



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: October 12, 1999

TO: Blanca Bayó, Director, Division of Records and Reporting

FROM: Wm Cochran Keating, Senior Attorney, Division of Legal Services *WCK*
 David Wheeler, Economic Analyst, Division of Electric and Gas *DW RRT*

RE: Docket No. 981827-EC - Complaint and petition by Lee County Electric Cooperative, Inc. for an investigation of the rate structure of Seminole Electric Cooperative, Inc.

Attached are an original and 32 copies of revised pages 13 and 13A to staff's October 7, 1999, recommendation in the above-referenced docket. The recommendation is scheduled to be heard as Item 4 at the Commission's October 19, 1999, Agenda Conference. Also attached is a copy of the memorandum by which the Deputy Executive Director/Technical approved the filing of these written revisions. The entire recommendation, as revised, will be provided by e-mail to the Division of Records and Reporting.

These revisions are intended to clarify that portion of the staff analysis located in the first full paragraph of page 13 of the original recommendation. The revisions include clarification of the specific language in that paragraph plus the addition of a new paragraph preceding the revised paragraph. No other page has been revised.

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Public Service Commission

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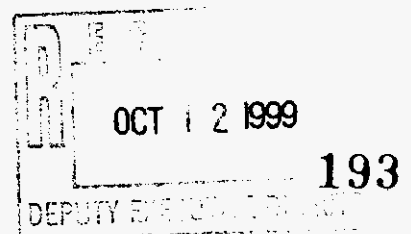
DATE: October 12, 1999
TO: Dr. Mary Bane, Deputy Executive Director/Technical
FROM: Wm Cochran Keating, Senior Attorney, Division of Legal Services *WCK*
RE: Docket No. 981827-EC - Complaint and petition by Lee County Electric Cooperative, Inc. for an investigation of the rate structure of Seminole Electric Cooperative, Inc.

On October 7, 1999, staff filed its recommendation concerning Seminole Electric Cooperative's pending motion to dismiss in the above-referenced docket. The recommendation is scheduled for consideration at the Commission's October 19, 1999, Agenda Conference. On October 8, 1999, staff became aware that a portion of its analysis concerning Commission jurisdiction over wholesale sales is unclear and may be subject to misinterpretation. Staff also became aware of a minor, recurring error in a certain legal citation. Thus, staff requests approval to file written revisions to the recommendation to clarify a portion of its analysis and to correct the erroneous legal citations. The revisions to clarify would affect parts of two pages in the recommendation.

There is no statutory or rule deadline that would prohibit deferral of this item to the next Agenda Conference. However, because the motion to dismiss has been pending for several months and the next scheduled Agenda Conference is a full month from the October 19, 1999, Agenda Conference, staff requests approval to file written revisions to its recommendation rather than defer the item. The revised recommendation can be filed immediately upon your approval, allowing a full week for Commissioners, parties, and interested persons to review the limited revisions.

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required. Seminole concludes that the latter is the only reasonable interpretation when Chapter 366, Florida Statutes, is considered as a whole, because any other interpretation would result in the Commission exercising more jurisdiction over wholesale sales by municipal and cooperative electric utilities than over wholesale sales by investor-owned utilities. Seminole contends that this would be an illogical result.

Staff disagrees. First, Seminole's premise that Section 366.11(1), Florida Statutes, exempts from Commission jurisdiction wholesale power sales by investor-owned utilities to municipal and cooperative electric utilities is incorrect. Section 366.11(1), Florida Statutes, provides in pertinent part:

No other provision of this chapter shall apply in any manner, other than as specified in ss. 366.04, 366.05(7) and (8), 366.051, 366.055, 366.093, 366.095, 366.14, and 366.80-366.85, . . . to the sale of electricity, manufactured gas, or natural gas at wholesale by any public utility to, and the purchase by, any municipality or cooperative under or pursuant to any contracts . . . when such municipality or cooperative is engaged in the sale and distribution of electricity or manufactured or natural gas, or to the rates provided for in such contracts.

(Emphasis supplied.) Clearly, the limited exemption in Section 366.11(1), Florida Statutes, is not intended to diminish the Commission's jurisdiction over electric utilities pursuant to the Grid Bill, which includes the jurisdiction granted in Sections 366.04 and 366.05(7) and (8), Florida Statutes.

Second, as LCEC noted, it is a commonly accepted principle of statutory construction that the express exemption of one thing in a statute, and silence regarding another, implies an intent not to exempt the latter. PW Ventures, Inc. v. Nichols, 533 So.2d 281, 283 (Fla. 1988). Applying the principle to this case, the most reasonable interpretation of Section 366.11(1), Florida Statutes, read together with the statutes listed therein, including Section 366.04, Florida Statutes, is that the Legislature knew how to exempt wholesale matters from certain aspects of Commission jurisdiction but chose not to exempt wholesale sales in their entirety. This interpretation is consistent with the plain language used by the Legislature in Sections 366.02(2) and 366.04(2)(b), Florida Statutes, as discussed above. Further, the

lack of an exemption for wholesale sales by municipal and cooperative electric utilities is consistent with FERC's lack of jurisdiction over such sales, as discussed below. Staff sees nothing unreasonable or ridiculous about this interpretation.

In summary, Seminole has not demonstrated that the plain language of the statute inaccurately reflects the Legislature's intent or that application of the plain language leads to an unreasonable or ridiculous result. Instead, it appears that Commission jurisdiction over wholesale rate structures of rural electric cooperatives and municipal electric utilities is consistent with the purposes of the Grid Bill and with the provisions of Chapter 366, Florida Statutes.

C. Commission's Past Inaction

As previously stated, the Commission has not exercised jurisdiction over the wholesale rate structure of a rural electric cooperative or municipal electric utility at any time since the enactment of Section 366.04(2)(b), Florida Statutes. However, the Commission has not affirmatively stated at any time that Section 366.04(2)(b), Florida Statutes, does not give it jurisdiction over the wholesale rate structures of rural electric cooperatives, nor has any court.