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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to resolve)
territorial dispute with Gulf)
Coast Electric Cooperative, Inc.)
by Gulf Power Company.)

Docket No. [REDACTED]

MOTION TO STRIKE REBUTTAL TESTIMONY
OF RUSSELL L. KLEPPER

GULF COAST ELECTRIC COOPERATIVE, INC. (GCEC), by and through its undersigned attorneys, respectfully requests that the Commission enter an order striking the rebuttal testimony of Russell L. Klepper filed by GULF POWER COMPANY (GP) on October 10, 1994, and in support thereof says:

1) On September 29, 1994, the Commission considered, among other things, a motion of GP to limit the issues or to allow GP to file additional rebuttal testimony. Order PSC-94-1191-PCO-EU, issued September 29, 1994, a copy of which is attached hereto (the Order) specifically addressed GP's motion.

ACK _____ 2) The Order specifically granted GP the "opportunity to
AFA _____ file rebuttal testimony on the area of dispute only by October 10,
APP _____ 1994". On the subject of the nature and purpose of cooperatives in
CAF _____ general, the Order specifically states that "No additional rebuttal
CNS _____ testimony on this subject is necessary."

2) On October 10, 1994, GP filed rebuttal testimony of
LID *Dudley*
JIM *Brown* 4 Richard L. Klepper, a document 51 pages long with four exhibits,
GFC _____ which was received by GCEC on October 12, 1994.

DOCUMENT NUMBER-DATE
10589 OCT 17 1994
FPSC-RECORDS/REPORTING

4) Mr. Klepper's testimony goes far beyond the scope of rebuttal allowed by the Order and is a blatant attempt to ignore the Order's limitation of rebuttal to the issue of what should be regarded as "the disputed area".

5) Mr. Klepper's testimony is entirely aimed at attacking the Rural Electrification Administration and its program, touting the benefits of free market competition, opining on why GP should be favored because the cooperatives have subsidies unavailable to GP, and generally urging "public policy" pronouncements that this Commission should adopt and follow.

6) Mr. Klepper claims to be not only an expert in the field of utility finance, but also in regulatory matters, rate design, accounting, and public policy, particularly on the legal interpretation of the Energy Policy Act of 1992.

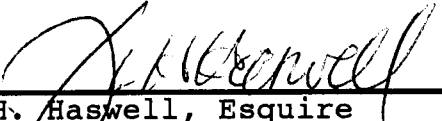
7) Mr. Klepper explains that the purpose of his testimony is to address "public policy issues" (page 3, lines 20-24) and the differing ownership structure of GP and GCEC (page 4, lines 2-4). Mr. Klepper claims that his testimony as a whole is intended to show that it would be unwise for the Commission to expand the area of dispute beyond the site of the correctional facility (page 4, lines 5-9). Yet, Mr. Klepper never focuses any testimony on the area of dispute, or what should be regarded as the area of dispute.

8) If the Commission allows the testimony of Mr. Klepper to stand as filed, GCEC is now prejudiced by the inability to respond to the personal views of this self-styled public policy expert unless the Commission were to grant GCEC additional time to file a

response to Klepper's testimony.

WHEREFORE, Gulf Coast Electric Cooperative, Inc. respectfully requests an order striking the rebuttal testimony of Russell L. Klepper since it violates Commission Order #PSC-94-1191-PCO-EU.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to:

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by regular U. S. mail and fax transmittal this 17 day of October, 1994.



of Counsel

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORDER NO. PSC-94-1191-PCO-EU
DOCKET NO. 930885-EU
PAGE 2

In Re: Petition to resolve) DOCKET NO. 930885-EU
territorial dispute with GULF) ORDER NO. PSC-94-1191-PCO-EU
COAST ELECTRIC COOPERATIVE, INC.) ISSUED: September 29, 1994
by GULF POWER COMPANY.)

made in negotiations concerning a compromise,
is inadmissible to prove liability or absence
of liability for the claim or its value.

ORDER ON PROCEDURAL MOTIONS

This Order will dispose of the following motions filed by the parties to this Docket:

- 1) Gulf Power Company's Motion to Strike Portions of the Testimony of H.W. Norris and Archie W. Gordon;
- 2) Gulf Power Company's Motion to Limit Scope of Issues, or, in the Alternative, to Extend the Time for Filing Rebuttal Testimony;
- 3) Gulf Coast Electric Cooperative's Motion for Continuance.

Gulf's interpretation of the applicability of this statute appears somewhat broad with respect to this administrative territorial dispute proceeding. Nevertheless, Gulf's reasoning is persuasive. Evidence of territorial agreement negotiations is not relevant to determine any of the factual issues in this case, and it is detrimental to the negotiation and settlement process.

The area of dispute is one of the contested issues in this case. Gulf Power contends that the area in dispute is only the new Washington County Correctional facility. Gulf Coast contends that the area in dispute is all areas in Washington and Bay Counties where the utilities' electric facilities are contiguous and the potential for uneconomic duplication exists. Gulf Coast's testimony uses facts about the territorial agreement negotiations to show that the area in dispute extends beyond the correctional facility. There is not a sufficient nexus between the negotiations and the area of dispute in this case. More importantly, the negotiation process would suffer if evidence of the negotiations were used against Gulf to resolve a contested issue in the case. For these reasons Gulf's Motion to Strike Portions of the Testimony of H.W. Norris and Archie W. Gordon is granted. Lines 9-15, page 22 of Mr. Norris' testimony and lines 24-25 of page 12 through lines 1-13 of page 13 of Mr. Gordon's testimony shall be stricken from the record of this proceeding.

Motion No. 1

In its Motion to Strike Portions of the Testimony of H.W. Norris and Archie W. Gordon, Gulf Power Company (Gulf) states that the testimony in question describes settlement negotiations between the parties to establish a territorial agreement and resolve their territorial dispute. Gulf contends that Section 90.408, Florida Statutes, prohibits the admission of evidence of such negotiations, because the evidence is irrelevant to prove the validity of a party's claim or defense, and because admission of it would have a chilling effect on parties' settlement efforts. Gulf Coast responds that Section 90.408 does not apply to the testimony in question because that testimony does not relate to the liability of either party, and it does not suggest that there were any offers or concessions made to settle any liability issue in the case.

Motion No. 2

In its Motion to Limit Scope of Issues, or, in the Alternative, to Extend the Time for Filing Rebuttal Testimony, Gulf Power contends that the area in dispute in this case is only the Washington County Correctional Facility. Gulf asks that the Commission only consider that specific area. Gulf proposes that the Commission should not address other areas of Washington and Bay Counties as Gulf Coast suggests. Also, Gulf requests that the Commission refrain from considering issues relating to the nature and purpose of Rural Electric Cooperatives. If the Commission does consider those issues, Gulf requests that it be permitted to file additional rebuttal testimony on those issues.

Section 90.48, Florida Statutes, Compromise and Offers to Compromise, states:

Evidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements

The extent of the area of territorial dispute between these utilities has been identified as an issue in this case. It is a reasonable question for the Commission to resolve in any

DOCUMENT NUMBER-DATE
09975 SEP 29 1994
FPSC-RECORDS/REPORTING

ORDER NO. PSC-94-1191-PCO-EU
DOCKET NO. 930885-EU
PAGE 4

ORDER NO. PSC-94-1191-PCO-EU
DOCKET NO. 930885-EU
PAGE 3

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.


territorial dispute proceeding. Section 366.04, Florida Statutes, gives the Commission considerable authority and responsibility to ensure the adequacy and reliability of Florida's electric grid, and specifically to avoid uneconomic duplication of facilities. The issue should be addressed in this case. Gulf will have the opportunity to file rebuttal testimony on the area of dispute only by October 10, 1994.

Regarding Gulf's concern over testimony relating to the nature an purpose of Rural Electric Cooperatives, there do not appear to be any specific issues raised in this case on that subject. Gulf Coast contends that its testimony on the subject is offered as background information only. Since there are no specific issues raised regarding this subject, there is no reason to limit their scope. Gulf will have the opportunity to object to the relevance of Gulf Coast's testimony at the hearing. No additional rebuttal testimony on this subject is necessary.

Motion No. 3

Gulf Coast's Motion for Continuance of the hearing until February, 1995 is denied. The hearing has been rescheduled for two days in October, which will be adequate time to address all the evidence in the case.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 29th day of September, 1994.



SUSAN F. CLARK, Commissioner
and Prehearing Officer

(S E A L)

MCB