

Shawna Senko

From: Michelle Hershel <mhershel@feca.com>
Sent: Friday, April 11, 2014 2:26 PM
To: Filings@psc.state.fl.us
Subject: Comments by FECA in Docket 140059-EM
Attachments: FECA comments.pdf

Name, Address, Telephone, e-mail address of the person responsible for this filing:

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Docket number and title:

Docket 140059-EM, In re: Notice of New Municipal Electric Service Provider and Petition for Waiver of Rule 25-9.044(2), F.A.C., by Babcock Ranch Community Independent Special District

Name of Party on whose behalf this document is filed:

Florida Electric Cooperatives Association, Inc.

Total number of pages in this document:

6

Brief, but complete, description of the attached document:

Attached for filing is Florida Electric Cooperatives Association, Inc.'s Comments to the Notice of New Municipal Electric Service Provider and Petition for Waiver of Rule 25-9.044(2), F.A.C., filed by Babcock Ranch Community Independent Special District.

Sincerely,

s/Michelle L. Hershel

Michelle Hershel
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FECA

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April 11, 2014

By Electronic Mail

Ms. Carlotta Stauffer, Director
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oaks Blvd
Tallahassee, FL 32399-0850

RE: Docket No. 140059-EM: In re: Notice of New Municipal Electric Service Provider and Petition for Waiver of Rule 25-9.044(2), F.A.C., by Babcock Ranch Community Independent Special District

Dear Ms. Stauffer:

Please find for filing in the above-reference docket the Florida Electric Cooperatives Association's ("FECA") Comments to the Notice of New Municipal Electric Service Provider and Petition for Waiver of Rule 25-9.044(2), F.A.C., filed by Babcock Ranch Community Independent Special District.

Thank you for your assistance with this filing. Please call me if you have any questions.

Sincerely,


William B. Willingham, Esq.

Enclosure

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of new municipal electric service provider and petition for waiver of Rule 25-9.044(2), F.A.C., by Babcock Ranch Community Independent Special District

DOCKET NO.: 140059-EM

DATE: April 11, 2014

FLORIDA ELECTRIC COOPERATIVES ASSOCIATION, INC.'S COMMENTS TO THE NOTICE OF NEW MUNICIPAL ELECTRIC SERVICE PROVIDER AND PETITION FOR WAIVER OF RULE 25-9.044(2), FLORIDA ADMINISTRATIVE CODE FILED BY BABCOCK RANCH COMMUNITY INDEPENDENT SPECIAL DISTRICT

The Florida Electric Cooperatives Association, Inc. ("FECA")¹, pursuant to Section 120.542, Florida Statutes, and Rule 28-104.003, Florida Administrative Code, and in accordance with the Commission's notice of the request for rule waiver that was published in the Florida Administrative Register on March 28, 2014, submits its comments to the "Notice of New Municipal Electric Service Provider and Petition for Waiver of Rule 25-9.044(2), Florida Administrative Code" (the "Notice and Petition") filed by Babcock Ranch Community Independent Special District (the "District") on March 24, 2014. FECA reserves the right to continue participating in this proceeding as it progresses.

The Notice and Petition is a poorly disguised attempt by the District to usurp a portion of the Commission's Order² that approved a territorial agreement between Lee County Electric Cooperative ("LCEC")³ and Florida Power and Light Company ("FPL"), which Order grants unique and exclusive service territories to both utilities within the boundary of the District. The issues before the Florida Public Service Commission ("Commission") in this proceeding are of great concern to FECA, the 17 electric cooperatives that are members of FECA, and to the

¹FECA is a Florida corporation and a trade association that represents almost all of Florida's electric cooperatives. All 17 of FECA's members are electric cooperatives, and all 17 members are regulated by the Florida Public Service Commission pursuant to Chapter 366, Florida Statutes. FECA's members that are distribution cooperatives provide retail service to approximately 800,000 retail accounts that are located throughout 53 Florida counties. FECA's members also own and operate generation and transmission facilities throughout Florida.

² Order No. 93-0705 issued May 10, 1993.

³ LCEC is not member of FECA.

consumer-members that are served by those electric cooperatives, and could have a significant impact on their ability to plan for future growth and to keep rates as low as possible.

FECA is especially concerned with the bald assertion that a vague provision in a special act of the Legislature could allow the District to unilaterally force LCEC and FPL to surrender a portion of their exclusive service territories as those territories are defined by the Commission's Order No. 93-0705. The District's request attempts to undermine the Commission's exclusive jurisdiction to: approve territorial agreements and resolve territorial disputes under the Grid Bill; to prevent uneconomic duplication of facilities; and to plan for a coordinated electric grid throughout Florida. There are numerous procedural and substantive grounds for the Commission to deny the waiver request and to reject the notice, including the District's absence of authority to create a competing retail electric utility, and FECA believes the Commission should deny the District's Notice and Petition.

The Need to Maintain the Integrity of the Grid Bill

Electric utilities plan for future growth based upon long term growth projections. Planning for generation, transmission, and substations requires multi-decade forecasts, and it is not uncommon for distribution facility planning to involve multi-decade forecasts. Ideally the facilities will be properly sized for immediate and future use and will not have to be replaced with higher capacity facilities before their useful life ends. In reality, utilities are in a constant struggle to make sure their facilities are sufficient to provide reliable service while also trying to avoid over building and avoid imposing extra costs upon the ratepayers.

To assist with planning, many utilities have entered into Commission-approved territorial agreements with neighboring utilities, which define the area that each utility must plan to serve. Forecasting is challenging enough when a utility knows the area that it will serve, but it would

become a guessing game if a local government or local district is allowed to give notice at any time that it will serve an area that a utility has planned to serve. Utilities' stranded cost could quickly mount, and rates would increase unnecessarily due to uneconomic duplication of facilities, which is exactly what the Grid Bill⁴ is supposed to prevent.

The Grid Bill, which was enacted in 1974 and expressly gave the Commission jurisdiction over municipally-owned utilities and electric cooperatives for the first time, authorizes and encourages territorial agreements between all utilities in order to prevent the uneconomic duplication of utility facilities throughout Florida. FECA and its members have a significant and abiding interest in the preservation and enforcement of the Grid Bill. Those interests include: (i) the avoidance of territorial disputes; (ii) the avoidance of further uneconomic duplication of generation, transmission and distribution facilities; (iii) the planning, development and maintenance of a coordinated electric power grid throughout Florida; and minimizing the cost of electricity in Florida. The District's unprecedented efforts in this proceeding threaten to abrogate the Commission's exclusive jurisdiction to implement, supervise, and enforce electric service territorial agreements in Florida, and have serious implications for electric utility regulations statewide.

The District Lacks Authority to Create a Municipal Utility

The District was created in 2007 by Chapter 2007-306, Laws of Florida (the "Babcock Special Law"). Section 6(7)(u) of the Babcock Special Law merely authorizes the District to "provide electricity". There is no mention whatsoever of authorizing the District to sell electricity at retail or to the general public, nor is there any mention of allowing the District to form or to operate as an electric or public utility. This is especially noteworthy as water, sewer,

⁴ Sections 366.04(2) through 366.04(5), Florida Statutes.

and wastewater reuse utilities are discussed in detail in Section 6(7)(b)1 of the Babcock Special Law.

Even if the District could somehow form a retail electric utility, and FECA believes they cannot, Section 6(7) of the Babcock Special Law clearly states that the District's special powers are subject to and cannot be 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." Regardless of any authority the District may have, it is subject to the Commission's exclusive jurisdiction over electric utility service territories, and the Commission, not the District, shall determine who will provide retail electric service within the boundaries of the District.

The Petition for Waiver of Rule 25-9.044(2) Should be Denied

The District requests a waiver of section 2 of the Commission's Rule 25-9.044, "Change of Ownership". However, the District fails to explain why the Rule is applicable or needs to be waived in this situation, as there is no change in ownership of a utility. Noticeably absent from the Notice and Petition is any reference to Section 120.542, Florida Statutes, and there is no attempt to satisfy even the minimum requirements of that Section. A rule waiver cannot be granted until the statutory requirements have been met. The requested rule waiver must be denied.

Conclusion

The District lacks authority to circumvent the Grid Bill, and the Commission must protect the integrity of its authority to regulate electric utility service territories. The District's authority to create a retail electric utility is illusory and the "Notice and Petition" should be dismissed.

Respectfully submitted,



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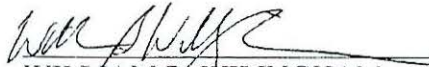
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 11th day of April 2014, to the following:

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