

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

Filed: April 19, 2016

**RESPONSE OF THE CITY OF CAPE CORAL TO LEE COUNTY ELECTRIC
COOPERATIVE'S MOTION TO DISMISS**

The City of Cape Coral, a Florida municipal corporation ("Cape Coral" or "City"), hereby responds to the Motion to Dismiss filed by Lee County Electric Cooperative, Inc. ("LCEC") and states as follows:

I. The Complaint and Petition Properly States the City's Claim for Relief

1. As recently confirmed by this Commission, a motion to dismiss challenges the legal sufficiency of the facts alleged in a petition. See Complaint regarding electric rate structure for Gainesville Regional Utilities, Docket No. 130188, Order No. 14-0137 issued March 19, 2014. As also confirmed in Order No. 14-0137, the standard to be applied in disposing of a motion to dismiss is whether, with all allegations in the petition assumed to be true, the petition states a cause of action upon which relief can be granted. Meyers v. City of Jacksonville, 754 So. 2d 198, 202 (1st DCA 2000). When making this determination, only the petition and documents incorporated therein can be reviewed, and all reasonable inferences drawn from the petition must be made in favor of the petitioner. Varnes V. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1193); Flye v. Jeffords, 106 So. 2d 229 (1st DCA 1958), overruled on other grounds, 153 So. 2d 759, 765 (1st DCA 1963).

2. It is undeniable that the Florida Legislature has given the Florida Public Service Commission ("PSC" or "Commission") authority to establish the rate structure and create customer service classifications for all electric utilities in Florida, including rural electric

cooperatives: "... in the exercise of its jurisdiction, the Commission shall have power over electric utilities... [t]o prescribe a rate structure for all electric utilities." Section 366.04(2), Fla. Stat. (2015).

3. The City's petition describes the well-established principal premise for establishing customer service classifications within a utility's rate structure: similarly situated customers should be treated similarly. The City's petition requests that the Commission require Lee County Electric Cooperative, Inc. ("LCEC") to file cost of service information as required to determine the reasonableness of a separate and distinct customer service classification for service within the municipal boundaries of the City of Cape Coral. Rate classifications established by consideration of municipal boundaries are not without precedent in Florida.

4. Based upon the "similarly situated" premise and statutory authorization in section 366.04(2), as electric service spread throughout Florida, utilities recognized that the cost for a utility to serve customers located in large cities within their respective service territories was lower than the cost to serve customers in small cities as well as in unincorporated areas of counties. Customer service classifications based upon municipal boundaries is not a "conceptually new" classification, as suggested by LCEC. LCEC Motion at 2.

5. The PSC (and its predecessor agency) authorized "large municipality", "small municipality" and "unincorporated area" customer classes for Florida Power & Light Company ("FPL") for many years. See Florida Power & Light Company, 19 P.U.R. 3d 417, Docket No. 5098, Order No. 2515 dated August 22, 1957 (a copy of which order was filed by the City with the Commission Clerk on March 31, 2016 for the convenience of all interested parties).

6. FPL's large municipality, small municipality and unincorporated area rate classes applied not only to residential customers, but to general service (business) customers of FPL as well. See Order No. 5098.

7. As the decades passed and Florida grew, the population served by FPL and thus FPL's customer base grew, at times at an extraordinary pace. Facts changed. FPL's cost of providing service to each class of customers changed. See Petition of Florida Power & Light Company, Docket No. 71627, Order No. 5696 issued April 3, 1979, wherein the Commission noted, "[t]here remains little question, if any, as to the extraordinary growth now being experienced by [FPL]. No one seriously questions the fact that it is presently the fastest growing electric utility within the United States." Order at p. 9.¹

8. In fact, the Commission first suspected the possibility of changed costs of service for FPL in Order No. 5098, issued in 1957, wherein the Commission noted that FPL's "present schedule of rates and charges on file with the Commission have not been revised to give full and proper recognition to the tremendous growth of certain portions of the territory served by said utility, and as a result, said rates and charges appear to give undue and unreasonable preference and advantage to some persons and localities and subject other persons and localities to undue and unreasonable prejudice and disadvantage." Order No. 5098 at 3. Based upon these changed facts and the corresponding changes in FPL's cost of serving customers, the Commission modified FPL's large municipality, small municipality and unincorporated area rate structures over the next 20 years, ultimately consolidating customers into the same rate classes where the facts and cost of service considerations warranted.

¹ Order No. 5696 further informs us that FPL actually had rate classifications such as "water pumping, ice manufacturing, and farm irrigation" as of 1979 and that the single general service schedule proposed by FPL in 1979 was designed to "accommodate the smallest commercial load to loads with demands in excess of 10,000 kw."

9. However, since originally consolidated in one general service (commercial) rate classification, over the years FPL's commercial customer base has been separated once again into several distinct customer classes to recognize cost of service differences for the customers included in those classifications. For instance, see FPL's current General Service – Non-Demand (0-20 kW); General Service Demand (21-499 kW); General Service Large Demand-1 (500-1999 kW), General Service Large Demand-2 (2000 kW+), General Service Large Demand-3 (2000 kW+ per installation), and other customer class specific rate classifications. These rate classifications have been implemented and authorized by the Commission over time, in cooperation with FPL's customers, so as to best reflect the overarching principle that a utility's similarly situated customers should be treated similarly.² The principal means of fulfilling this principle is to group similarly situated customers in the same rate classification.

II. This Commission Has Exercised Its Jurisdiction Over the Rate Structures of Cooperatives and Municipalities and Has Required Rate Structure Modifications

10. LCEC suggests that matters relating to the establishment of customer classifications are matters of “fundamental policy” and thus do not fall within the jurisdiction of the Public Service Commission. LCEC Motion at 2, 9.

11. The Commission has exercised the authority delegated to it by the Florida Legislature to review and modify the rate structures of municipalities and rural electric cooperatives. In fact, LCEC cites with some favor the results of Commission rate structure investigations that are the subject of several court cases and PSC orders. In those cases and proceedings, the PSC reviewed and evaluated the customer classifications which were in use by

² In fact, other Florida electric utilities also continue to recognize differences in the cost of serving commercial customers by establishing separate and distinct rate classifications and corresponding rates for large use/high load factor customers. See rate schedule information for FPL, Gulf Power and Florida Public Utilities, attached as Appendix A.

other utilities which the Commission regulates, including municipalities and rural electric cooperatives.

12. The cases and proceedings cited by LCEC confirm that the Commission has required the utility to prepare and file a cost of service study when a rate structure is challenged. The Commission did not defer to the judgment or policy determinations of the elected city council members or cooperative trustees who had established the rate structures reviewed by the Commission in those cases and proceedings.

13. In summary, LCEC does not contest the validity of court decisions or PSC orders where the Commission ordered a utility to file cost of service support for the rate structures they had in place. Nor does LCEC contest the validity of Commission orders requiring utilities to modify such rate structures in the Commission's exercise of its legislatively delegated authority over municipal and rural electric cooperative rate structures.

14. To accept LCEC's premise that rate structure issues are matters of fundamental policy beyond this Commission's jurisdiction would be unprecedented and would render the powers granted to the Commission pursuant to section 366.04(2), Florida Statutes, a nullity. Nowhere in section 366.04(2) is the Commission's power limited to consolidating customer service classifications in a cooperative's chosen rate structure while prohibiting the Commission's consideration of the creation of new service classifications where warranted by the facts and cost of serving a specified customer class. The Commission, in fact, has done both.

15. Moreover, nowhere in Florida Statutes is the PSC prohibited from investigating the need for a new customer classification, as is suggested by LCEC. In fact, section 366.04 (2), Florida Statutes, provides that the Commission has the power over electric utilities, including rural electric cooperatives like LCEC, to *prescribe* a rate structure. The Commission, if made

aware of facts supporting its investigation of the need to establish a new rate structure or customer classification may do so in order to exercise this affirmative authority.

III. The Commission Has Ordered the Filing of Cost of Service Information When A Rate Structure Has Been Challenged

16. Commission Order No. 9567 addresses a rate structure challenge when the City of Wauchula established a customer class for customers within the City and a separate customer class for customers located outside of the City. In re: Rate schedule modification of the City of Wauchula, Docket No. 800498, Order No. 9567 issued September 25, 1980.

17. The City of Wauchula is a Florida municipal corporation which owned an electric utility. The utility's rate structure had been approved by the elected City Council members. Despite this fact the Commission ordered the City to file cost of service information so that the reasonableness of the rate classifications used in the rate structure could be reviewed and evaluated. Thus, the Commission ordered the City to file the following information for the Commission's review:

- a. the number of customers by rate classification inside and the number of customers by rate classification outside the city limits;
- b. the square miles of service area inside and the square miles of service area outside the city limits;
- c. the detailed map of the service area indicating the city limits and the service area limits;
- d. the distribution transformer KVA servicing inside the city limits and serving outside the city limits;
- e. the number of distribution transformers serving inside the city limits and serving outside the city limits;

- f. the number of customers per distribution line mile inside the city limits and the number of customers per distribution line mile outside the city limits;
- g. the distribution line losses inside the city limits and distribution line losses outside the city limits;
- h. the customer cost inside the city limits and the customer cost outside the city limits;
- i. the operation and maintenance cost inside the city limits and the operation and maintenance cost outside the city limits; and
- j. the meter reading cost inside the city limits and the meter reading cost outside the city limits. See "Rate Schedule Modification of the City of Wauchula," Docket No. 800498, Order No. 9567 dated September 25, 1980, at pages 2-3, copy attached as Appendix B.

18. In City of Tallahassee v. Mann, 411 So. 2d 162 (Fla 1981), cited by LCEC (Motion at p. 4), the Commission also required the City of Tallahassee to file cost of service information so that its "in city/outside city" rate structure could be reviewed and evaluated.

19. The Commission's authority to order a municipality or rural electric cooperative to file cost of service information is not limited to instances where the Commission is considering the consolidation of rate structures, but applies equally to a situation, like this one, where a new class of customers consisting of 45 percent of the customer base in an urbanized area of a rural electric cooperative appears proper. Changed facts. Changed cost of service to an identified class of customers. New customer service classifications are proper.

IV. The City's Petition Presents Facts Which Justify Consideration of Service within its Municipal Boundaries as a Separate and Distinct Service Classification, a Classification Which Requires Cost of Service Information to Validate It

20. LCEC suggests that the Commission should dismiss the City's petition on the grounds that the City has not met some undefined burden to justify a separate rate classification. LCEC Motion at p. 2, 15.

21. Cape Coral's petition identifies facts and circumstances specific to Cape Coral which would impact LCEC's cost of serving within the City and thus justify consideration of a separate and distinct service classification to be applied for service within the City. These facts and circumstances include:

a. Cape Coral, Florida's 10th largest city is the only large Florida city being served by a "rural" electric cooperative;

b. Cape Coral is an urbanized city and its businesses and residents bear no similarity in any way, shape or form to LCEC service to pole barns, sod maintenance barns, melon barns, and other types of customers LCEC serves in its vast 2,100 square mile service territory of largely undeveloped land;

c. LCEC operates within Cape Coral, and uses the City's streets, rights of way, etc., pursuant to a franchise which term expires in only a few months;

d. Cape Coral's franchise with LCEC requires that LCEC rates charged within the City be reasonable;

e. Cape Coral's request for a separate rate classification will ensure that rates charged by LCEC reasonably recover solely LCEC's cost to serve in the City.

f. LCEC has no power generation facilities; generation facilities that serve all of a utility's customers typically constitute a huge part of the utility's investment and present a

primary justification for the same rates to be charged to all customers receiving service from those facilities;

g. That justification is absent here; LCEC buys 100% of its power from FPL so power costs are simply passed through to all LCEC customers;

h. With no shared generation costs to be recovered in rates, it is much simpler to identify the distribution assets specific to service within Cape Coral which should be included in cost of service;

i. FPL retail service virtually surrounds Cape Coral, unlike other far flung areas in the rest of LCEC'S 2,100 square mile service territory;

j. Rural electric cooperatives were created to combine similarly situated customers located in rural areas to attempt to achieve economies of scale and to obtain funding subsidies from the federal government and taxpayers across the nation to assist in achieving reasonable rates, the City no longer is similarly situated to those rural customers;³

k. To these special City characteristics, add Geography, the municipal boundaries of the City are well established; and

l. Density, LCEC serves approximately 750 customers per mile in the City compared to an average of 55 customers per mile in the remainder of its 2,100 square mile service territory.

22. These many facts, combined, differentiate Cape Coral from LCEC's other areas and customers.

³ As noted in the City's petition, section 425.02, Florida Statutes, titled "Purpose," provides that rural cooperatives are organized for the sole purpose "[of] supplying electrical energy and promoting and extending the use thereof in rural areas." Section 425.03(1). Florida Statutes, defines a "rural area" as "any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough having a population in excess of 2,500 persons." The City long ago was disqualified as a rural area under this statutory definition.

23. These facts and circumstances reveal that the City, its inhabitants and businesses are not similarly situated to LCEC's remaining customers. Just as the Commission continues to authorize utilities to establish different customer classes within the general service (commercial) class to reflect different costs to serve large versus small commercial users, the Commission should grant the City's request so as to permit the City, its residents and inhabitants to be fairly charged by LCEC.

24. As noted in the City's petition at pages 11-12, this Commission has recognized the existence of a number of very significant disparities between and among the customers intended to be served by rural electric cooperatives and customers served by other utilities in Florida.

25. Reference is again made to the Commission's recitation of such differences, each of which impact a utility's cost of service, as provided in Order No. 02-1169 issued on August 26, 2002 in In re: Petition for Approval of Modification of Electric Rate Schedules by Choctawhatchee Electric Cooperative, Inc. (Docket No. 020537). Those distinctions include: customer density; different number of transformers required to serve; different cost to construct and maintain lines in a rural territory where such costs are spread to a significantly fewer number of customers; differences in the time customers are occupying the properties served in rural versus urban areas; variations in electric use and seasonal load factors between rural and urban customers; differences in types of structures served; differences in number of accounts maintained by customers in rural versus urban areas and other differences in characteristics between and among customers served by a cooperative in rural as compared to urban areas.

26. It is only through a cost of service study conducted specifically to identify LCEC's actual cost of providing service within the City that the Commission can determine whether these facts result in cost differences worthy of a separate customer service classification.

27. Based upon all of these differences, the City believes that the Commission must order LCEC to conduct a cost of service study.

28. The City represents 45 percent of LCEC's customer base. LCEC refuses to identify to the City how much of its more than \$400 million of annual revenue is obtained from LCEC service within the City. Assuming that the revenue derived from LCEC service within the City is approximately 45 percent of LCEC's total revenue, LCEC receives approximately \$180 million every year from the City, its inhabitants and businesses. Thus, even a 10 percent difference in LCEC's cost to provide electric service in the City, if reflected in a separate rate classification and corresponding rates, could save the City, its inhabitants and businesses \$18 million a year; and \$540 million over the course of a 30 year franchise term.

29. LCEC has refused to identify to the City its cost of providing service within the City, despite numerous and repeated requests from the City for this information.

30. LCEC is bound by its franchise with the City to charge reasonable rates and only reasonable rates within the City.

31. LCEC's actions have caused the City to conclude that a cost of service study identifying LCEC costs specifically to serve within the City likely would establish a significant level of existing subsidy by the City, its inhabitants and businesses.

32. Facts change. Costs of providing service change. Rate classifications change to reflect changed costs of providing service.

33. The Commission long has recognized the principle that rates should follow cost causation. The Commission must ensure that rate classes are established such that similarly treated customers are treated similarly.

34. The City's petition indicates that LCEC's current rate structure does not comport with these principles of ratemaking.

35. The City cannot prove that a separate service classification is justified. The Commission has not hesitated in the past to require that such a cost of service study be filed by a utility when its rate structure is challenged.

V. The City Represents the Public Interest.

36. The City of Cape Coral is a Florida municipal corporation.

37. The members of the City Council are elected to represent the interests of the City, its inhabitants and businesses.

38. Everything the City Council does in its official capacity is done to secure and promote the best interests of the City, its inhabitants and businesses. Yet, LCEC suggests that the City does not represent the best interest of its inhabitants and businesses in this proceeding. LCEC is wrong.

39. LCEC is privileged to provide electric service within Cape Coral only by the decision of the City Council, made 45 years ago and re-confirmed 30 years ago, that it was in the best interest of the City, its inhabitants and businesses that such privilege be granted to LCEC; together with the City's authorization to use the public's roads, streets, alleyways and other rights of way in the City (held in trust by the City for the benefit of its inhabitants and businesses).

40. The City is a member/owner of LCEC receiving service under LCEC residential and general service customer classifications.

41. LCEC's suggestion that the City should not be understood to represent the interests of its inhabitants and businesses in this proceeding is confounding.

42. The City, pursuant to the Florida Constitution, possesses all home rule powers necessary to act in the protection of the public health, safety and welfare. No Florida law or constitutional provision inhibits or limits the City's representation of the interests of the public it serves.

43. Should the Commission consider application of the Agrico test, the City, its inhabitants and businesses definitely are immediately and substantially impacted by the Commission decision sought in the City's petition. The Commission is empowered by the Legislature to add a new customer service classification to LCEC's rate structure and the Commission's failure to require a cost of service study necessary to establish LCEC's cost of serving within the City injures the City, its inhabitants and businesses every day that an apparently unfair and discriminatory rate structure remains in place. The City requests an administrative hearing under section 120.57, Florida Administrative Code, once LCEC has filed a cost of service study so that the Commission can remedy this injury, as the Commission is authorized by the Florida Legislature to do. Thus, the City meets the test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (2d DCA 1981).

VI. LCEC Tacitly Admits that Cape Coral, Its Inhabitants and Businesses are Subsidizing LCEC's Other Customers Located in LCEC's Vast 2,100-Square-Mile Service Territory and Thus, an Investigation of the Propriety of a Separate Rate Classification is Justified

44. LCEC suggests that should the Commission permit Cape Coral to be established as a separate customer classification, Native American communities would be disadvantaged and economic development in low density areas could be impeded. LCEC is simply avoiding the admission that Cape Coral is currently subsidizing LCEC's customers in these communities and areas.

45. These allegations admit substantive reasons why Cape Coral's request should be granted.

46. The federal government established, funded and granted preferences and privileges to rural electric cooperatives since the days of President Franklin Delano Roosevelt to bring electric service to rural areas.

47. The federal government determined that it was in the nation's interest that all taxpayers in the nation subsidize rural electric cooperatives to achieve this goal.

48. LCEC remains a rural electric cooperative, established and operated to this day to continue to spread electric service to vast, predominantly sparsely populated areas within the unincorporated areas of five southwest Florida counties.

49. Under LCEC's current rate structure, however, the burden of the subsidy previously provided by federal taxpayers has been shifted, at least in part, to the City of Cape Coral. LCEC's allegations confirm that Cape Coral unfairly bears the burden of subsidizing not only the Native American population mentioned by LCEC, but the remainder of LCEC's customers located in rural areas in its service territory as well. This is not fair, just or reasonable. As noted in the City's petition, the result is discriminatory rates which require Cape Coral, its

inhabitants and businesses to pay more than the cost of serving them to subsidize a rural electric cooperative's other customers in lieu of, or perhaps in addition to, the subsidy provided by federal taxpayers. Utility ratemaking and utilities, in general, should not be used to accomplish such a result. If LCEC requires subsidies for its customers, such subsidies should not be received through its rate structure and be inequitably imposed on a subset of customers.

VII. Cape Coral's Petition Does Not Mislead the Commission

50. Florida law, Commission rule and Commission precedent establish that the Commission possesses authority to review and establish a rural electric cooperative's rate structure. LCEC refers to the City's citation to a Commission rule repealed as of December, 2015, as misleading. The replacement rule quoted by LCEC clearly reaffirms the Commission's jurisdiction over LCEC's rate structure. The fact that the Commission eliminated the recitation in a prior Commission rule of specific factors to be reviewed when the Commission considers a utility's rate structure simply expands the factors which the Commission is free to consider when addressing rate structure issues, such as each of the facts and circumstances identified by the City in its petition, and restated herein.

VIII. Establishing a City-Specific Rate Classification Would Not Present an Extraordinary Burden on LCEC, Nor Would a Commission Requirement that LCEC Conduct the Cost of Service Study Requested by Cape Coral

51. Electric utility rate structures must properly establish rate classifications that recover the utility's cost of serving specified classes of customers. As the City's petition and this response confirm, utilities following this principle have included in their rate structures large municipality, small municipality, unincorporated area, large commercial user, small commercial user, and other rate classifications designed to address specific classes of customers that they serve.

52. Utilities perform periodic cost of service studies both to ensure that rate classifications remain appropriate and to eliminate or create new classifications when justified.

53. For years, FPL used a rate structure consisting of “residential customers in large municipalities,” “residential customers in small municipalities,” “residential customers in unincorporated areas,” “general service customers in large municipalities,” general service customers in small municipalities,” and “general service customers in unincorporated areas.” Currently, general service customers are classified in different rate classes based upon power needs and load factors by several utilities. The performance of cost of service studies to justify rate structures is not unduly but rather constitutes a duty of any utility, and the cost of LCEC performing such studies certainly bears little weight in comparison to a class of customers which provides approximately \$180 million annually to LCEC.

54. The City of Cape Coral, its inhabitants and businesses certainly are no less deserving of the opportunity to review the costs of providing service to them, through an LCEC rate study, than the customers of the city utilities in Tallahassee, Wauchula, Gainesville, or any other city or electric cooperative which has had its rate structures investigated by the Commission.

55. The Commission should deny LCEC’s motion to dismiss and require LCEC to submit a cost of service study identifying the cost of providing service within the City of Cape Coral. The Commission possesses the authority to do so, and the City’s petition sets forth sufficient facts to warrant an investigation that will allow the Commission to investigate and prescribe an appropriate rate structure and customer classification.

IX. Cape Coral Requests a Customer Classification for Service Within the Municipal Boundaries of Cape Coral and a Cost of Service Study to Justify All Rates and Charges Within Such Rate Classification, Including Contributions in Aid of Construction and LED Streetlight Charges

56. LCEC misapprehends the City's request in its petition. The City requests that LCEC service within the City be identified as a separate rate classification.

57. Once a cost of service study is performed and presented to the Commission, the City and other interested parties for review, the Commission can determine whether this separate rate classification should be implemented.

58. If implemented, the cost of serving within this rate classification shall be recovered by LCEC's collection of all types of rates and charges, including CIAC charges and LED streetlight rates.

59. Cape Coral is not requesting that the Commission specifically investigate whether LCEC's CIAC charges or LED streetlight rates are too high simply as a matter of ratemaking. The City is requesting the modification of LCEC's rate structure and from the new rate classification, new rates and charges would follow.

X. Rate Classifications Should Be Designed to Address Differences Between Customer Groups, Particularly Cost of Service Differences

60. LCEC suggests that the Commission cannot consider the customer rate classification requested by Cape Coral except "pursuant to appropriate rulemaking or, at minimum, only after carefully considering that policy change in a properly noticed investigatory docket for the entire electric utility industry." LCEC Motion at 14. This suggestion is without basis or merit.

61. As noted in Cape Coral's petition, the Florida Supreme Court in City of Tallahassee v. Public Service Commission, 441 So. 2d 620, 623 (Fla. 1983), affirmed this

Commission's rejection of the same argument when presented to it many years ago. In affirming the Commission's refusal to initiate rulemaking to address in city/out of city rate structures generically, the Supreme Court noted that "the factual situations under which particular surcharge issues arise will be quite diverse and for this reason, the PSC should not be compelled to promulgate restrictive rules in an area demanding flexibility." The Supreme Court thus instructed that "[t]he Commission's finding that the City's boundaries were not a reasonable basis for creating a customer classification was based on evidence unique to the City of Tallahassee and does not constitute an ironclad rule which will automatically apply to all other municipalities." Id.

62. LCEC suggests that it is unfair to require it to perform a cost of service study "particularly when the rate structure is based on decades of historic precedent, and the single tariff pricing concept engrained therein has been approved by the Commission." The Commission must consider that the large municipality, small municipality, unincorporated area rate structure of FPL was in place for decades before the Commission requested cost of service justification from FPL to continue the application of such structure. See Order Nos. 5098 and 5696, discussed herein.

63. Moreover, the Commission has approved FPL rate structures which consolidated all residential and general service (commercial) customers into one classification, only to authorize separate and distinct rate classifications for certain types of commercial customers based predominantly on the different cost to serve such customers.

64. In no proceeding has the Commission simply dismissed a request for a rate structure investigation in the manner or for the reasons requested by LCEC.

XI. The Rate Structure Investigation Requested by Cape Coral is Ripe for Consideration

65. LCEC suggests that the Commission should dismiss the City's petition since LCEC is now reviewing its Contributions in Aid of Construction policies. LCEC Motion at 8. Apparently, LCEC would like to draw a parallel with the rate structure investigation request addressed by the Commission in In re: Complaint Regarding electric rate structure for Gainesville Regional Utilities, Docket No. 130188, Order No. 14-0137 dated March 19, 2014.

66. However, the facts presented in the City's petition are markedly different than the facts presented in the GRU petition. Here, LCEC has implemented its CIAC policies and charges and has been applying them, according to LCEC, for many years.

67. When a trade association filed a petition requesting Commission review of an electric cooperative's CIAC rate structure, the Commission ordered the cooperative to perform and file a cost of service study. See, In re: Petition of Florida Home Builders Association for declaratory statement, discussed in the City's petition.

68. When it was suspected that the City of Tallahassee's rate structure may be discriminating on the basis that elected City officials authorized an "in city/out of city" rate structure, the Commission ordered the City to perform and file a cost of service study. See, City of Tallahassee v. Mann, discussed in the City's petition and herein.

69. When it was suspected that the City of Wauchula's rate structure may be discriminatory on the basis that elected City officials authorized an "in city/out of city" rate structure, the Commission ordered the City to perform and file a cost of service study. See, In re: Rate structure modification of the City of Wauchula, discussed in LCEC's motion and herein.

70. When it was suspected that FPL's rate structure which classified residential and commercial (general service) customers according to their location in large cities, small cities or

in unincorporated areas no longer were required due to disparate cost of serving customers in these locations, the Commission required FPL to perform and file a cost of service study. See, Order No. 5098, discussed herein.

71. When a single business and a single customer of Gainesville Regional Utilities filed a petition for a rate structure investigation premised upon their review of a cost of service study performed by GRU, the Commission recognized the petitioner's right to such an investigation and authorized petitioners to amend their petition so as to secure such right. See, In re: Complaint regarding electric rate structure for Gainesville Regional Utilities, discussed in LCEC's motion and herein.

72. In many, if not all of the situations where a utility's rate structure was at issue, the Commission required the utility to perform and file a cost of service study, without any entity having presented to this Commission detailed facts and circumstances like those facts and circumstances presented by Cape Coral in this petition.

73. In GRU, a single residential and a single commercial customer of GRU were able to review and analyze a cost of service study performed by GRU and presented to those customers by GRU for such analysis. The GRU rate structure included rate classifications for general demand commercial customers and large power customers. Therefore, GRU's cost of service study compared the electric cost of service to the forecasted revenues at current GRU rates by customer class. The cost of service study showed that GRU's rates were resulting in some customer classes paying more than GRU's cost of serving them and other customer classes paying less than GRU's cost of serving them. This is the type of information which is revealed in a cost of service study and this is why the City of Cape Coral has requested that a separate service classification be created should one be indicated by a LCEC cost of service study.

74. In GRU, the city utility not only had already performed a cost of service study which was made available to its city residents, but the city also had already initiated proceedings to establish new rates and consider amending its rate classes at the time the customers filed their petition with the Commission. The Commission, recognizing that the rate issues were pending before the City Commission, dismissed those portions of the customers' petition which addressed a proposed city rate structure which the City Commission was to vote upon in the future. The Commission noted that any allegations as to how the City Commission might vote were speculative at the time.

75. However, the Commission also allowed the customers to amend their petition to incorporate actions actually taken by the City Commission after the filing of the customers' petition, as "such new information may substantially affect the outcome of these proceedings." The customers amended their petition and subsequently voluntarily withdrew it, without prejudice, after "GRU sent a letter to [the customers] acknowledging their right as GRU customers to seek relief before the Commission, but inviting them to participate in the deliberative process during the upcoming GRU budget hearing process in an effort to address [the customers'] retail electric rate structure concerns as an alternative to litigating [the customers'] rate structure concerns before the Commission in Tallahassee." See Petitioners' Notice of Voluntary Dismissal Without Prejudice filed May 6, 2014, at page 1, approved by the Commission by Order No. 14-0316 dated June 13, 2014 in Docket No. 130188.

76. These facts described in the GRU proceeding discussed above differ entirely from the facts presented to the Commission in the City's petition. LCEC refuses to this day to perform the requested cost of service study. LCEC refuses to recognize this Commission's jurisdiction over its rate structure or the City's right to seek relief before this Commission. Whether LCEC

trustees are now prepared to address complaints from the City and other City residents and businesses relating to LCEC's CIAC charges and policies does not address the City's contention that such charges must be predicated upon a cost of service study recognizing specifically LCEC's cost of constructing facilities in Cape Coral, not LCEC's generic costs of construction in the 2,100 square mile service territory which it serves.

77. LCEC's motion makes clear that LCEC has no intention to perform the cost of service study requested by the City. The City's petition presents issues ripe for Commission consideration at this time.

WHEREFORE, the City of Cape Coral requests that the Commission deny LCEC's motion to dismiss and grant the City the relief requested in the City's petition, in all respects. The City further requests that should the Commission not summarily deny LCEC's motion to dismiss, that the City be provided the opportunity to present oral argument to best assist the Commission in the understanding of the City's petition and positions set forth in this response. As noted herein and in the petition, many, many millions of dollars are at issue.

Respectfully submitted,

s/ Brian P. Armstrong
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery and U.S. Mail to D. Bruce May, Esq., Holland & Knight, Bank of America Building, Suite 600, 315 South Calhoun Street, Tallahassee, Florida 32301, and to Dennie Hamilton, CEO, Lee County Electric Cooperative, Inc., 4980 Bayline Drive, North Fort Myers, Florida 33917, on this 19th day of April, 2016. Copies have also been furnished by electronic delivery to the following interested parties: William B. Willingham, fecabill@embarqmail.com.

By: /s/ Brian P. Armstrong
Brian P. Armstrong, Esq.
Florida Bar No. 888575

APPENDIX A

INVESTOR OWNED ELCTRIC UTILITY RATE SCHEDULE INDEXES

**FPUC RATE SCHEDULES NOT AVAILABLE FOR PRINTING OR COPYING FROM
PUBLIC WEBSITE**

INDEX OF RATE SCHEDULES

<u>RATE SCHEDULE</u>	<u>DESCRIPTION</u>	<u>SHEET NO.</u>
BA	Billing Adjustments	8.030
SC	Storm Charge	8.040
GS-1	General Service - Non Demand (0-20 kW)	8.101
GST-1	General Service - Non Demand - Time of Use (0-20 kW)	8.103
GSD-1	General Service Demand (21-499 kW)	8.105
GSDT-1	General Service Demand - Time of Use (21-499 kW)	8.107
GSL	General Service Load Management Program	8.109
NSMR	Non-Standard Meter Rider	8.120
GSCU-1	General Service Constant Usage	8.122
RS-1	Residential Service	8.201
RTR-1	Residential Time of Use Rider	8.203
CU	Common Use Facilities Rider	8.211
RLP	Residential Load Control Program	8.217
GSLD-1	General Service Large Demand (500-1999 kW)	8.310
GSLDT-1	General Service Large Demand - Time of Use (500-1999 kW)	8.320
CS-1	Curtable Service (500-1999 kW)	8.330
CST-1	Curtable Service -Time of Use (500-1999 kW)	8.340
GSLD-2	General Service Large Demand (2000 kW +)	8.412
GSLDT-2	General Service Large Demand - Time of Use (2000 kW +)	8.420
HLFT	High Load Factor – Time of Use	8.425
CS-2	Curtable Service (2000 kW +)	8.432
CST-2	Curtable Service -Time of Use (2000 kW +)	8.440
CST-3	Curtable Service -Time of Use (2000 kW +)	8.542
CS-3	Curtable Service (2000 kW +)	8.545
GSLD-3	General Service Large Demand (2000 kW +)	8.551
GSLDT-3	General Service Large Demand - Time of Use (2000 kW +)	8.552
OS-2	Sports Field Service	8.602
MET	Metropolitan Transit Service	8.610
CILC-1	Commercial/Industrial Load Control Program (Closed Schedule)	8.650
CDR	Commercial/Industrial Demand Reduction Rider	8.680
SL-1	Street Lighting	8.715
PL-1	Premium Lighting	8.720
OL-1	Outdoor Lighting	8.725
SL-2	Traffic Signal Service	8.730
RL-1	Recreational Lighting	8.743
SST-1	Standby and Supplemental Service	8.750
ISST-1	Interruptible Standby and Supplemental Service	8.760
EDR	Economic Development Rider	8.800
DSMAR	Demand Side Management Adjustment Rider	8.810
TR	Transformation Rider	8.820
SDTR	Seasonal Demand – Time of Use Rider	8.830
EFEDR	Existing Facility Economic Development Rider	8.900
CISR	Commercial/Industrial Service Rider	8.910
VSP	Voluntary Solar Partnership Pilot Program	8.930

BILLING ADJUSTMENTS

The following charges are applied to the Monthly Rate of each rate schedule as indicated and are calculated in accordance with the formula specified by the Florida Public Service Commission.

RATE SCHEDULE	FUEL			CONSERVATION		CAPACITY		ENVIRON- MENTAL ¢/kWh
	¢/kWh	¢/kWh	¢/kWh	¢/kWh	\$/kW	¢/kWh	\$/kW	
	Levelized	On-Peak	Off-Peak					
RS-1, RS-1 w/RTR-1 1 st 1,000 kWh	2.173			0.186		0.488		0.263
RS-1, RS-1 w/ RTR-1 all addn kWh	3.173			0.186		0.488		0.263
RS-1 w/RTR-1 All kWh		0.778	(0.323)	0.186		0.488		0.263
GS-1	2.502			0.177		0.466		0.251
GST-1		3.280	2.179	0.177		0.466		0.251
GSD-1, GSD-1 w/SDTR (Jan – May)(Oct – Dec)	2.501				.61		1.55	0.233
GSD-1 w/SDTR (Jun-Sept)		4.620	2.224		.61		1.55	0.233
GSDT-1, HLFT-1 GSDT-1w/SDTR (Jan – May)(Oct – Dec)		3.280	2.179		.61		1.55	0.233
GSDT-1 w/SDTR (Jun-Sept)		4.620	2.224		.61		1.55	0.233
GSLD-1, CS-1, GSLD-1w/SDTR (Jan – May)(Oct – Dec)	2.500				.68		1.78	0.232
GSLD-1 w/SDTR (Jun-Sept)		4.617	2.222		.68		1.78	0.232
GSLDT-1, CST-1, HLFT-2, GSLDT-1 w/SDTR (Jan–May & Oct–Dec)		3.277	2.177		.68		1.78	0.232
GSLDT-1 w/SDTR (Jun-Sept)		4.617	2.222		.68		1.78	0.232
GSLD-2, CS-2, GSLD-2 w/SDTR (Jan – May)(Oct – Dec)	2.482				.70		1.70	0.205
GSLD-2 w/SDTR (Jun- Sept)		4.587	2.208		.70		1.70	0.205
GSLDT-2, CST-2, HLFT-3 , GSLDT-2 w/SDTR (Jan – May)(Oct – Dec)		3.256	2.163		.70		1.70	0.205
GSLDT-2 w/SDTR (Jun-Sept)		4.587	2.208		.70		1.70	0.205
GSLD-3, CS-3	2.426				.72		1.88	0.200
GSLDT-3, CST-3		3.180	2.113		.72		1.88	0.200

NOTE: The Billing Adjustments for additional Rate Schedules are found on Sheet No. 8.030.1

(Continued from Sheet No. 8.030)
 BILLING ADJUSTMENTS (Continued)

RATE SCHEDULE	FUEL			CONSERVATION			CAPACITY			ENVIRON- -MENTAL ¢/kWh
	¢/kWh	¢/kWh	¢/kWh	¢/kWh	\$/kW		¢/kWh	\$/kW		
	Levelized	On- Peak	Off- Peak							
OS-2	2.482			0.142			0.366			0.210
MET	2.482				0.77			2.04		0.228
CILC-1(G)		3.280	2.179		0.79			1.98		0.205
CILC-1(D)		3.253	2.161		0.79			1.98		0.205
CILC-1(T)		3.180	2.113		0.77			1.83		0.192
SL-1,OL-1, PL-1	2.355			0.073			0.095			0.100
SL-2, GSCU-1	2.502			0.137			0.289			0.192
					<u>RDD</u>	<u>DDC</u>		<u>RDD</u>	<u>DDC</u>	
SST-1(T)		3.180	2.113		0.08	0.04		0.21	0.10	0.186
SST-1(D1)		3.280	2.179		0.08	0.04		0.22	0.10	0.217
SST-1(D2)		3.277	2.177		0.08	0.04		0.22	0.10	0.217
SST-1(D3)		3.256	2.163		0.08	0.04		0.22	0.10	0.217
ISST-1(D)		3.253	2.161		0.08	0.04		0.22	0.10	0.217
ISST-1(T)		3.180	2.113		0.08	0.04		0.21	0.10	0.186

Issued by: S. E. Romig, Director, Rates and Tariffs
 Effective: April 1, 2016

Rates, Rules, and Regulations

Want even more detail about our rates and billing? Click on the links below to get the full rules and regulations for each type of billing available.

Rates

- GS [General Service Non-Demand](#)
- GSD [General Service - Demand](#)
- GSDT [General Service - Demand - Time-of-Use Conservation \(Optional\)](#)
- LP [Large Power Service](#)
- PX [Large High Load Factor Power Service](#)
- LPT [Large Power Service - Time-of-Use Conservation \(Optional\)](#)
- PXT [Large High Load Factor Power Service - Time-of-Use Conservation \(Optional\)](#)
- SBS [Standby and Supplementary Service](#)
- ISS [Interruptible Standby Service](#)
- SP [Rate Schedule SP — Surge Protection](#)
- RTP [Real Time Pricing - Limited Availability Rate](#)
- I [Photovoltaics](#)
- FLAT-1 [Residential/Commercial FlatBill](#)
- GSTOU [General Service Time-of-Use Conservation \(Optional Schedule\)](#)
- OS [Outdoor Service \(SL,OL,OL1,OL2\)](#)

Riders and Rate Adjustments

- BB [Budget Billing \(Optional Rider\)](#)
- CR [Cost Recovery Clause - Fossil Fuel and Purchased Power](#)
- PPCC [Purchased Power Capacity Cost Recovery Clause](#)
- ECR [Environmental Cost Recovery Clause](#)
- ECC [Cost Recovery Clause - Energy Conservation](#)
- LBIR [Large Business Incentive Rider \(Optional Rider\)](#)
- MBIR [Medium Business Incentive Rider \(Optional Rider\)](#)
- SBIR [Small Business Incentive Rider \(Optional Rider\)](#)
- CIS [Commercial/Industrial Service \(Optional Rider\)](#)
- MBFC [Military Base Facilities Charge \(Optional Rider\)](#)
- TAX [Tax Adjustment, Franchise Fee Billing, Gross Receipts, Payment of Bills](#)

Rules, Regulations, and General Information

[Miscellaneous](#)

[Technical Terms and Abbreviations](#)

[List of Communities Served](#)

Rules and Regulations

[Table of Contents](#)

Part I - General Rules

Part II - Credit Regulations

Part III - Line Extension

Part IV - Billing and Metering Regulations

Part V - Contract and Enforcement Regulations

Part VI - Underground Distribution Facilities

Part VII - Standard for Cogeneration and Small Power Production Facilities

Special Contracts and Agreements

Standard Contract Forms

Contract of Compliance

Contract for Electric Service

Contract for Electric Service for Resale

Contract for Seasonal Electric Power

Outdoor Service — Lighting Pricing Methodology - Rate Schedule OS (Part I/II)

Contract for Street and General Area Lighting Service - Rate Schedule OS (Part I/II)*

Contract for Government Owned and Operated Housing

Equipment Rental Lease and Maintenance Agreement

Agreement for Underground Electric Construction by the Utility

Agreement for Underground Construction Standards

Application for Underground Service in an Overhead Area

Request for Interconnection of Customer-Owned Generation

Standby Service Agreement

Standby Service Interconnection Agreement

Agreement for Residential Advanced Energy Management Program

Surge Protection Agreement — Rate Schedule SP

Application for Underground Cost Estimate

Guaranty Agreement

Optional Relamping Service Agreement Customer-Owned Street and General Area Lighting - Rate Schedule OS (Part I/II)*

Optional Up Front Payment of Fixture(s) — Rate Schedule OS (Part I/II)*

Optional Up Front Payment of Additional Facilities - Rate Schedule OS (Part I/II)*

Contract Service Arrangement for the Provision of Service Under the Commercial/Industrial Service Rider

Assignment of Lighting Service Contract — Rate Schedule OS (Part I/II)*

Customer-Owned Lighting Agreement (Without Relamping Service Provisions) - Rate Schedule OS (Part I/II)*

Landlord "Leave Service Active" Agreement

Master Contract for Electric Service

Premises Exhibit to Master Contract for Electric Service

Schedules

Index

Schedule COG-1 - Standard Rate For Purchase of As-Available Energy From Qualifying Cogeneration and Small Power Production Facilities (Qualifying Facilities)

Schedule COG-2 - Standard Offer Contract Rate For Purchase of Firm Capacity and Energy From Small Qualifying Facilities (less than 75 MW) or From Solid Waste Facilities

Standard Offer Contract For the Purchase of Firm Energy and Capacity From a Qualifying Facility

Form 12 - Application for Interconnection of Customer-Owned Generation

Standard Interconnection Agreement

Standard Interconnection Agreement for Customer-Owned Tier 1 Renewable Generation Systems (10 kW or less)

Standard Interconnection Agreement for Customer-Owned Tier 2 Renewable Generation Systems (Greater than 10 kW and Less than or Equal to 100 kW)

Standard Interconnection Agreement for Customer-Owned Tier 3 Renewable Generation Systems (Greater than 100 kW and Less than or Equal to 2 MW)

Standard Interconnection Application for Customer-Owned Renewable Generation Systems

Schedule REF-1 - Standard Offer Contract Rate For Purchase of Firm Capacity and Energy From Renewable Energy Facilities

Renewable Standard Offer Contract For Purchase of Firm Capacity and Energy From a Renewable Energy Facility

Standard Interconnection Agreement for Non-Export Parallel Operators 10 MVA or Less

Customer Service 1-800-225-5797 24hrs/7days

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