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March 31, 1992

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Steve Tibble, Director
Division of Records and Reporting
Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0850

Re: Cook, et al vs. Lee County Electric Cooperative, Inc.
Docket No. 920225-EC

Dear Steve:

Thank you very much for your telephone call this morning.
It was good to talk with you.

I have enclosed herewith for filing the original and 15
copies of the motion to dismiss filed on behalf of Lee County
Electric Cooperative, Inc. I have also enclosed an original and
15 copies of the memorandum in support of the motion to dismiss.

If you should require anything further of me, please give me
a call.

Respectfully submitted,

John A. Noland
John A. Noland

- ACK
- AFA _____
- APP _____
- CAF _____
- CMU JAN/mmw
- CTR Enclosure

EAG cc: Mr. James D. Sherfey
LEG 1/4/92 Ms. Pamela M. May

- LIN ✓
- OPC 1
- RCH _____
- SEC 1
- WAS _____
- OTH _____

memo
DOCUMENT NUMBER-DATE

03193 APR -1 1992

FPS-RECORDS/REPORTING

motion
DOCUMENT NUMBER-DATE

03192 APR -1 1992

FPS-RECORDS/REPORTING

BEFORE THE PUBLIC SERVICE COMMISSION

GLADYS COOK, MARGARET DIAZ,
CAROLYN MOORE and DONALD
HULSLANDER

vs.

DOCKET NO. 920225-EC

LEE COUNTY ELECTRIC
COOPERATIVE, INC.

ORIGINAL
FILE COPY

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION

LEE COUNTY ELECTRIC COOPERATIVE, INC. (LEE COUNTY) submits this its memorandum of law in support of its motion to dismiss the complaint filed in this cause for lack of subject matter jurisdiction. A complaint was filed by GLADYS COOK, MARGARET DIAZ, CAROLYN MOORE and DONALD HULSLANDER pursuant to Section 25-22.036, Florida Administrative Code, alleging that LEE COUNTY is engaged in enterprises unrelated to "supplying electric energy and promoting and extending the use thereof in rural areas" and the manner in which LEE COUNTY conducts its monthly Board of Trustees Meetings. LEE COUNTY has filed its motion to dismiss asserting that the Commission does not have jurisdiction over the matters set forth in the complaint.

The Commission is expressly limited in jurisdiction over utilities owned and operated by cooperatives and existing under the Rural Electrification law of the state. §§ 366.02 and 366.04, Florida Statutes. It is well settled that the Commission can have and exercise no jurisdiction except such as may be lawfully conferred by statute. State, ex rel. Burr v. Jacksonville Terminal Co. (1916), 71 Fla. 295, 71 So. 474. The jurisdiction of the Commission must be invoked in the manner provided by statute, and it is not

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authorized to proceed except in conformity with the statute. Florida Motor Lines vs. Railroad Commission, (1931) 101 Fla. 1018, 132 So. 851.

LEE COUNTY ELECTRIC COOPERATIVE, INC. is a rural electric cooperative, established by Chapter 425, Florida Statutes and is an "electric utility", as defined by § 366.02(2), Florida Statutes. With respect to an electric utility, the Commission's limited jurisdiction is clearly set forth in § 366.04(2), Florida Statutes as follows:

(2) In the exercise of its jurisdiction, the commission shall have power over electric utilities for the following purposes:

(a) To prescribe uniform systems and classifications of accounts.

(b) To prescribe a rate structure for all electric utilities.

(c) To require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes.

(d) To approve territorial agreements between and among rural electric cooperatives, municipal electric cooperatives, and other electric utilities under its jurisdiction. However, nothing in this chapter shall be construed to alter existing territorial agreements as between the parties to such agreements.

(e) To resolve, upon petition of a utility or on its own motion, any territorial dispute involving service areas between and among rural electric cooperatives, municipal electric utilities and other utilities under its jurisdiction. In resolving territorial disputes, the commission may consider, but not be limited to consideration of, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population, the degree of urbanization of the area, its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services.

(f) To prescribe and require the filing of periodic reports and other data as may be reasonably available and as necessary to exercise its jurisdiction hereunder.

The acts alleged in the complaint do not confer jurisdiction of the Commission over LEE COUNTY. The Commission does not have jurisdiction to regulate or control the participation of a rural electric cooperative in the enterprises set forth in paragraph 4 of the complaint or the manner in which a cooperative conducts its monthly board of trustees meetings set forth in paragraph 6 of the complaint.

The allegation in paragraph 5 of the complaint that the Public Service Commission, pursuant to § 366.04(f), Florida Statutes, can require a utility to file periodic reports and other data misquotes the statute by expanding the provisions of the statute with the gratuitous language of "... with the Public Service Commission if necessary to determine if rate structures are fair and reasonable." This clearly is a nullity and does not confer any additional jurisdiction on the Commission other than that clearly conferred by law. Finally, the paragraph does not set forth an alleged violation of the statute by LEE COUNTY.

In § 366(2)(b), Florida Statutes, the Commission is granted jurisdiction to "prescribe a rate structure for all electric utilities." The essence of the complaint does not present factual allegations of a "rate structure." The rate structure refers to the classification system used in justifying different rates. Occidental Chemical Co. vs. Mayo, 351 So.2d 336 (Fla. 1977); City of Tallahassee vs. Mann, 411 So.2d 162 (Sup. Ct. 1982).

The Public Service Commission is granted jurisdiction only over those matters clearly enumerated in the statute. The allegations contained within the complaint do not set forth any legal basis for the Commission to have jurisdiction over this matter. Therefore, LEE COUNTY respectfully requests that the Commission enter an order dismissing this complaint with prejudice.

I HEREBY CERTIFY that the original and fifteen (15) copies of the above and foregoing have been furnished to Steve Tribble, Director, Division of Records and Reporting, Public Service Commission, 101 East Gaines Street, Tallahassee, FL 32399-0850, by overnight mail, and that a true and correct copy has been furnished to William H. Grace, Esquire, P.O. Box 2119, Fort Myers, FL 33902, by U.S. Mail, this 31st day of March, 1992.

HENDERSON, FRANKLIN, STARNES & HOLT
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813/334-4121

By: John A. Noland
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