

# HENDERSON FRANKLIN

ATTORNEYS AT LAW • FOUNDED 1924

HENDERSON, FRANKLIN, STARNES & HOLT, P.A.

LAURIE H. ANTON  
CHARLES J. BASINAIT  
JANET C. BERNSTEIN  
THOMAS P. CLARK  
MICHAEL J. CORSO  
CRAIG FERRANTE  
DAVID K. FOWLER  
ALBERT M. FRIERSON  
DANNI L. GERMANO  
THOMAS H. GUNDERSON  
GRACE GUTIERREZ  
ERNEST H. HATCH, JR.

STEPHEN L. HELGEMO  
WILLIAM N. HOROWITZ  
HAROLD N. HUME, JR.  
PAULA F. KELLEY  
CARLOS A. KELLY  
STEVEN G. KOEPEL  
THERESA M. KOLISH  
JEFFREY D. KOTTKAMP  
KEITH R. KYLE  
ALANE C. LABODA  
JOHN W. LEWIS  
JOSEPH M. MADDEN, JR.

CORA C. MOLLOY  
CHAD J. NOTES  
DENIS H. NOAH  
JOHN A. NOLAN  
JAMES L. NULMAN  
GERALD W. PIERCE  
J. TERRENCE PORTER  
JOHN F. POTANOVIC, JR.  
ANDREW L. RINGERS, JR.  
RUSSELL P. SCHROPP  
ROBERT C. SHEARMAN

DANIEL W. SHEPPARD  
RONALD W. SMALLEY  
TOM SMOOT III  
TRICIA A. SPIVEY  
VICKI L. SPROAT  
BRUCE M. STANLEY, SR.  
J. ERIC STIFFLER  
DOUGLAS B. SZABO  
RANDAL H. THOMAS  
GUY E. WHITESMAN  
ELIZABETH A. WOLT

1715 MONROE STREET  
FORT MYERS, FLORIDA 33901  
P.O. BOX 280  
FORT MYERS, FLORIDA 33902-0280  
FACSIMILE (941) 332-4494  
TELEPHONE (941) 334-4121

December 8, 1998

Ms. Blanca Bayo  
Director, Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd., Room 110  
Tallahassee, FL 32399-0850

VIA OVERNIGHT MAIL

981827-EC

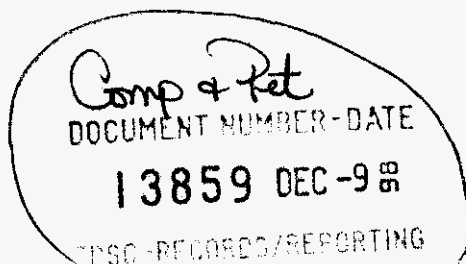
Re: Seminole Electric Cooperative, Inc. Wholesale Service Rate Members  
Rate Schedule - SECI-7

Dear Ms. Bayo:

Enclosed please find the following:

- Hard copy, signed by Don Howell and Kathleen C. Lake, of the Request for Order Granting Leave for Appearance of Qualified Representative;
- A diskette including same, as required by Rule 25-22.028, Florida Administrative Code;
- Hard copy of the Complaint and Petition;
- A diskette including same, as required by Rule 25-22.028, Florida Administrative Code;
- Fifteen (15) copies of the Request for Order Granting Leave and fifteen (15) copies of the Complaint and Petition; and
- An additional copy of the Complaint and Petition together with a self-addressed, stamped envelope.

I would appreciate it if you would return to me a date-stamped copy of the Complaint and Petition indicating the time of filing.



Reg for Order  
DOCUMENT NUMBER-DATE  
13860 DEC-9 86  
FPSC-RECORDS/REPORTING

RECEIVED  
DEC 9 1998  
6-333 86

Ms. Blanca Bayo  
December 8, 1998  
Page 2

Thank you very much for your cooperation and assistance.

Very truly yours,



John A. Noland

JAN/mmw  
Enclosures

cc: Mr. Curtis W. Bostick  
Mr. David Gomer  
Ms. Pamela M. May  
Mr. Frank L. Wilkerson  
Mr. William F. Hetherington  
Donald Howell, Esq.  
Kathy Lake, Esq.  
Mr. Anis D. Sherali  
Dr. Martin J. Blake  
Robert A. Mora, Esq.  
Mr. Richard J. Midulla

ORIGINAL

14

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of )  
)  
)  
)  
)  
Lee County Electric Cooperative, Inc. )  
)  
v. )  
)  
Seminole Electric Cooperative, Inc. )  
)  
)  
)

Docket No. 981827-EC

COMPLAINT AND PETITION OF  
LEE COUNTY ELECTRIC COOPERATIVE, INC.  
FOR AN INVESTIGATION OF THE RATE STRUCTURE OF  
SEMINOLE ELECTRIC COOPERATIVE, INC.

Lee County Electric Cooperative, Inc., ("LCEC"), pursuant to Section 366.04, Florida Statutes, and Sections 25-9.050 - 25-9.056, Florida Administrative Code, files this Complaint against Seminole Electric Cooperative, Inc. ("Seminole") and this Petition requesting that the Florida Public Service Commission ("Commission") (i) direct Seminole to file its recently adopted Rate Schedule SECI -7, together with appropriate documentation in support thereof; and (ii) investigate the rate structure adopted in such Rate Schedule, which LCEC believes is discriminatory, arbitrary, unfair, and unreasonable. In support hereof LCEC states as follows:

DOCUMENT NUMBER-DATE  
13859 DEC-98  
FPSC-RECORDS/REPORTING

## **I. Service**

For purposes hereof, LCEC requests service be made on the following:

John A. Noland  
Henderson, Franklin,  
Starnes & Holt, P.A.  
1715 Monroe Street  
P.O. Box 280  
Fort Myers, Florida 33902-0280  
(941) 334-4121

Kathleen C. Lake  
Vinson & Elkins L.L.P.  
1001 Fannin, Suite 2300  
Houston, Texas 77002-6760  
(713) 758-3826

## **II. Background**

LCEC is a non-profit electric distribution cooperative which is organized under Chapter 425, Florida Statutes and is engaged in the distribution and sale of electric energy within its commission approved service territory located in Southwest Florida. LCEC's address is 4980 Bayline Drive (Zip Code 33917), Post Office Box 3455, North Fort Myers, FL 33918-3455. LCEC serves approximately 139,000 customers, most of which are located in Lee County, Florida. LCEC, which purchases all of its power requirements from Seminole pursuant to a Wholesale Power Contract between LCEC and Seminole dated May 22, 1975, as amended, is a captive customer of Seminole.

Seminole's headquarters are located at 16313 North Dale Mabry Highway, Post Office Box 272000, Tampa, Florida 33688-2000. Seminole provides generation and transmission service to 11 distribution cooperatives in Florida, including LCEC. These 11 distribution cooperatives are members and owners of Seminole. On October 8, 1998, the Seminole Board approved a new rate schedule, Rate Schedule SECI-7, that will go into effect on January 1, 1999 and that is applicable to all of its members. A copy of Rate Schedule SECI-7 is attached as

Exhibit 1. This new Rate Schedule supersedes a rate schedule implemented on September 1, 1994. A copy of Seminole's rate schedule that went into effect on September 1, 1994, is attached as Exhibit 2. On information and belief, Seminole has not filed with the Commission Rate Schedule SECI-7, or related supporting documentation.

Seminole's failure to file its revised rate schedule is particularly disturbing in the case of its new Rate Schedule SECI-7, because this Rate Schedule reflects a new rate structure that abruptly departs from Seminole's historical rate structure. In particular, Seminole's Rate Schedule SECI-7 creates a new rate structure that replaces the existing demand charge with two separate charges: a reduced demand charge based on monthly billing demand, and a new "Production Fixed Energy Charge" which is allocated to members based on their 3-year historical energy usage.<sup>1</sup> Seminole has thus revised its existing rate structure to transfer a portion of its generation demand charge to an energy charge.

The Commission should direct Seminole to file its new Rate Schedule SECI-7 and provide supporting information for the changes to its rate structure so that the Commission may review Seminole's rate structure as set forth in Rate Schedule SECI-7 and determine whether it is fair, just and reasonable. On information and belief, LCEC submits Rate Schedule SECI-7 will result in a rate structure that discriminates against high load factor customers and customers who have made investments in load management, by effectively requiring these customers to

---

<sup>1</sup> The rates established in Rate Schedule SECI-7 also reflect a reduction in the cost of providing service to Seminole members, which results from commendable cost control measures that Seminole has taken for the benefit of its members. This cost reduction is not the subject of this Complaint.

subsidize other Seminole customers, and placing high load factor customers at a competitive disadvantage as the electric industry is restructured.

The new rate structure is also arbitrary and unreasonable, and is an unjustified change from the historical rate structure to a new rate structure which is not reflective of cost causation or sound regulatory principles. Moreover, LCEC believes Rate Schedule SECI-7 is contrary to sound regulatory policy, because it could unreasonably inhibit new investment in load management, competitively disadvantage retail customers with high load factors, and favor construction of otherwise uneconomic new generation. The Commission should therefore conduct a full investigation and evidentiary hearing on the rate structure set forth in Rate Schedule SECI-7 to resolve these and such other issues as the Commission deems appropriate.

### **III. The Commission Has Authority to Review and Prescribe Seminole's Rate Structure**

While LCEC acknowledges that the Commission has not previously exercised its jurisdiction over Seminole's wholesale electrical rate structure, the Commission has the ability to exercise such jurisdiction by statute, rule, and case law. If the Commission should fail or refuse to exercise such jurisdiction over Seminole's wholesale rate structure, it would result in a "regulatory gap" and Seminole, as a Rural Utility Service ("RUS") borrower, would not be regulated by the Federal Energy Regulatory Commission ("FERC") or be held accountable by a state regulatory body. This "regulatory gap" would result in increased costs to LCEC and, thus, to the ultimate consumer.

In *Dairyland Power Cooperative, et al*, 37 F.P.C. 12 (1967), as in the instant case, the cooperative was a borrower from the Rural Electrification Administration, predecessor to the

RUS. The Federal Power Commission (predecessor to FERC) found that under the Federal Power Act, Congress never intended to regulate the wholesale electric rates of cooperatives which are REA (now RUS) borrowers. If there is no state regulation, there is no regulation at all.

Section 366.04(2)(b), Florida Statutes, states that the Commission has the power “[t]o prescribe a rate structure for all electric utilities.” Section 366.02(2), Florida Statutes, defines “Electric Utility” as “any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.” Because Seminole is a rural electric cooperative which owns electric generation and transmission systems in Florida, it is therefore an “electric utility,” as defined in Section 366.02(2), Florida Statutes. Section 366.04(2)(b) does not differentiate between the Commission's authority over retail and wholesale rate structures, and on its face applies to both. Consequently, the Commission clearly has the authority “to prescribe a rate structure” for Seminole.

The U.S. Supreme Court has upheld such an exercise of state jurisdiction. *Arkansas Public Service Comm'n v. Arkansas Elec. Cooperative Corp.*, 461 U.S. 375 (1983) (finding that the regulation of wholesale electric sales by an entity located primarily in one state, from generation located primarily in one state, to distribution electric cooperatives located primarily in one state could be regulated by the public service commission of that state).

The Commission's "rate structure jurisdiction" gives it broad authority to review any discriminatory effects of a rate structure, as well as consider to what extent the rate structure reflects cost causation principles and works to achieve energy efficiency. Section 25-9.051 of the Commission's regulations establishes that in exercising its rate structure jurisdiction over a

rural electric cooperative, the Commission may review the rate relationship between various customer classes, which are defined in Section 25-9.051(8) as any group of customers distinguishable from other customers by load, consumption, or other characteristics. Therefore, it is appropriate for the Commission to review the rate relationship under SECI-7's rate structure between Seminole's high load factor customers and low load factor customers, as well as between those customers having invested in load management systems and those who have not so invested. Section 25-9.052 states that in prescribing a fair, just and reasonable rate structure the Commission may consider, among other things, the cost of providing service to each customer class, the load characteristics of various classes of customers, fairness in apportioning costs, avoidance of undue discrimination, and encouragement of efficiency. It is therefore appropriate for the Commission to consider whether the rate structure of Rate Schedule SECI-7 reflects cost causation, is based on sound regulatory principles, and if it encourages the efficient use of energy.

#### **IV. Seminole Has Not Complied with Commission Regulations Directing Cooperatives to File Changes to Their Rate Structures**

By an order of the Commission issued January 3, 1979, rural electric cooperatives and municipal electric utilities were directed to file their rate structures with the Commission.<sup>2</sup> The Commission subsequently adopted Sections 25-9.050 -- 25-09.056, Florida Administrative Code, which establish the format for the documentation of the electric rate structures submitted in accordance with its order, as well as the procedure the Commission will follow in reviewing a

---

<sup>2</sup> *In re: General investigation as to rate structures for municipal electric systems and rural electric cooperatives*, 5 F.P.S.C. 3 (1979).



utility's rate structure.<sup>3</sup> Section 25-9.050(1) expressly states that these rules apply to municipal electric utilities and rural electric cooperatives and prescribe the procedure to be followed by such utilities in submitting documentation of rate schedules.

Seminole has failed to comply with the Commission's regulations. Section 25-9.052(2) requires municipal and cooperative rate schedule revisions to be submitted to the Commission at least 30 days prior to final adoption by the utility.<sup>4</sup> This allows the Commission to review and comment on the rate structure, as well as make a request for data or for explanation of the basis for any change in the rate structure. The utility may then review the Commission's comments before adopting a final rate structure. Despite these requirements, Seminole still has not submitted its new rate schedule in accordance with Section 25-9.052(2).

Nor has Seminole offered any justification or the required supporting documentation for the changes in its rate structure. Section 25-9.053(1) directs a utility filing a change in rate structure to submit supporting information in sufficient detail so as to allow the Commission to determine the derivation of all rate structure modifications. The supporting information must include either a utility-specific cost study or an analysis of utility-specific cost and operating data prepared using a methodology previously approved by the Commission for any comparable utility. Seminole should instead be directed to file its new Rate Schedule SECI-7, along with

---

<sup>3</sup> *In re: Proposed amendment of Rule 25-9.01 and new Parts IV and V of Chapter 25-9 relating to rate structures of rural electric cooperatives and municipal electric systems*, 6 F.P.S.C. 581 (1979).

<sup>4</sup> *See also In re: Complaint by Coastal Lumber Company against Talquin Electric Cooperative, Inc. regarding rate structure*, 93 F.P.S.C. 474, 476 (1993) (reminding electric cooperative that Rule 25-9.052(2) requires municipal and cooperative rate schedule revisions to be submitted to the Commission at least 30 days prior to formal adoption by the utility).

documentation providing cost justification and other appropriate supporting information for the changes in its rate structure resulting from Rate Schedule SECI-7.

**V. The Commission Should Investigate Seminole's Rate Structure to Determine if the Rate Structure is Fair, Just and Reasonable**

Seminole's failure to file with the Commission is particularly disturbing here, where Seminole's new Rate Schedule SECI-7 reflects an abrupt, dramatic, and unsupported departure from Seminole's historical rate structure. LCEC believes that this change in rate structure will discriminate against high load factor customers and customers who have installed load management control, by requiring them to subsidize other Seminole customers and depriving them of the value of their investment.

A utility's rate structure is an important element of the customer's business environment and customers make investments in electric-using equipment and load control devices based on the then-existing rate structure. Based on Seminole's previous rate structure, both LCEC and its customers have made significant investments in equipment to reduce their peak loads and, thus, reduce their demand costs. Eighteen of LCEC's customers have installed standby generators that are used to provide enhanced reliability and to shave their on-peak usage. LCEC has made significant investments in load management equipment to reduce its peak load and reduce its demand charges. These investments were made in anticipation of Seminole's continued use of the same rate structure, which makes reducing on-peak usage economically attractive. Seminole's new rate structure significantly reduces the demand charge and, thus, the value of these investments to LCEC and its customers.

By reducing the demand charge and shifting a significant portion of its demand-related costs to a Production Fixed Energy Charge that is allocated on the basis of 3-year historical kWh usage, Seminole has essentially eliminated the economic feasibility of investments in load management programs to reduce billing demand. Seminole's rate structure modifications place LCEC's current load management program in serious jeopardy. LCEC currently serves over 46,000 residential customers under its load management program and is currently evaluating whether to discontinue its load management program in the event that Seminole is permitted to modify its rate structure in a manner that discourages demand-side initiatives. At the very least, the modifications to Seminole's rate structure will require LCEC to reduce the load management credits provided to customers, which will undoubtedly cause customers to withdraw from LCEC's load management program and harm conservation efforts. The changes to Seminole's rate structure may make it necessary to reduce the credit for interruptible service currently provided to commercial and industrial customers.

LCEC believes the SECI-7 rate structure is also arbitrary and unreasonable because it is contrary to sound ratemaking principles, does not reflect cost causation, and conflicts with Commission and state law conservation policy. The Commission has stated that a rate structure should be based on cost of service studies.<sup>5</sup> Seminole has offered no such justification for the cost-shifting reflected in the SECI-7 rate structure, or its abrupt departure from Seminole's historical rate structure. The Commission has also stated that rate structures which track costs

---

<sup>5</sup> *In re: Investigation as to rate structure of municipal electric systems and rural electric cooperatives*, 6 F.P.S.C. 519 (1979).

promote energy conservation.<sup>6</sup> Moreover, the policy goals of the Florida Legislature, as expressed in Section 366.81, Florida Statutes, affirm the importance of the reduction in, and control of, the growth rates of electric consumption. The Legislature specifically stated its intention that load-control systems be encouraged, and expressly directed the Commission not to approve any rate structure which discriminates against any class of customers on account of the use of such systems. The Commission itself has expressed concern that potential cost-effective conservation programs are not being pursued by Seminole's members.<sup>7</sup> LCEC believes that Rate Schedule SECI-7 flies in the face of these policies, and will in fact discourage the implementation of load management control by Seminole's members.

While implementing rate structure changes which will discourage demand-side initiatives, Seminole plans to go forward with the installation of new generation capacity. Seminole currently plans to build a combined cycle plant at its Hardee County generating site to replace a contract to purchase power from Florida Power Corporation that will expire in January, 2002. It appears that Seminole is using its rate structure to reinforce and create a need for generation capacity and to eliminate viable alternatives to the installation of generating facilities. By implementing a rate structure that discourages load management and other supply-side initiatives, Seminole is attempting to turn back the clock to the days when the only alternative the utility considered was to build large, centrally-located power plants with the resulting costs to consumers.

---

<sup>6</sup> *Id.*

<sup>7</sup> *In Re: Petition for Determination of Need for Proposed Electrical Power Plant to be located in Hardee and Polk Counties by Seminole Electric Cooperative, Inc.*, 94 F.P.S.C. 347, 357 (June 21, 1994).

Reducing the demand charge and shifting a significant portion of its demand-related costs to a "Production Fixed Energy Charge" will discourage retail customers from pursuing self-generation alternatives in the future. If the distribution cooperative reflects the change in Seminole's wholesale rate structure through to retail customers, then retail customers will not be able to economically justify the installation of on-site generation facilities. By artificially deflating its demand charge and artificially inflating a charge based on energy usage (i.e., the Production Fixed Energy Charge that is allocated on the basis of 3-year historical kWh), Seminole prospectively eliminates any incentive for a retail customer to install on-site generation. This will take away options that retail customers currently have based on rates that reflect the cost of generating electric power to serve them.

By failing to file, Seminole has not provided any documentation in support of its new rate structure so that the Commission may ascertain whether it is fair, just and reasonable. The Commission should review and investigate Seminole's new rate structure respecting the above and other appropriate issues through an investigation and evidentiary hearing into the rate structure of Rate Schedule SECI-7.

## **VI. Request for Relief**

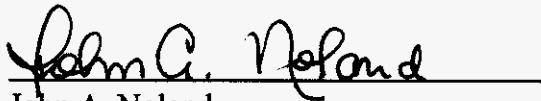
WHEREFORE, for the foregoing reasons, LCEC respectfully requests that the Commission:

1. Require Seminole to file Rate Schedule SECI-7 with the Commission pursuant to Section 366.04(2)(b), Florida Statutes, and Section 25-9.052, Florida Administrative Code, and provide cost support for its new rate structure, including, but not limited to justification for its use of a "Production Fixed Energy Charge" that disproportionately impacts its high load factor customers and discourages the use of load management.

2. Allow Rate Schedule SECI-7 to go into effect on January 1, 1999, in light of the significant cost reduction it reflects, pending Commission review of the Rate Schedule SECI-7 rate structure, and whether or not it is fair, just and reasonable.

3. Conduct a full investigation and evidentiary hearing into the rate structure of Rate Schedule SECI-7 in order to determine the appropriate rate structure to be prescribed by the Commission.

Respectfully submitted,



John A. Noland  
Florida Bar No. 175179  
Henderson, Franklin, Starnes & Holt, P.A.  
1715 Monroe Street  
P.O. Box 280  
Fort Myers, FL 33902-0280  
(941)334-4121

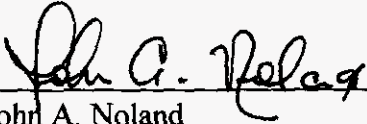
Donald L. Howell  
Kathleen C. Lake  
Vinson & Elkins L.L.P.  
1001 Fannin, Suite 2300  
Houston, TX 77002-6760  
(713)758-2222

Attorneys for Lee Electric Cooperative, Inc.

F:\KL0500\LEE080\DOC14C.WPD

**CERTIFICATE OF SERVICE**

I certify that a copy hereof has been furnished to Richard J. Midulla, Executive Vice  
President and General Manager, Seminole Electric Cooperative, Inc., P.O. Box 272000, Tampa,  
FL 33688-2000, by regular U.S. Mail this 8<sup>th</sup> day of December, 1998.

  
\_\_\_\_\_  
John A. Noland  
Florida Bar No. 175179  
Henderson, Franklin, Starnes & Holt, P.A.  
1715 Monroe Street  
P.O. Box 280  
Fort Myers, FL 33902-0280  
(941)334-4121