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August 7, 1996

Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oaks Boulevard
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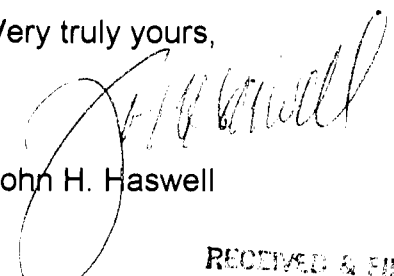
ACK _____
AFA _____
APP 1 _____
CAF _____
CMU _____
CTR _____
RE: Petition to Resolve Territorial Dispute with
Gulf Coast Electric Cooperative, Inc.
and Gulf Power Company
FPSC Docket Number: 93-0885-EU

Dear Ms. Bayo:

EAG _____
LEC 1 _____ I am enclosing herewith the original and fifteen (15) copies of a Response to Motion
to Dismiss on behalf of Gulf Coast Electric Cooperative, Inc. for filing.

LIN 3 _____
OPC _____ Please call me if you have any questions.

RCH _____
SEC 1 _____
WAS _____
OTH _____
Very truly yours,


John H. Haswell

JHH/lez

Enclosures

cc: J. Patrick Floyd, Esquire
Roy Barnes

RECEIVED & FILED

EPSC-BUREAU OF RECORDS

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FPSC-RECORDS/REPORTING

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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. 930885-EU

RESPONSE TO MOTION TO DISMISS

Gulf Coast Electric Cooperative, Inc. ("Gulf Coast"), by and through its undersigned attorney, hereby opposes the Motion to Dismiss made by Gulf Power Company ("Gulf Power") in the above referenced case before the Florida Public Service Commission (the "Commission"). Gulf Power's motion depends entirely on its incorrect reading of one case, Gulf Coast Elec. Co-op v Clark, 674 So. 2d 120 (Fla. 1996). Gulf Power incorrectly argues that Gulf Coast lessens or restricts the jurisdiction of the Commission. In Gulf Coast the Supreme Court held that the Commission failed to consider customer preference and abused its discretion in awarding service to the prison (Washington County Correctional Facility) to Gulf Power (Id., at 122). In doing so, the Court noted that it reached its decision "...under the unique factual circumstances of this case...". (Id.) Those unique factual circumstances included the finding by the Commission (not by the Court) that the additional cost to Gulf Coast to serve the facility was relatively small, and that "...But for Gulf Coast's efforts, the facility would not be there for anyone to serve." Id. In addition, the Commission's findings included the fact that Gulf Coast had facilities in the site itself, that Gulf Coast would have to relocate its line no matter who served the prison, (Id., at 123), and that Gulf Power was aware of Gulf Coast's efforts to help locate the prison in Washington

County, but said nothing (Id., at 122). A consideration of all of those factors led the Court to conclude that the Commission, by its own rules, should have considered customer preference. It is clear that there were unique circumstances in Gulf Coast that led to the Court's decision, not the least of which was the Court's reference to the fact that Gulf Coast had to construct the new line regardless of who served the prison. (This obviously impressed the Court because it referred to this finding four times [Id., page 122-123]).

Gulf Power misreads Gulf Coast. Gulf Coast does not suggest that all cases of \$14,583.00 or less are not "uneconomic duplication", or that the Commission's jurisdiction should be limited to cases greater than \$14,583.00. If the Court had intended that, it would have explicitly stated so. Instead, Gulf Coast explicitly notes that cost is only one factor to be considered in determining whether an upgrade in service is "uneconomic duplication". Gulf Coast, 674 So. 2d at 123. Therefore the decision of whether an upgrade in service is "uneconomic duplication" rests on more than the \$14,583.00 figure and the Commission's jurisdiction is not limited to cases above that figure.

Further, the statute concerning the Commission does not include any such jurisdictional limitation. The statute states that:

"the Commission shall have power over electric utilities to resolve, upon petition of a utility or on its own motion, any territorial dispute involving service areas between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. In resolving territorial disputes, the Commission may consider, but not be limited to consideration of, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population, the degree of the urbanization of the area, its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services". Fla. Stat. §366.04(2)(e).

The statute also provides:

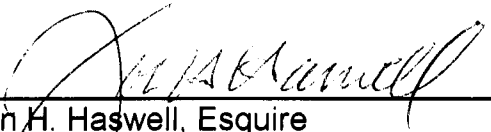
"the Commission shall further have jurisdiction over the planning, development and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission and distribution facilities". Fla. Stat. §366.04(5).

Nowhere in the statute is there any dollar amount which would limit the Commission's jurisdiction.

Similarly, the case law provides the Commission with a broad statement of jurisdiction. The powers of the Commission include both those expressly given and those given by clear and necessary implication from the provisions of the statute. City Gas Co. v Peoples Gas System, Inc., 182 So. 2d 429, 436 (Fla. 1965). Further, the Commission has the authority to interpret the statutes that empower it, including jurisdictional statutes, and to make rules and issue orders accordingly. Florida Pub. Serv. Comm. v Bryson, 569 So. 2d 1253, 1255 (Fla. 1990). The Commission, therefore, has plenary jurisdiction over territorial disputes and the planning, development and maintenance of electric facilities. To argue that because in one unique case the Court and the Commission both determined that the additional costs incurred by Gulf Coast in relocating an existing line was relatively small somehow rises to a judicial declaration that in all cases where the additional cost is \$15,000.00 or less, a duplication is not uneconomic, goes beyond the bounds of reason and common sense. Indeed, such a judicial declaration would essentially defeat a major aspect of the Commission's power and ability to resolve territorial disputes and determine territorial boundaries. Such a position by Gulf Power is not surprising in light of its steadfast opposition to the drawing of any territorial boundary lines.

Wherefore, Gulf Coast respectfully requests that the Commission deny Gulf Power's Motion to Dismiss and its Request for Oral Argument.

Respectfully submitted,



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CERTIFICATE OF SERVICE

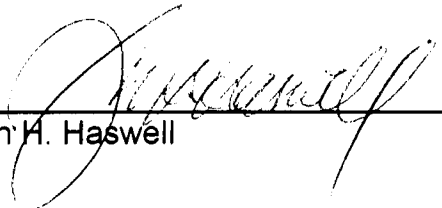
I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by regular U.S. mail to the following:

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Attorneys for Gulf Power Company

Patrick Floyd, Esquire
Gulf Coast Electric Cooperative
408 Long Avenue
Port St. Joe, Florida 32456

this 7 day of August, 1996.



John H. Haswell