BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and Petition of the City of Cape Coral, Florida, for an investigation into the rate structure of Lee County Electric Cooperative, Inc.	DOCKET NO.: 160060-EC DATE: April 12, 2016

LEE COUNTY ELECTRIC COOPERATIVE, INC.'S MOTION TO DISMISS, AND STRIKE PORTIONS OF, THE CITY OF CAPE CORAL'S COMPLAINT AND PETITION

Lee County Electric Cooperative, Inc. ("LCEC"), pursuant to Florida Administrative Code Rule 28-106.204(2), moves to dismiss the Complaint and Petition (the "Petition") filed by the City of Cape Coral (the "City") on March 15, 2016, which challenges the rates that LCEC charges its members and requests that the Commission conduct an expedited hearing to investigate LCEC's rate structure.[1] LCEC also moves to strike improper allegations contained in the Petition.

Summary

The City's Petition alleges: (a) LCEC's rates for LED street lighting are unconscionable; (b) LCEC's charges for contribution-in-aid-of-construction ("CIAC") are improper; and (c) the City is entitled to its own "City-only" electric rate classification that differentiates LCEC's members within the City from members outside of the City. The City asks that the Commission require LCEC to conduct and file a new cost of service study justifying its uniform rates and charges for members inside and outside the City and that the Commission conduct a hearing on LCEC's rate structure. The City requests such relief for itself and "its inhabitants and businesses."

The complaints in the Petition that challenge LCEC's rates for LED street lighting and what LCEC charges for CIAC should be dismissed with prejudice because the Legislature has not given the Commission the jurisdiction to regulate the specific dollar amount that LCEC charges

[1] A response was separately provided on April 4, 2016 to the City and provided to the Commission pursuant to Florida Administrative Code Rule 25-22.032(6)(b), regarding customer complaints.

for electric service. In addition, while LCEC's current CIAC policy conforms to standard industry practice, its Board of Trustees is currently reviewing that policy in response to concerns of members. Thus, the City's challenge to LCEC's CIAC policy is not ripe for consideration.

The City's request for a cost of service study analyzing a "City-only" rate classification must be dismissed for three independent reasons. First, while the relationship between classes of customers is within the Commission's rate structure jurisdiction, the City's proposal to create a conceptually new, geographic-based class of customers is a fundamental shift in cooperative policy that has the potential to cause harm to all members; thus, it must be reserved to the business judgment of the cooperative and its member-elected Board of Trustees. Second, the burden is on the City to justify why this fundamental shift in policy to a new City-only customer classification system is in the public interest, and the City has not met that burden. Third, the City has no standing to assert rate structure claims and demand fundamental shifts in cooperative policy on behalf of other inhabitants and businesses located within its municipal boundaries. Therefore, a demand for LCEC to undergo the extraordinary expense to study the City's unorthodox proposal presents a claim upon which relief cannot be granted.

Finally, the City makes several allegations that are based on Commission rules that have been repealed, as well as misleading and inflammatory statements regarding Florida statutes outside of Chapter 366 that have nothing to do with rate structure. The Commission should strike those improper allegations.

Background

The Commission's Jurisdiction Over Rural Electric Cooperatives Is Limited

1. LCEC is a non-profit rural electric distribution cooperative organized under Chapter 425, Florida Statutes, that is authorized by the Commission to exclusively provide retail

electric service to all customers within its service territory, first approved by the Commission in 1965 ("Exclusive Service Territory").[2] The entire City is within LCEC's Exclusive Service Territory and LCEC provides retail electric service to the City and to persons and businesses located within the City limits.

2. As a rural electric cooperative, LCEC and its electric rates are not regulated by the Commission. *See* § 366.02(1), Fla. Stat. (providing the Commission with jurisdiction to regulate rates and services of a "public utility," but excluding rural electric cooperatives from the definition of "public utility"). Furthermore, section 366.11, Florida Statutes, exempts a rural electric cooperative like LCEC from the full panoply of the Commission's rate and service regulation, vesting the Commission only with the carefully circumscribed authority set forth in specifically referenced statutes, including section 366.04(2), Florida Statutes. § 366.11(1), Fla. Stat. ("No provision of this chapter shall apply in any manner, other than as specified in ss. 366.04, 366.05(7) and (8), 366.051, 366.055, 366.093, 366.095, 366.14, 366.80-366.83, and 366.91, to utilities owned and operated by . . . cooperatives organized and existing under the Rural Electric Cooperative Law of the state . . . ."). The Petition seeks to invoke the Commission's limited jurisdiction over electric utilities in section 366.04(2)(b), which provides that "[i]n the exercise of its jurisdiction, the Commission shall have power over electric utilities . . . [t]o prescribe a rate structure for all electric utilities." § 366.04(2), Fla. Stat.

3. The Commission's limited jurisdiction over a rural electric cooperative's "rate structure" under section 366.04(2)(b) is far different than its more expansive jurisdiction under section 366.06(1) to "determine and fix fair, just, and reasonable rates" for investor-owned electric

[2] LCEC's Exclusive Service Area was first approved by Commission Order No. 3799 issued on April 28, 1965 in Docket No. 7424-EU, which approved a territorial agreement between LCEC and FPL. That territorial agreement was most recently amended and approved by the Commission by Order No. PSC-15-0071-CO-EU dated January 27, 2015.

utilities. In *City of Tallahassee v. Mann*, 411 So. 2d 162 (Fla. 1981), in the context of a municipal electric utility, the Florida Supreme Court described the difference between rate and rate structure as follows: "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." *Id.* at 163. The Court went on to hold that a municipal electric utility's rates are not to be set by the Commission but rather by the city commission which "is charged with the duty of setting reasonable rates. The . . . Commission has no authority over those rates. If the rates are unreasonable, the ratepayers have recourse to the city commission." *Id.*

4. The Florida Supreme Court has recognized that the same principles apply to limit the Commission's jurisdiction over rural electric cooperatives. *Lee Cnty. Elec. Co-op., Inc. v. Jacobs*, 820 So. 2d 297, 299-300 (Fla. 2002). Rural electric cooperatives operate under a statutorily-authorized "one member/one vote" democratic governance structure that gives member/customers of a cooperative direct control over electing the board of trustees which in turn determines the level of the cooperative's rates and services. *See, e.g.*, § 425.09(7), Fla. Stat. ("Each member shall be entitled to one vote on each matter submitted to a vote at a meeting" of the cooperative.); § 425.10 (1) & (2), Fla. Stat. ("The business and affairs of a cooperative shall be managed by a board of not less than five trustees, ... [and] the members shall elect trustees to hold office . . . ."). In light of the fact that all member/customers of a cooperative have a meaningful electoral say in the level of the rates the cooperative charges for electric service, the Legislature has excluded cooperatives from the Commission's rate setting jurisdiction. *Amerson v. Jacksonville Elec. Auth.*, 362 So. 2d 433, 434 (Fla. 1st DCA 1978) (Section 366.02 "by its very terms specifically excludes electric utilities operated by Rural Electrification Cooperatives and

municipalities from its rate change jurisdiction."); *see also, e.g.*, *In re: Recommendation on Commission action regarding adoption of PURPA Standard 14, "Time-based Metering and Communications*," Docket No. 070022-EU, Order No. PSC-07-0212-PAA-EU, at 26 (F.P.S.C., Mar. 7, 2007) ("Since we do not have ratemaking authority over municipal and rural cooperative electric utilities in Florida, . . . these utilities are charged with conducting their own investigation of the standards.").

5. Moreover, when it comes to the Commission's rate restructure jurisdiction over electric cooperatives like LCEC, "[a]ny reasonable doubt regarding [the Commission's] regulatory power compels the [Commission] to resolve that doubt against the exercise of jurisdiction." *Jacobs*, 820 So. 2d at 300.

The City's Challenges to LCEC's LED Street Light Rate Are Beyond the Commission's Jurisdiction

6. The City's claims regarding LED street light rates fall outside of this Commission's jurisdiction over rural electric cooperatives, which is limited to matters of rate structure and not rate levels.

7. The City alleges that LCEC's rates for LED street lighting contained in LCEC's tariff sheet filed on March 1, 2016 are "unconscionable" because LCEC has set those rates at the same level as LCEC's other "existing lighting rates." Pet. ¶ 92. There can be no doubt this is a challenge to the dollar amount that LCEC charges for its LED street light service and not its rate structure, and thus this claim is beyond the Commission's jurisdiction. As the Florida Supreme Court has stated, a rate "refers to the dollar amount charged for a *particular service*." *Mann*, 411 So. 2d at 163. The City's challenge should be dismissed with prejudice.

8. The City also appears to claim that LCEC failed to provide supporting cost information to justify its rates for its LED street light service. The City "submits that a cost of

service study is a prerequisite for establishment of any rates or charges," Pet. ¶ 92, but cites no Commission statute or rule supporting that proposition. In other portions of its Petition, the City makes passing reference to Florida Administrative Code Rule 25-9.052, which it cites for the proposition that "in prescribing a fair, just and reasonable rate structure, the Commission may consider, among other things, the cost of providing service to each customer class, the load characteristics of various classes of customers, fairness in apportioning costs and the avoidance of undue discrimination." But, as will be discussed later in the motion to strike, the provision in Rule 25-9.052 containing that quoted language was *repealed* effective December 30, 2015, and states now only that "[w]hen a utility's filing reflects a proposed change in rate structure, the utility shall provide documentation to support the change in rate structure." Fla. Admin. Code R. 25-9.052(4) (2016). In any event, by offering LED street light services and filing an informational tariff with the rates for that service, LCEC did not propose a change in its rate structure. LCEC has complied with all applicable rules of the Commission. Indeed, the Commission has acknowledged LCEC's LED street light tariff complied with Commission requirements by letter dated March 8, 2016 (attached). The City's contention that LCEC should be required to provide further documentation specific to its LED street light rates is baseless.

The City's Claims Regarding LCEC's CIAC Charges Are Also Beyond The Commission's Jurisdiction, and Are Not Ripe While the LCEC Board Considers the Matter

9. The complaints in the Petition that challenge LCEC's CIAC charges also should be dismissed with prejudice because the Commission has no jurisdiction to regulate the specific dollar amount that LCEC charges its members for CIAC. Again this is a challenge of rate level, not rate structure, and is outside the Commission's jurisdiction. *Jacobs*, 820 So. 2d at 299-300.

10. The City cites *In re: Petition of Florida Home Builders Association for Declaratory Statement*, Docket No. 850595-EC, Order No. 15497 (F.P.S.C., Dec. 24, 1985), in support of its

contention that CIAC charges are a matter of rate structure. There this Commission stated that Withlacoochee River Electric Cooperative's CIAC policy—which charged $500, regardless of the actual construction costs involved—was a matter of rate structure because it "applies equally to all classes of customers, despite the fact that construction costs may vary by class or within a class. As such the imposition of a CIAC constitutes a classification system." *Id*. at 4-5. However, that case is inapposite here because LCEC does not rigidly impose a flat CIAC charge without regard to the cost to extend service to a member. Rather, LCEC's CIAC charges are set on a case-by-case basis in accordance with standard industry practice after careful consideration of the costs to serve a particular member. LCEC sets its CIAC charge based on the difference between (i) the construction costs LCEC estimates it will incur to serve a specific member and (ii) the expected annual base revenue the cooperative expects to receive from the specific member based on the member's projected usage. LCEC Electric Service & Meter Requirements Handbook at 22.[3]

11. When setting rates, including its CIAC charges, LCEC carefully complies with the democratic cooperative governance processes required by Chapter 425, Florida Statutes, and such processes are consistent with protecting the interest of its ratepayers/members. Take for example the very CIAC charges the City is petitioning the Commission to investigate. In July of 2015, prior to the City filing its Petition, other LCEC members had asked LCEC to review its CIAC

[3] LCEC's Electric Service & Meter Requirements Handbook may be found here: https://www.lcec.net/pdf/ESMR-Handbook.pdf. LCEC's CIAC policy provides that:

> A nonrefundable CIAC will be required for any overhead extension where the estimated job cost for new poles, conductors, and fixtures (excluding transformers, service-drops and meters) required to provide standard service, as determined by LCEC, exceeds four times the estimated annual base rate revenue (EAR). This CIAC amount is equal to the difference between that estimated job-cost (poles, conductors, and fixtures) and four times the EAR. If the member requests facilities that are not typically required, in the opinion of LCEC, to serve the load, a CIAC in addition to the above difference will also be required. This additional amount is equal to the difference (including transformers, service, and meter) between LCEC's estimated cost to provide the standard service and the estimated cost of the non-standard service requested by the member.

Handbook at 22. "EAR" or annual base rate revenue is the non-fuel energy (kWh) and demand charge (kW), if any, resulting from the member's electric use under the applicable rate schedule, generated annually by the load for which electric service is being requested by the member. Handbook at 1, 3.

policy and consider bringing it closer to the Commission's CIAC rule for investor-owned electric utilities found in Florida Administrative Code Rule 25-6.064. LCEC has been actively considering a change its CIAC policy since November 19, 2015. The change under consideration would effectively mirror Rule 25-6.064. This matter is scheduled to be heard at the LCEC Board of Trustees' May 19, 2016 meeting. The City's representatives may attend this meeting, and LCEC welcomes the City's input. However, the City's parallel challenge to the policy in this case is premature while the issue remains under consideration and subject to revision by the Board of Trustees.

12. The Commission has long recognized the importance of requiring that a dispute be ripe and that the alleged harm be imminent before an issue can be properly adjudicated. *See, e.g., In re: Complaint regarding electric rate structure for Gainesville Regional Utilities*, Docket No. 130188-EM, Order No. PSC-14-0137-FOF-EM (F.P.S.C., Mar. 19, 2014); *In re: Investigation of Vilaire Communications, Inc.'s Eligible Telecommunications Carrier Status & competitive Local Exchange Comp. Certificate Statute in the State of Fla.*, Docket No. 080065-TX, Order No. PSC-08-0304-PCO-TX (F.P.S.C., May 8, 2008). In *Gainesville Regional Utilities*, this Commission decided that because the challenged retail rate structure had not been finalized and was still subject to review and revision by the City Commission, the petitioner's challenge to that rate structure was "too speculative" to show an injury in fact. *See* Order No. PSC-14-0137-FOF-EM, at 12.

13. Likewise, the City's challenge here is "too speculative" to show injury in fact, and is unripe, as the rudiments of the City's CIAC concerns are currently being addressed by LCEC, and are currently scheduled to be heard by the LCEC Board of Trustees on May 19, 2016. Accordingly, the Commission should dismiss this claim and the City should instead participate in the deliberative process before the LCEC Board of Trustees.

The City Has Not Stated a Claim Upon Which Relief Can Be Granted

14. The Petition, which is filed on behalf of "the City as well as inhabitants and businesses located within Cape Coral's municipal boundaries," asks that the Commission order LCEC to conduct and file on an expedited basis a fully allocated cost of service study analyzing a "City-only" rate classification that differentiates LCEC members within the City from members outside of the City. The demand for LCEC to conduct a new cost of service study must be dismissed for at least three independent reasons. First, the Commission's jurisdiction over rate structure involves regulation over existing classes of customers, not a fundamental policy decision which creates conceptually new classes of customers based on the geographic location of a customer. Second, to the extent the City wants LCEC to abandon its Commission-approved, single-tariff pricing structure in favor of a new customer classification system based on customers' geographic location, the City cannot impose that cost on LCEC's members because the City has not met its ultimate burden of justifying the new classification system it proposes. Third, the City's attempt to be a voice for "inhabitants and businesses" located within the City should be rejected because it does not have standing to represent the interests of other persons located within its municipal boundaries in a rate structure challenge.

The Creation of a New Customer Class is Fundamentally a Policy Decision More Appropriately Resolved by the Cooperative

15. While the Commission has jurisdiction to evaluate the fairness of the relationship between customers of different classes, this is far different from dictating the creation of a new and altogether different classification of customers. By demanding that LCEC pursue the creation of a new, geographic-based "City-only" class of customers the City is advocating a fundamental shift in cooperative policy that has the potential to cause harm to all members. Such a fundamental

policy decision must be left to the self-governance mechanisms and business judgement of the cooperative and its member-elected Board of Trustees.

16. The fact that this is a fundamental policy decision, and one in which LCEC has already taken the more prudent course, is illustrated by the fact that the same unorthodox rate structure proposed by the City has been associated with unreasonable and discriminatory results. While it may be technically true that "City-only" electric rates were used in Florida 50 years ago, they are not used by electric utilities today.[4] Moreover, beginning over 35 years ago, the Commission has given clear and consistent signals that electric utilities, like LCEC, should not adopt rate structures that impose rates on customers within a municipality that are different from those imposed on those customers outside of the municipality. In September of 1980, the Commission found that the City of Tallahassee's electric rate structure was unduly discriminatory because it charged a higher rate to customers outside the City than it charged to customers inside the City. *In re: Rate schedule modification of the City of Tallahassee*, Docket No. 800495-EU (SC), Order No. 9516 (F.P.S.C., Sept. 3, 1980). On appeal, the Florida Supreme Court affirmed the Commission's order finding the City of Tallahassee's classification of customers by location within and without the City's territorial limits was unduly discriminatory. *City of Tallahassee v. Fla. Pub. Serv. Comm'n*, 441 So. 2d 620, 623-24 (Fla. 1983).

17. Following its decision in *City of Tallahassee* the Commission expressly challenged the City of Wauchula's "City-only" rate classification as "discriminatory." *In re: Rate schedule*

[4] As early as 1957 the Florida Railroad and Public Utilities Commission ("FRPUC") was moving away from rural/urban distinctions in rate structure. In its Order No. 2515, regarding Florida Power and Light Company (FPL), dated August 22, 1957, the FRPUC began consolidating rates that differentiated between service provided inside large urban areas and service provided in areas near the large urban areas. While minor rate distinctions were still approved by the FRPUC in 1957, eventually all such rate discrimination based on locality was eliminated. Indeed, research shows that by December 17, 1971, FPL had completely rejected the rural/urban distinctions in its rate structure and adopted a uniform, single-tariff pricing rate design that all Florida electric utilities follow today. *See In re: Petition of Florida Power and Light Company for Authority to Increase its Rates and Charges*, Docket No. 71627-EU, Order No. 5696 (F.P.S.C., Apr. 3, 1973).

modification of the City of Wauchula, Docket No. 800498-EU (SC), Order No. 9567 (F.P.S.C., Sept. 25, 1980). The Commission emphasized that it

> was primarily concerned with the application of separate rate schedules to members of the same class of customers based solely upon their geographic location. While it appears that the City of Wauchula is not applying rate schedules that are as obviously discriminatory against non-city residents as are the rate schedules applied by the City of Tallahassee, the fact that different rate schedules with different charges are applied to customers inside and outside the city limits raises doubts as to the reasonableness of the rates schedules applied by the City of Wauchula.

Id. at 5.

18. In no small part due to these Commission policy pronouncements, Florida electric utilities long ago abandoned rate structures that discriminate on the basis of geographic or density considerations for like service.

19. Moreover, the standard methodologies used to prepare cost of service studies typically would not consider geographic-based customer densities when defining classes of service. The standard treatise on cost of service studies is the Electric Utility Cost Allocation Manual published by the National Association of Utility Regulatory Commissioners ("NARUC"). This manual does not address methodologies that allocate fixed cost on the basis of customer densities. Addressing cost of service classifications based on customer densities would involve performing a separate study that goes well beyond the standard cost of service methodologies.

20. The cost and effort to reconstruct LCEC's cost records and conduct additional research by geography would be significant and serve no purpose with respect to electric rates. The unsubstantiated allegations in the Petition should not be the basis for requiring LCEC to pursue such an expensive and time-consuming undertaking. The fact is, no matter what the study costs, it is difficult to imagine that any such study would lead to density-based rates classifications since

by far the largest cost component of electric utility service is generation supply, and generation supply costs have nothing whatsoever to do with customer density.

21. Not only has the Commission warned against the geographic and density-based rate design proposed by the City, other regulators and courts have expressed similar concerns. *E.g.*, *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 526 A.2d 1243, 1247 (Pa. Commw. Ct. 1987) ("Were it to grant a preference to one group because of relative proximity and density, the commission would have to grant the same preference to other groups similarly situated. Relative cost between areas alone is not controlling. . . . If area classifications were determined by cost of service studies, such could produce an infinite number of rate zones, and in the instant case, such assumption alone could create rate zones within the city area served depending on proximity to the source of supply of water.").

22. There are over 3,100 electric utilities in the United States, over 900 of which are electric cooperatives.[5] The City can only point to a handful of out-of-state electric utilities that employ any kind of geographic based rate structures. The paucity of the City's own data supports the conclusion that geographic based rates are not standard industry practice.

23. Indeed, there are many policy reasons not to differentiate rates based on customer location and density. The City itself has a wide diversity of customer densities, including many undeveloped areas, and thus is not a homogenous area that would warrant a separate rate classification. LCEC also serves a number of areas outside the City that have customer densities as high or higher than the City. Thus, if density is to be the proper determinant of rate classes, then that density classification approach would need to be applied equally across LCEC's entire service area, not just within the City, so that rates are not unduly discriminatory. In other words,

[5] *See* http://www.nreca.coop/about-electric-cooperatives/co-op-facts-figures/.

if LCEC were to grant a preference to the City because of density considerations, it would have to grant the same preference to other areas similarly situated. This could produce an enormous number of rate zones which would be virtually impossible to administer. *See City of Pittsburgh*, 526 A.2d 1243.

24. Moreover, creating a density-based customer classification system would require continuous and expensive analysis of service areas whose densities will be in constant flux due to ongoing development. This model would continually beg the question of where, and how often, to draw the dividing line between more and less "dense" areas. Carrying this logic to the extreme, the combination of load characteristics and specific infrastructure requirements would potentially create a unique rate for every single member on the system.

25. Price discrimination based on population densities also could raise a number of controversial public policy issues, such as potentially impeding economic development in low density areas, disadvantaging Native American communities located in more rural areas, and charging different rates for basically the same type, level, and use of service.

26. In addition, moving to a "City-only" rate classification is a risky and potentially harmful policy shift for members located within the City limits, particularly since the risk of storm damage to utility infrastructure within the City may be higher than the risk of storm damage in more inland areas. *See, e.g., In Re: Complaint and Petition of Town of Golden Beach for Relief from Insufficient, Inadequate, and Unsafe Overhead Electric Service Provided by Florida Power & Light Co.*, Docket No. 9008110-EI, Order No. 25670 at 11 (F.P.S.C. Feb. 3, 1992) (acknowledging that "the maintenance cost of coastal electric distribution systems is higher than that of inland systems"). For example, if the rates paid by those members within the City are based on the costs of serving just that isolated area, and a tropical storm were to damage utility

infrastructure within the City disproportionately, members within the City could experience rate shock resulting from such costs not being spread more evenly across the entire system.

27. For all of these reasons, preserving the existing customer classifications, and continuing with uniform rates and single tariff pricing, is far more cost-effective and consistent with widely-accepted utility practices. It spreads risks and costs across the system as a whole, is more efficient to administer, and results in stable, predictable, and fairly allocated rates.

28. The fact is that LCEC operates under a traditional Commission-approved rate structure with uniform rates that are not based on the geographic location of customers or density. LCEC's existing rate structure has been and continues to be supported by a cost of service study. Consequently, LCEC is not required to, and has not, prepared a "special" City-only cost of service study.

29. The City's suggestion that the Commission's rules somehow compel LCEC to perform a new cost of service study to justify its existing Commission-approved rate structure is a blatant mischaracterization of what the Commission rules require. There is no such rule. Moreover, it is fundamentally unfair to compel LCEC's members/customers to incur the significant expense of performing a new cost of service study to justify LCEC's existing rate structure, particularly when that rate structure is based on decades of historic precedent, and the single tariff pricing concept engrained therein has been approved by the Commission.

30. If the Commission is inclined to consider radically abandoning its longstanding policy of uniform rates and single tariff pricing for electric utilities, it must do so pursuant to appropriate rulemaking[6] or, at minimum, only after carefully considering that policy change in a properly noticed investigatory docket for the entire electric utility industry.

[6] *See* § 120.54(1)(a), Fla. Stat.

The City's Demand that LCEC Incur the Substantial Expense of Analyzing the City's Proposed City-Only Classification Cannot Be Granted as a Matter of Law

31. As the City is the one challenging LCEC's Commission-approved rate structure, and advocating a "City-only" rate classification that the Commission previously warned against, it is the City's burden to show a reasonable basis to classify customers within or without the City limits. *Clay Util. Co. v. City of Jacksonville*, 227 So. 2d 516, 518 (Fla. 1st DCA 1969) (noting that "consumers" challenging an existing Commission approved rate structure have the burden "to establish by competent evidence" that the existing rate structure cannot be justified on the basis of cost of service.). The City has not met that burden.

32. Because the City has not met its burden to establish its entitlement to the proposed rate classification, the Commission cannot order LCEC to complete such a difficult and extremely expensive cost of service study to justify the City's novel proposal. The City must come forward with allegations substantiated by evidence, not conjecture, that the lack of a City-only customer classification is unduly discriminatory. The Commission should reject the City's attempt to shift the burden of proof, and the significant costs associated therewith, onto LCEC and its members/customers.

The City Lacks Standing to Assert the Claims of the City's "Inhabitants and Businesses"

33. Third, the City erroneously assumes that it has standing to bring its claims on behalf of others who are located within Cape Coral's municipal limits. *See* Pet. ¶ 15 ("Each day that existing LCEC rates and charges remain in effect, Cape Coral, its residents and businesses are paying discriminatory rates . . . ."); Pet. ¶ 31 ("Cape Coral requests that, at a minimum, the Commission investigate whether it is fair and reasonable for Cape Coral, its residents and businesses to be identified in distinct rate classifications and charged distinct rates . . . ."); Pet. Request for Relief No. 1 (asking the Commission to require LCEC to conduct and file a cost-of-

service study to justify LCEC's rates and charges "that disproportionately impact the City, as well as inhabitants and businesses located within Cape Coral's municipal boundaries"); Pet. Request for Relief No. 3 (asking the PSC to "[o]rder such other relief for the City of Cape Coral, its inhabitants and business as the [PSC] may deem just and proper").

34. But the City has no standing to bring claims on behalf of the inhabitants and businesses within the City's municipal borders. *See In Re: Application for a limited proceeding to include groundwater development and protection costs in rates in Martin County by Hobe Sound Water Company*, Docket No. 960192-WU, Order No. PSC-96-0768-PCO-WU, at 2-3 (F.P.S.C. June 14, 1996) (holding that the Town of Jupiter Island was not permitted to intervene in a rate case proceeding as a representative for its residents and taxpayers). While section 120.52(12)(d), Florida Statutes, grants such authority to certain county representatives to "represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county," no such authority is granted to cities or towns. *Hobe Sound*, Order No. PSC-96-0768-PCO-WU, at 3. There are important and practical reasons why the City does not have standing to assert the arguments that it is making on behalf of "inhabitants and businesses." There is no showing that the City is similarly situated with those "inhabitants and businesses." Indeed, as explained in paragraph 26, those inhabitants and businesses may very well disagree with a "City-only" rate classification since it could expose them to rate shock if a weather event were to damage utility infrastructure within the City disproportionately, and LCEC's storm repair costs could not be spread evenly across the entire system. Consequently, the City lacks standing to assert the claims of its inhabitants and businesses, and such claims must be dismissed.

Motion to Strike Impertinent, Misleading, and Inflammatory Allegations

35. The City makes repeated allegations throughout the Petition that LCEC has failed to comply with various provisions in Chapter 25-9, Florida Administrative Code. However many of the provisions to which the City refers have either been repealed or substantially altered as a result of comprehensive rule amendments that took effect in December of 2015. For example:

a. In the introductory paragraph, the City represents that the Petition is being filed "pursuant to Section 366.04, Florida Statutes and Sections 25-9.050 through 25-9.056, Florida Administrative Code" but fails to apprise the Commission that Rule 25-9.050 was repealed on December 30, 2015.

b. In paragraphs 53 and 54 the City suggests that LCEC failed to comply with "Section 25-9.050(1)" regarding documentation of rate schedules; again, however, Rule 25-9.050 was repealed on December 30, 2015.

c. In paragraph 43, the City suggests that LCEC has failed to comply with the requirements of Section 25-9.052 and alleges that rule states "in prescribing a fair, just and reasonable rate structure, the Commission may consider, among other things, the cost of providing service to each customer class, the load characteristics of various classes of customers, fairness in apportioning costs and the avoidance of undue discrimination." But the express provision quoted by the City was substantially amended on December 30, 2015, and now states only that "[w]hen a utility's filing reflects a proposed change in rate structure, the utility shall provide documentation to support the change in rate structure." Fla. Admin. Code R. 25-9.052(4) (2016).

The City's citations to and quotes from Commission rules that have been repealed are misleading, inaccurate, and should be struck.

36. The Petition also makes a number of allegations concerning the purported requirements of Chapter 425, Florida Statutes, that are unrelated to rate structure and are completely outside the Commission's jurisdiction. Section 120.569(2)(g), Florida Statutes, requires the Commission to exclude such irrelevant, immaterial, or unduly repetitious evidence from the proceeding. For example, the City cites section 425.04(4), Florida Statutes, and a federal eminent domain case to suggest that LCEC may not be able to serve "non-rural" areas. Aside from mischaracterizing the case and the statute, neither the case nor the statute has anything to do with rate structure and thus should be stricken as irrelevant and immaterial.[7]

37. Likewise, the City makes a series of incorrect and inflammatory references to LCEC's "equity capital" and suggests that it represents "profit." *See* Pet. ¶¶ 14, 78, 79, 81. As a non-profit cooperative, LCEC must operate "at cost." Therefore, it is incorrect, misleading, and scandalous for the City to state that "LCEC's current rate structure permits LCEC to recover profits each year from its customers." The contributions that members invest into the cooperative as equity capital, as provided for in Chapter 425 and in the member-approved Bylaws, have nothing to do with rate structure. Patronage refunds are distributed on a patronage basis and are a benefit of cooperative membership. These arguments and allegations have no place in resolving a purported rate structure challenge and should be stricken as immaterial, impertinent, and scandalous. *See* Fla. R. Civ. P. 1.140(f).

[7] The City's arguments also would lead to absurd results. Since the Rural Cooperative Electric Law was enacted in 1939, at least 166 municipalities have incorporated in Florida, and numerous square miles have been annexed by municipalities. In many cases, facilities owned by electric cooperatives that were built in "rural areas" are now within the limits of a municipality, and municipalities continue to expand. The City's strained interpretation of section 425.04(2), Florida Statutes, could force electric cooperatives to abandon members and service territory and prevent the provision of electric service to some areas in the cooperative's service territory. Such a result would undermine the clear language of the Grid Bill regarding a coordinated grid and preventing the further uneconomic duplication of facilities. § 366.04(5), Fla. Stat.

WHEREFORE, LCEC respectfully requests that the Petition be dismissed with prejudice for lack of jurisdiction and/or for failure to state a claim upon which relief may be granted, and the immaterial, impertinent, and scandalous allegations described above be struck from the Petition.

Respectfully submitted on April 12, 2016.

HOLLAND & KNIGHT LLP

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Counsel for Lee County Electric Cooperative

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by electronic mail to: Brian P. Armstrong, P.O. Box 5055, Tallahassee FL 32314-5055 [Brian@brianarmstronglaw.com]; Dolores Menendez, City of Cape Coral, 1015 Cultural Park Boulevard, Cape Coral FL 33990 [dmenendez@capecoral.net]; Danijela Janjic, Office of the General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850 [djanjic@psc.state.fl.us] this 12th day of April, 2016.

/s/ D. Bruce May, Jr.
D. Bruce May, Jr.

ATTACHMENT

STATE OF FLORIDA

DIVISION OF ECONOMICS
GREG SHAFER
DIRECTOR
(850) 413-6410

Public Service Commission

March 8, 2016

Mr. Frank Cain
Dir, Reg. & Govt Relations & CCO
Lee County Electric Cooperative, Inc.
P. O. Box 3455
North Ft. Myers, Florida 33918-3455

AUTHORTY NO.: **CE-16-003**

Re: Revision to Lighting Rate Schedule SL-2.

Dear Mr. Cain:

The following tariff sheet has been approved effective April 1, 2016:

ELEVENTH REVISED SHEET NO. 17.0

The tariff sheet was approved by Commission Authority No. CE-16-003 and will be kept on file in the Bureau of Economic Impact & Rate Design Section of the Division of Economics. If you have any questions, please contact Elisabeth Draper at (850)413-6706.

Sincerely,

Greg Shafer
Director

Enclosures (1)

SL-2

RATE SCHEDULE SL-2
PUBLIC STREET AND HIGHWAY LIGHTING ELECTRIC SERVICE

The Lee County Electric Cooperative, Inc., shall charge and collect for electric lighting service on the following bases of availability, application, character of service, monthly rate, power cost adjustment, and tax adjustment.

AVAILABILITY:

In all territory served.

APPLICATION:

Applicable to customers, under the qualification Street Light Districts and governmental agencies for automatically controlled dusk-to-dawn outdoor lighting where existing overhead secondary circuits are located.

CHARACTER OF SERVICE:

Service under this rate schedule shall be alternating current 60 Hertz, single phase at the Lee County Electric Cooperative, Inc.'s standard voltages and shall include lamp renewals and automatically controlled energy from approximately dusk each day until approximately dawn the following day.

MONTHLY RATE:

High pressure sodium (HPS) or metal halide (MH)or light emitting diode (LED) light fixture mounted on existing wooden pole, where applicable, with bracket attachment and connected to existing overhead secondary circuit.

Fixture Type Nominal Wattage	Average Monthly kWh Usage	Rate per Month for Fixture Owned by Lee County Electric Cooperative, Inc Energy	Fixture	Total
55 watt LED	20	$ 1.92	$ 9.13	$11.05
*100 watt HPS	46	$ 4.49	$ 6.56	$11.05
150 watt HPS	69	$ 6.74	$ 6.63	$13.37
250 watt HPS	109	$10.64	$ 7.38	$18.02
400 watt HPS	169	$16.50	$ 7.96	$24.46
Decorative Fixture:				
150 watt HPS	69	$ 6.74	$14.17	$20.91
175 watt MH	77	$ 7.52	$22.89	$30.41
Shoebox Fixture:				
250 watt HPS or MH	109	$10.64	$10.70	$21.34
400 watt HPS or MH	169	$16.50	$10.74	$27.24
400 watt MH Galleria	169	$16.50	$13.79	$30.29
1000 watt MH Galleria	402	$39.26	$15.39	$54.65
1000 watt MH Landau	402	$39.26	$13.71	$52.97

* These units are closed to new LCEC Installations

(Continued on Sheet No. 17.1)