



Public Service Commission  
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COMMISSION CLERK

**DATE:** MARCH 6, 2003

**TO:** DIRECTOR, DIVISION OF THE COMMISSION CLERK  
ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** OFFICE OF THE GENERAL COUNSEL (HOLLEY) *JAM*  
DIVISION OF ECONOMIC REGULATION (KUMMER) *180 JOJ*

**RE:** DOCKET NO. 021011-E.C. - INFORMAL COMPLAINT AGAINST  
WITHLACOOCHEE RIVER ELECTRIC COOPERATIVE, INC. BY  
SADDLEBROOK RESORT CONDOMINIUM ASSOCIATION, INC., REQUEST  
FOR DETERMINATION THAT SADDLEBROOK'S UNIT OWNERS BE  
ALLOWED TO TAKE SERVICE FROM WREC THROUGH MASTER METERS,  
AND FOR RECLASSIFICATION OF SRCA OWNERS UNDER WREC'S RATE  
STRUCTURE AS GENERAL SERVICE DEMAND ACCOUNTS RATHER THAN  
RESIDENTIAL.

**AGENDA:** 03/18/03 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** DEFERRED FROM 02/18/03 AGENDA -  
SUBSTANTIALLY REVISED RECOMMENDATION

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\021011.RCM

CASE BACKGROUND

Saddlebrook Resort Condominium Association, Inc. (Saddlebrook Condo Association) is a customer of Withlacoochee River Electric Cooperative, Inc. (WREC), located in Wesley Chapel, Florida. Saddlebrook is a golf and tennis resort that operates pursuant to Chapter 509.242, Florida Statutes, as a public lodging establishment. The Saddlebrook Condo Association represents the investors/owners of the 'condominium units located in the Saddlebrook resort. Each owner of the condominium unit is a member of WREC and receives service from WREC through individual meters, and is served under WREC's residential rate schedule.

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WREC is a non-profit electric distribution cooperative which owns and operates an electric distribution system and provides electric retail service to customers within Pasco, Hernando, and Citrus Counties, and was organized under the Rural Electric Cooperative law, Chapter 425, Florida Statutes.

On September 27, 2002, Saddlebrook Condo Association filed an informal complaint against WREC, requesting determination from the Commission that Saddlebrook Condominium unit owners be allowed to take service from WREC through master meters in a similar manner as WREC serves the rest of the Saddlebrook Resort. Further, the complaint by Saddlebrook sought to reclassify Saddlebrook condominium owners under WREC's rate structure, thereby changing Saddlebrook condominium unit owners from Residential customers to General Service Demand customers.

On October 17, 2002, WREC filed its Motion to Dismiss Saddlebrook's complaint. In support of its Motion to Dismiss, WREC stated that it is not a "public utility" as defined by Section 366.02(1), Florida Statutes, but is a non-profit cooperative organized and existing under the Rural Electric Cooperative law of Chapter 425, Florida Statutes. WREC further stated that the Commission lacked the subject matter jurisdiction to consider this complaint, as the Commission has limited statutory jurisdiction and authority over WREC, especially with respect to ordering a cooperative to reclassify a residential customer as a commercial customer. Accordingly, WREC's Motion sought to dismiss Saddlebrook's complaint with prejudice and close the docket.

In the course of discussions with staff and with one another, the parties came to the agreement that the Commission likely lacked the jurisdiction to consider Saddlebrook's complaint. The parties subsequently filed their Joint Motion for Approval of Stipulation with respect to the Commission's jurisdiction, and for Dismissal with Prejudice of Informal Complaint with the Commission.

This recommendation addresses whether the Commission should grant WREC's Motion to Dismiss Saddlebrook's complaint and dismiss Saddlebrook's complaint with prejudice, or whether the Commission should accept the parties' Joint Motion for Approval of Stipulation.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant WREC's Motion to Dismiss Saddlebrook's Complaint?

**RECOMMENDATION:** Yes. The Commission should grant WREC's Motion to Dismiss Saddlebrook's Complaint with prejudice. (HOLLEY, KUMMER)

**STAFF ANALYSIS:**

**Saddlebrook's Informal Complaint**

The essence of Saddlebrook's complaint is a request for the Commission to order WREC to allow Saddlebrook to install a master meter in lieu of individual meters required under WREC's residential tariff. Further, Saddlebrook requests that the Commission order WREC to reclassify Saddlebrook Condominium owners under WREC's rate structure as General Service Demand Accounts rather than Residential.

In support of its complaint, Saddlebrook cites to Sections 366.04(2)(a) and (b), Florida Statutes, which grant the Commission the authority to prescribe uniform systems and classifications of accounts and a rate structure for all electric utilities. Saddlebrook also cites Rules 25-9.051(7) and 25-9.052(4), Florida Administrative Code. Rule 25-9.051(7) defines the term "rate structure" as the classification system used in justifying different rates, and more specifically, to the rate relationship between various customer classes, as well as the rate relationship between members of a customer class. Rule 25-9.052(4) allows the Commission to determine whether a rate structure of a utility is not fair, just and reasonable, and allows the Commission to initiate appropriate proceedings to prescribe a fair, just and reasonable rate structure. Further, Saddlebrook cites to the provisions of the Florida Energy Efficiency and Conservation Act (FEECA), found in Section 366.81, Florida Statutes.

Saddlebrook also relies on Rules 25-6.049(5)(a) and (5)(a)(3), Florida Administrative Code, which Saddlebrook states were established for the purpose of fostering energy conservation. Saddlebrook states that these paragraphs require individual electric metering by utility companies for each separate occupancy unit of condominiums for which construction is commenced after January 1, 1981, and also allow for specific exceptions to the

individual metering requirement for motels, hotels, and similar facilities.

Saddlebrook further acknowledges that WREC may not be bound to the provisions of Rule 25-6.049, Florida Administrative Code. However, Saddlebrook believes that several Commission orders interpreting Rule 25-6.049(5)(a)(3), Florida Administrative Code, provide direction in determining, for the purposes of Section 366.81, Florida Statutes, whether the rate structure of WREC is unduly discriminatory or in violation of FEECA according to Saddlebrook's particular situation.

Saddlebrook states that Commission Orders No. PSC-98-1193-FOF-EU, issued in Docket Number 980667-EI, and PSC-01-0626-PAA-EU, issued in Docket Number 001543-EI, established that the type of facilities exempt from the individual metering requirement are those that operate similar to hotels and motels where the occupants of the units are not billed for their use of electricity, and where it is impractical to attribute and bill electric usage to the daily and weekly guests of the resort. Saddlebrook states that the Commission found in both cases that there was a substantial hardship and discrimination as a result of the condominium resorts in question paying a higher rate for electricity than similarly situated facilities.

Accordingly, Saddlebrook requests that the Commission make a determination that WREC's classification of the condominium unit owners as residential is either unduly discriminatory, is not just and fair, and not reasonable under the facts in this situation. Saddlebrook further seeks a determination that would allow the condominium unit owners who dedicate the use of their units to the operation of Saddlebrook resort as a hotel, to take service from WREC through master metering, and to be served under WREC's General Service Demand Rate.

In its complaint, Saddlebrook provides numerous facts to support its contention that the condominium unit owners dedicate the use of their units to the operation of Saddlebrook resort as a hotel. For example, Saddlebrook states that it is a well known Golf and Tennis resort that operates pursuant to Chapter 509.242, Florida Statutes, as a public lodging establishment. Further, Saddlebrook is registered with and licensed by the Florida Department of Business and Professional Regulation to engage in the business of providing transient lodging accommodations.

Saddlebrook is engaged in the business of providing short term lodging to vacationers, and the resort competes with other hotels and motels in Wesley Chapel, Tampa, St. Petersburg, Clearwater, and surrounding areas.

Saddlebrook claims that without being allowed to master meter its facilities, the owners of the condominium units will pay approximately 25%-30% more for the same electricity to operate as competing hotels and motels. Saddlebrook states that this creates substantial hardship and discriminates against the condominium owners in their efforts to compete in the room rental business and pay all the associated costs of operating a resort hotel facility. Further, Saddlebrook states that it also violates principles of fairness, and is unjust and unreasonable in that other competing hotels and motels throughout the state and the surrounding area will spend less money on electricity and will be able to spend more money on advertising or upgrading their facilities.

Further, Saddlebrook states that the Commission orders cited previously where the Commission exempted certain facilities, involved the same type of facilities as Saddlebrook, specifically resort condominiums that operate similar to hotels and motels where the occupants of the units are not billed for their use of electricity. According to Saddlebrook, the Commission found the service by the utility on the higher residential rate to be discriminatory or unfair, and allowed the resort condominiums to take service under the utilities general service demand rates through master meters. Saddlebrook states that it should be treated the same.

Finally, with respect to the conservation issue, Saddlebrook argues that Rule 25-6.049, Florida Administrative Code, was adopted in great part to encourage conservation of electricity. Further, Saddlebrook states that Section 5(a) of this Rule follows the theory that end users will be more inclined to be conscious of conservation if the user is made aware of his or her electric use and associated costs, and thus requires individual metering. Saddlebrook further argues that the implication that can be derived for this provision is that condominiums required to be individually metered are those that are residential in nature.

Saddlebrook argues that because it operates as a resort hotel catering to the public, the owners of the individual units are not the ones responsible for energy conservation at the resort.

Saddlebrook's chief engineer, maintenance, and housekeeping staff that have the responsibility for energy conservation, just as their counterparts in other hotels and motels. Further, monthly electric bills for the units are forwarded to the individual unit owners, which Saddlebrook states is not conducive to energy conservation as neither the chief engineer, maintenance, or housekeeping staff ever learn whether their efforts towards conservation is effective. Saddlebrook states that this is contrary to the position of the Commission that the end user should receive the electric bills to foster conservation, and in this case, the resort is the end user, as it rents the units to guests on a temporary basis who pay a bundled rate for the room and never see the electric bill. In this particular case, Saddlebrook argues that individual metering the Saddlebrook units is contrary to FEECA.

Further, Saddlebrook points to the fact that the Commission, in recognizing that timeshare resorts are similar in nature to hotels and motels, amended Rule 25.6-049(5)(a)(3), Florida Administrative Code, to include timeshare resorts as an exception to individual metering requirement. Saddlebrook states that its electric usage characteristics are more similar to motels and hotels than most of the timeshare resorts in Florida, and, as such, energy conservation would be better served if Saddlebrook was able to master meter its units. Finally, Saddlebrook states that owners of timeshare condominiums in this state also derive the benefit of lower electric costs as a result of being allowed to master meter the resort, while owners at Saddlebrook continue to pay the higher residential electric rates, and this is patently unfair and discriminatory.

#### WREC's Motion to Dismiss

WREC filed its Motion to Dismiss Saddlebrook's complaint stating that WREC is a non-profit electric distribution cooperative which owns and operates an electric distribution system and provides electric retail service to customers within Pasco, Hernando and Citrus Counties. WREC further states that it is not a "public utility" as defined in Section 366.02(1), Florida Statutes, but is a cooperative organized and existing under the Rural Electric Cooperative Law, Chapter 425, Florida Statutes.

WREC argues that Saddlebrook's complaint attempts to create Commission authority to grant the relief requested based on the fiction that the reclassification of Saddlebrook as a commercial

customer falls within the Commission's "rate structure" jurisdiction over electric cooperatives such as WREC. WREC further argues that Saddlebrook also attempts to support a statutory basis for Commission relief by referring to FEECA. According to WREC, Saddlebrook's attempt to create Commission jurisdiction over this dispute with WREC lacks merit, and further, the Commission lacks the subject matter jurisdiction over Saddlebrook's complaint, which should therefore be dismissed with prejudice.

#### Subject Matter Jurisdiction

Relying on City of Cape Coral v. GAC Utilities, Inc. of Florida, 281 So. 2d 493, 496 (Fla. 1973), WREC argues that as a creature of statute, "the Commission's powers duties and authority are those and only those that are conferred expressly or impliedly by statute of the State." Further, WREC is an "electric utility" as defined by Section 366.02(2), Florida Statutes, and the Commission has limited jurisdiction and authority over WREC. Saddlebrook is attempting create Commission jurisdiction by attempting to cast WREC's refusal to reclassify Saddlebrook as commercial customer as a "rate structure" dispute.

It is undisputed that the Commission has "rate structure" jurisdiction over electric utilities pursuant to Section 366.04(2)(b), Florida Statutes. Further WREC states that in City of Tallahassee v. Mann, 411 So. 2d 162, 163 (Fla. 1981), the Florida Supreme Court clarified what is meant by the term "rate structure" under Chapter 366, Florida Statutes:

There is a clear distinction between "rates" and "rate structure" though the two concepts are related. "Rates" refers to the dollar amount charged for a particular service or an established amount of consumption. "Rate structure" refers to the classification system used in justifying different rates.

WREC argues that the Commission's statutory authority over a cooperative's rate structure is the authority to review the different rate classes utilized by the cooperative for the purpose of establishing retail rates and to ensure that the rates applicable to the different classes are justified. WREC further states that this historical application of the term "rate structure," which is a term not defined under Chapter 366, Florida Statutes, was reiterated by the Florida Supreme Court in Lee County

Electric Cooperative, Inc. v. Jacobs, 820 So. 2d 297, 300 (Fla. 2000), in which the Court quoted Commission Deason's definition of the term "rate structure" to be:

. . . rate structure means the structure of rates as they relate to different rate classes, and a classic example is residential, commercial, industrial, classifications of those types. And that rate structure connotes to me an offering by a utility that says these are the terms and conditions that we will provide service to you, and if you meet those terms and conditions, you will be provided the service on a non-discriminatory basis. . .

The notion that the Commission's rate structure authority over a cooperative authorizes the Commission to order a cooperative to reclassify a residential customer as a commercial customer, WREC argues, has no basis in Chapter 366, Florida Statutes. Moreover, it is totally inconsistent with the Commission's and Florida Supreme Court's meaning and application of the term "rate structure". Accordingly, WREC states that the Commission lacks the subject matter jurisdiction to grant the relief sought by Saddlebrook and its complaint must be dismissed.

Finally, with respect to Saddlebrook's contention that the Commission has jurisdiction over this master metering dispute pursuant to the FEECA statutes, WREC states that Saddlebrook's argument has no merit. Pursuant to Section 366.82(1), Florida Statutes, WREC is not a "utility" as defined for the purposes of FEECA, and is therefore not subject to FEECA, and accordingly, there is no relief available to Saddlebrook against WREC under FEECA. Further, WREC states that notwithstanding the Commission's lack of jurisdiction over WREC under FEECA, the notion that conservation goals in general will be promoted by replacing individual meters with master meters is counter-intuitive, defies logic, and is completely inconsistent with the purposes for promulgating the Commission's individual metering rule requirement, applicable to "public utilities," set forth in Rule 25-6.049(5)(a), Florida Administrative Code.

Accordingly, because the Commission lacks subject matter jurisdiction over the complaint, WREC respectfully requests the Commission to dismiss the complaint filed by Saddlebrook with prejudice.



Staff Analysis

A motion to dismiss raises, as a question of law, whether the facts alleged in a petition state a valid cause of action. See Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1<sup>st</sup> DCA, 1998). In deciding whether to grant or deny a motion to dismiss, all allegations made in the petition must be taken as true. Id.

As stated previously, the essence of Saddlebrook's complaint is a request for the Commission to order WREC to allow Saddlebrook to install a master meter in lieu of individual meters as required under WREC's residential tariff. The basis of the complaint is that the WREC residential classification of the individual unit owners is unduly discriminatory, unjust, and unfair because it results in electricity costs higher than would be paid under a master metered commercial rate, and is inconsistent with decisions made in similar situations for customers of IOUs.

However, what Saddlebrook seeks is not a change in rate structure, but a change in the applicability of a particular rate schedule. As defined in Rule 25-9.051(7), Florida Administrative Code, "rate structure" refers to the classification system used in justifying different rates and, more specifically, to the rate relationship between various customer classes, as well as the rate relationship between members of a customer class. Rate structure reviews address whether each rate class is contributing appropriately to the utility's total revenue requirement. The review typically focuses on whether cross subsidization exists across rate classes, as measured by class rates of return compared to total utility return.

Rate structure reviews can also address within-rate class discrimination. This type of discrimination generally takes two different forms: (1) if similarly situated customers in a single rate class pay different rates for similar service; or (2) if a uniform rate structure has a significantly disparate impact of some members of the same class because of different usage characteristics. (For example, a rate structure with a high fixed customer charge and a low energy charge imposes a different cost burden on low load factor customers compared to high load factor customers within the class.)

Saddlebrook does not allege that either the residential or commercial rates charged are unfair or discriminatory compared to

other rate classes. It does not allege that similarly situated customers within a single rate class are paying different rates, nor that the usage patterns of Saddlebrook's residents are significantly different from other WREC residential customers. The complaint only alleges that if this customer were to be metered and billed on a different rate schedule, his electric bill would be lower. Every utility offers different rates, terms, and conditions to different classes of customers based on usage or cost characteristics. Declining to bill a customer in a specific manner or on a specific rate schedule does not necessarily constitute rate structure discrimination, unless it can be shown that it is in conflict with the approved tariff, or that other similarly situated customers of the utility are allowed to be so metered or billed.

#### Differentials Between Utilities

The complaint alleges that if the customer were served by a different utility, it would be entitled to seek, and would likely be granted, a waiver of the individual metering requirement. This is irrelevant in a rate structure argument. Rate options available to customers differ across utilities because of differences in rate design and the cost to provide service. In determining whether discrimination is present, the Commission can look only at the treatment of the subject utility's customers.

It may be true that the complainant's rates would be lower if it were served by a different utility. However, that situation can occur with any customer in any rate class, and is not discrimination within the meaning of rate structure. For example, the minimum KW required to qualify for demand rates differs across the five IOUs. That difference has not been found to discriminatory, even though it means customers of one utility may qualify for a demand rate while similarly sized customers of another utility do not, because it is tied to the specific cost characteristics of each utility.

In this case, the complainant is defined by WREC as a residential customer subject to individual metering requirements and is charged the filed residential rate along with all other residential customers. There is no rate disparity within the class as WREC defines it.

As long as WREC defines all resort condominiums as residential and all are billed the approved residential rate, there is no

showing of within-class rate structure discrimination. To establish a basis for rate structure discrimination, the complainant would need to document that a similarly situated customer (i.e., another resort condominium in WREC's territory) was allowed to master meter.

Application of Rule 25-6.049, Florida Administrative Code

Saddlebrook places great reliance on previous Commission approval of exceptions to Rule 25-6.049, Florida Administrative Code. Rule 25-6.002, Florida Administrative Code, specifically states that the rules in Chapter 25-6 are applicable to "public utilities" or investor owned utilities (IOU), as defined in Chapter 366.02, Florida Statutes. While a cooperative or a municipal utility may adopt any part of a Chapter 25-6 rule as part of its tariff, it is not required to do so and no rule in this Chapter can be imposed on a cooperative or municipal utility, unless the rule language specifically includes these utilities. [For example, see Rule 25-6.0131(1)(b) and 25-6.100(7)(c)] Therefore, WREC is free to adopt the individual metering requirement but not obligated to adopt the language allowing exceptions. In addition, the orders cited by Saddlebrook represent a case by case consideration of waiver requests by customers served by IOUs. Unlike the exemption for timeshares codified in Rule 25-6.049, Florida Administrative Code, no such codification has been made concerning the exemption from individual metering for resort condominiums.

Parties Stipulation

Based upon staff's informal opinion and discussions with the parties, Saddlebrook Condo Association and WREC filed their Joint Motion for Approval of Stipulation for Dismissal with Prejudice of Informal Complaint with the Commission. In their joint motion, the parties stipulate that the Commission lacks subject matter jurisdiction to resolve the informal complaint filed by Saddlebrook Condo Association, that the complaint should be dismissed with prejudice, and that each party shall bear its own fees and costs incurred in connection with this docket. The Commission has never formally addressed individual metering requirements for cooperatives. The existing rules and previous decisions have all addressed situations for IOUs. Staff is concerned that simply accepting the stipulation could be interpreted as a de facto policy decision by the Commission to relinquish jurisdiction on this matter. Therefore, staff is presenting the arguments for a

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decision on the motion to dismiss because in staff's opinion, it is a more prudent course of action. Staff does not recommend that the Commission accept the parties' stipulation, but rather grant WREC's Motion to Dismiss.

Conclusion

For the reasons stated above, staff recommends that the Commission grant WREC's Motion and dismiss Saddlebrook's complaint with prejudice.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes. If the Commission either grants WREC's Motion to Dismiss or approves the parties' stipulation, Saddlebrook's complaint will be dismissed with prejudice and this docket should be closed. (HOLLEY)

**STAFF ANALYSIS:** If the Commission either grants WREC's Motion to Dismiss or approves the parties' stipulation, Saddlebrook's complaint will be dismissed with prejudice and this docket should be closed.