

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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
ORDER NO. PSC-99-0380-PCO-EC
ISSUED: February 22, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER GRANTING REQUEST FOR ORAL ARGUMENT

BY THE COMMISSION:

On December 9, 1998, Lee County Electric Cooperative, Inc. (LCEC) filed a complaint against Seminole Electric Cooperative, Inc. (Seminole) and petition requesting that this Commission take the following actions: (1) direct Seminole to file with this Commission its recently adopted Rate Schedule SECI-7, together with appropriate supporting documentation; and (2) conduct a full investigation and evidentiary hearing into the rate structure of Rate Schedule SECI-7 in order to determine the appropriate rate structure to be prescribed by this Commission. LCEC asserts that this new rate schedule is discriminatory, arbitrary, unfair, and unreasonable.

On January 4, 1999, Seminole timely filed a motion to dismiss LCEC's complaint and petition for lack of jurisdiction. By filing of the same date, Seminole requested oral argument on its motion to dismiss. On January 19, 1999, LCEC timely filed a memorandum in opposition to Seminole's motion to dismiss. On the same date, LCEC filed a response opposing Seminole's request for oral argument. By letter filed January 27, 1999, LCEC withdrew its response in opposition to Seminole's request for oral argument.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Pursuant to Rule 25-22.058, Florida Administrative Code, a request for oral argument must state with particularity why oral argument would aid this Commission in comprehending and evaluating the issues before it. As grounds for its request, Seminole states that LCEC's complaint and petition seek to have the Commission abandon its long-standing application of Section 366.04(2)(b), Florida Statutes, and, for the first time in over 24 years since the statute was enacted, claim jurisdiction over wholesale power contracts between Seminole and its members, such as LCEC. Seminole further states that such a result would have far-reaching implications not only for itself but also for the regulation of wholesale power transactions by all cooperative and municipal utilities.

We find that Seminole's request for oral argument on its motion to dismiss should be granted. The issues raised by LCEC clearly present a case of first impression. For the first time, we are being asked to exercise jurisdiction over the wholesale rate structure of a rural electric cooperative. As Seminole points out in its request, we have not exercised jurisdiction over this subject matter at any time since the enactment of Section 366.04(2)(b), Florida Statutes, which provides:

(2) In the exercise of its jurisdiction, the commission shall have the power over electric utilities for the following purposes:

(b) To prescribe a rate structure for all electric utilities.

However, this Commission has not affirmatively stated at any time that Section 366.04(2)(b), Florida Statutes, does not give us jurisdiction over the wholesale rate structures of rural electric cooperatives. Both parties present reasonable arguments on the merits which make clear the complexity and importance of this issue and, thus, underscore the usefulness of oral argument.

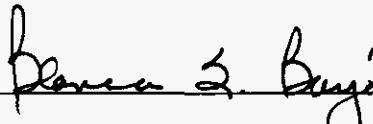
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Seminole Electric Cooperative, Inc.'s request for oral argument on its motion to dismiss is granted. It is further

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ORDERED that this docket shall remain open pending this Commission's disposition of Seminole Electric Cooperative, Inc.'s motion to dismiss the complaint and petition of Lee County Electric Cooperative, Inc.

By ORDER of the Florida Public Service Commission this 22nd day of February, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial

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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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.