

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

MEMORANDUM

June 4, 1992

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF LEGAL SERVICES [ELIAS] *RUE*  
DIVISION OF ELECTRIC AND GAS [WHEELER] *DPW CBK JOJ*

RE : DOCKET NO. - 920225-EC - LEE COUNTY ELECTRIC COOPERATIVE, INC. - COMPLAINT OF GLADYS COOK, MARGARET DIAZ, CAROLYN MOORE, AND DONALD HULSLANDER AGAINST LEE COUNTY ELECTRIC COOPERATIVE, INC. REGARDING ACTIVITIES WHICH MAY BE ADVERSELY AFFECTING RATE STRUCTURE

AGENDA: 06/16/92 - CONTROVERSIAL AGENDA - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

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CASE BACKGROUND

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.

DOCUMENT NUMBER-DATE

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Lee County Electric Cooperative's Motion to Dismiss the Complaint filed by Gladys Cook, Margaret Diaz, Carolyn Moore and Donald Hulslander?

RECOMMENDATION: Yes. The Commission lacks jurisdiction over the subject matter of the Complaint.

STAFF ANALYSIS: 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 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 have "adversely affect(ed) 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 the Commission's jurisdiction over the allocation of those charges to the various classes (rate structure).

Staff notes that Section 425.045(2), Florida Statutes, provides that the records of a cooperative are available for inspection and copying by any member of the cooperative upon reasonable notice. If the rate structure of the cooperative does not conform to applicable law, Complainants can readily obtain information sufficient to invoke this Commission's rate structure jurisdiction.

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, the Commission clearly lacks jurisdiction to resolve the dispute. Staff submits 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, staff recommends the Motion to Dismiss the Complaint be Granted.

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

**RECOMMENDATION:** Yes.

**STAFF ANALYSIS:** If no party timely files a Notice of Appeal of the final order to be issued in this cause, no further action will be required in this matter. Therefore, staff recommends that the docket be closed.