

Dorothy Menasco

From: Michelle Hershel <mhershel@feca.com>
Sent: Tuesday, May 27, 2014 3:37 PM
To: Filings@psc.state.fl.us
Subject: Response by FECA in Docket 140059-EM
Attachments: FECA's Response to Motion to Strike.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:

7

Brief, but complete, description of the attached document:

Attached for filing is Florida Electric Cooperatives Association, Inc.'s Response to Babcock Ranch Community Independent Special District's Motion to Strike Comments Filed By FECA.

Sincerely,

s/Michelle L. Hershel

Michelle Hershel
Director of Regulatory Affairs
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FECA

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May 27, 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") Response to Babcock Ranch Community Independent Special District's Motion to Strike Comments Filed by FECA.

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

Sincerely,

William B. Willingham, Esq.

Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Notice of new municipal electric service) Docket No. 140059-EI
provider and petition for waiver of)
Rule 25-9.044(2), F.A.C., by Babcock Ranch) Filed: May 27, 2014
Community Independent Special District)
_____)

**FLORIDA ELECTRIC COOPERATIVES ASSOCIATION, INC.'S
RESPONSE TO BABCOCK RANCH COMMUNITY INDEPENDENT
SPECIAL DISTRICT'S MOTION TO STRIKE COMMENTS FILED BY
FLORIDA ELECTRIC COOPERATIVES ASSOCIATION, INC.**

The Florida Electric Cooperatives Association, Inc. ("FECA"), by and through its undersigned counsel, submits its Response to Babcock Ranch Community Independent Special District's ("Babcock Ranch") Motion to Strike Comments filed by FECA and in support thereof states:

1. On March 24, 2014, Babcock Ranch filed its Notice of New Municipal Electric Service Provider and Petition of Waiver of Rule 25-9.044(2), F.A.C. ("Petition") with the Florida Public Service Commission (the "Commission").

2. On March 28, 2014, the Commission published public notice of the Petition in the Florida Administrative Register ("FAR"), which provided an opportunity for filing comments on Babcock Ranch's Petition within 14 days. The Commission's notice for filing comments did not distinguish between the "Notice" portion and the "Waiver of Rule" portions of Babcock Ranch's Petition.

3. FECA timely provided comments on April 11, 2014, "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." FECA's comments noted that Babcock Ranch's position contradicted the Commission's exclusive jurisdiction under the Grid Bill to implement,

supervise and enforce electric service territorial agreements in Florida, and that the Babcock Ranch lacks authority to create a retail electric utility, and thus there was no legal basis for the rule waiver requested by Babcock Ranch. FECA's comments did not include a request to intervene as a party in the proceeding.

4. On May 20, 2014, Babcock Ranch filed its Motion to Strike Comments filed by FECA ("Motion"). In support thereof, Babcock Ranch alleged that FECA lacks standing to submit comments in this proceeding, and that FECA did not seek leave of the presiding officer to file comments. Babcock Ranch also requested the Commission to strike any of FECA's comments that did not directly relate to the rule waiver, but their Motion did not identify any specific comments as being unrelated to the rule waiver. As set forth below, FECA is an interested person and its comments were properly filed in accordance with the Commission's notice in the FAR. Alternatively, FECA believes its comments should be accepted as public comments. FECA maintains that all of its comments are related to the rule waiver request, as Babcock Ranch's rule waiver request and the request to be acknowledged as a retail electric utility are co-dependent and it is impossible to separate these issues. Moreover, FECA believes it is allowed to file comments on all aspects of the Petition, as the Commission's notice allowed "Comments on the petition" and did not restrict comments to the portions of the Petition that pertain to the rule waiver. In addition, FECA's standing to intervene in this rule waiver proceeding is moot at this time as FECA has not sought to intervene in this proceeding as a party and has merely filed comments.

FECA has the Right to file Comments in this Rule Waiver Proceeding

5. Section 120.542(6), Florida Statutes, requires a "means for interested persons to provide comments" on a petition for a rule waiver. Pursuant to Section 120.52(14), Florida

Statutes, the term “person” includes any person described in Section 1.01, Florida Statutes. FECA is an association and a corporation, both of which are listed in Section 1.01(3), Florida Statutes. There is no question that FECA is a “person” for purposes of this proceeding. FECA also is an “interested person” for purposes of Section 120.542(6). The Commission has determined that if the commenter is a “person” as defined in Section 120.52, Florida Statutes, they are presumed to be an “interested person” under 120.542(6), Florida Statutes. *See e.g., In re: Petition of Mad Hatter Utility, Inc., in Pasco County for variance from Rule 25-30.036(3)(d), F.A.C., or, in the alternative, motion for extension of time*, Docket No. 971481-WS, Order No. PSC-98-0586-FOF-WS, April 27, 1998. In addition, Rule 28-104.003(3), Florida Administrative Code, expressly distinguishes persons that just file comments in a rule waiver proceeding from those that seek party status. Rule 28-104.003(3) states “[t]he right to comment pursuant to this section does not alone confer party status in any proceeding arising from a petition for variance or waiver.” Clearly, FECA is an “interested person” for purposes of filing comments in this proceeding. Moreover, the Commission has a long history of encouraging public comments in rule waiver proceedings, and, at a minimum, FECA’s comments should be accepted as public comments.

6. FECA and its members have not requested, and at this time do not seek to intervene as a party in this proceeding. Therefore, FECA is not required to demonstrate standing in this proceeding, and the standing criteria cited by Babcock Ranch are irrelevant at this point in time. Furthermore, FECA takes great exception to Babcock Ranch’s reliance on *In re: Petition of Tampa Electric Company to increase its rates and charges*, Order No. 6156 (May 28, 1974), for justification to strike FECA’s comments from the record of this proceeding. In that case the Commission struck a Petition for Reconsideration of a final order filed by a person that was not a

party to the case and did not have standing to intervene.

FECA was not Required to Seek Leave of the Presiding Officer

7. Babcock Ranch's claim that FECA's comments must be stricken on the basis that FECA did not seek leave of the presiding officer to file comments is absurd. FECA timely filed its comments on Babcock Ranch's Petition in accordance with the Commission's invitation to file comments that was noticed in the FAR. There was no requirement for FECA to seek leave from the presiding officer. Ironically, if there was such a requirement it would have essentially prevented any meaningful comments from being filed as the Pre-hearing Officer was not assigned until April 8 and the comments were due on April 11.

All of FECA's Comments are Related to the Rule Waiver

8. Babcock Ranch has requested that any portions of FECA's comments that are not related to the rule waiver be stricken, but it did not identify any specific sections as being unrelated. FECA believes all of its comments are directly related to the rule waiver request, which request is moot if Babcock Ranch is not a "different or new utility."¹ Therefore, in order to address the rule waiver, FECA was compelled to also address the following threshold questions: whether Babcock Ranch has been given express authority to be a retail electric utility; whether its authority overrides the Commission's exclusive jurisdiction over the Grid and territorial issues; and whether the special act at issue expressly vacated all or a portion of the Commission's Order approving the territorial agreement between Florida Power and Light and Lee County Electric Cooperative so that Babcock Ranch could instead serve a portion of each utility's assigned territory. As set forth in FECA's comments and in light of the deficiencies in Babcock Ranch's Petition that were addressed in Lee County's Motion to Dismiss, we believe the answer to all three questions is a resounding "NO". Clearly, if Babcock Ranch does not have

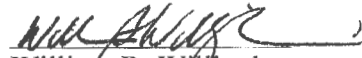
¹ Rule 25-9.044(1), Florida Administrative Code.

the requisite authority to be a retail electric utility and to serve the territory at issue, it does not have standing to seek a waiver of Rule 25-9.044 and its Petition must be dismissed. FECA's comments are relevant to Babcock Ranch's request for a rule waiver, and Babcock Ranch has not identified any portion of the comments that are not related to the rule waiver.

Conclusion

9. Wherefore, FECA is an "interested person" for purposes of submitting comments in this proceeding, and if not, its comments should be accepted as timely filed public comments. All of FECA's comments are directly related to the rule waiver and there are no irrelevant comments to strike.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy of the foregoing was furnished by electronic mail to the following this 27th day of May, 2014:

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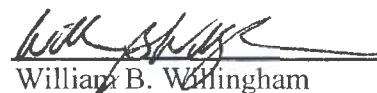
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