

LAW OFFICES  
**CHANDLER, LANG & HASWELL, P.A.**  
POST OFFICE BOX 23879  
GAINESVILLE, FLORIDA 32602-3879

ORIGINAL

JAMES F LANG  
JOHN H HASWELL  
C WHARTON COLE

TELEPHONE 352/376-5226  
TELECOPIER 352/372-8858  
211 N E FIRST STREET  
GAINESVILLE, FL 32601-5367

WILLIAM H. CHANDLER  
1920-1992

March 11, 1998

RECEIVED

MAR 11 1998

FPSC - Records/Reporting

Blanca Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oaks Boulevard  
Tallahassee, Florida 32399-0850

Via Hand Delivery

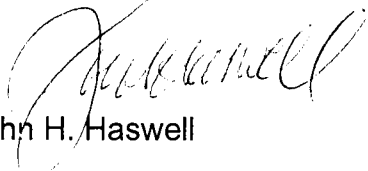
RE: Gulf Coast Electric Cooperative, Inc., Respondent/Appellant  
v. Florida Public Service Commission and Gulf Power Company,  
Petitioner/Appellee; FPSC Docket Number: 930885-EU

Dear Ms. Bayo:

I am enclosing herewith a Motion for Stay Pending Judicial Review on behalf of Gulf Coast Electric Cooperative, Inc. related to Order Number PSC-98-0174-FOF-EU. Fifteen (15) copies of the enclosed Notice are also herewith submitted for filing.

Please call me, if you have any questions.

Very truly yours,

  
John H. Haswell

JHH/lez

1 Enclosures

3 cc: J. Patrick Floyd, Esquire  
Leslie Paugh, Esquire  
Russell Badders, Esquire

C:\WP60\GCEC\TERRITOR\WASHINGT\APPEAL\BAYO2.LTR

DOCUMENT NUMBER-DATE

03096 MAR 11 8

FPSC - RECORDS/REPORTING

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

Filed: March 11, 1998

**MOTION FOR STAY PENDING JUDICIAL REVIEW**

Gulf Coast Electric Cooperative, Inc. (Gulf Coast), Respondent/Appellant, by and through its undersigned attorneys pursuant to Rule 25-22.061, Florida Administrative Code, files herewith its Motion for Stay Pending Judicial Review of the Florida Public Service Commission (Commission) Order Number PSC-98-0174-FOF-EU issued January 28, 1998. The nature of the Order is a final order declining to resolve a territorial dispute between Gulf Coast and Gulf Power Company (Gulf Power). The Order also requires Gulf Power and Gulf Coast to establish procedures and guidelines addressing subtransmission, distribution, and requests for new electric service and to submit such procedures and guidelines to the Commission for review on or before July 31, 1998.

Stays pending judicial review of a Commission final order are governed by Rule 25-22.061(2) of the Florida Administrative Code which states that the Commission "shall have the authority to grant, modify, or deny such relief."

Rule 25-22.061(2) also states that stays may be conditioned upon the posting of a bond. Gulf Coast requests that the Commission not require Gulf Coast to post a bond because neither Gulf Coast nor Gulf Power will be adversely affected by a status quo order pending judicial review.

The Rule allows the Commission to consider three factors, among other things,

DOCUMENT NUMBER-DATE

03096 MAR 11 8 001047

FILED - APPELLANT/RESPONDING

which are: (1) whether the petitioner is likely to prevail on appeal; (2) whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and (3) whether the delay will cause substantial harm or be contrary to the public interest. The Commission is not limited to just those three factors.

Regarding the first factor, Gulf Coast believes it has a reasonable chance to prevail on appeal based on Gulf Coast's view that the Commission's Order is contrary to the Commission's prior two (2) Orders in this case, PSC-95-0271-FOF-EU and PSC-95-0913-FOF-EU. Those Orders clearly stated the intent of the Commission to establish a territorial boundary "in the areas identified in the record where the utilities facilities are commingled or are in close proximity, and where further territorial conflict and uneconomic duplication of facilities is likely to occur... . [A] territorial agreement implicitly, logically, and necessarily contemplates the establishment of a territorial boundary. That is clearly what we intend the parties to do in areas of South Washington and Bay Counties where facilities are commingled or are in close proximity and where further conflict is likely", and reiterated the Commission's policy to "...to encourage territorial agreements and that policy necessarily envisions a geographic division of territory".

Even though the Commission found that there are twenty-seven (27) areas in South Washington and Bay Counties where the electric facilities of these two utilities are commingled and in close proximity, and where their facilities run down both sides of the same road and cross each other, the Commission declined to follow its own prior orders and policy to draw a territorial boundary. Notwithstanding the Commission's own findings on duplication, commingling, and close proximity, and the Commission's directives to Gulf

Power and Gulf Coast which caused Gulf Coast to expend significant resources in complying with the Commission's requirements to draw a proposed boundary and prepare for the hearing on where those boundaries should be, the Commission instead departed from its own policy and orders and refused to draw the very lines it initially determined were needed to stop the historical disputes and duplication of services in South Washington and Bay Counties. Based on the foregoing, Gulf Coast believes it has a reasonable chance on appeal.

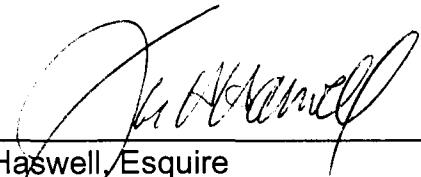
As to the second factor, while Gulf Coast is not likely to suffer significant irrevocable harm if the stay is not granted, it will be required to spend resources in attempting to work out procedures and policies with Gulf Power that as past practice has shown will result in fruitless and wasted efforts. The Commission has as much as stated that the territorial policies submitted by Gulf Power through Mr. Holland are the appropriate policies, and it is therefore unlikely that Gulf Power will agree to any other procedures or guidelines that would be acceptable to Gulf Coast. Requiring Gulf Coast to expend resources in an effort that is likely to be fruitless, pending appeal, will harm Gulf Coast's members/ratepayers.

As to the third discretionary consideration, granting the Motion for a Stay will not result in harm to Gulf Power, nor to the public interest, particularly in light of the Commission's ruling that what has gone on in the past and what may continue to go on in South Washington and Bay Counties as far as utility expansion is concerned, is fine with the Commission. Because the Commission has in essence ruled that there can be no uneconomic duplication in the identified areas because the two utilities are already there, the current practices of the parties will not result in harm to the parties or to the public.

While those practices may be subject to refinement if the Order were not stayed, staying the Order will not change the status quo and will allow both utilities to avoid what may be unnecessary expenses, pending the outcome of the appeal.

WHEREFORE, Gulf Coast respectfully requests that the Commission enter an order staying that portion of Order No. PSC-98-0174-FOF-EU that requires Gulf Power Company and Gulf Coast Electric Cooperative, Inc. to establish procedures and guidelines addressing subtransmission, distribution and requests for new service as set forth in the body of that Order and to submit such procedures and guidelines to the Commission on or before July 31, 1998.

Respectfully submitted,



---

John H. Haswell, Esquire  
Florida Bar No. 162536  
Chandler, Lang & Haswell, P.A.  
211 Northeast First Street  
Gainesville, Florida 32601  
(352) 376-5226

and

J. Patrick Floyd, Esquire  
408 Long Avenue  
Port St. Joe, Florida 32456  
(904) 227-7413

Attorneys for Gulf Coast Electric  
Cooperative, Inc.

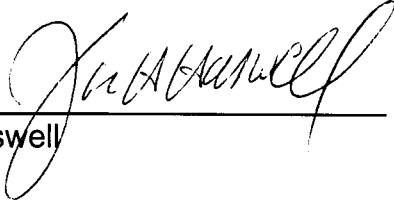
**CERTIFICATE OF SERVICE**

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

Russell Badders, Esquire  
Jeffrey A. Stone, Esquire  
Beggs & Lane  
3 West Garden Street, Suite 700  
Post Office Box 12950  
Pensacola, Florida 32576-2950

Leslie J. Paugh, Esquire  
Staff Counsel  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

this 10<sup>th</sup> day of March, 1998.

  
\_\_\_\_\_  
John H. Haswell