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Subject:	Docket 140059-EM; Response to Motion to Dismiss
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Babcock Ranch Community Independent Special District

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Brief, but complete, description of the attached document:

Attached for filing is a Response of the Babcock Ranch Community Independent Special District to the Motion to Dismiss of Lee County Electric Cooperative, Inc.

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice Pursuant to Rule 25-9.044, Florida Administrative Code of New Electric Service Provider, Babcock Ranch Community Independent Special District, and Request for Partial Waiver	Docket No. 140059-EM Filed: April 22, 2014

RESPONSE OF THE BABCOCK RANCH COMMUNITY INDEPENDENT SPECIAL DISTRICT TO THE MOTION TO DISMISS OF LEE COUNTY ELECTRIC COOPERATIVE, INC.

The Babcock Ranch Community Independent Special District ("Babcock District" or "District"), by and through its undersigned counsel, files this response to the motion to dismiss filed by Lee County Electric Cooperative, Inc. ("Cooperative" or "LCEC"), incorporates herein the contents of the originally filed Notice, and says:

Background

1. The aerial map provided in Appendix B of the Notice establishes that the Babcock District consists of approximately 13,631 acres, virtually all of which is undeveloped property owned by Babcock Property Holdings ("BPH") and affiliated interests.

2. The Cooperative and FPL entered a territorial agreement in 1965, which agreement has not been modified in nearly twenty years ("the FPL/LCEC Territory Agreement"). The FPL/LCEC Territory Agreement arbitrarily divided tens of thousands of acres fifty years ago in such manner as to split between them land owned by the single largest landowner in the area. The Legislature included 13,631 acres of such land within the boundary of the Babcock District in 2007. PSC Order Nos. 3799, 20817, and 93-705.

3. Electric service currently provided by the Cooperative in the District is limited to only five isolated locations, all of which are owned by BPH or an affiliate (a fire station and melon barn lease BPH property), require minimal facilities, contribute minimal annual revenue to the Cooperative and can easily install generators for their electric service. See, Photos of the five locations provided in Appendix D of the Notice.

4. The Cooperative owns no generating facilities and purchases from FP&L 100% of the power it supplies to its customers. See, FPL Ten Year Power Plant Site Plan 2013-2022, at page 36. The Cooperative is simply a middleman.

5. FPL provides no service to any customer in the District.

6. The Legislature created the Babcock District as an innovative mechanism to facilitate development within the District in the most economical and environmentally friendly manner possible.

7. The Legislature specifically stated its intent that systems, facilities and services constructed or established in the District, by the District, should be so constructed or established to avoid duplication, fragmentation and proliferation of services.

8. The Babcock District Law expresses the Legislature's desire that achieving goals of efficiency and environmental stewardship within the District be paramount to the interest of any public or private entity, pecuniary or otherwise.

9. The District filed its Notice with the Commission pursuant to Rule 25-9.044, Florida Administrative Code, in the absence of any law or Commission rule which addresses the

District's situation on all fours – the introduction of a new, legislatively-created entrant into the electric utility business.

10. The District determined that it was prudent and necessary to file the Notice to enable the District to initiate planning for electric service, as any third party with whom the District consults as to such service would be aware of the pre-existing territorial agreement between the Cooperative and FPL. Commission acknowledgment of the District's powers under the Babcock District Law to serve the areas identified in Appendix C of the Notice will provide confidence to such third parties that the expenditure of time, money and resources will not be wasted working with the District toward the most efficient and environmentally feasible manner of providing electric service.

11. The Babcock District reiterates the request made in the Notice that the Commission acknowledge the electric service territory boundary established by the Legislature (as modified in Appendix C of the Notice) and permit the District to perform the analysis of the most cost-effective, environmentally friendly means of providing electric service in the District, as required by the Legislature.

The Cooperative's Motion to Dismiss

12. The Cooperative's motion to dismiss the District's Notice is premised upon three foundations:

(1) The Babcock District Law should be read by the Commission to prevent the Babcock District from providing retail electric service; although wholesale service and the generation of electricity solely for use by the District should be allowed;

(2) A territorial agreement between two electric utilities approved by Commission order becomes sacrosanct and immutable and the Legislature cannot alter a party's rights under such an agreement; and

(3) To allow the District to either provide electric service or to contract with a third party to provide such service would be an unconstitutional taking or unconstitutional impairment of contract for which the Cooperative presumably would be entitled to damages.

Each of these foundations is based on false premises and does not support the Cooperative's motion that this proceeding be dismissed.

The Florida Legislature Created the District and Granted the District the Power to Provide Electric Service

13. The Cooperative alleges that the Babcock District is attempting to "unilaterally seize" the Cooperative's electric service area. The Florida Legislature created the Babcock District. The Florida Legislature granted the Babcock District its many municipal powers, including the power "**to provide electricity and related infrastructure** and to enter into public-private partnerships and agreements as may be necessary to accomplish the foregoing." Chapter 2007-306, section 6(7)(u), Laws of Florida (the "Babcock District Law").

14. The Florida Legislature defined the boundary of the Babcock District, providing the precise legal description of such boundary in section 4 of the Babcock District Law.

15. The Legislature identified the boundary of the Babcock District and gave the District its powers to provide electric service within it, the Babcock District did not "unilaterally seize" anything.

The Cooperative's Motion Asks the Commission to Read Limitations Into the Babcock District Law Which Do Not Exist

a. The Legislature did not prohibit the Babcock District from providing retail electric service, nor limit the District to providing wholesale service or "self-generation."

16. The Cooperative suggests that if the Legislature intended the Babcock District to provide retail electric service, the Legislature would have included the word "retail" in the Babcock District Law. The Cooperative further suggests that the Legislature intended to authorize the District only to provide wholesale electric service or "self-generation" service.

17. When the Legislature intends to limit the types of electric service to be provided by a special district, the Legislature expressly states such limitations.

18. The Legislature created the Lakewood Ranch Stewardship District in 2005 (Chapter 2005-338, Laws of Florida) and amended the law in 2009. (Chapter 2009-263, Laws of Florida) (together, the "Lakewood District Law"). The 2009 amendment granted the Lakewood District the power to develop and generate alternative or renewable energy sources and certain other specifically stated powers relating to energy and electricity.[1] Thus, the Legislature expressly limited the Lakewood District's powers regarding electric matters. The Legislature provided no such limitation when it bestowed on the Babcock District the power **"to provide electric service and related infrastructure."**

[1] Section 2 of the 2009 Amendment amended section 6(7)(r) of the Lakewood District Law to allow that district limited powers regarding electric service, as follows: "To provide sustainable or green infrastructure improvements, facilities, and services, including, but not limited to, recycling of natural resources, reduction of energy demands, development and generation of alternative or renewable energy sources and technologies, mitigation of urban heat islands, sequestration, capping or trading of carbon emissions or carbon emissions credits, LEED or Florida Green Building Coalition certification, and development of facilities and improvements for low-impact development and to enter into joint ventures, public-private partnerships, and other agreements and to grant such easements as may be necessary to accomplish the foregoing."

19. The 2009 amendment to the Lakewood District Law further provides:

> "Nothing herein shall authorize the district to provide electric service to retail customers or otherwise act to impair electric utility franchise agreements."

In contrast to the Lakewood District Law, the Babcock District Law grants the District the power **to provide electric service and related infrastructure**. The Legislature did not prohibit the District from providing retail service. The Legislature did not limit the type of electric service which the Babcock District can provide to wholesale service or "self-generation," nor did the Legislature limit in any way the "related infrastructure" which the District may construct.

20. Close inspection of the Cooperative's motion to dismiss reveals that the Cooperative's allegation that the District is limited to providing wholesale service stems from a term in the FPL/LCEC territory agreement which in no way binds the Babcock District. See Cooperative's Motion at footnote 6. The Cooperative relies upon case law to suggest that the District may generate electricity solely for its own use. See Motion at page 6, citing P.W. Ventures, Inc. v. Nichols, 533 So. 2d 281 (Fla. 1988).

21. The language of the Babcock District Law is clear and unambiguous. It should not be read in such manner so as to require knowledge of the terms of a territory agreement signed 50 years ago and knowledge of obscure Florida case law to interpret it. The Cooperative has provided no valid basis for limiting the type of electric service which the District may provide.[2]

[2] When the Legislature intended to place limits on special powers granted to the Babcock District, the Legislature expressly did so. Thus, in section 7(b), the Legislature granted the District the special power to provide for water supply, sewer and wastewater management, reclamation and reuse, or any combination thereof. The Legislature then limited these powers by imposing conditions on the Babcock District's ability to purchase or sell a water, sewer

b. The special powers granted in the Babcock District Law are to be construed liberally by the Commission.

22. The Cooperative suggests that the Commission should interpret the provisions of the Babcock District Law narrowly to permit the District to provide only wholesale electric service and electricity for the District's own use, "self-generation."

23. Section 6(7) of the Babcock District Law states:

> "The enumeration of special powers herein shall not be deemed exclusive or restrictive but shall be deemed to incorporate all powers, express or implied, necessary or incident to carrying out such enumerated special powers, including the general powers provided by this special act charter to the district to implement its special purpose. Further, the provisions of this subsection shall be construed liberally in order to carry out effectively the special purpose of this district under this act (emphasis added)."

24. The Cooperative's attempt to limit the District's powers to wholesale service and self-generation flies in the face of this unambiguous statement of legislative intent and should be rejected by the Commission.

c. The Legislature did not make the Babcock District's powers subservient to pre-existing agreements.

25. The Cooperative suggests that the District's legislatively granted power to provide electric service is superseded by a territorial agreement approved by Commission order, the FPL/LCEC Territory Agreement.

26. The Babcock District Law does not state that the District's powers shall be subservient to pre-existing territorial agreements. As stated in the District's Notice, when the Legislature intends to create such precedence, it expressly does so. For instance, Section 366.04(2)(d), Florida Statutes, authorizes the Commission to approve territorial agreements

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or wastewater reuse utility. No conditions, limits or restrictions of any kind were placed on the Babcock District's power "to provide electric service and related infrastructure."

between utilities, but provides a significant limitation, "however, nothing in this chapter shall be construed to alter existing territorial agreements" (emphasis added). Section 366.04(2)(f), Florida Statutes, generally recognizes a municipality's power to provide electric service within its corporate boundary but provides a significant limitation, "however existing territorial agreements shall not be altered or abridged hereby" (emphasis added). No such limitations were provided by the Legislature in the Babcock District Law.[3]

If the Babcock District Provides Electric Service, the District's Electric Operations Will Be Subject to the Regulatory Jurisdiction of the Commission

a. The Babcock District Law confirms that the District will be subject to Commission jurisdiction if the District elects to provide electric service in the area identified by the Legislature.

27. The Babcock District Law provides that if the Babcock District exercises its power to provide electric service, the District will be subject to "the regulatory jurisdiction and permitting authority" of the Commission or other bodies or agencies which regulate electric providers (section 6(7), Babcock District Law). Section 6(7), states, in pertinent part, as follows:

> SPECIAL POWERS.—The district shall have, and the board may exercise, the following special powers to implement its lawful and special purpose and to provide, pursuant to that purpose, systems, facilities, services, improvements, projects, works, and infrastructure, each of which constitutes a lawful public purpose when exercised pursuant to this charter, subject to, and not inconsistent with, the regulatory jurisdiction and permitting authority of all other applicable governmental bodies, agencies, and any special districts having authority with respect to any area included therein, and to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, finance, fund, and maintain improvements, systems, facilities, services, works, projects, and infrastructure, including, without limitation, any obligations pursuant to a development order or agreement…. (emphasis added)

[3] Note, also, the Legislature's dictate in the Lakewood District Law that the electric powers granted to that district were not intended to impair previously existing franchise agreements. No such language is found in the Babcock District Law. The Babcock District Law does not grant pre-existing agreements of any kind precedence over the Babcock District's powers.

28. The Cooperative interprets this language to mean that the District's "power 'to provide electricity' must be read in a manner not inconsistent with the Commission's pre-existing approvals of territorial agreements and the exclusive service areas established therein." Motion, at pages 5-6.

29. This strained interpretation of a single clause in the Babcock District Law, which the Cooperative refers to as a "Limiting Provision," conflicts with the Law's plain language which simply confirms that as an electric service provider, the District would be subject to this Commission's jurisdiction (as well as the permitting authority of the Department of Environmental Protection and Federal Energy Regulatory Commission). Further, as demonstrated previously in this Response, where the Legislature intends that pre-existing territory agreements shall have priority over electric powers of municipal providers, the Legislature expressly states such intention.

30. The Cooperative properly references the doctrine of *in pari materia* but then incorrectly applies it. See, Motion at page 5, footnote 4. The Cooperative argues for an interpretation of the "Limiting Provision" in section 6(7) which would render meaningless the grant of authority to provide electric service or inexplicably limit such power to wholesale or self-generation services. However, the "Limiting Provision" may be read in harmony with section 6(7)(u) of the Babcock District Law by recognizing that the District's rendition of electric service is subject to the Commission's authority to regulate pursuant to the Grid Bill and other applicable laws. This interpretation gives meaning to both sections of the Babcock District Law consistent with principles of statutory construction, and avoids the Cooperative's strained interpretation patently designed to serve its pecuniary interests.

31. The doctrine of *in pari materia*, when applied to the Babcock District Law, the Grid Bill, and Florida laws delegating responsibility to the Commission to carry out the Legislature's intent concerning electric service in this State, requires the Commission to reject the Cooperative's strained interpretation of the "Limiting Provision" and deny the Cooperative's motion to dismiss.

b. The Babcock District Law does not conflict with the Grid Bill from which the Commission draws its jurisdiction to determine electric service territories.

32. The Cooperative suggests that "[t]here can be no doubt that the Commission's jurisdiction under the Grid Bill, and its orders approving LCEC's territorial agreement with FPL, are 'exclusive and superior to' that of the District." Motion at page 8.

33. The Cooperative is asking the Commission to ignore the express terms of the Babcock District Law. Section 3 provides that:

> "in the event that a conflict arises between the provisions of applicable general laws and this act, the provisions of this act will control, and the district has jurisdiction to perform such acts and exercise such authorities, functions, and powers as shall be necessary, convenient, incidental, proper, or reasonable for the implementation of its limited, single, and specialized purpose regarding the sound planning, provision, acquisition, development, operation, maintenance, and related financing of those public systems, facilities, services, improvements, projects, and infrastructure works as authorized herein, including those necessary and incidental hereto" (emphasis added).

34. The Grid Bill is a general law enacted in 1974. To the extent that the Cooperative suggests that the Babcock District Law somehow conflicts with this general law (which it does not), or orders issued by the Commission pursuant to such law, the Legislature has dictated that the provisions of the Babcock District Law will control.

35. The District does not contest the fact that in exercising its power to provide electric service, the District will be subject to the Commission's jurisdiction, including the dictates of the Grid Bill. By the same token, the Commission derives its regulatory powers from the Legislature and the Legislature has granted to the District the power to provide electric service within District boundaries. Just as the Commission may modify service territories in previously approved territory agreements, so may the Legislature.

Service Areas Established In Territory Agreements Approved by Commission Order Are Not Sacrosanct or Immutable

a. Territory Agreements may be modified by the Legislature as well as the Commission.

36. The Cooperative refers to the "sanctity" of the FPL/LCEC Territory Agreement (motion at page 9) and suggests that the Legislature may not pass a law which modifies a territory agreement's terms.

37. The Florida Constitution vests in the Legislature full police power to regulate charges and services performed by utilities. The Legislature has enacted various laws in whole or in part to exercise the power, including Chapters 125, 366, 367 and other chapters in the Florida Statutes.

38. Longstanding case law holds that the terms of agreements entered by utilities, whether with another utility, government entity or other entity, "are ineffective to preclude subsequent legislative action in the exercise of the State's police power." City of Plantation v. Utilities Operating Co., Inc., 156 So. 2d 842, 844 (Fla. 1963).[4]

[4] Finding that "the right to exercise the police power is a continuing one," the Florida Supreme Court denied a city's claim that an act of the Legislature unconstitutionally impaired the city's rights under a franchise agreement with a private utility. City of Plantation v. Utilities Operating Co., Inc., at page 11, paragraph 35.

39. The Commission must recognize that by granting to the District the power to provide electric service within District boundaries, the Legislature pre-empted the pre-existing rights of the Cooperative under the FPL/LCEC Territory Agreement. The Cooperative's suggestion that the Commission possesses the power to amend the FPL/LCEC Territory Agreement but the Florida Legislature, from which the Commission derives such power, cannot, is without merit.

b. The Commission has recognized that when there is a new entrant into the electric service business, the service territory in a pre-existing territory agreement is modified.

40. The Commission has recognized that a Commission-approved territory agreement may be modified when there is a new entrant into the electric industry. This was demonstrated by the purchase by the City of Winter Park in 2003 of the electric assets of Progress Energy located within the city's boundaries. Progress Energy previously provided service within Winter Park pursuant to a Commission-approved territorial agreement between Progress Energy and Orlando Utilities Commission. Winter Park exercised its right to purchase Progress Energy's assets, a right accorded to the City under its franchise agreement with Progress Energy.

41. The fact that Progress Energy had been providing electric service within City borders under a Commission-approved territorial agreement did not prohibit the Commission from acknowledging Winter Park's entry into the electric utility business as a new municipal electric utility.[5] In its order, the Commission relieved Progress Energy of its obligation to provide service in the city, "thereby delineating the City's territorial service boundary." In re:

[5] The Cooperative suggests that because the Babcock District does not currently provide electric service, it is not a "utility" and the Commission should therefore dismiss the District's Notice. Winter Park did not provide electric service prior to its purchase of Progress Energy's electric assets. This fact did not prevent the Commission from acknowledging the City as a new municipal electric provider subject to the Commission's jurisdiction. In re: Petition to relieve Progress Energy Florida, Inc. of the statutory obligation to provide electrical service to certain customers within the City of Winter Park, pursuant to Section 366.03 and 366.04, F.S., Order No. PSC-05-0453-PAA-EI (April 8, 2005).

Joint petition for approval of territorial agreement in Orange County by the City of Winter Park and Duke Energy Florida, Inc., Order No. PSC-14-0108-PAA-EU (February 24, 2014) at page 1.

42. While the Commission acknowledged Winter Park as a new municipal electric provider, the Commission stated a preference for the city and the utility to enter into a new territory agreement reflecting service boundaries between them. The city and utility did not submit such territory agreement to the Commission until November 6, 2013. The Commission did not approve the territory agreement until February 24, 2014. Id. During the intervening nine years, Winter Park provided electric service to its residents.

43. Moreover, section 366.04(2)(e), Florida Statutes, and case law make clear that territorial agreements can be amended on the Commission's initiative or by motion of a party to the agreement or another interested party. See Peoples Gas System, Inc. v. Mason, infra.

44. The FPL/LCEC Territorial Agreement itself provides for amendment if there is a change in circumstances. Specifically, section 4.1 of the FPL/LCEC Territory Agreement provides as follows:

> "This Agreement shall continue and remain in effect until the Commission, by order, modifies or withdraws its approval of this Agreement after proper notice and hearing. Modification or withdrawal of the Commission's order of approval of this Agreement shall be based upon a finding that modification or withdrawal is necessary in the public interest because of changed conditions or other circumstances not present at the time this Agreement was approved by the Commission."

The Legislature's passage of the Babcock District Law certainly constitutes "changed conditions or other circumstances not present at the time the [FPL/LCEC] Agreement was approved by the Commission." The District believes the rights of FPL and the Cooperative were modified immediately upon passage of the Babcock District Law.

The Cooperative's Constitutional Arguments are Not Within the Commission's Jurisdiction to Determine, are Without Merit and Should be Rejected

45. The Cooperative alleges that if the Babcock District exercises its legislatively-delegated power to provide electric service within legislatively-defined District boundaries, it will unconstitutionally impair the Cooperative's rights under a pre-existing territorial agreement. The Cooperative provides no support for the allegations other than a citation to the Florida Constitution.

46. The Cooperative also alleges that if the Babcock District exercises its legislatively-delegated power to provide electric service within legislatively-defined District boundaries, it will unconstitutionally take the Cooperative's property without just compensation. The Cooperative provides no support for this allegation other than a citation to the Florida Constitution.

47. The Cooperative's bare assertions of unconstitutional acts fly in the face of fundamental principles of modern utility regulation. Absent active supervision by the Commission, private territory agreements assigning future service to undeveloped territory, like the one between the Cooperative and FPL, are horizontal divisions of territory that are anti-competitive, unlawful, and a per se violation of federal anti-trust laws. Such private territory agreements have no existence apart from the Commission's approval order. Only active supervision by the Commission renders the FPL/LCEC Territory Agreement lawful. Thus, the Commission can modify the territory agreement consistent with this supervisory power in a proceeding initiated by the Commission, by a party to the agreement, or even by an interested member of the public, like the Babcock District. See Public Service Commission v. Fuller, 551 So. 2d 1210 (Fla. 1989); Peoples Gas System, Inc. v. Mason, 187 So. 2d 335 (Fla. 1966); In re:

Complaint of Robert D. Reynolds and Julianne C. Reynolds against Utility Board of the City of Key West, Florida d/b/a Keys Energy Services regarding extending commercial electrical transmission lines to each property owner of No Name Key, Florida, Order No. PSC-13-0207-PAA-EM (May 21, 2013).

48. Acknowledgment by the Commission of the Babcock District's right to provide electric service within District boundaries, or to otherwise provide therefor, will not result in unlawful impairment of the Cooperative's rights under the FPL/LCEC Territory Agreement. Rather, such acknowledgment will be a valid exercise of the State's delegated police power, a power which cannot be foreclosed by agreement between private parties. City of Plantation v. Utilities Operating Co., 156 So. 2d 842 (Fla. 1963). See, also, H. Miller & Sons, Inc. v. Hawkins, 373 So .2d 913, 914 (Fla. 1979), in which the Florida Supreme Court found that it is a . . . "well-settled principle that contracts with public utilities are made subject to the reserved authority of the state, under the police power of express statutory or constitutional authority, to modify the contract in the interest of the public welfare without unconstitutional impairment of contracts." (citing Midland Realty Co. v. Kansas City Power & Light Co., 300 U.S. 109 (1937); City of Plantation v. Utilities Operating Co., 156 So. 2d 842 (Fla. 1963); Miami Bridge Co. v. Railroad Commission, 20 So. 2d 356 (1944)).

49. The Cooperative's claim of an unconstitutional taking similarly is without merit. Both the Grid Bill, to which the District would be subject, and the Babcock District Law articulate the basis for the State's exercise of its police power to regulate activities that can result in public harm. Both laws discourage the fragmentation and duplication of facilities and services which result when multiple providers of a single service are permitted to exist within the District, likely resulting in the uneconomic duplication of facilities and services.

50. As recognized long ago by the Florida Supreme Court, "[t]here is a clear distinction between the power of eminent domain and the police power. The power of eminent domain is that sovereign power to take property for a public use or purpose and this cannot ever be done without just compensation. On the other hand, the police power is that power by which the Government may destroy or regulate the use of property in order to "promote the health, morals and safety of the community," and the police power may be exercised without making compensation for the impairment of the use of property or any decrease in the value of property by reason of the regulated use (internal citations omitted)." Adams v. Housing Authority of Daytona Beach, 60 So. 2d 663 (Fla. 1952).

51. Both of the Cooperative's claims of constitutional impropriety are without merit, allege matters outside the jurisdiction of the Commission[6], and should be rejected by the Commission.

The District's Request to Defer Submitting a Tariff Should Be Granted Until a Decision is Made to Provide Electric Service Directly or Contract with a Third Party For Such Service

a. *Requiring the District to submit a tariff now would be a waste of resources.*

52. The Cooperative provides lengthy arguments in opposition to the District's request to defer the filing of a tariff until the District has decided whether to provide electric service directly or through a public-private partnership, a choice granted to the District by the Legislature.

[6] See, Fuel and purchased power cost recovery clause with generating performance incentive factor, Order No. PSC-11-0579-FPF-EI (December 16, 2011) and Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for [numerous counties], Order No. PSC-99-0664-PCO-WS (April 5, 1999) (quoting Key Haven Associated Enters, Inc. v. Board of Trustees of Internal Improvement Trust Fund, 427 So. 2d 153, 158 (Fla. 1982)).

53. The legitimacy and practicality of the District's request is beyond question. Should the Commission require the District to file a tariff prior to the point in time when associated costs of service and ultimate utility provider are known? The filing of such a tariff would be a waste of money, time and effort at this time. The District considers such wasteful activity a hardship. Moreover, it is this type of waste and inefficiency in the District's planning stages, which the Cooperative is advocating, that the Legislature created the District to avoid, as exhibited in section 3 of the Babcock District Law, where the Legislature provides:

> "…the district has jurisdiction to perform such acts and exercise such authorities, functions, and powers as shall be necessary, convenient, incidental, proper, or reasonable for the implementation of its limited, single, and specialized purpose regarding the sound planning, provision, acquisition, development, operation, maintenance, and related financing of those public systems, facilities, services, improvements, projects, and infrastructure works as authorized herein, including those necessary and incidental hereto."

54. The District understands that should the District decide that it will be most cost-effective, efficient and environmentally friendly for the District to provide electric service within its boundary, the District will file a tariff with the Commission prior to initiation of service[7] and be subject to Commission rules in the same manner as other municipal electric utilities. This understanding is clearly stated by the District in the Notice.[8] The Babcock District should not be

[7] District lands are owned by BPH and its affiliated interests. The District will be working with BPH throughout the development process, including the determination of the most efficient, effective and environmentally friendly manner of providing electric service. BPH and its affiliates thus will have timely notice of the District's decision and associated costs, rates, policies and procedures, which will be included in such tariff prior to initiation of service by the District.

[8] In Docket No. 920041-EI, Petition for Clarification and Guidance on Appropriate Market Based Pricing Methodology for Coal Purchased from Gatliff Coal Company by Tampa Electric Company, the electric utility requested clarification of a certain pricing methodology previously established by Commission order. The Office of Public Counsel filed a motion to dismiss the petition alleging, in part, that the petition did not comply with Commission rule and suggesting that interested parties did not "have any idea what authority [the utility] is invoking that would empower the Commission to grant relief." The Commission found the argument unconvincing and denied the motion. The Commission's order states, in pertinent part: "We do not find this argument convincing. The petition well meets the accepted standards for the form of petitions filed with the Commission. The petition states that the Commission has regulatory authority over TECO under the provisions of Chapter 366, Florida

made to suffer from the absence of a statute or Commission rule which applies directly to the relatively unique facts presented in the District's Notice. The District's Notice should not be dismissed, with prejudice, as requested by the Cooperative.

Wherefore, for the reasons indicated in this Response, the Babcock District respectfully requests that the Commission (1) deny the Cooperative's motion to dismiss, (2) acknowledge the authority of the Babcock District to provide retail electric distribution service and other electric services within the area presented in Appendix C to the Notice; (3) grant the District's request for a temporary waiver of the tariff filing requirement, and (4) grant the District such further relief as may be just and proper.

Respectfully submitted this 22nd day of April, 2014.

s/ Brian P. Armstrong
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Statutes…The petition sets out the relief requested and alleges the factual and legal grounds on which the request for relief is based." Petition for Clarification, Docket No. 920041-EI (Order 92-0304 issued May 6, 1992) at page 3. The Commission should apply the same rationale in this docket and deny the Cooperative's motion to dismiss.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy of the foregoing was furnished by electronic mail to the following this 22nd day of April, 2014:

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