

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Gladys Cook,) DOCKET NO. 920225-EC
Margaret Diaz, Carolyn Moore, and) ORDER NO. PSC-92-0609-FOF-EC
Donald Hulslander against LEE) ISSUED: 07/07/92
COUNTY ELECTRIC COOPERATIVE. INC.)
regarding activities which may)
adversely affecting rate)
structure)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER GRANTING MOTION TO DISMISS COMPLAINT

BY THE COMMISSION:

On March 13, 1992, Gladys Cook, Margaret Diaz, Carolyn Moore and Donald Hulslander (hereinafter referred to as the "Petitioners") filed a complaint with the Commission concerning certain activities of the Lee County Electric Cooperative, Inc. (hereinafter referred to as "Lee County"). The complaint alleges that Lee is "engaging in enterprises unrelated to "supplying electric energy and promoting extending the use thereof in rural area(s)" which adversely affect the rate structure of the cooperative. The Complaint also alleges that the meetings of Lee's board of trustees are being conducted in a manner inconsistent with the requirement of Section 425.045(1), Florida Statutes that all such meetings be open to the membership.

On April 1, 1992, Lee County filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. The memorandum filed in support of the motion suggests that taken as true, the allegations in the complaint do not fall within the jurisdiction of the Commission regarding rural electric cooperatives. The Petitioners did not file a response to the Motion to Dismiss.

The Commission's jurisdiction over the activities of rural electric cooperatives is limited by section 366.04(2), Florida Statutes. The Commission may prescribe the system of accounts used, review the rate structure or relationship of each class's contribution to total revenue, review conservation activities, and adjudicate territorial disputes with other electric utilities. The Commission does not have jurisdiction over general management policies, total revenues, or rate levels. The Complaint alleges

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that the cooperative has engaged in enterprises unrelated to the provision of electric service to its "economic detriment". The Complaint further suggests that these activities "may be adversely affecting the rates" charged to the members of the utility.

A showing that the cooperative was engaging in enterprises unrelated to the provision of electric service to its economic detriment, thus adversely affecting the level of rates is, without more, insufficient to invoke this Commission's jurisdiction over the allocation of those charges to the various classes (rate structure).

As to the allegation that the Board of Trustees meetings are not being conducted in accord with the requirement of Section 425.045(1), Florida Statutes, this Commission clearly lacks jurisdiction to resolve the dispute. We believe that the appropriate pleading is a petition/complaint for injunctive relief filed in the appropriate circuit court.

Based on the failure to allege matters within the jurisdiction of the Commission, we find that the Motion to Dismiss the Complaint should be Granted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion to Dismiss the Complaint for Lack of Subject Matter Jurisdiction is GRANTED. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 7th day of July, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RVE

by: Kay Flynn
Chief, Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.