

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 26, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Schrader, Crawford, King) *AK KS*
Division of Economics (Merryday, Draper) *EDD*
Division of Engineering (Ballinger, Graves) *EG TB*

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

AGENDA: 04/02/19 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

This docket pertains to a territorial dispute between Gulf Coast Electric Cooperative (GCEC) and Gulf Power Company (Gulf Power) over new service to a sewage treatment lift facility (Lift Facility) that was constructed by St. Joe Company. The ultimate customer of the Lift Facility is Bay County, and the Lift Facility was transferred to Bay County after the completion and commissioning of the facility.

To resolve a long-standing dispute between GCEC and Gulf Power regarding electric service in certain areas of Washington and Bay Counties, GCEC and Gulf Power entered into a Territorial Agreement (Territorial Agreement). The Territorial Agreement set out procedures and guidelines by which the parties were to address subtransmission, distribution, and new requests for service. The Commission approved this Territorial Agreement by Order Nos. PSC-01-0891-PAA-EU,

issued April 9, 2001, and PSC-01-0891A-PAA-EU, issued March 26, 2002 (collectively referred to herein as the Territorial Order).¹

The Territorial Agreement does not use a traditional “lines-on-the-ground” territorial boundary. Rather, the Territorial Agreement establishes procedures for the parties to follow upon receiving a request for service from a customer.

On May 23, 2018, GCEC filed a complaint against Gulf Power in the instant docket alleging, in essence, that Gulf Power did not comply with the notice procedures of the Territorial Agreement and seeking expedited enforcement of the Territorial Agreement in GCEC’s favor to service the new Lift Facility. After filing an answer to GCEC’s complaint, Gulf Power filed a Motion for Summary Final Order on June 6, 2018. At the December 11, 2018 Agenda Conference, the Commission voted to grant Gulf Power’s Motion for Summary Final Order and denied GCEC’s Motion for Summary Final Order as moot. Prior to the issuance of an order on that vote, staff filed a recommendation on February 21, 2019, stating that staff believed it had incorrectly advised the Commission on Gulf Power’s Motion for Summary Final Order and recommended that the Commission vacate its December 11, 2018 votes to grant Gulf Power’s Motion for Summary Final Order and deny GCEC’s Motion for Summary Final Order, and reconsider the parties’ motions. Staff’s recommendation, ultimately, was to deny both Gulf Power’s and GCEC’s Motions for Summary Final Order. At the request of the parties, and in order to allow for further discussion of settlement of this matter, the Commission deferred consideration of the recommendation until the April 2, 2019 Agenda Conference.

On March 20, 2019, GCEC and Gulf Power filed a Joint Motion to Approve Settlement Agreement and Amendment to Territorial Agreement (Joint Motion) to resolve all matters in this docket and clarify current language in the notice procedure for future application.²

The parties’ proposed settlement resolves the question regarding which electric utility should service the Lift Facility and also proposes to revise the Territorial Agreement. The parties state that the proposed Settlement Agreement and revisions to the Territorial Agreement are null and void unless the Commission approves them in their entirety by “non-appealable” final order.³

The proposed Settlement Agreement provides that:

1. Gulf Power relinquish service to the Lift Facility to GCEC.
2. Gulf Power remove 3,000 linear feet of lines beginning at the Lift Facility and extending west to a demarcation point bisecting the right-of-way on a specified highway.

¹ See Order No. PSC-01-0891-PAA-EU, issued April 9, 2001, in Docket No. 930885-EU, *In re: Petition to resolve territorial dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power Company*; and Order No. PSC-01-0891A-PAA-EU, issued March 26, 2002, in Docket No. 930885-EU, *In Re Petition to resolve territorial dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power Company*.

² On March 22, 2019, the parties filed a revised page 2 of the Settlement Agreement, correcting an inadvertent typographical error.

³ The Commission may approve the settlement in its entirety; however, the nature of the decision is a Proposed Agency Action that will become a final order 21 days after the PAA order is issued if there is no request for a hearing. The Commission does not have the authority to enter a “non-appealable” final order.

3. GCEC be permitted to extend easterly its lines and facilities 11,000 linear feet beginning at its existing facilities.
4. GCEC agree not to assess any additional charges to the Lift Facility as a result of GCEC taking over service to that facility.
5. The parties agree to not further extend lines from a demarcation point along the right-of-way of a specified highway.

The Settlement Agreement also calls for GCEC to withdraw its complaint in this docket if the Commission grants the Joint Motion in its entirety.

The parties state that the proposed revisions to the Territorial Agreement are intended to forestall future disputes regarding interpretation of that Agreement and avoid further uneconomic duplication of facilities. In summary, the proposed revisions:

1. Provide that the requested utility must deliver notice by certified mail to the other utility for certain service requests from a customer the intent to fulfill such a request. The proposed revisions also provide the persons to whom such a notice must be sent.
2. Define the term “all relevant information” to clarify what information must be provided in the notice to the other utility about a service request from a customer.
3. Revise the deadline for the other utility to reply to the notice from the requested utility from five to ten days.
4. Require the utility responding to the notice to do so in writing.

At this time, it is appropriate for the Commission to discuss and vote on whether to approve the Settlement Agreement and First Amendment to Territorial Agreement as requested in the Joint Motion by Gulf Power and GCEC (attached as Appendix A, incorporating the revised page 2).

Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440, Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.⁴

After review of the Joint Motion and the proposed revisions to the Territorial Agreement, it appears that the proposed amendments to the Territorial Agreement are in the public interest and would enable Gulf Power and GCEC to serve their customers in an efficient manner. It appears that the proposed amendments would avoid uneconomic duplication of facilities and would not cause a decrease in the reliability of electric service to the customers. The joint movants state that they have worked together to resolve the issues in this docket and voluntarily have entered into the Settlement Agreement. The joint movants further state that their Settlement Agreement fairly and reasonably balances the various positions of the parties regarding the issues in this docket, and serves the best interests of Gulf Power’s and GCEC’s customers and the public interest in general. As such, it appears that the proposed revisions to the Territorial Agreement

⁴ *Utils. Comm’n of the City of New Smyrna Beach v. Fla. Pub. Serv. Comm’n*, 469 So. 2d 731, 732–33 (Fla. 1985).

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between Gulf Power and GCEC and the Settlement Agreement can be approved in the public interest.

If the Commission grants the Joint Motion and the Commission order becomes final, the Settlement Agreement provides that GCEC must withdraw its complaint in this matter. If the Commission grants the Joint Motion, the Commission should vacate its votes from the December 11, 2018, Agenda Conference, because the Motions for Summary Final Order would be moot with the approval of the Settlement Agreement.

The Commission has jurisdiction pursuant to Section 366.04, Florida Statutes (F.S.).



FILED 3/20/2019
DOCUMENT NO. 03245-2019
FPSC - COMMISSION CLERK

March 20, 2019

Mr. Adam Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Docket No. 20180125-EU

Dear Mr. Teitzman:

Attached for official filing in the above-referenced docket is the Joint Motion of Gulf Coast Electric Cooperative, Inc. and Gulf Power Company to Approve Settlement Agreement and Amendment to Territorial Agreement.

Sincerely,

A handwritten signature in blue ink that reads 'C. Shane Boyett'.

C. Shane Boyett
Regulatory Issues Manager

md
Attachments

cc: Gulf Power Company
Russell Badders, Esq., VP & Associate General Counsel
Beggs & Lane

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

Filed: March 20, 2019

**JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT AND AMENDMENT
TO TERRITORIAL AGREEMENT**

Gulf Coast Electric Cooperative, Inc. ("GCEC") and Gulf Power Company ("Gulf Power") (collectively the "Joint Movants") jointly move the Florida Public Service Commission ("Commission") for an order approving the attached Settlement Agreement and First Amendment to the Territorial Agreement, which will resolve the pending territorial dispute in this docket and assist in avoiding further disputes and uneconomic duplication of electric service. In support of this motion, Joint Movants state:

1. Joint Movants are parties to an agreement entitled "Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities", which this Commission approved as a territorial agreement in Order Nos. PSC-2001-0891-PAA-EU and PSC-2001-0891A-PAA-EU (the "Territorial Agreement").
2. Joint Movants are currently in a territorial dispute over service to a lift station in Bay County Florida, which involves Joint Movants' differing interpretations of the Territorial Agreement.
3. GCEC and Gulf Power have subsequently engaged in discussion in an attempt to resolve this dispute, and have executed a Settlement Agreement and First Amendment to the Territorial Agreement, which are attached hereto as Composite Exhibit 1 and are expressly contingent upon Commission approval.

4. Each of the Joint Movants agrees that it has entered into the Settlement Agreement voluntarily, that it fairly and reasonably balances the various positions of the parties on the issues in these proceedings, and that it serves the best interests of their customers and the public interest in general.

5. Commission approval of the Settlement Agreement and First Amendment to the Territorial Agreement would resolve the pending territorial dispute, forestall future disputes over the interpretation of the Territorial Agreement, and avoid further uneconomic duplication of facilities.

WHEREFORE, Joint Movants respectfully move the Commission for expedited approval of the attached Settlement Agreement and First Amendment to the Territorial Agreement in their entirety.

For GCEC

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*Attorneys for Gulf Coast Electric
Cooperative, Inc.*

For Gulf Power

/s/ Steven R. Griffin _____
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(850) 432-2451

Attorneys for Gulf Power Company

COMPOSITE EXHIBIT 1

Settlement Agreement
BY AND BETWEEN
Gulf Power Company
and
Gulf Coast Electric Cooperative, Inc.

SETTLEMENT AGREEMENT

Gulf Power Company (“Gulf Power”) and Gulf Coast Electric Cooperative (“GCEC”) hereby stipulate and agree as follows:

WITNESSETH

WHEREAS, by Order No. PSC-98-0174-FOF-EU, dated January 28, 1998, the Florida Public Service Commission (“PSC”) directed Gulf Power and GCEC to “establish detailed procedures and guidelines addressing subtransmission, distribution, and requests for new service which would be enforceable with the respective company”, and which would “take into account [PSC] precedent on resolving territorial disputes”.

WHEREAS, pursuant to Order No. PSC-98-0174-FOF-EU, the Parties entered into an agreement entitled “Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities”, which was approved by the PSC as a territorial agreement in Orders Nos.: PSC-2001-0891-PAA-EU and PSC-2001-0891A-PAA-EU (the “Territorial Agreement”).

WHEREAS, the Parties are currently involved in a territorial dispute before the PSC in Docket No. 20180125-EU over service to a lift station in Bay County, Florida located at Lat. 30° 19’ 45.16” N, Long. 85° 42’ 53.86” W (the “Customer”).

WHEREAS, during the pendency of the dispute Gulf Power extended its lines and facilities approximately 11,000 feet from the west to provide temporary service to the Customer (the “Gulf Power Lines”).

WHEREAS, the Parties have negotiated in good faith to identify a mutually agreeable resolution to the pending territorial dispute which will avoid unnecessary duplication of electric service.

NOW, THEREFORE, the Parties, in consideration of the mutual benefits contained herein, agree as follows:

1. The above recitals are true and correct and incorporated herein.
2. This Agreement shall begin as of the date it is fully executed by all Parties and the conditions precedent set forth in paragraph 6 are satisfied (“Effective Date”).
3. Gulf Power and GCEC shall enter into an agreement attached as Exhibit A, to amend their existing Territorial Agreement (“2019 Amendment”).
4. To avoid uneconomic duplication of facilities, Gulf Power shall relinquish service to the Customer and remove 3000 linear feet of the Gulf Power Lines beginning at the Customer’s lift station located at GPS coordinate: Lat. 30° 19’ 45.16”N, Long. 85° 42’ 53.86” W and extending west along Highway 388 W to a point that bisects the right-of-way on that highway (the “Demarcation Point”). GCEC shall be permitted to extend its lines and facilities 11,000 linear feet beginning at its existing facilities on Highway 388 W and extending west (the “GCEC Lines”),

and provide permanent service to the Customer. GCEC agrees that the Customer shall not be required to pay additional charges at its lift station as a result of permanent service being provided by GCEC.

5. To further avoid uneconomic duplication of facilities: (i) Gulf Power agrees not to extend the Gulf Power Lines along Highway 388 W east of the Demarcation Point; and (ii) GCEC agrees not to extend the GCEC Lines along Highway 388 W west of the Demarcation Point. It is the express intention of the Parties that this Section 5 shall operate solely to prevent either Party from further extending the Gulf Power Lines and GCEC Lines along the right-of-way of Highway 388 W.

6. The Parties agree that this Settlement Agreement along with the attached First Amendment to the Territorial Agreement will be submitted to the PSC for approval as quickly as possible. If the Settlement Agreement, and the attached Amendment to the Territorial Agreement, are not approved by the PSC in their entirety through a final and non-appealable PSC order, then the settlement and amendment shall be null and void and the Parties will resume their territorial dispute currently pending in Docket No. 20180125-EU.

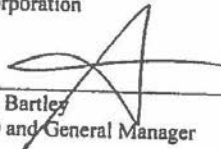
7. GCEC shall withdraw its Complaint for Enforcement of Territorial Order previously filed in Docket No. 20180125-EU within two (2) business days of the date that a PSC order approving the Settlement Agreement and Amendment to the Territorial Agreement in their entirety becomes final and non-appealable.

[Remainder of space intentionally left blank. Signature page follows.]

DATED this 19 day of March 2019.

GULF COUNTY ELECTRIC
COOPERATIVE, INC., a Florida not-for-
profit corporation

By: _____


John Bartley
CEO and General Manager

DATED this 19 day of March 2019.

GULF POWER COMPANY,
a Florida corporation

By: 

Michael G. Spoor
Vice President, Power Delivery

EXHIBIT A

Amendment to the Territorial Agreement

**FIRST AMENDMENT TO THE TERRITORIAL AGREEMENT
BETWEEN
GULF POWER COMPANY
AND
GULF COAST ELECTRIC COOPERATIVE**

This Amendment to a territorial agreement, dated as of March 17, 2019, (“2019 Amendment”) is entered into by Gulf Power Company (“Gulf Power”) and Gulf Coast Electric Cooperative (“GCEC”), each of which is a corporation organized and existing under the laws of the State of Florida and an electric utility as defined in section 366.02(2), Florida Statutes, and which corporations are herein collectively referred to as the “Parties”.

WITNESSETH

WHEREAS, the Parties have an existing agreement entitled “Procedures and Guidelines for Avoiding Further Uneconomic Duplication of Facilities” relating to their respective retail service areas, which was approved by the Florida Public Service Commission (the “PSC”) as a territorial agreement in Orders Nos. PSC-01-0891-PAA-EU and PSC-01-0891A-PAA (the “Territorial Agreement”);

WHEREAS, the Parties now desire to make minor changes to the Territorial Agreement to clarify the process by which the Parties are to respond to requests for service to avoid confusion and achieve further operational efficiencies in their respective retail service areas, while continuing to eliminate circumstances giving rise to uneconomic duplication of facilities;

WHEREAS, the Commission has previously recognized that uneconomic duplication of facilities results in needless and wasteful expenditures and may create hazardous conditions, both being detrimental to the public interest; and

WHEREAS, the Commission is empowered by section 366.04(2)(d), Florida Statutes, to approve territorial agreements and resolve territorial disputes between rural electric cooperatives

and other electric utilities under its jurisdiction, and has held such territorial agreements are advisable in proper circumstances, and, indeed, in the public interest.

NOW THEREFORE, in consideration of the following mutual covenants and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, subject to and upon the terms and conditions herein set forth, do hereby agree to the following:

1. Subsections (a) and (b) of Section 2.3 of the Territorial Agreement are amended to read:

- (a) The requested Utility is to notify the other Utility of the Customer's request, providing all relevant information about the request. For purposes of this Section 2.3(a), "all relevant information" means: (1) the Utility's best estimate of the Global Positioning System (GPS) coordinates of the Point of Delivery; (2) the Utility's best estimate of the size of the requesting Customer's Load; and (3) the GPS coordinates of the requested Utility's Existing Facilities.
- (b) If the other Utility believes that its facilities would be uneconomically duplicated if the request is honored, it has ~~five (5)~~ ten (10) working days from receipt of notice to deliver a written request for 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.

2. Section 2.4 is amended to read:

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.

3. Section VI of the Territorial Agreement is created to read:

SECTION VI: NOTICES

All notices and other written communications contemplated by this Agreement, including but not limited to the notifications required under Section 2.3, shall be deemed to have been given if sent by certified mail or by prepaid private courier with confirmed receipt. Notices and other communications to or between the Parties shall be addressed to:

To GCEC:

John Bartley
CEO/General Manager
722 West Highway 22
P.O. Box 220
Wewahitchka, FL 32465

J. Patrick Floyd, Esq.
408 Long Avenue
P.O. Box 950 (32457-0950)
Port St. Joe, FL 32456

To Gulf Power:

Michael G. Spoor
Vice President, Power Delivery
One Energy Place
Pensacola, FL 32520-0100

Sandra Sims
Regional External Affairs Manager
1230 East 15th Street
Panama City, FL 32405-0015

Either Party may change its designated representative or address to which such notices or communications shall be sent by giving written notice thereof to the other Party in the manner herein provided.

4. Section VII of the Territorial Agreement is created to read:

SECTION VII: SETTLEMENT AGREEMENT

The Parties agree that the terms of their Settlement Agreement attached hereto as Appendix "A", including but not limited to Section 4 thereof, shall be incorporated in, and become part of, the Territorial Agreement.

5. Condition Precedent. The approval of this 2019 Amendment by the PSC without modification, unless otherwise agreed to by the Parties, shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This 2019 Amendment shall have no effect whatsoever until such approval has been granted by

the PSC, and the date that the PSC's order, if any, granting such approval becomes final and non-appealable shall be deemed to be the effective date of the 2019 Amendment.

6. Existing Territorial Agreement. All other parts of the Territorial Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, this 2019 Amendment has been caused to be executed by Gulf Power in its name by its Vice President, Power Delivery, and by GCEC in its name by its Chief Executive Officer, on the day and year first written above.

GULF POWER COMPANY

By:  _____

Date: 3/19/19

Name: Michael G. Spoor

Title: Vice President, Power Delivery

GULF COAST ELECTRIC COOPERATIVE

By:  _____

Date: 3/19/19

Name: John Bartley

Title: Chief Executive Officer

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 20th day of March, 2019 to the following:

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