

1 BEFORE THE  
2 FLORIDA PUBLIC SERVICE COMMISSION

3 In the Matter of:

DOCKET NO. 130188-EM

4 COMPLAINT REGARDING ELECTRIC  
5 RATE STRUCTURE FOR GAINESVILLE  
6 REGIONAL UTILITIES.

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13 PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
14 ITEM NO. 3

15 COMMISSIONERS  
16 PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER RONALD A. BRISÉ  
COMMISSIONER EDUARDO E. BALBIS  
COMMISSIONER JULIE I. BROWN

18 DATE: Thursday, March 13, 2014

19 PLACE: Betty Easley Conference Center  
Room 148  
20 4075 Esplanade Way  
Tallahassee, Florida

21 REPORTED BY: JANE FAUROT, RPR  
22 Official FPSC Reporter  
(850) 413-6732

1                   **P R O C E E D I N G S**

2                   **CHAIRMAN GRAHAM:** Okay. Let's cycle back  
3 around to Item Number 3.

4                   **MS. BARRERA:** Good morning, Commissioners.

5                   This docket concerns the complaint filed by  
6 customers of Gainesville Regional Utilities containing  
7 certain allegations about Gainesville's rates, wholesale  
8 contract with Alachua, a proposed rate structure, and  
9 the rate structure in existence at the time the  
10 complaint was filed in July of 2013. Gainesville filed a  
11 motion to dismiss the complaint. The complainants filed  
12 a response, and we are here on the motion to dismiss.

13                  Staff recommends dismissal with prejudice  
14 those portions of the complaint over which the  
15 Commission has no jurisdiction, which are the rates and  
16 the wholesale contract. And staff also recommends  
17 dismissal without prejudice of the portion of the  
18 complaint regarding rate structure and to allow -- if  
19 the complaint is dismissed, to allow the complainants to  
20 file a complaint within 15 -- an amended complaint  
21 within 15 days, or a complaint within 15 days.

22                  **CHAIRMAN GRAHAM:** Thank you, staff.

23                  Commissioners, Issue Number 1, oral arguments.  
24 I'm inclined to grant the five-minute oral arguments.  
25 If I don't hear any opposition, we'll go with that.

1                   We'll start with Mr. Skop. I will let you  
2 know when you have about a minute left, and then you can  
3 kind of draw your conclusions.

4                   **MR. SKOP:** Thank you, Mr. Chairman.

5                   As a point of information, since GRU is the  
6 movant, perhaps it would be more appropriate for Mr. May  
7 to speak to GRU's motion first and allow us the  
8 opportunity to respond.

9                   **CHAIRMAN GRAHAM:** Mr. May, if that's okay.

10                  **MR. MAY:** That would be fine, Mr. Chairman.

11                  Good morning. I'm Bruce May with the law firm  
12 of Holland and Knight. Our firm represents the City of  
13 Gainesville, which does business as the Gainesville  
14 Regional Utilities. With me this morning is Ms. Shayla  
15 McNeill; she is to my left. Ms. McNeill is the city's  
16 in-house utility counsel.

17                  As you listen to the arguments today,  
18 Commissioners, please keep in mind that the city is a  
19 municipal utility governed by local elected officials.  
20 The city has a strong interest in making sure that it  
21 listens to and understands the concerns of its customers  
22 and hopes that those concerns can be amicably resolved.  
23 However, when a customer files a legal action against  
24 the city based upon pleadings which do not comply with  
25 Florida law, the city has no choice but to point out

1       these legal deficiencies and seek dismissal. That's  
2       where we find ourselves today.

3                 I would also ask that you keep in mind that  
4       this agency does not have jurisdiction over the city's  
5       revenue requirement, nor does it have jurisdiction over  
6       the level or the dollar amount of the city's rates.  
7       Under Florida law, the city's revenue requirement and  
8       its rates are set solely by the city commission of  
9       Gainesville, elected officials, but only after the city  
10      commission receives extensive public input during  
11      numerous public hearings.

12               With that said, Commissioners, the city  
13      supports your staff's recommendation. And just as we  
14      pointed out in our motion to dismiss, your staff has  
15      recommended that the petition be dismissed for three  
16      basic reasons. First, it is filled or replete with  
17      claims that the city's rates are too high and its  
18      wholesale contracts and wholesale rate structure are  
19      improper. The Supreme Court has ruled that those claims  
20      are clearly outside the Commission's jurisdiction over  
21      municipals. Therefore, those claims should be  
22      dismissed.

23               The second deficiency is that the petition  
24      targets a fiction. The petition is largely dedicated to  
25      vilifying a proposed two-tiered rate structure that the

1       city actually never adopted and simply doesn't exist.  
2       This is a classic strawman argument and should be  
3       dismissed.

4                 Third, the petition makes conclusory  
5       allegations about the inadequacies of the city's  
6       existing rate structure without providing the Commission  
7       or the city with the requisite notice of what the  
8       petitioners believe those inadequacies are.

9                 The petition also fails to put the Commission  
10      and the parties on notice as to what specific relief is  
11      being requested. Those are material defects,  
12      Commissioners, under Florida's Administrative Procedures  
13      Act. As your staff recommendation reflects, the  
14      petition has serious flaws and you really have no  
15      discretion today but to dismiss it, just as your staff  
16      recommends.

17               Before I conclude, I want to briefly address  
18      an erroneous argument that surfaces in the petitioner's  
19      response to our motion to dismiss. Counsel suggests  
20      that the petition he filed somehow entitles his clients  
21      to a formal evidentiary hearing. That's incorrect. In  
22      its response to our motion to dismiss, the petitioners  
23      mention that the petition was filed pursuant to  
24      Section 120.569. But what the petitioners do not advise  
25      the Commission of is that that statute was amended in

1           1998 to make it clear that the right to an  
2           administrative hearing is not automatic.

3           Prior to 1998, it was fairly common practice  
4           for agencies to immediately commence formal evidentiary  
5           hearings simply based on vague or speculative petitions  
6           in hopes that those defects would be cured later during  
7           the evidentiary hearing by motion practice before the  
8           administrative law judge or the hearing officer. This  
9           often left agencies such as yourself and other parties  
10          to the proceeding in the difficult position of having to  
11          speculate on what the hearing was all about. This led  
12          to prolonged disputes over unnecessary issues, it led to  
13          inordinate delays, and it ultimately increased costs.

14           Formal evidentiary hearings are expensive  
15          propositions. To correct this problem, the legislature  
16          amended Section 120.569 to require, to require an agency  
17          like you to, quote, closely review the petition at the  
18          front end of the process, and to dismiss the petition at  
19          the front end of the process if it is based on  
20          conclusory allegations, speculative injuries, and rates  
21          that simply don't exist.

22           **CHAIRMAN GRAHAM:** Mr. May, you have a minute  
23          left.

24           **MR. MAY:** Okay. Your staff recommendation  
25          complies with that statutory mandate to the letter. As

1 staff explains, the petition was filed well before the  
2 city finalized its rate structure and filed it with the  
3 Commission. Because petitioners jumped the proverbial  
4 gun, their pleadings make repeated allegations directed  
5 at a rate structure that was never actually adopted by  
6 the city.

7 As your staff correctly points out, the  
8 allegations are far too speculative and the relief  
9 requested is far too vague to entitle petitioners to an  
10 evidentiary hearing. The petition itself needs to be  
11 dismissed as a matter of law.

12 Going forward, Commissioners, if counsel is  
13 intent on pursuing this matter any further, he needs to  
14 amend his petition to cure these serious defects.  
15 That's precisely what the law requires, and that's what  
16 your staff has recommended. Thus, we would respectfully  
17 request that you adopt or approve staff's  
18 recommendation. Thank you.

19 I'll be available after Mr. Skop makes his  
20 presentation to answer any questions.

21 **MR. SKOP:** Thank you, Mr. Chairman,  
22 Commissioners. Nathan Skop appearing on behalf of Eye  
23 Associates of Gainesville, LLC, and Debra Martinez.

24 Mr. May raised some points, and I'd like the  
25 opportunity to briefly respond. As to the staff

1 recommendation, given the significant amount of time  
2 that has passed since the filing of our petition, nearly  
3 seven months, my clients support the staff  
4 recommendation subject to comment and clarification. My  
5 clients are certainly willing to amend the complaint to  
6 update the ultimate facts supporting the stated cause of  
7 action upon which relief can be granted.

8 It's important to recognize, however,  
9 Commissioners, and Mr. Chairman, that the petitioners  
10 cause of action in this docket is, has been, and always  
11 will be about GRU's retail rate structure, retail  
12 electric rate structure. The petition filed by the  
13 petitioners was the initiation of formal proceedings  
14 pursuant to Rule 25-22.306, Florida Administrative Code.

15 In a subsequent filing, the Commission  
16 reclassified the petition as a complaint and revised the  
17 docket title. The petition itself is supported by the  
18 signatures of 112 GRU customers, and docket  
19 correspondence letters exist from a state representative  
20 who is also a GRU customer, and a congressman who also  
21 has constituents that live in GRU's service territory.

22 But getting to the point, the Commission  
23 clearly has jurisdiction over the retail electric rate  
24 structure of a municipal utility pursuant to Sections  
25 366.02(2) and 366.04(2)(b), Florida Statutes. GRU would

1 seek to have this Commission render the statutory  
2 jurisdiction meaningless.

3 I think it's fair to say -- and, Mr. May, feel  
4 free to opine -- but I think that it's fair to say that  
5 the parties and PSC staff would all likely agree that  
6 the Commission does have jurisdiction over GRU's retail  
7 electric rate structure. And the standard of review  
8 that this Commission should apply in reviewing the  
9 complaint was that in order to sustain a motion to  
10 dismiss, the moving party must show that accepting all  
11 allegations as true and in favor of the complainant,  
12 that the petition still fails to state cause of action  
13 for which relief may be granted. GRU's motion fails to  
14 meet this burden. Applying the standard of review to  
15 petitioner's complaint, the GRU motion to dismiss should  
16 be denied because the petition was facially sufficient  
17 and stated a cause of action upon which relief may be  
18 granted.

19 There's two issues. There's the existing rate  
20 structure and proposed rate structure. Clearly there  
21 were inequities in the rate structure. I think a lot of  
22 this can be solved by amending the complaint.

23 My clients are somewhat puzzled, however, by  
24 the staff recommendation to grant GRU's motion to  
25 dismiss with prejudice on the nonjurisdictional issues

1 which my clients never sought to litigate in this  
2 docket. The petitioners have the right to plead the  
3 ultimate facts necessary to establish a stated cause of  
4 action upon which relief may be granted by this  
5 Commission, and in this case that's GRU's retail  
6 electric rate structure.

7 The disputed issues of material fact and  
8 relief sought in the petition did not raise nor request  
9 any relief whatsoever on the nonjurisdictional issues.  
10 Accordingly, the motion to dismiss the nonjurisdictional  
11 issues upon which relief was not sought seems equally  
12 moot.

13 Commissioners, the nonjurisdictional issues  
14 which GRU complains upon in their motion were pled as  
15 relevant facts within the background, background section  
16 of the petition. These relevant facts are aggravating  
17 factors demonstrating why review of the inequities  
18 within GRU's retail electric rate structure are  
19 critically important. So to make this analogy, it is  
20 well known that GRU currently has the highest electric  
21 rates in the State of Florida. And if the Commission  
22 could take official recognition of this well-known fact,  
23 then certainly a litigant should be able to plead a  
24 relevant fact in the context of establishing the stated  
25 cause of action related to GRU's retail electric rate

1                   structure.

2                   So, again, I think that the relief sought here  
3                   was to review the rate structure. The material issue or  
4                   disputed issues of material fact were all related to  
5                   GRU's retail electric rate structure. So with respect  
6                   to the relief sought, again, my clients are perfectly  
7                   happy to amend the complaint pursuant to the staff  
8                   recommendation.

9                   Again, we would like to put this in a hearing  
10                  posture, conduct some discovery, put on some testimony,  
11                  and ultimately the Commission would have the authority,  
12                  at least in our opinion, based upon the reading of the  
13                  statute, to issue an order directing GRU, if it was  
14                  proven is based on the evidentiary record, to address  
15                  the inequalities within their retail electric rate  
16                  structure.

17                  I don't believe that this Commission could  
18                  order GRU how to accomplish that, because rate structure  
19                  and rates are inextricably intertwined. But certainly  
20                  if inequities exist within the statutory jurisdiction  
21                  that this Commission enjoys on the electric retail rate  
22                  structure, then that's an issue squarely within the  
23                  Commission's jurisdiction. And 93,000 GRU customers,  
24                  including my clients, are looking to this Commission for  
25                  assistance in resolving those inequities.

1                   Thank you, Mr. Chairman.

2                   **CHAIRMAN GRAHAM:** Thank you, Mr. Skop.

3                   Commissioners? Commissioner Brown.

4                   **COMMISSIONER BROWN:** Thank you. A couple of  
5                   questions for Mr. May.

6                   Could you tell us what the status is of the  
7                   city commission ordinance? Has it been codified and  
8                   issued by the city clerk?

9                   **MR. MAY:** Commissioner Brown, this petition  
10                  that's before you today was filed well in advance of the  
11                  city finalizing its rates. The city actually filed its  
12                  rates, finalized its rates in August of last year. And  
13                  in accordance with your rules under Chapter 25-9, filed  
14                  the rate structure and the rates with you and your staff  
15                  at the end of last year.

16                  The utility has received -- this is outside of  
17                  the -- obviously outside of the four corners of the  
18                  pleadings, but just to answer your question, the utility  
19                  has received a letter from your staff which has  
20                  administratively approved the rate structure. So that's  
21                  where we are today. To answer your question, yes, they  
22                  have, and it has been filed and it has been approved by  
23                  your staff administratively.

24                  **COMMISSIONER BROWN:** This may be a question  
25                  for you or Mr. Skop regarding the existing rate

1       structure and how it differs from the previous rate  
2       structure. Can you or Mr. Skop explain to us how they  
3       differ?

4                   **MR. MAY:** The rate structure that the City of  
5       Gainesville has filed is essentially the same rate  
6       structure that has been on file for the last seven  
7       years, and it has been approved each year by this  
8       Commission.

9                   **COMMISSIONER BROWN:** Okay.

10                  **MR. SKOP:** Mr. Chair. And to Commissioner  
11       Brown's question, I would agree that it is a rate  
12       structure. However, the inequities that exist within  
13       that rate structure are disputed issues of material  
14       fact. And I know that our original petition, again,  
15       looked at the existing and the proposed rate structure.  
16       The existing had inequities. It's our belief that the  
17       implemented rate structure has those same inequities.  
18       And notwithstanding Commission staff's administrative  
19       approval action, again, what we're trying to do is  
20       address and litigate the inequities within the retail  
21       electric rate structure, and I think that's a credible  
22       difference.

23                  And one thing that I did not mention  
24       previously, but it was in Docket 080665-EI, in re,  
25       approval of long-term agreement for full requirement

1 electric service with Lee County Electric Cooperative,  
2 that was an instance where the PSC had both rate  
3 structure and rate jurisdiction, but it was asked to  
4 look at FPL's proposed wholesale contract with Lee  
5 County. And staff actually issued recommendations that,  
6 you know, kind of pierced that veil a little bit to take  
7 a look at some of the impact on the various rate classes  
8 of customers as a result of that contract.

9 So it's not unprecedeted, at least in my  
10 opinion, for the Commission to look there. And in this  
11 case it's a municipal, which makes it more difficult,  
12 because the Commission does not have rate jurisdiction.  
13 But the rate structure is an issue, and the rate  
14 structure inequities are aggravated by some of these  
15 nonjurisdictional issues that were merely pled as  
16 ultimate facts in relation to support the stated cause  
17 of action.

18                   **COMMISSIONER BROWN:** Mr. Skop, in the oral  
19 argument you stated, you seemed to be inclined to  
20 support the staff recommendation to come back and amend  
21 the complaint, is that correct?

22                   **MR. SKOP:** Yes, ma'am.

23                   **COMMISSIONER BROWN:** Okay. Because I think  
24 there's some validity in the fact that the complaint  
25 didn't really specify what the inequities are. I think

1           it needs to be more clear, so I -- thank you.

2           **CHAIRMAN GRAHAM:** Other Commissioners?

3           Okay. I'd like to entertain a motion.

4           Commissioner Brown.

5           **COMMISSIONER BROWN:** I move staff  
6 recommendation.

7           **CHAIRMAN GRAHAM:** It has been moved and  
8 seconded, staff recommendation.

9           Commissioner Edgar, did you have any comments?

10          **COMMISSIONER EDGAR:** I was going to make a  
11 motion.

12          **CHAIRMAN GRAHAM:** Okay. It has been moved and  
13 seconded, staff recommendation on all issues on Item  
14 Number 3. Any further discussion?

15          Seeing none, all in favor say aye.

16          (Vote taken.)

17          **CHAIRMAN GRAHAM:** Any opposed?

18          By your action you've approved staff's  
19 recommendation.

20          **MS. BARRERA:** Thank you.

21          **MR. MAY:** Thank you, Commissioners.

22                               \* \* \* \* \*

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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4  
5 I, JANE FAUROT, RPR, Chief, Hearing Reporter  
Services Section, FPSC Division of Commission Clerk, do  
hereby certify that the foregoing proceeding was heard  
at the time and place herein stated.

7 IT IS FURTHER CERTIFIED that I  
8 stenographically reported the said proceedings; that  
the same has been transcribed under my direct  
supervision; and that this transcript constitutes a  
9 true transcription of my notes of said proceedings.

10 I FURTHER CERTIFY that I am not a relative,  
employee, attorney or counsel of any of the parties,  
nor am I a relative or employee of any of the parties'  
attorney or counsel connected with the action, nor am I  
financially interested in the action.

13 DATED THIS 20th day of March, 2014.

14  
15   
16 JANE FAUROT, RPR  
17 Official FPSC Hearings Reporter  
(850) 413-6732  
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