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ORIGINAL

January 4, 1999

Ms. Blanca S. Bayó
Director, Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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RECORDS AND REPORTING

Re: Seminole Electric Docket # 981827-EC

Dear Ms. Bayó:

Enclosed for filing on behalf of Seminole Electric Cooperative, Inc. are the original and fifteen copies of its:

1) Motion to Dismiss for Lack of Jurisdiction 00048-99
2) Request for Oral Argument 00049-99

By copy of this letter, these documents have been furnished to the parties on the attached service list.

Very truly yours,

Richard D. Melson

RDM/kcg
Enclosures
cc: Parties of Record

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

43p

In re: Complaint and petition by Lee County Electric Cooperative, Inc. for an investigation of the rate structure of Seminole Electric Cooperative, Inc.	)	Docket No. 981827-EC Filed: January 4, 1999

SEMINOLE ELECTRIC COOPERATIVE, INC.'S MOTION TO DISMISS FOR LACK OF JURISDICTION

Seminole Electric Cooperative, Inc. (Seminole), pursuant to Rule 28-106.204(2), Florida Administrative Code, moves to dismiss for lack of jurisdiction the complaint and petition filed by Lee County Electric Cooperative, Inc. (LCEC) on December 9, 1998, which asks the Florida Public Service Commission (Commission) to investigate what LCEC characterizes as Seminole's rate structure. In support of its motion, Seminole states:

I. Background

1. Seminole is a non-profit electric generation and transmission cooperative organized pursuant to Chapter 425, Florida Statutes. Seminole provides electricity at wholesale to its 10 owner-members, each of which is a distribution cooperative organized pursuant to Chapter 425. The distribution cooperatives in turn provide retail electric service to member/customers throughout their service areas. Seminole itself has no retail customers. Seminole is governed by a 30 member Board of Trustees consisting of two voting members and one alternate from each of its 10 member distribution cooperatives (Members). LCEC is one of 10 Owner-Members and as such is duly represented on the Board of Trustees.

2. Seminole's wholesale sales of electric power and energy to its Members are governed by the terms of uniform Wholesale Power Contracts between Seminole and each

Member. A copy of the Wholesale Power Contract between Seminole and LCEC, as amended and supplemented, is attached hereto as Composite Exhibit 1. These negotiated agreements fix the obligations of Seminole, as seller, and the individual Members, as purchasers. Pursuant to the Wholesale Power Contracts, the rates, terms and conditions under which Seminole furnishes electric power and energy to its Members are fixed from time to time by a majority vote of Seminole's Board of Trustees, subject to prior written approval by the Administrator of the Rural Utilities Service, formerly known as the Rural Electrification Administration. Such approval is required because Seminole has obtained financing for various generating and transmission facilities through the Rural Utilities Service (RUS). The negotiated contracts make no reference to any requirement for approval by the Commission.

3. Under the terms of the Wholesale Power Contracts, the total revenue to be generated by Seminole's wholesale power sales to its Members is limited to the amount necessary (when combined with revenues from all other sources) to meet Seminole's costs of operation and maintenance, to meet the cost of purchased power and transmission services, to make payments of principal and interest on Seminole's indebtedness, and to provide for the establishment and maintenance of reasonable reserves. The rates in effect from time to time are included in a Rate Schedule which is part of each Wholesale Power Contract.

4. On October 8, 1998, Seminole's Board of Trustees approved Rate Schedule SECI-7 and directed that effective January 1, 1999, it would supercede Rate Schedule SECI-6b. This Rate Schedule was submitted to RUS for approval on October 19, 1998 and was approved by RUS on or about November 20, 1998. A copy of the RUS approval is attached as Exhibit 2.

5. On December 9, 1998, LCEC filed its Complaint and Petition in which it asks the Commission to (a) direct Seminole to file its Rate Schedule SECI-7 and supporting

documentation with the Commission, and (b) investigate the rate structure adopted in that Rate Schedule, which LCEC alleges is discriminatory, arbitrary, unfair and unreasonable. For the reasons set forth below, the Commission lacks jurisdiction over Seminole's wholesale rate schedules, and LCEC's complaint must therefore be dismissed.

II. Scope of Commission Jurisdiction

6. As a rural electric cooperative which owns generation and transmission facilities in Florida, Seminole is an "electric utility" as defined in Section 366.02(2), Florida Statutes. As a rural electric cooperative, however, Seminole is not a "public utility" as defined in Section 366.02(1), Florida Statutes.

7. LCEC's complaint and petition seeks to invoke the Commission's jurisdiction under Section 366.04(2)(b), Florida Statutes, which provides:

> (2) In the exercise of its jurisdiction, the commission shall have power over electric utilities for the following purposes:
>
> ***
>
> (b) To prescribe a rate structure for all electric utilities.

8. The jurisdictional question presented by LCEC's complaint and raised by this motion to dismiss is whether the Commission's power "to prescribe a rate structure for all electric utilities" gives it jurisdiction to review a *wholesale* rate schedule adopted in conformance with a *contract between two rural electric cooperatives.* When Section 366.04(2)(b) is interpreted in light of:

- the purpose of Chapter 366;
- the Commission's long-standing interpretation of subsection (2)(b);
- the other provisions of Chapter 366, including Section 366.11; and

- the principles governing the scope of the Commission's jurisdiction

it is clear that the Commission does not have jurisdiction to review and approve Seminole's wholesale Rate Schedule. This action must therefore be dismissed.

III. Jurisdiction Is Not Supported by the Purpose of Chapter 366

9. The underlying purpose of Chapter 366 is to prevent potential abuses of monopoly power when the public obtains electric service from a monopoly provider. See, City of St. Petersburg v. Carter, 39 So.2d 804 (Fla. 1949). This purpose is not served by regulating any aspect of the Wholesale Power Contract between Seminole and LCEC. First, LCEC is not a captive customer of a monopoly provider. LCEC's obligation to purchase its full requirements of power and energy from Seminole is the result of voluntary contractual negotiations, not the result of Seminole's right to serve some governmentally protected or defined service territory. Second, in entering into the Wholesale Power Contract, LCEC specifically agreed to the method by which rates, terms and conditions would be determined; namely, by action of the Board of Trustees, subject to approval by the Administrator of RUS. Nowhere does the Wholesale Power Contract contemplate that any aspect of the rates or other contract terms is subject to review or approval by the Commission. Third, LCEC is a fully participating member of Seminole's Board of Trustees. As such, it had an equal and direct voice in the action approving Rate Schedule SECI-7. In this situation, Seminole lacks any monopoly power over LCEC, and the underlying purpose of Chapter 366 would not be furthered by Commission review of Seminole's wholesale Rate Schedule.

10. Seminole has had a number of Rate Schedule amendments since the Wholesale Power Contract with LCEC became effective in 1975. Several of those amendments have

involved changes in the rate elements used to calculate monthly charges, or in percentage of fixed costs assigned for recovery by particular rate elements. (See, e.g., footnote 3, infra.) Not once has any of the LCEC representatives on Seminole's Board of Trustees suggested that Seminole should submit any of these Board-approved Rate Schedule amendments to the Commission for further review and approval.

11. If the Commission fails to dismiss LCEC's complaint, it will effectively be adding a step in the review and approval process for amendments to Seminole's Wholesale Power Contracts that is beyond anything contemplated or negotiated by the parties. Such an action would invite a Commission challenge whenever a single Seminole Member is unhappy with a particular Rate Schedule Amendment, even if that amendment has been approved by a majority vote of the other Members.[1] What a Member cannot achieve by a vote in the Board room, it will be invited to seek at the Commission. The Commission should refrain from a new, expansive reading of Chapter 366 that has it assert jurisdiction over a wholesale power contract between two cooperative utilities, one of which is a part owner of the other, when nothing in the purpose of Chapter 366 supports such jurisdiction.

12. In an analogous case, the Florida Supreme Court held that the presumption of correctness that ordinarily attaches to Commission orders did not apply when the Commission exceeded its jurisdiction by claiming authority over the terms of a settlement contract between two telephone utilities. United Telephone Company v. Public Service Commission, 496 So.2d 116 (Fla. 1986). After considering federal court interpretations of the Federal Power Act and the constitutional prohibition against impairment of private contracts, the Court held that the

[1] Rate Schedule SECI-7 was, in fact, approved by Seminole's Board of Trustees on a vote of 17 to 2.

provisions of Chapter 364 which gave the Commission jurisdiction to alter unreasonable rates or practices by a telephone company "refer to rates and practices as applied to ratepayers and do *not* confer jurisdiction upon the commission to alter the contractual relationship between telephone companies." Id. at 119 (emphasis in original). The same principle should apply to the interpretation of the Commission's jurisdiction over electric utility rate structure under Chapter 366 -- that jurisdiction attaches to retail rate structures applicable to utility *ratepayers*, not to Rate Schedules contemplated in negotiated contracts between two utilities. That principle should have particular force in a case, such as this, where the purchasing utility is one of the owners of the seller and is represented on its governing Board of Trustees.

IV. Jurisdiction Is Inconsistent With the Commission's Long-Standing Interpretation of Section 366.04(2)(b)

13. LCEC's complaint and petition candidly admits that the Commission has not previously exercised jurisdiction over Seminole's wholesale Rate Schedule. (Complaint at 4.) LCEC nevertheless goes on to argue that the Commission has the ability to exercise such jurisdiction by statute, rule and case law.[2] Seminole submits that since the Commission first required the distribution cooperatives to file rate schedules by order dated October 28, 1977, the Commission has tacitly acknowledged that Section 364.04(2)(b) does not grant it rate structure jurisdiction over Seminole's wholesale rates.

14. By way of historical background, the Commission took its first steps toward

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[2] LCEC cites the U.S. Supreme Court case of Arkansas Public Service Commission vs. Arkansas Electric Cooperative Corp., 461 U.S. 375 (1983) for the proposition that a state public service commission can regulate wholesale electric sales from a generation and transmission cooperative to distribution cooperatives located in the same state. This decision simply holds that regulation pursuant to a state statute clearly establishing a state regulatory scheme is not preempted by federal law. It does nothing to resolve the question presented by LCEC's petition as to whether *Florida* law imposes such a regulatory scheme.

implementing Section 366.04(2)(b) in early 1975. In re: General Investigation of fuel adjustment clauses of electric companies, Docket No. 74680-CI, Order No. 6484, January 30, 1975. In that order, the Commission invited interested parties to brief the issue of whether the statute gave the Commission ratemaking jurisdiction over municipally owned utilities and rural electric cooperatives, as the Attorney General had stated in Opinion 074-309. After briefing and oral argument, the Commission concluded that Section 366.04(2)(b) does *not* confer ratemaking jurisdiction over rural electric cooperatives and municipally owned electric systems. In re: General investigation of fuel adjustment clauses of electric companies, Docket No. 74860-CI, Order No. 6899, September 10, 1975.

15. Two years later, the Commission initiated an investigation for the purpose of implementing Section 366.04(2)(b), including the task of defining the term "rate structure." See, In re: General investigation as to rate structures for municipal electric systems and rural electric cooperatives, 1 F.P.S.C. 83 (Docket No. 770811-EU; Order No. 8027; October 28, 1977). In that order, the Commission directed each rural electric cooperative and municipal electric utility to file within 30 days a copy of its current rates and charges for electric service. In response to the order, on January 3, 1978, the fourteen distribution cooperatives submitted a joint response acknowledging the authority of the Commission over their rate structure. The distribution cooperatives subsequently filed their individual rate schedules with the Commission. Also on January 3, 1978, Seminole filed a separate response in which it stated that because it had no sales at retail to consumers, Seminole was not subject to the Commission's rate structure jurisdiction, and therefore would not be filing rates or charges with the Commission. A copy of this response is attached as Exhibit 3. The Commission never questioned Seminole's interpretation of the statute and did not require Seminole to participate further in the docket.

16. The rate structure investigation in Docket 770811-EU was ultimately concluded by the entry of a Consent Order. In re: General investigation as to rate structures for municipal electric systems and rural electric cooperatives, 5 F.P.S.C. 3 (Docket No. 770811-EU; Order No. 8628, January 3, 1979). In that order, the Commission stated that the rural electric cooperatives and municipal electric systems consented to the entry of an order which grandfathered their existing rate structures and established a procedure for submission of proposed rate structure changes pending the adoption of a formal Commission rule.

17. In late 1985, the Commission again took action to require rate schedule filings by municipal and cooperative utilities. In re: Filing Requirements for Municipal and Rural Electric Cooperatives, 85 F.P.S.C. 12:401 (Docket No. 850595-EU-A; Order No. 15509; December 31, 1985). That order included an attachment which listed -- for each jurisdictional municipal utility and rural electric cooperative --- the specific charges which were on file with the Commission. The order required each listed utility to file its rate schedule for any charge which it imposed that was not already reflected on the Commission's list. Seminole is notably absent from this list.

18. In 1987, the Commission initiated an investigation of retail rate structure revisions filed by Sumter Electric Cooperative. (Docket No. 870053-EC.) In that case, Sumter cited two factors as hampering its efforts to achieve uniform, cost-based rates. One of those factors related to fluctuations in the wholesale power rates that Sumter paid to its supplier, Seminole. In this regard, Sumter's submission to Chairman Nichols discussed various changes that had occurred over time in the components of Seminole's wholesale power rates.[3] The order which ultimately

[3] In Sumter's words: "The Cooperative's efforts to achieve uniform, cost-based rates over the past three rate studies have been hampered by changes in our wholesale power rates. In 1983, Seminole's demand charge was applied to each of our substation's non-coincident peak demands. In 1984, the non-coincidental billing remained but was supplemented by an annual demand charge adder based upon each substation's maximum non-coincident peak demand during the prior 12 months. By 1987, Seminole had dropped the annual demand adder

approved Sumter's rate structure filing made explicit reference to Seminole's wholesale power rate changes, but gave no hint that the Commission had any jurisdiction to review these types of changes. In re: Rate Structure Revisions of Sumter Electric Cooperative, 87 F.P.S.C. 5:186 (Docket No. 870053-EC; Order No. 17579; May 21, 1987).

19. Seminole submits that the history of these various Commission proceedings is consistent with only one conclusion -- the Commission has never interpreted Section 366.04(2)(b) to give it jurisdiction over Seminole's wholesale Rate Schedules. If the Commission had interpreted the statute in any other manner, there is no reasonable explanation for its failure to have required filings by Seminole at any time during the twenty-four years since the statute was enacted.

20. This long-standing practical interpretation of the statute may not now be reversed by the Commission. See, Walker v. State, Department of Transportation, 366 So.2d 96 (Fla.1st DCA, 1979) (holding that DOT could not abandon a long-standing interpretation of a fee payment statute and cease accepting late payments); see also, Green v. Stuckey's of Fanning Springs, 99 So.2d 867 (Fla. 1957) ("the contemporaneous administrative construction of a statute by those charged with its enforcement and interpretation is entitled to great weight, and courts generally will not depart from such construction 'except for the most cogent reasons, and unless clearly erroneous'"). In a case closely on point, the Florida Supreme Court applied the principle that an agency is not free to abandon a long-standing statutory interpretation when it quashed an attempt by the Commission's predecessor to assert jurisdiction over a municipal street railway

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and had changed to a coincident demand billing. Since demand cost allocation is a major concern in doing the cost studies and is a major cost item, their wholesale billing changes have had a major impact on the class cost relationships." A copy of Sumter's submission is attached as Exhibit 4.

system which had been in operation without such oversight for many years. City of St. Petersburg v. Carter, 39 So.2d 804 (Fla. 1949). As the court stated:

> The construction placed *actually or by conduct* upon a statute by an administrative board is, of course, not binding upon the courts. However, it is often persuasive and great weight should be given to it. *Some significance must be attached to the fact that this is the first instance which has come to our attention where the Florida Railroad and Public Utilities Commission has attempted to assert jurisdiction by regulating the operation of a municipally owned street railway system. . .* The transportation system of the City of St. Petersburg has been operated by said city for a period of thirty years. During all these years many changes have been made in the rates, schedules and routes, all without application for approval by the Florida Railroad and Utilities Commission *or any suggestion that such changes should have been so approved.*
>
> Id., at 806 (emphasis added).

Just as the Commission's predecessor could not change its practical interpretation of the railroad regulatory statute to assert jurisdiction over a municipal railroad after 30 years of inaction, so the Commission cannot abandon its practical interpretation of Section 366.04(2)(b) and assert jurisdiction over Seminole's wholesale Rate Schedule after 24 years of inaction.

V. Jurisdiction Is Inconsistent With Section 366.11 and Other Provisions of Chapter 364

21. If the Commission interprets Section 366.04(2)(b) to confer jurisdiction over the Rate Schedule governing wholesale power transactions between Seminole and its Members, it will be claiming authority over an entire category of transactions -- wholesale power sales by cooperative and municipal utilities -- over which it has never before asserted jurisdiction. Interestingly, Section 366.11(1) specifically exempts wholesale sales *by* investor-owned utilities *to* municipals and cooperatives from Commission jurisdiction. This exemption is required because the numerous provisions of Chapter 366 which give the Commission rate-making authority over

investor-owned utilities do not explicitly distinguish retail sales from wholesale sales. In contrast, Section 366.11(1) does not specifically exempt wholesale sales *by* municipal and cooperative utilities from Commission jurisdiction. This means one of two things -- either all such transactions are subject to rate structure jurisdiction which the Commission has inexplicably failed to exercise for over twenty-four years *or* the Legislature never intended or expected Section 366.04(2)(b) to confer jurisdiction over wholesale transactions in the first instance, so no exemption was required in Section 366.11. Seminole submits that the latter is the only reasonable interpretation when Chapter 366 is considered as a whole. Any other interpretation would result in the Commission exercising rate structure jurisdiction over all wholesale power transactions in which a municipal or cooperative utility is a seller -- a category of transactions that no one has ever claimed the Commission has jurisdiction to regulate. It would also result in the Commission exercising *more* jurisdiction over wholesale sales by cooperative and municipal utilities than over wholesale sales by investor-owned utilities. There is absolutely nothing in the purpose of Chapter 366 which compels such an illogical result.

VI. Any Reasonable Doubt About the Commission's Jurisdiction Must Be Resolved Against the Exercise Thereof

22. The Commission is a creature of statute and has only such powers as are conferred expressly or impliedly by statute. Deltona Corporation v. Mayo, 342 So.2d 510 (Fla. 1977); State of Florida, Department of Transportation v. Mayo, 354 So.2d 359, 361 (Fla. 1977). As a consequence, any reasonable doubt about the existence of a particular power must be resolved against the Commission. City of Cape Coral v. GAC Utilities, Inc. of Florida, 281 So.2d 493 (Fla. 1973); Radio Telephone Communications, Inc. v. Southeastern Telephone Company, 170 So.2d 577, 582 (Fla. 1964).

23. As shown in paragraph 21, if the Commission fails to dismiss LCEC's rate structure complaint, it will be de facto claiming jurisdiction for the first time over all wholesale power transactions in which a municipal or cooperative utility is a seller. This would include Seminole's sales to its Members; sales by the Florida Municipal Power Agency to municipalities; sales by Alabama Electric Cooperative to its members located in Florida; sales by any municipal or cooperative to any investor-owned utility, including sales on the Florida Broker system; and sales by one municipal utility to another. There is certainly a reasonable doubt about the Legislature's intent to grant the Commission authority over this entire class of wholesale transactions. Under the principles announced by the Florida Supreme Court, the existence of that doubt means that the jurisdictional question must be resolved against the claim of such jurisdiction. That is particularly true where the assertion of jurisdiction would represent a fundamental change in the Commission's long-standing interpretation of the statute. See, City of St. Petersburg v. Carter, supra.

VII. Conclusion

24. All of the factors discussed above lead to the inescapable conclusion that the Commission does not have jurisdiction over any Rate Schedule pursuant to Seminole's Wholesale Power Contracts. There is nothing in the underlying purpose of Chapter 366 that would warrant a grant of jurisdiction over contractual wholesale power transactions between two utilities, particularly a cooperative and one of its 10 voting owner-members. This is especially true where the complaining party has participated in the approval of every wholesale Rate Schedule since 1975 and has never previously suggested that these amendments were subject to Commission review and approval. The history of the Commission's dockets implementing Section 366.04(2)(b) reflect its long-standing interpretation that the statute does not confer jurisdiction over wholesale

rate structure issues. When read in para materia with other provisions of Chapter 366, particularly Section 366.11, it is clear that the Legislature did not intend to give the Commission jurisdiction over all wholesale power transactions in which a municipal or cooperative utility is a seller, yet refusing to dismiss LCEC's complaint would inevitably lead to exactly that result. Under well settled principles of statutory construction, the Commission is a creature of statute, and such a sweeping grant of jurisdiction cannot be sustained where there is any reasonable doubt as to its existence.

WHEREFORE, for the reasons stated above, Seminole urges that LCEC's complaint and petition be dismissed for lack of jurisdiction.

RESPECTFULLY SUBMITTED this 4th day of January, 1999.

HOPPING GREEN SAMS & SMITH, P.A.

By: _____

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ATTORNEYS FOR SEMINOLE
ELECTRIC COOPERATIVE, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following by U.S. Mail this 4th day of January, 1999.

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Cochran Keating
Division of Legal Services
Florida Public Service Commission
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Tallahassee, FL 32399-0850

Kathleen C. Lake
Vinson & Elkins L.L.P.
1001 Fannin, Suite 2300
Houston, TX 77002

Attorney

WHOLESALE POWER CONTRACT

AGREEMENT made as of May 22, 1975 between SEMINOLE ELECTRIC COOPERATIVE, INC. (hereinafter called the "Seller"), a corporation organized under the laws of the State of Florida and LEE COUNTY ELECTRIC COOPERATIVE, INC. (hereinafter called the "Member"), a corporation organized and existing under the laws of the State of Florida.

WHEREAS, the Seller proposes to construct and/or acquire electric generating capacity and transmission facilities and may purchase or otherwise obtain transmission services and electric power and energy for the purpose, among others, of supplying electric power and energy to borrowers from the Rural Electrification Administration which are or may become members of the Seller; and

WHEREAS, the Seller has heretofore entered into or is about to enter into agreements for the sale of electric power and energy similar in form to this agreement with all the borrowers which are members of the Seller and may enter into similar contracts with other such borrowers who may become members, and

WHEREAS, the Member desires to purchase electric power and energy from the Seller on the terms and conditions herein set forth.

NOW THEREFORE, in consideration of the mutual undertakings herein contained the parties hereto agree as follows:

1. GENERAL. The Seller shall sell and deliver to the Member and the Member shall purchase and receive from the Seller all electric power and energy which the Member shall require for the operation of the Member's system within the State of Florida to the extent that the Seller shall have such power and energy and facilities available; provided, however, that the Member shall have the right to continue to purchase electric power and energy under any existing contract or contracts with a supplier other than the Seller during the remainder of the term thereof. If the Member continues to purchase electric power and energy under a contract or contracts with a supplier or suppliers other than the Seller, then the power and energy purchased under such contract or contracts shall be paid for by Seller for the account of the Member, and the Member shall be billed by Seller for such power and energy in accordance with the terms and conditions of Section 4 hereof. The Member shall terminate, if the Seller shall, with the approval or at the direction of the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator") so request, any such existing contract or contracts with a supplier other than the Seller at such times as it may legally do so, provided the Seller shall have sufficient electric power and energy facilities available for the Member.

2. ELECTRIC CHARACTERISTICS AND POINTS OF CONNECTION. Electric power and energy to be furnished hereunder shall be sixty Hertz alternating current.

As used in this Agreement "Points of Connection" shall be those points where the system of the Member is connected to the transmission system that Seller has from time to time ownership of or rights to deliver power and energy through.

The Member shall keep the Seller advised concerning anticipated loads at established Points of Connection and the need for additional Points of Connection by furnishing the Seller by November 1 of each year a revised "Schedule A" substantially in the form attached hereto.

The initial Point or Points of Connection and their initial delivery voltages shall be as set forth in "Schedule B" attached hereto and made a part hereof. Other Points of Connection and their initial delivery voltages may be established by mutual agreement of the Member and the Seller, and "Schedule B" shall be revised accordingly.

3. DELIVERY FACILITIES. The Seller shall be responsible for the facilities to deliver power and energy to the Point or Points of Connection. The Member shall be responsible for providing the facilities necessary to take and use the power and energy from the Point or Points of Connection. The parties shall provide and maintain, or cause to be provided and maintained, switching and protective equipment which may be reasonably necessary to protect the system of the other. Meters and metering equipment shall be furnished, maintained, and read, or caused to be furnished, maintained, and read, by the Seller.

4. RATE. The Member shall pay the Seller for all electric power and energy furnished hereunder at the rates and on the terms and conditions set forth below:

(a) The rate to the Member shall be composed of the Monthly Billing Cost plus or minus a Member Adjustment Factor:

(i) The Monthly Billing Cost shall be the computed cost to Member as if the Member's total monthly power and energy supply had been purchased directly from a supplier or suppliers other than the Seller under applicable wholesale rate schedules. The applicable wholesale rate schedule shall be the rate schedule of supplier serving the territory in which the Point of Connection of the Member is located.

(ii) The Member Adjustment Factor shall be obtained by multiplying the difference between the Seller's total costs and the sum of the Monthly Billing Costs for all members by the ratio of the Member's monthly energy requirements to the total monthly energy requirements of all members of Seller.

(b) The Board of Trustees of the Seller shall ensure that revenues produced by the rate for electric power and energy furnished hereunder and under similar agreements with other members shall be sufficient, but only sufficient, with the revenues of the Seller from all other sources, to meet the cost of the operation and maintenance (including without limitation, replacements, insurance, taxes and administrative and general overhead expenses) of the generating plant(s),

transmission system, and related facilities of the Seller, to meet the cost of purchased power and transmission services, to make payments on account of principal and interest on all indebtedness of the Seller, and to provide for the establishment and maintenance of reasonable reserves. Without limiting the generality of the foregoing, the revenues produced by the rate shall be such as will enable the Seller to comply with all mortgage requirements as they may exist from time to time. The Seller shall cause a notice in writing to be given to the Member and other members of the Seller and the Administrator which shall set out all proposed revisions in the wholesale rate schedules used in determining the Monthly Billing Cost and any revisions affecting the maintenance of reasonable reserves with the effective date thereof, which shall be not less than thirty (30) nor more than forty five (45) days after the date of the notice, and shall set forth the basis upon which such revisions are proposed; provided, however, that no such revision shall be effective unless approved in writing by the Administrator.

5. METER READINGS AND PAYMENT OF BILLS. The Seller shall read meters monthly, or cause meters to be read monthly. Electric power and energy furnished hereunder shall be paid for at the office of the Seller within ten (10) days after the bill therefor is mailed to the Member. If the Member shall fail to pay any such bill within such ten-day period, the Seller may discontinue delivery of electric power and energy hereunder upon fifteen (15) days' written notice to the Member of its intention so to do.

6. METER TESTING AND BILLING ADJUSTMENT. The Seller shall test and calibrate meters, or shall cause such meters to be tested and calibrated, by comparison with accurate standards at intervals of twelve (12) months. The Seller shall also make, or cause to be made, special meter tests at amy time at the Member's request. The costs of all tests shall be borne by the Seller; provided, however, that if any special meter test made at the Member's request shall disclose that the meters are recording accurately, the Member shall reimburse the Seller for the cost of such test. Meters registering not more than two percent (2%) above or below normal shall be deemed to be accurate. The readings of any meter which shall have been disclosed by test to be inaccurate shall be corrected for the thirty (30) days previous to such test in accordance with the percentage of inaccuracy found by such test. If any meter shall fail to register for any period the Member and the Seller shall agree as to the amount of power and energy furnished during such period and the Seller shall render a bill therefor.

7. NOTICE OF METER READING OR TEST. The Seller shall notify the Member in advance of the time of any meter reading or test so that the Member's representative may be present at such meter reading or test.

8. RIGHT OF ACCESS. Duly authorized representatives of either party hereto shall be permitted to enter the premises of the other party hereto at all reasonable times in order to carry out the provisions hereof.

9. CONTINUITY OF SERVICE. The Seller shall use reasonable diligence to

deliver a constant and uninterrupted supply of electric power and energy hereunder. If the supply of electric power and energy shall fail or be interrupted, or become defective, through act of God or the public enemy, or because of accident, labor troubles, or any other cause beyond the control of the Seller, the Seller shall not be liable therefor or for damages caused thereby.

10. TERM. This Agreement shall become effective only upon approval in writing by the Administrator and shall remain in effect for a term of forty-five (45) years and thereafter until terminated by either party's giving to the other not less than three year's written notice of its intention to terminate. Subject to the provisions of Article 1 hereof, service hereunder and the obligation of the Member to pay therefor shall commence upon Seller's making service available to Member hereunder.

EXECUTED THE day and year first above mentioned.

SEMINOLE ELECTRIC COOPERATIVE, INC.

By _____
PRESIDENT

ATTEST:

_____
SECRETARY

LEE COUNTY ELECTRIC COOPERATIVE, INC.

By _____
PRESIDENT

ATTEST:

_____
SECRETARY

SCHEDULE A
TO WHOLESALE POWER CONTRACT

EXISTING AND PROPOSED DELIVERY POINT LOAD REQUIREMENTS
AND DELIVERY VOLTAGES

NAME OF MEMBER: LEE COUNTY ELECTRIC COOPERATIVE, INC.

DATE: May 22, 1975

Existing Delivery Points

Indicate Year of Estimated Peak Load From Above Date

	Name	Voltage of Delivery Change and New Voltage if Any	1975 1Yr. Hence	1976 2Yrs.Hence	1977 3Yrs.Hence	1979 5Yrs.Hence	1984 10Yrs. Hence
1.	Lee	138 KV	96.1	110.6	126.9	164.8	304.2
2.	Buckingham	138 KV	33.7	38.8	44.5	57.8	106.7
3.	Belle Mead (Marco)	138 KV	14.1	16.3	18.7	24.3	44.8
4.	Suncoast	69 KV	4.9	5.7	6.5	8.5	15.7
5.	Bayshore	138 KV	7.9	9.1	10.5	13.6	25.1
6.	North Fort Myers	69 KV	20.3	23.5	26.9	34.9	64.5
	TOTALS		177 MW	204 MW	234 MW	304 MW	561 MW

SCHEDULE A
TO WHOLESALE POWER CONTRACT

EXISTING AND PROPOSED DELIVERY POINT LOAD REQUIREMENTS
AND DELIVERY VOLTAGES

Proposed Delivery Points (No New Proposed Delivery Points)

	Name	Location	Voltage of Delivery	Date Required	Peak Load	Estimated Peak Load From Above Date: 1Yr. Hence	2Yrs. Hence	3Yrs. Hence	5Yrs. Hence	10Yrs Hence
1.										
2.										
3.			(N O N E)							
4.										
5.										
6.										
7.										
8.										
9.										
10.										

SCHEDULE B
TO WHOLESALE POWER CONTRACT

EXISTING DELIVERY POINTS

NAME OF MEMBER: LEE COUNTY ELECTRIC COOPERATIVE, INC.

DATE: MAY 22, 1975

	Name	Voltage of Delivery	SEPA Allotment	Location	Date of Initiation of Service
1.	Lee	138 KV	NONE		1973
2.	Buckingham	138 KV	NONE		1958
3.	Belle Mead (Marco)	138 KV	NONE		1967
4.	Suncoast	69 KV	NONE		1973
5.	Bayshore	138 KV	NONE		1971
6.	North Fort Myers	69 KV	NONE		1949

SUPPLEMENTAL AGREEMENT

AGREEMENT made as of May 22, 1975, between SEMINOLE ELECTRIC COOPERATIVE, INC. (hereinafter called the "Seller"), LEE COUNTY ELECTRIC COOPERATIVE, INC. (hereinafter called the "Member"), and the United States of America, acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator)

WHEREAS, the Seller and the Member have entered into a contract for the purchase and sale of electric power and energy, which contract is attached hereto and is hereinafter called the "Power Contract"; and

WHEREAS, the execution of the Power Contract between the Member and the Seller is subject to the approval of the Administrator under the terms of the loan contracts entered into with the Administrator by the Seller and the Member respectively;

NOW THEREFORE, in consideration of the mutual undertakings herein contained, and the approval by the Administrator of the Power Contract, the parties hereto agree as follows:

1. The Seller, the Member and the Administrator agree that if the Member, upon being requested to do so by the Seller with the approval or at the direction of the Administrator, shall fail to terminate any contract with a power supplier other than the Seller, as provided by Section 1 of the Power Contract, the Seller, or the Administrator if he shall so elect, shall have the right to enforce the obligations of the Member under the provisions of said Section 1 of the Contract by instituting all necessary actions at law or suits in equity, including, without limitation, suits for specific performance.

2. The Member will not renew, amend or extend any such contract or contracts or enter into any new contract without approval of Seller and Administrator.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above mentioned.

SEMINOLE ELECTRIC COOPERATIVE, INC.

By _____
PRESIDENT

ATTEST:

_____
SECRETARY

LEE COUNTY ELECTRIC COOPERATIVE, INC.

By _____

ATTEST:

_____
SECRETARY

UNITED STATES OF AMERICA

By _____
ADMINISTRATOR
OF
RURAL ELECTRIFICATION ADMINISTRATION

Exhibit 1-B

AMENDMENT NO. 1

WHOLESALE POWER CONTRACT

This Amendment made this 26 day of June, 1984, by and between Seminole Electric Cooperative, Inc. (called Seller) and Lee County Electric Cooperative, Inc. (called Member).

WHEREAS, in 1975, Seller and Member entered into a Wholesale Power Contract (Power Contract) and a Supplemental Agreement (Supplement); and

WHEREAS, the Power Contract contained a specific purchased power cost flow-through pricing mechanism for power sales to Members; and

WHEREAS, it is desirable that the Power Contract be amended to clearly provide for a rate structure responsive to Seller's ownership and operation of generation and transmission facilities; and

WHEREAS, Seller is entering into uniform amendments with all of its Members.

NOW, THEREFORE, in consideration of these mutual undertakings in said Power Contract it is herein agreed by the parties as follows:

1. Sections 1, 4, and 5 of the Power Contract between Seller and Member are hereby amended to read in their entirety as follows:

> "1. GENERAL. The Seller shall sell and deliver to the Member and the Member shall purchase and receive from the Seller all electric power and energy which the Member shall require for the operation of the Member's system within the State of Florida to the extent that the Seller shall have such power and energy and facilities available; provided, however, that the Member shall have the right to continue to purchase electric power and energy under any existing contract or contracts with a supplier other than the Seller during the remainder of the term thereof. The Member shall terminate, if the Seller shall, with the approval or at the direction of

the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator") so request, any such existing contract or contracts with a supplier other than the Seller at such times as it may legally do so, provided the Seller shall have sufficient electric power and energy facilities available for the Member."

"4. RATE. (a) The Member shall pay the Seller for all electric power and energy furnished hereunder at the rates and on the terms and conditions set forth in Schedule C attached hereto (designated as Rate Schedule SECI-2 adopted by the Board of Trustees of Seller on April 14, 1983, and effective on February 1, 1984) and made a part hereof.

(b) The Board of Trustees of the Seller at intervals as it shall deem appropriate, but in any event not less frequently than once in each calendar year, shall review said Schedule C including the related terms and conditions thereof for electric power and energy furnished hereunder and under uniform agreements with other Members and, if necessary, shall revise such Schedule C so that it shall produce revenues under appropriate terms and conditions which shall be sufficient, but only sufficient, with the revenues of the Seller from all other sources, to meet the cost of operation and maintenance (including without limitation, replacements, insurance, taxes and administrative and general overhead expenses) of the generating plant(s), transmission system, and related facilities of the Seller, to meet the cost of purchased power and transmission services, to make payments on account of principal and interest on all indebtedness of the Seller, and to provide for the establishment and maintenance of reasonable reserves. Without limiting the generality of the foregoing, the revenues produced by the rate shall be such as will enable the Seller to comply with all mortgage requirements as they may exist from time to time. After the Board of Trustees of Seller has reviewed said Schedule C and any revisions are proposed, the Seller shall cause a notice in writing to be given to the Member and other Members of the Seller and the Administrator which shall set out all proposed revisions in Schedule C with the effective date thereof, which shall be not less than thirty (30) nor more than ninety (90) days after the date of the notice, and shall set forth the basis upon which such revisions are proposed. The Member agrees that the rates and terms and conditions from time to time established by the Board of Trustees of the Seller shall be deemed to be substituted for the rates, terms, and conditions herein provided and agrees to pay for electric power and energy furnished by the Seller to it hereunder after the effective date of any such revision at such revised rates, terms, and conditions; provided, however, that no such revision shall be effective unless approved in writing by the Administrator."

"5. METER READINGS AND PAYMENT OF BILLS. The Seller shall read meters monthly, or cause meters to be read monthly. Electric power and energy furnished hereunder shall be paid for in accordance with the terms and conditions of Schedule C and as such terms and conditions may be modified from time to time by the Board of Trustees of the Seller as provided in Section 4 above."

2. Notwithstanding anything herein to the contrary, the parties agree that, as a material inducement for entering into this Amendment, the initial Schedule C and all subsequent amendments or revisions thereof shall recognize and provide for variations in the cost of providing service at differing delivery voltages, load factors, and power factors, the specific provisions therefore to be made in accordance with generally accepted ratemaking standards.

3. In all other respects said 1975 Contract is affirmed.

4. This Amendment shall become effective upon execution of a uniform amendment with all other Members of Seller, and upon approval in writing by the Administrator of the Rural Electrification Administration.

Executed the day and year first above written.

SEMINOLE ELECTRIC COOPERATIVE, INC.

BY _____

ATTEST:

_____

Lee County Electric Cooperative, Inc.

BY _____

ATTEST:

_____

THIS AGREEMENT, made as of September 22, 1987, among Lee County Electric Cooperative, Inc. (hereinafter called the "Company"), Seminole Electric Cooperative, Inc. (hereinafter called the "Power Supplier") and the United States of America (hereinafter called the "Government"), acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator"),

WITNESSETH:

WHEREAS, the Company has heretofore borrowed funds from the Government, acting through the Administrator, and in evidence thereof has heretofore duly authorized and executed, and has delivered to the Government, or has assumed the payment of, notes (hereinafter collectively called the "Notes") all payable to the order of the Government, of which the certain Notes more specifically identified in Appendix A attached hereto are outstanding on the date hereof (such Notes being hereinafter collectively called the "Outstanding Company Notes"); and

WHEREAS, the Company and the Power Supplier have heretofore entered into a certain contract for the purchase and sale of electric power and energy, which contract, together with the amendments and supplements thereto which have heretofore been entered into by the Company and the Power Supplier, is attached to this Agreement as Appendix B hereto (such contract, as it has heretofore been amended and supplemented and as it may hereafter be amended or supplemented from time to time, being hereinafter called the "Wholesale Power Contract"); and

WHEREAS, in reliance, in part, upon the Company's obligations to the Power Supplier under the Wholesale Power Contract, the Government, acting through the Administrator, has heretofore made and guaranteed certain loans to the Power Supplier, or has permitted the Power Supplier to assume certain indebtedness of a third party or parties to the Government created by a loan or loans theretofore made by the Government, acting through the Administrator, to such third party or parties, to finance the acquisition or construction or installation of electric generating plants or transmission systems, or both, to meet the Company's requirements for electric power and energy; and

WHEREAS, the indebtedness of the Power Supplier created by loans heretofore made or guaranteed by the Government is evidenced by certain outstanding notes and any indebtedness of the Power Supplier created by any loans which may hereafter be made or guaranteed by the Government shall be evidenced by additional notes (such outstanding notes of the Power Supplier and additional notes of the Power Supplier being hereinafter collectively called the "Power Supplier Notes"); and

WHEREAS, the Company desires now to prepay the Outstanding Company Notes pursuant to Public Law No. 99-509; and

WHEREAS, the Government has determined to permit the Company to prepay the Outstanding Company Notes on the terms and conditions contained in a certain agreement between the Government, acting through the Administrator, and the Company, which agreement is attached to this Agreement as Appendix C hereto (such agreement being hereinafter called the "Prepayment Agreement"); and

WHEREAS, one of the conditions to the Government's permission to the Company to prepay the Outstanding Company Notes, as set forth in the Prepayment Agreement, is that the Company shall provide the Government with satisfactory assurances that the Company will continue to meet its obligations to the Power Supplier under the Wholesale Power Contract during the term of the Wholesale Power Contract, as such term may be amended and extended from time to time.

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company, the Power Supplier and the Government agree as follows:

SECTION 1. Limitations on Transfers of the Company's Assets.

The Company agrees that, for so long as the Wholesale Power Contract shall be in effect between the Company and the Power Supplier, the Company will not, without the approval in writing of the Power Supplier and the Administrator, take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired. Notwithstanding the foregoing, the Company may take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired, so long as the Company shall pay such portion of the outstanding indebtedness evidenced by the Power Supplier Notes at the time outstanding, as well as other obligations and commitments of the Power Supplier at the time existing, as shall be determined by the Power Supplier with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and the Power Supplier may require.

SECTION 2. Specific Performance Available.

The Company agrees that the failure or threatened failure of the Company to comply with the terms of Section 1 of this Agreement will cause irreparable injury to the Power Supplier and the Government which cannot properly or adequately be compensated by the mere payment of money. Therefore, the Company agrees that, in the event of a breach or threatened breach of the terms of Section 1 of this Agreement by the Company, either the Power

Supplier or the Government, or both of them, shall have the right, in addition to any other remedies that may be available to either of them judicially, to obtain from any competent court a decree enjoining such breach or threatened breach of the terms of Section 1 of this Agreement or a decree providing that the terms of Section 1 of this Agreement be specifically enforced.

SECTION 3. Survival of Agreement.

This Agreement shall survive the Power Supplier's payment in full of the Power Supplier Notes; provided, however, that in the event that the Power Supplier shall pay in full the Power Supplier Notes, the Government shall be deemed no longer to be a party to this Agreement and neither the Government nor the Administrator shall have any rights hereunder.

IN WITNESS WHEREOF, the Company, the Power Supplier and the Government, acting through the Administrator, have caused this Agreement to be duly executed as of the day and year first above mentioned.

(SEAL)

LEE COUNTY ELECTRIC COOPERATIVE, INC.
Company

Attest: _____ By: _____
President

(SEAL)

SEMINOLE ELECTRIC COOPERATIVE, INC.
Power Company

Attest: _____ By: _____
Assistant Secretary Executive Vice President & General Manager

UNITED STATES OF AMERICA

By: _____
Administrator
of
Rural Electrification Administration

2/1954c/5

SUPPLEMENTAL AGREEMENT

This SUPPLEMENTAL AGREEMENT is made as of September 29, 1995, between SEMINOLE ELECTRIC COOPERATIVE, INC., (hereinafter called the "Seller"), a cooperative corporation organized and existing under the laws of the State of Florida, its successors and assigns; LEE COUNTY ELECTRIC COOPERATIVE, INC., (hereinafter called the "Member"), a cooperative corporation organized and existing under the laws of the State of Florida, its successors and assigns; and the UNITED STATES OF AMERICA (hereinafter called the "Government"), acting through the Administrator of the Rural Utilities Service, formerly the Rural Electrification Administration, (hereinafter called the "Administrator").

WHEREAS, the Seller and the Member entered into a Wholesale Power Contract, dated May 22, 1975, as supplemented and amended by Supplemental Agreement, dated May 22, 1975, Amendment No. 1 to Wholesale Power Contract, dated June 26, 1984, and Supplemental Agreement, dated September 22, 1987, which by this reference are incorporated herein and are hereinafter collectively called the "Power Contract"; and

WHEREAS, the Seller has constructed and/or acquired in the past and intends to construct and/or acquire in the future, electric generating capacity, transmission facilities, transmission services and electric power and energy for the purpose among others, of supplying electric power and energy to its members; and

WHEREAS, the Seller has financed and may, in the future, finance such construction in whole or part through loans made or guaranteed by the Government; and

WHEREAS, the indebtedness created by such loans and loan guarantees made by the Government is evidenced, and with respect to future indebtedness, shall be evidenced, by certain notes (hereinafter collectively called "Notes") secured by the Supplemental Mortgage and Security Agreement and Financing Statement made by and among the Seller, the Government and the National Rural Utilities Cooperative Finance Corporation, (said Supplemental Mortgage and Security Agreement and Financing Statement as it may have been heretofore or may be hereafter amended, supplemented and/or restated from time to time being hereinafter called the "Mortgage"); and

WHEREAS, the Government has agreed to make the loans and loan guarantees to the Seller, evidenced by the Notes, on the condition that the Seller and the Member enter into this Supplemental Agreement; and

WHEREAS, the Government is relying on said Power Contract and similar contracts between the Seller and other borrowers from the Rural Utilities Service to assure that the Notes are repaid and the purposes of the Rural Electrification Act of 1936, as amended, are carried out and the Seller and Member by executing this Supplemental Agreement, acknowledge this reliance;

NOW THEREFORE, in consideration of the mutual undertakings herein contained and in consideration of the Government's loans and loan guarantees made to or on behalf of the Seller the parties agree as follows:

1. The Seller, the Member and the Administrator agree that if the Member shall fail to comply with any provision of the Power Contract, the Seller, or the Administrator, if the Administrator so elects, shall have the right to enforce the obligations of the Member under the provisions of the Power Contract by instituting all necessary actions at law or suits in equity, including, without limitation, suits for specific performance. Such rights of the Administrator to enforce the provisions of the Power Contract are in addition to and shall not limit the rights which the Administrator shall otherwise have as third-party beneficiary of the Power Contract or pursuant to the assignment and pledge of such Power Contract and the payments required to be made thereunder as provided in the Mortgage. The Government shall not, under any circumstances assume or be bound by the obligations of the Seller under the Power Contract except to the extent the Government shall agree in writing to accept and be bound by such obligations.

2. In the event the Seller shall pay the Notes in full, the Government shall no longer be deemed to be a party to this Supplemental Agreement and neither the Government nor the Administrator shall have any rights hereunder.

3. This Supplemental Agreement may be simultaneously executed and delivered in two or more counterparts, each of which so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be duly executed as of the day and year first above written.

SEMINOLE ELECTRIC COOPERATIVE, INC.

By: _____
George Stephens
Title: President

ATTEST:

_____
Secretary

LEE COUNTY ELECTRIC COOPERATIVE, INC.

ATTEST:

_____
John A. Noland
Assistant Secretary

By: _____
Thomas G. Drake
Title: President

(corporate seal)

UNITED STATES OF AMERICA

ATTEST:

_____
Secretary

By: _____
Administrator Rural Utilities Service

USDA

United States Department of Agriculture
Rural Development

Rural Business–Cooperative Service • Rural Housing Service • Rural Utilities Service
Washington, DC 20250

Mr. Richard J. Midulla
Executive Vice President
and General Manager
Seminole Electric Cooperative, Inc.
P. O. Box 272000
Tampa, Florida 33688-2000

Dear Mr. Midulla:

The Rural Utilities Service (RUS) is in receipt of your letter of October 19, 1998, submitting Seminole Electric Cooperative, Inc.'s (Seminole) proposed wholesale rate revision, designated as Rate Schedule SECI-7, under the terms of the Memorandum of Understanding between RUS and Seminole dated February 11, 1997. With an effective date of January 1, 1999, RUS has found the proposed rate revision to be acceptable and acknowledges your disclosure that Seminole is unable to achieve a Times Interest Earned Ratio (TIER) of at least 1.05 or a Debt Service Coverage (DSC) of at least 1.0 for each of the three calendar years immediately preceding this rate decrease as a result of declining revenues. RUS has determined that Seminole's inability to achieve TIER or DSC requirements as they pertain to the design of rates described in Section 4.15 of the Mortgage is not within itself detrimental to the government's loan security.

Sincerely,

THOMAS L. EDDY
Director
Power Supply Division

Copy:
T. Woodbury

11-20-98
JTF

Exhibit 2

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE:	General investigation as to rate structures for municipal electric systems and rural electric cooperatives.	DOCKET NO. 770811-EU (GI)

RESPONSE TO ORDER INITIATING INVESTIGATION

Comes now SEMINOLE ELECTRIC COOPERATIVE, INC., a Florida corporation hereinafter "Seminole", by and through its undersigned attorneys, and files its response to Order No. 8027, Docket No. 770811-EU (GI) of the Florida Public Service Commission hereinafter "Commission", as follows:

I.

JURISDICTIONAL ISSUE

The Commission does not have general jurisdiction over rural electric cooperatives, as set forth in the Commissions own Order No. 6899 of September 10, 1975, in Docket No. 74680-CI (GI). Order No. 6899 also establishes that the Legislature did not grant ratemaking jurisdiction over rural electric cooperatives to the Commission. The only rate jurisdiction granted by the Legislature over rural electric cooperatives was that granted by Section 366.04(2)(b) in 1974 and this was limited to rate structure and nothing else. This, of course, only applies to retail rate structures, as wholesale rate regulation jurisdiction is solely vested in the Federal Energy Regulatory Commission.

Seminole Electric Cooperative is a rural electric cooperative incorporated under the laws of the State of Florida, but it is only engaged in the generation and transmission of electric energy. The only rates charged by it are for wholesale energy, as it is in no way engaged in the business of distributing electric energy to consumers. For this reason the Commission lacks jurisdiction over Seminole Electric Cooperative, to the extent of Seminole's wholesale energy generation and transmission.

II.

DEFINITION OF RATE STRUCTURE

In view of the fact Seminole sells no electric energy at retail to consumers, rate structures would not be applicable to it. Seminole will not interpose its ideas at this time as to the definition of rate structure, since the Commission lacks jurisdiction over Seminole, and any such definition by Seminole would be gratuitous.

III.

ELECTRIC SERVICES THAT FALL WITHIN RATE STRUCTURE

For the reason that rate structure is not applicable to Seminole's wholesale rates, it will not comment upon the electric services which fall within the definition of rate structure.

IV.

Seminole, having no retail rates and making no retail sales of electric energy to consumers, has no current retail rates or charges to file with the Florida Public Service Commission.

V.

Seminole reserves the right to raise any jurisdictional issue or any question involving rate structure at such time as any of its business relations or dealings are determined to be subject to the jurisdiction of the Florida Public Service Commission.

Respectfully submitted,

CHANDLER, O'NEAL, GRAY, LANG & HASWELL

BY: _____
William H. Chandler

_____
John H. Haswell
211 N.E. First Street
Gainesville, Florida 32602
Attorneys for Seminole Electric Cooperative, Inc.

SUMTER ELECTRIC COOPERATIVE, INC

March 16, 1987

Ms. Katie Nichols, Chairman
State of Florida
Public Service Commission
Fletcher Building
101 East Gaines Street
Tallahassee FL 32399-0854

Re: Docket No. 870053-EC
Authority No. CE-86-39
Rate structure changes of
Sumter Electric Cooperative, Inc.

Dear Chairman Nichols:

We have carefully reviewed the "Issue and Recommendation Summary" prepared by the staff and the comment letter issued by the Commission in regard to Docket No. 870053-EC. In addition, we met with the staff on February 18 to further discuss the situation.

We recognize that the allocation of the small (.41%) additional revenue requirement for 1987 deviates from standard rate-making. However, as we will point out in this letter, this approach was a one-time effort to avoid serious member relation problems with our residential members due to a small, but very untimely, rate increase. Historically, we have been working toward cost-based rates and plan to continue that philosophy in future rate changes.

Enclosed with this letter is a summary of our last three rate changes called "Analysis of 1983, 1984, and 1987 Rate Studies". Hopefully, this analysis and the following excerpts and descriptive comments will demonstrate our past efforts to achieve cost-based rates:

1983 Rate Change

Class	COS Ratio Current Rates	COS Ratio Revised Rates	Rate Inc/(Dec)
RS	93.69	99.04	5.71%
GSND	99.64	103.27	3.64%
GSD	101.63	102.41	.76%
GSLD	117.08	106.35	(9.16%)
LTG	87.64	99.98	14.09%
Total	95.33	99.99	4.88%

COMMENTS: With an overall rate increase requirement of 4.88%, Residential was increased by 5.71% to achieve 99.04% of cost while GSLD was decreased by 9.16% to partially correct a serious over contribution by that class.

1984 Rate Change

Class	COS Ratio Current Rates	COS Ratio Revised Rates	Rate Inc/(Dec)
RS	96.59	99.63	3.15%
GSND	100.89	103.06	2.15%
GSD	101.75	102.83	1.06%
GSLD	99.95	99.95	Ø
LTG	78.23	91.27	16.68%
Total	96.94	100.00	3.15%

COMMENTS: This rate change required an overall increase of 3.15%, which was also the increase applied to the Residential class. The GSND and GSD classes received increases of 2.15% and 1.06% respectively. The GSLD class was left unchanged. The Lighting class, which was substantially below cost (78.23% COS Ratio), was increased by 16.68%, the maximum deemed practical at the time.

1987 Rate Change

Class	COS Ratio Current Rates	COS Ratio Revised Rates	Rate Inc/(Dec)
RS	97.27	97.27	Ø
GSND	105.51	110.07	4.32%
GSD	104.32	109.07	4.55%
GSLD	108.18	101.41	(6.25%)
LTG	123.21	123.21	Ø
Total	99.59	100.00	.41%

COMMENTS: The required overall increase was only .41%; however, as will be discussed in detail, special circumstances involving the Residential and GSLD classes dictated a deviation from purely cost-based rates.

The Cooperative's efforts to achieve uniform, cost-based rates over the past three rate studies have been hampered by changes in our wholesale power rates. In 1983, Seminole's demand charge was applied to each of our substation's non-coincident peak demands. In 1984, the non-coincidental billing remained but was supplemented by an annual demand charge adder based upon each substation's maximum non-coincident peak demand during the prior 12 months. By 1987, Seminole had dropped the annual demand adder and had changed to a coincident demand billing. Since demand cost allocation is a major concern in doing the cost studies and is a major cost item, their wholesale billing changes have had a major impact on the class cost relationships.

Throughout the period from January 1, 1984, through January 1, 1987, SECO has worked diligently to control costs and, thus, avoided rate increases in 1985 and 1986. However, the small increase in 1987 was absolutely necessary. The magnitude was significantly decreased, however, by temporarily dropping our targeted T.I.E.R. level from 2.00 to 1.70.

With the preceding information as background, I offer the following comments regarding the 1987 rate changes:

Residential Class: By far, this is the major class served by SECO and, like other utilities, is the class most frequently below cost. As discussed previously, we have given this class the highest rate increase in each of the previous two rate increases to achieve rates extremely close to cost. This year, we felt, and still feel, that we could not increase this class due to the significant deviation between our rates and those of the adjacent and intermingled municipal and investor-owned utilities, which have significantly higher consumer densities than we have.

Although the required increase would have been small, we feel there are two major impacts related to rate increases -- the economic impact and the psychological impact. Due to the significant, adverse effect of announcing any rate increase, regardless of how small, we felt it best to avoid the massive, negative psychological impact that would be generated to achieve a minimal economic return. We decided to wait until the next rate increase was necessary and then to return to our past and continuing long-range philosophy of cost-based rates.

GSND & GSD CLASSES: Since 1983, our cost of service ratios for these two classes have been extremely good -- much better than the IOU's current rate of return indexes for theses classes. This year, their COS ratios were somewhat over cost using current rates partially because of the demand cost allocation differences resulting from Seminole's change to coincident demand billing.

For this year only, we decided to recover the needed additional revenue from these two classes and move them to COS ratios of 110.07 and 109.07 respectively. For the GS class, the IOU's rate of return indexes range from 1.13 to 1.95 -- 113 to 195% of cost. References to the IOU's rate of return indexes are made not as a justification of our 1987 revenue allocation, but simply as a statement of fact. Unfortunately, all media rate comparisons seem to be made using Residential rates and very little publicity is given to other classes.

Also considered in our decision to recover the additional revenue from these classes were the facts that:

1) these two classes can recover their electric costs in the prices of their products, which are ultimately paid by residential consumers;

2) many of the owners are also residental members who benefit from that class' relatively favorable position;

3) all classes benefited from our decision to reduce targeted T.I.E.R. from 2.00 to 1.70;

4) these classes had received nominal increases in 1983 and 1984 and no increase in 1985 and 1986.

In spite of the preceding points, I want to stress that it is not our long range intention to intermingle social economics into our rate-making. We fully expect that assuming the same or similar class relationships at the time of our next rate change, these two classes will receive no increases or very small increases relative to the Residential class.

GSLD(GSTD) Class: In 1983, this class was at a COS ratio of 117.08. In 1984, the class had dropped to a ratio of 99.95, but by 1987, had increased to 108.18.

In the summer of 1986, the large consumers served under this rate collectively engaged the services of the law firm of Lawson, McWhirter, Grandoff, & Reeves to pursue rate relief to make their rates competitive with the interruptible and curtailable rates offered by the IOU's throughout the state. Further compounding the competitive problem is the fact that the IOU's rarely interrupt or curtail the consumers on these rates which has the effect of giving them firm power at discounted rates.

These consumers made it quite clear that they had to have rate relief or they would close down their operations or build their own distribution facilities to take service from Florida Power Corporation on one of their "curtailable or interruptible rates". We believe they were quite sincere in outlining their alternatives.

Although the staff disagrees with our position that industrial load is generally beneficial to all classes of consumers, I believe they will support our contention that the sudden loss of all or a major part of our industrial load will have an adverse affect on all classes by requiring them to cover a greater portion of the distribution and transmission costs.

In order to offer a competitive, cost-based rate, we designed a General Service Time-of-Day rate to take advantage of Seminole's change to coincident demand billing and to pass along the savings created by this class to the class.

This rate has been well received by the members in this class and is allowing them to benefit through lower rates from their willingness to operate outside of our peak load hours.

Lighting Class: Although this class has a COS ratio of 123.21 for 1987, it has been significantly below cost in prior years. We suspect that this radical shift in COS ratio is the result of the previously described change from non-coincident to coincident wholesale demand billing and our program of replacing mercury vapor fixtures with sodium vapor fixtures.

Our existing Cost of Service Study methodology treats all lighting as one common class when, in fact, there are several different sizes of fixtures within the class. To get a better indication of the true costs within the class, we have engaged Mr. John Lansing, our rate consultant, to complete a full Cost of Service Study within the Lighting class.

If this study supports the findings of the 1987 general study with regard to the Lighting class being substantially over cost, we will propose at the time of our next rate increase that a rate decrease be implemented for the Lighting class.

We fully understand the staff's position regarding our 1987 revenue requirement allocations and hope that the preceding data and comments demonstrate our reasons for allocating as we did and support our statements that we have generally been working toward cost-based rates and will continue to do so.

Just for comparison, below is a table of the current relationships between our classes of consumers and the IOU's relationships between classes:

	COS Ratio	Rate of Return Index			
Class	SECO	FPC	Gulf	FPL	TECO
RS	97.27	.97	.89	.96	1.01
GS	110.07	1.25	1.95	1.13	1.13
GSD/LD	109.07	.98	1.09	1.12	1.05
GSTD	101.41	.98	1.07	.91	1.00
OL	123.21	.95	.93	.82	1.03
IS/CS	-	1.26	-	.98	.73
PX	-	-	1.03	-	-
OS-III	-	-	3.09	-	-

While we understand the staff's concern that we are increasing two classes which are already somewhat over cost and leaving an under cost class alone, I think the resulting class relationships are very comparable to the IOU's.

As you know, a Cooperative's owners are its member-consumers. Our primary goal is to provide the member-consumers with reliable service at the lowest possible cost consistent with sound business practices. At present, we have extremely good member relations among all members including the GS, GSD, GSTD, and Lighting classes. The revised rates were implemented February 1, 1987, and we have had virtually no complaints from the GS and GSD classes.

We respectfully request that you not require us to disrupt this fragile balance by making us implement a Residential increase and/or a GSTD increase at this time. Instead, we propose that the rates presently in effect stay as they are until another rate increase is required, most likely January 1, 1988. At that time, we commit to a Residential increase and a continuation of our historical trend toward cost-based rates.

Ms. Katie Nichols
March 12, 1987
Page Six

We appreciate the staff's efforts and courtesies during this evaluation process and urge the Commission to give favorable consideration to the data in the letter including the fact that significant rate disparity between classes of consumers presently exists at each of the investor-owned utilities.

We further ask that you consider our stated and demonstrated philosophy toward cost-based rates and grant our request to leave the existing rates in place.

Sincerely,

SUMTER ELECTRIC COOPERATIVE, INC.

James P. Duncan
Director, Accounting & Finance

JPD/dn

cc:. Mr. Ray F. Vick, President, Sumter Electric Cooperative, Inc.
Mr. John J. Sisler, General Manager, Sumter Electric Cooperative, Inc.
Mr. John E. Horne, Exe. V.P. & Gen. Mgr., Florida Rural Electric Cooperative, Assoc.
Ms. Margaret Meeter, P.U. Analyst Supervisor, Rate Section, Florida Public Service Commission

Encl.