Coast Electric Cooperative, Inc.
Date: Thursday, May 31, 2018 4:02:37 PM
Attachments: [20180525160204.pdf](#)

Good afternoon Steve. I haven't heard back so I'm following up on my letter I emailed you on May 25, 2018 (attached). As I stated, GCEC would like to depose Joshua R. Rogers. We don't anticipate his deposition will require a significant amount of time, and propose that it be conducted in Pensacola sometime in the block of 2:30-4:30 EST (1:30-3:30 CST) on June 26, 27, or 28, 2018. Please let me know what date will work for you all. Since this is on an expedited track we'd like to get the deposition notice out and on our respective calendars soon. Thank you for your consideration.

Bruce

D. Bruce May, Jr. | [Holland & Knight](#)

Partner

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From: [Steven R. Griffin](#)
To: [May, D Bruce \(TAL - X35607\)](#)
Subject: Re: Docket 20180125 -- Complaint against Gulf Power Company for expedited enforcement of territorial order, by Gulf Coast Electric Cooperative, Inc.
Date: Friday, June 01, 2018 10:57:07 AM

Bruce:

I have a meeting with Gulf Power this afternoon to discuss this matter.

Best regards,

Steve

Steven R. Griffin
Beggs & Lane RLLP
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(850) 432-2451

Sent from my iPhone

On May 31, 2018, at 3:00 PM, "bruce.may@hklaw.com" <bruce.may@hklaw.com> wrote:

Good afternoon Steve. I haven't heard back so I'm following up on my letter I emailed you on May 25, 2018 (attached). As I stated, GCEC would like to depose Joshua R. Rogers. We don't anticipate his deposition will require a significant amount of time, and propose that it be conducted in Pensacola sometime in the block of 2:30-4:30 EST (1:30-3:30 CST) on June 26, 27, or 28, 2018. Please let me know what date will work for you all. Since this is on an expedited track we'd like to get the deposition notice out and on our respective calendars soon. Thank you for your consideration.

Bruce

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From: [Steven R. Griffin](#)
To: [May, D Bruce \(TAL - X35607\)](#)
Cc: [Roddenberry, Tiffany A \(TAL - X35658\)](#); j.patrickfloyd@jpatrickfloyd.com
Subject: GCEC v. Gulf Power: Company Docket No. 20180125-EU
Date: Wednesday, June 06, 2018 1:48:23 PM
Attachments: [image003.png](#)

Good afternoon Bruce:

Gulf Power is in the process of finalizing a Motion for Summary Final Order/Motion to Stay Discovery in the above-referenced matter and intends to file it with the Commission this afternoon. The Motion requests that the Commission: (i) resolve the dispute in Gulf Power's favor based on the undisputed facts as reflected Complaint and Answer; (ii) impose a stay of discovery pending resolution of the motion; and (iii) if the motion is denied, and the Commission determines that discovery is appropriate, narrow the scope of discovery to matters concerning the parties' respective costs of service. As called for by Rule 28-106.204, F.A.C., I am inquiring as to you/your client's position with respect to the motion. If you could kindly provide the same, it would be most appreciated. I am happy to discuss further, if need be.

Best regards,

Steve



STEVEN R. GRIFFIN
ATTORNEY AT LAW

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