

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: July 13, 2018

**GULF COAST ELECTRIC COOPERATIVE, INC.'S
MOTION FOR STATUS CONFERENCE**

Gulf Coast Electric Cooperative, Inc. (“GCEC”), pursuant to Rule 28-106.204, Florida Administrative Code, respectfully requests that the prehearing officer conduct a status conference “to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case,” as provided by Rule 28-106.211, Florida Administrative Code. In support, GCEC states:

1. On May 23, 2018, GCEC filed its Complaint for Expedited Enforcement of Territorial Order, due to Gulf Power Company’s (“Gulf Power”) breach of a territorial agreement entered into for the purpose of avoiding uneconomic duplication of facilities. Upon information and belief, despite the pendency of this action, Gulf Power has already begun construction to extend its facilities to the Lift Station that is clearly closer to GCEC’s existing facilities, and is at the heart of this dispute.

2. The parties’ efforts to resolve the dispute have not been successful. Section 2.4 of the territorial agreement, which has been approved by and merged into the Territorial Order, provides that unresolved disputes are entitled to “expedited hearing before the Commission.”

3. Given the need for expedited consideration, on May 25, 2018, GCEC delivered a letter to Gulf Power in an attempt to schedule a deposition of a Gulf Power employee—Mr. Joshua Rogers—who GCEC believes to have relevant information regarding Gulf Power’s efforts and motivations to extend its facilities to serve the disputed Lift Station in violation of the

territorial agreement.

4. After waiting 12 days for Gulf Power to confirm the date for the deposition, on June 6, 2018, the undersigned learned that Gulf Power had no intention of agreeing to the deposition of Mr. Rogers. Thus, to avoid further delay, on June 6, 2018, GCEC served notice of a short deposition of Mr. Rogers in his hometown for June 28, 2018, and propounded 10 requests for production of documents.

5. After GCEC served the referenced discovery on Gulf Power, Gulf Power filed its motion for summary final order and motion for protective order later on June 6, 2018. Gulf Power filed an additional motion for protective order on June 8, 2018, directed to the pending discovery. GCEC filed responses to both motions on June 13 and June 15, 2018. Both of Gulf Power's motions for protective order remain pending.

6. The simple filing by Gulf Power of a motion for protective order did not automatically stay discovery. *Stables v. Rivers*, 559 So. 2d 440, 440–41 (Fla. 1st DCA 1990) (“Petitioners argue that the filing of the motion for protective order acted as an automatic stay of the scheduled depositions. We find no support for this contention in the Florida Rules of Civil Procedure.”); see also *Momenah v. Ammache*, 616 So. 2d 121, 124 (Fla. 2d DCA 1993) (“The filing of a motion for protective order does not act as an automatic stay in a civil action.”) However, following an informal conference among the parties conducted by Commission staff on June 21, 2018, counsel for the Commission requested that GCEC agree to briefly postpone the deposition and briefly extend the deadline to respond to the currently pending discovery, which GCEC did as a courtesy to the Commission. But GCEC has not agreed to any stay of all discovery, nor does relevant case law support such stay.

7. Thus, GCEC asks that the prehearing officer rule on the pending motions for

protective order, set a status conference and ultimately enter an order establishing the following proposed expedited procedures, including the establishment of procedures related to discovery. Proceeding in this manner allows GCEC, Gulf Power, and the Commission to proceed with a determination on all issues in a timely manner before the evidence becomes stale. GCEC respectfully submits that the following schedule and procedures represent the most efficient use of the Commission's and the parties' resources.

Proposed Expedited Case Schedule

(1)	Parties' direct testimony and exhibits	August 15, 2018
(2)	Staff's testimony and exhibits, if any	September 6, 2018
(3)	Parties' rebuttal testimony and exhibits	September 14, 2018
(4)	Prehearing statements	October 1, 2018
(5)	Prehearing conference	October 15, 2018
(6)	Discovery deadline	October 17, 2018
(7)	Hearing	November 1, 2018
(8)	Briefs	November 20, 2018

Proposed Expedited Discovery Procedures

In order to expedite and control the cost of discovery, GCEC proposes the following:

- (1) Discovery should be completed by October 17, 2018.
- (2) Discovery requests should be served by e-mail, hand delivery, or overnight mail. Sets of interrogatories, requests for admissions, requests for production of documents, or other forms of discovery should be numbered sequentially in order to facilitate their identification.
- (3) Within each set, discovery requests should be numbered sequentially, and any discovery requests in subsequent sets should continue the sequential numbering system.
- (4) Discovery responses should be served within 20 calendar days (inclusive of mailing) of receipt of the discovery request.
- (5) Each page of every document produced pursuant to requests for production of documents should be identified individually through the use of a Bates Stamp or other equivalent method of sequential identification.
- (6) Copies of discovery requests and responses should be served on all parties and staff. In addition, copies of all responses to requests for production of documents should be provided to the Commission staff at its Tallahassee office unless otherwise agreed.
- (7) Interrogatories, including all subparts, should be limited to 30.

- (8) Requests for production of documents, including all subparts, should be limited to 50.
- (9) Requests for admissions, including all subparts, should be limited to 30.
- (10) When a discovery request is served and the respondent intends to seek clarification of any portion of the discovery request, the respondent should request such clarification within 5 days of service of the discovery request. Further, any specific objections to a discovery request should be made within 10 days of service of the discovery request.

GCEC's Proposed Issues for Resolution

GCEC proposes that the issues to be resolved in this proceeding include, but are not necessarily limited to, the following:

- Whether GCEC knowingly and willingly waived its right to serve the Lift Station under the Territorial Order;
- Whether Gulf Power willfully violated the Territorial Order;
- Whether Gulf Power had received a “bona fide” request for service on or before October 20, 2017;
- Whether Peyton Gleaton, Jr. was authorized by GCEC to receive notice under the Territorial Order;
- Whether Gulf Power failed to give notice to GCEC’s counsel of record in Docket No. 930885-EU;
- Whether Gulf Power failed to give notice to GCEC’s General Manager;
- Whether Gulf Power’s email of October 20, 2017, can effectuate notice under the Territorial Order;
- On what basis did Gulf Power believe its Cost of Service as defined by the Territorial Order is not significantly more than GCEC’s Cost of Service, in order to even invoke the notice procedure in Section 2.3;
- Whether Gulf Power’s Cost of Service as defined by the Territorial Order is not significantly more than GCEC’s Cost of Service; and
- Whether Gulf Power’s email of October 20, 2017, provided GCEC with “all relevant information” about the request for service as required by the Territorial Order.

CERTIFICATE OF CONFERRAL

Pursuant to Rule 28-106.204(3), Florida Administrative Code, GCEC counsel has

conferred with Gulf Power and was advised that Gulf Power objects to this motion.

WHEREFORE, GCEC respectfully moves for the Prehearing Officer to enter an Order setting a status conference to effectuate discovery and establish the procedures outlined above.

Respectfully submitted on July 13, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by E-Mail this 13th day of July, 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