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100304 - EU

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Subject: Docket No. 100304-EU
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The Docket No. is 100304-EU Territorial Dispute between Choctawhatchee Electric Cooperative, Inc. and Gulf Power Company

This is being filed on behalf of Choctawhatchee Electric Cooperative, Inc.

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Choctawhatchee Electric Cooperative, Inc.'s Response to Motion for Reconsideration and Cross Motion for Reconsideration

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believes that the Commission has properly disposed of the Motion to Compel as to these interrogatories and Gulf Power has not shown any basis for Reconsideration.

3. In solving territorial disputes, Section 366.04(2)(e), Florida Statutes, give the Commission the power to consider, among other things,

“ . . . the nature of the area involved . . . the degree of urbanization of the area, its proximity to other urban areas . . .” (emphasis supplied)

Virtually the same language is found in Rule 25-6.0441(2)(b), Florida Administrative Code, entitled Territorial Dispute for Electric Utilities. In the SVEC case cited by Gulf Power, the Commission was evaluating the nature of the area in dispute, and was not looking at other areas far removed from “the area involved” as Gulf is proposing here. The degree to which other areas served by CHELCO may be urban is not relevant to the Commission’s jurisdiction regarding the Freedom Walk territorial dispute under Chapter 366, Florida Statutes and the Motion to Compel was properly denied.

4. Gulf Power cites to Section 425.03(1), Florida Statutes, and argues that unincorporated areas can be “non-rural” under certain circumstances. The Commission has on several occasions referred to areas as “rural” as defined in Section 425.03(1), Florida Statutes, but again has done so with respect to the territory at dispute. Gulf is seeking to establish that other areas, served by CHELCO outside of the disputed area, are not rural. As noted in the order, Gulf is seeking this information to “. . . help determine whether CHELCO is in fact serving [over its entire 4 county service area] greater than a ten percent non-rural membership.” The information sought by Gulf may be pertinent to Section 425.04(4), Florida Statutes; but has no applicability to the issue of whether Freedom Walk is urbanized as required by Chapter 366, Florida Statutes.

5. While the Commission was correct with respect to denying the Motion to Compel as discussed above, CHELCO respectfully requests the Commission to reconsider Order No. PSC-11-0020-PCO-EU to the extent it granted the motion as to Bluewater Bay (Interrogatories 23-25) and Seagrove Beach (Interrogatories 44-46). Neither of these areas are incorporated and both are several miles from the area at dispute in the pending docket. Neither of those areas has anything to do with the nature of Freedom Walk, the degree of urbanization of Freedom Walk, or Freedom Walk's proximity to other urban areas. In requiring CHELCO to respond to these interrogatories, the Commission has not considered the lack of jurisdiction over the provisions of Chapter 425, Florida Statutes, as acknowledged by the Commission in In re: Petition of Gulf Power Company to resolve a territorial dispute with West Florida Electric Cooperative Inc. in Holmes County, Order No. 18886, Docket No. 870235-EI, issued February 18, 1988. In that case the Commission said

“Finally, the school board’s membership in WFEC is not a dispositive factor in this proceeding. This criteria relate only to Chapter 425, Florida Statutes, which grants no rights under our jurisdiction over territorial disputes.” (emphasis supplied)

The order granting the Motion says “. . . it is not clear from the information provided whether those “developments” would come under the provisions of Section 425.03(1), Florida Statutes.” However is not within the Commission’s jurisdiction to determine issues under Chapter 425, rather the Commission is charged with resolving territorial disputes under the standards established in Chapter 366, Florida Statutes. It is well established that an agency only has such authority powers and duties as are conferred upon them by statute. State ex rel Burr v. Jacksonville Terminal Co., 71 So. 474 (1916); City of Cape Coral v. GAC Utilities Inc of Florida, 281 So. 2d 493 (Fla. 1973); Florida Bridge Co. v. Bevis, 363 So. 2d 799 (Fla. 1978);

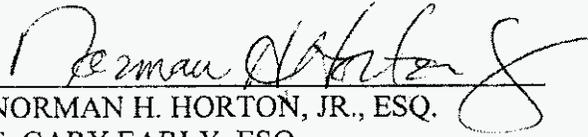
Teleco Communication Co. v. Clark, 695 So. 2d 304 (Fla. 1997). It is respectfully submitted that in granting the Motion to Compel the Commission overlooked or failed to consider the appropriate scope of its jurisdiction under Section 366.04(2), Florida Statutes, as to territorial disputes.

6. In requiring CHELCO to provide response as to Seagrove Beach, the Commission also overlooked that the area of Seagrove Beach is located within a portion of Walton County which is covered by a territorial agreement between Gulf Power and CHELCO. In Order No. PSC-00-1709-PAA-EU issued September 25, 2000 in Docket No. 000805-EU, the Commission approved a territorial agreement which established territorial boundaries in Walton County for each party. For Gulf to now take the position that CHELCO is precluded from serving another area within its service area because CHELCO is serving Seagrove Beach, per the territorial agreement with Gulf Power, is not an argument the Commission should accept.

7. Finally, the Commission failed to consider that Bluewater Bay was the focus of a dispute between CHELCO and Gulf Power in 1976. In that case Gulf Power contended that CHELCO could not serve the area because it was likely to become “urbanized” and that if it did become urbanized CHELCO would have to abandon service to the area. The Commission rejected that position observing that losing the characteristics of a “rural area” was speculative at best. Clearly Bluewater Bay was considered “rural” at the time CHELCO extended service to that area, and nothing in this proceeding as to Freedom Walk should be construed as a de factor docket to change that status.

8. Counsel for CHELCO has conferred with counsel for Gulf Power on the Cross-Motion and can represent that Gulf Power objects to the Cross-Motion.

Respectfully submitted,



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CERTIFICATE OF SERVICE

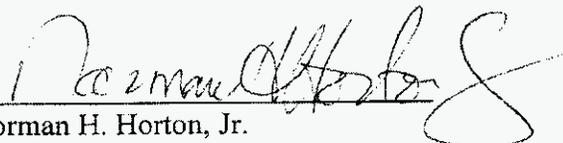
I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail and/or U.S. Mail this 25th day of January, 2011.

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