Shawna Senko

From: Marsha Rule <marsha@rutledge-ecenia.com>
Sent: Tuesday, October 08, 2013 4:25 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 130235-EQ
Attachments: Glades. Docket 130235.pdf

Docket No. 130235-EQ – In re: Petition of Southeast Renewable Fuels, LLC, for a Declaratory Statement Regarding Co-Ownership of Electrical Cogeneration Facilities in Hendry County

Responsible person: Marsha E. Rule (contact information below)

On behalf of: Glades Electric Cooperative, Inc.

Description & Pages:
Total number of pages: 29
1. Glades' Petition for Leave to Intervene (Pg.1-7 of attachment; 7 pgs. total)
2. Glades' Response to Petition for Declaratory Statement (Pg. 8-26 of attachment; 19 pgs. total)
2. Glades' Motion to Address the Commission (Pg. 27-29 of attachment; 3 pgs. total)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Southeast Renewable Fuels, LLC, for a Declaratory Statement Regarding Co-Ownership of Electrical Cogeneration Facilities in Hendry County	)	Docket No. 130235-EQ
	)	Filed: October 8, 2013

GLADES ELECTRIC COOPERATIVE, INC.'S
MOTION FOR LEAVE TO INTERVENE

Glades Electric Cooperative, Inc. ("Glades") pursuant to Rule 28-105.0027, Florida Administrative Code, hereby moves for leave to intervene in the above-referenced docket because its substantial interests are subject to determination or will be affected by the declaratory statement sought by Southeast Renewable Fuels, LLC ("Southeast"). Contemporaneously with the filing of this Motion, Glades is filing its Response to Southeast's Petition to clarify the issues raised therein and explain the appropriate resolution of Southeast's Petition. In support, Glades states:

1. Movant's name and address are:

Glades Electric Cooperative, Inc.
P.O. Box 519
Moore Haven, FL 33471

2. Pleadings, motions, notices, orders and other documents should be served on Glades' attorneys:

Marsha E. Rule
Rutledge Ecenia, P.A.
119 South Monroe St., Suite 202
Tallahassee, FL 32301
Email: marsha@rutledge-ecenia.com
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3. Glades is a not-for-profit, customer-owned rural electric cooperative that provides service to approximately 15,000 member-owners over more than 2,224 miles of lines throughout Highlands, Glades, Okeechobee and Hendry Counties. Glades' customer base is primarily rural, averaging less than six meters per mile of distribution line.

4. Southeast seeks a three-part declaration regarding the regulatory effect of certain ownership arrangements and transactions between Southeast and an unidentified partner in connection with a project located on County Road 835 in Hendry County. Although Southeast fails to specify the address, Glades understands that the project is under construction in Glades' historic service territory, and that Southeast is now receiving temporary construction service from Glades at that site. Further, as noted in Southeast's petition, Southeast and its confidential partner specifically identify Glades as a Florida utility to which they intend to sell excess electricity.

5. Glades is entitled to intervention under the two-prong standing test set forth in *Agrico Chemical Company v. Department of Environmental Regulation,* 406 So.2d 478 (Fla. 2nd DCA 1981); if the Commission erroneously grants the declaratory statement sought by Southeast, Glades will suffer injury in fact which is of sufficient immediacy to entitle Glades to a hearing, and such substantial injury is of a type or nature against which the proceeding is designed to protect.

6. As more fully set forth in Glades' Response to Southeast's Petition, Southeast has provided insufficient facts necessary for the Commission to determine that its proposed project is self-generation. Accordingly, if the arrangement proposed by Southeast were to be erroneously determined by the Commission to constitute self-generation because of an incomplete knowledge

or understanding of the proposal, Glades' substantial interest would be adversely affected in at least the following ways:

(a) Southeast will provide electric service to one or more unrelated entities on its site that otherwise would be customers of Glades, thus improperly reducing Glades' sales and depriving its member-owners of the improved economy of scale that would result from serving Southeast, its partner, and other entities that Southeast may recruit in the future.

(b) Southeast's jointly-owned generating entity will become a privately-held utility in the midst of Glades' historic service territory, with which Glades will be forced to compete for customers.

(c) Glades will be foreclosed from seeking Commission resolution of territorial disputes regarding the provision of service by Southeast's generating entity, which will be immune from the Commission's jurisdiction.

(d) Glades' existing transmission and distribution facilities at the Southeastern site will be uneconomically duplicated and such duplicative facilities will improperly infringe on Glades' retail service territory, to the detriment of Glades' member-owners.[1]

(e) Southeast has requested that Glades provide backup service to its jointly-owned electric generator. It thus appears that Southeast and its secret partner will electrically interconnect behind Glades' meter, which will require Glades to develop a non-standard system protection scheme unique to Southeast.

(f) Southeast and its secret partner also may require backup service from Glades for those times when the generator is out of service due to an outage or

[1] Southeast states that the initial generating capacity of its project is 25 MW, capable of expansion to 50 MW, yet the petition describes an initial maximum demand of 11.5 MW. It thus appears that the project may uneconomically duplicate Glades' generation facilities as well as its transmission and distribution facilities.

preventative maintenance.[2] Glades thus will be forced to provide backup service not only to its competitor, but to its competitor's customers.

7. The Commission has previously determined that substantial interests of the serving utility were substantially affected in a declaratory statement proceeding in which its customer petitioned for the same three-part declaration sought by Southeast herein: that its "self-generation" project would not result in a retail sale, would not cause either party to be deemed a "public utility," and would not subject either party to regulation by the Commission. *See,* Order No. PSC-98-0074-FOF-EU, January 13, 1998, Docket No. 971313-EU (*In re: Petition of IMC-Agrico Company for Declaratory Statement confirming Non-Jurisdictional Nature of Planned Self-Generation*). The serving utility in that case asserted – as does Glades herein – that the petitioner provided insufficient facts upon which the Commission could reach the conclusion proposed by its customer, and that if the petition were granted, it would suffer loss of revenue and suffer from uneconomic duplication of its facilities. Several other utilities asserted that their substantial interests would be injured because unlawful retail sales would result in territorial disputes and unwarranted costs to their ratepayers.

8. The Commission granted intervention, finding that the substantial injuries described by the intervenors (and by Glades herein) were both immediate and of the type against which the declaratory statement proceeding was designed to protect:

> Intervention petitioners here allege that issuance of the declaratory statement is sought on the basis of insufficient facts necessary for us to know whether the resulting project will be self-generation or prohibited retail sales. Therefore, intervention petitioners assert that if the Declaratory Statement is issued, territorial disputes, stranded investment and unwarranted costs to the companies and their rate payers will result from those unlawful sales.

[2] Glades prohibits resale of electricity it furnishes to customers, so both Southeast and its secret partner will have to obtain such service directly from Glades.

> Where our long-standing policy requires public utilities to anticipate territorial disputes and bring them to us for resolution, it would be inconsistent to characterize these allegations as lacking immediacy. Moreover, where [petitioner] IMC-Agrico seeks a disclaimer of our jurisdiction pursuant to Section 366.02, Florida Statues and a major focus of the regulation of public utilities pursuant to Chapter 366 is the prevention of uneconomic duplication of utility facilities, it would be inconsistent to say that the 120.565 proceeding is not designed to protect against the type of injuries alleged or that those injuries lie outside the zone of interest of Chapter 366.

Order No. PSC-98-0074-FOF-EU. The Commission granted amicus curiae status to several other movants which – unlike Glades herein – raised a "more speculative intervention claim" regarding the effect of negative precedent.

9. Southeast seeks the same declaration as that sought by IMC-Agrico, and Glades should be granted intervention because it will suffer the same injuries as those alleged by the intervenors in that case. Further, the injuries suffered by Glades and its member-owners are the very same injuries the Florida Supreme recognized would inevitably result from the unregulated retail sale of electricity:

> The regulation of the production and sale of electricity necessarily contemplates the granting of monopolies in the public interest. *Storey v. Mayo,* 217 So.2d 304 (Fla 1968), *cert. denied*, 395 U.S. 909, 89 S. Ct. 1751, 23 L. Ed. 2d 222 (1969). Section 366.04(3), Florida Statutes (1985), directs the PSC to exercise its powers to avoid "uneconomic duplication of generation, transmission, and distribution facilities." If the proposed sale of electricity by PW Ventures is outside of PSC jurisdiction, the duplication of facilities could occur. What PW Ventures proposes is to go into an area served by a utility and take one of its major customers. Under PW Ventures' interpretation, other ventures could enter into similar contracts with other high use industrial complexes on a one-to-one basis and drastically change the regulatory scheme in this state. The effect of this practice would be that revenue that otherwise would have gone to the regulated utilities which serve the affected areas would be diverted to unregulated producers. This revenue

> would have to be made up by the remaining customers of the regulated utilities since the fixed costs of the regulated systems would not have been reduced. (footnote omitted)

PW Ventures, Inc., v. Nichols, 533 So.2d 281, 283 (Fla. 1988) (affirming Commission order that sale of electricity to even one end-user will render the seller a "public utility" subject to the Commission's jurisdiction.)

10. Glades has contacted counsel for Southeast, Mr. Robert Scheffel Wright, who advised that Southeast will oppose Glades' Motion to Intervene.

WHEREFORE, Glades Electric Cooperative, Inc. respectfully requests that its Motion for Leave to Intervene be granted and that the Commission authorize it to participate as a party in this proceeding. Alternatively, if the Commission determines that Glades is not entitled to intervention, Glades suggests that its Response to Southeast's Petition would nevertheless aid the Commission in its consideration of the issues raised herein, and respectfully requests that the Commission permit it to participate in this proceeding as an amicus curiae, and to accept its Response to Southeast's Petition on that basis.

Respectfully submitted this 8th day of October, 2013.

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Florida Bar Number 0302066

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Attorneys for Glades Electric Cooperative, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail and (where indicated) electronic mail on this 8th day of October, 2013, to the following:

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Marsha E. Rule
Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Southeast Renewable Fuels, LLC, for a Declaratory Statement Regarding Co-Ownership of Electrical Cogeneration Facilities in Hendry County	)	Docket No. 130235-EQ
	)	Filed: October 8, 2013

GLADES ELECTRIC COOPERATIVE, INC.'S
RESPONSE TO PETITION FOR DECLARATORY STATEMENT

Glades Electric Cooperative, Inc. ("Glades") pursuant to Rule 28-105.0027, Florida Administrative Code, hereby responds to the petition for declaratory statement sought by Southeast Renewable Fuels, LLC. In support, Glades states:

1. Southeast Renewable Fuels, LLC ("Southeast") seeks a three-part declaration regarding the regulatory effect of certain ownership arrangements and transactions between Southeast and at least one unidentified partner. Based on scant information, Southeast urges the Commission to determine that its proposed generation facility constitutes self-service and thus is beyond the Commission's jurisdiction.[1]

2. The appropriate action for an agency to take in response to a petition for declaratory statement is to either issue a declaratory statement and answer the question or deny the petition and decline to answer the question. Section 120.565(3), F.S., Rule 28-105.003, F.A.C., *see, also,* Order No. PSC-13-0387-DS-EI, pg. 11 (August 20, 2013, Docket No. 130160-EI, *In re: Petition for declaratory statement regarding the inspection, repair and*

[1] Southeast does not require the Commission's review or approval to build, own, and operate its proposed ethanol plant and QF. In fact, Southeast acknowledged in its petition that it has already broken ground on the project, that it anticipates the ethanol plant and generating equipment will be operational in early 2015, that it anticipates using at least 10 MW of the 25MW that will initially be generated by its proposed QF, and that the QF will sell excess power to a utility. (Petition, ¶¶ 10, 11) Accordingly, the economic benefits of the project described by Southeast are not wholly dependent on the Commission's decision.

replacement of meter enclosures for smart meter analytical tool, by Florida Power & Light Company). As set forth below, the Commission should declare that Southeast's petition describes a retail sale of electricity that would subject both Southeast and its partner to the Commission's regulatory jurisdiction. Alternatively, if the Commission believes there are insufficient facts to make that determination, it should deny Southeast's petition and decline to answer it because it is not sufficiently plead.

SOUTHEAST'S PETITION DESCRIBES A RETAIL SALE OF ELECTRICITY THAT WOULD SUBJECT THE PARTIES TO THE COMMISSION'S REGULATORY JURISDICTION AS "PUBLIC UTILITIES"

3. It is well-settled that the sale of electricity to even one end-user will render the seller a "public utility" subject to the Commission's regulatory jurisdiction. *PW Ventures, Inc., v. Nichols,* 533 So.2d 281 (Fla. 1988), affirming Order No. 18302-A (October 22, 1987. Docket No. 870446-EU, *In re: Petition of PW Ventures, Inc. for Declaratory Statement in Palm Beach County*).

4. Under proper circumstances, however, a self-service generator may structure the financing of its own generating facilities without effecting a sale or becoming subject to the Commission's regulatory jurisdiction. For example, the Commission has declared that conventional fixed-payment lease financing of a cogeneration facility would not result in a sale where the lessor would hold title to the facility and receive fixed lease payments from the lessee, while the lessee was responsible for operation and costs of the facility, would retain all operating risks, and would own and consume all electricity produced. (Orders Nos. 17009 and 17009-A, December 22, 1986 and March 9, 1987, Docket No. 860725-EU, *In re: Petition*

of Monsanto Company for a Declaratory Statement Concerning the Lease Financing of a Cogeneration Facility). Under these circumstances, the Commission concluded that "Monsanto is leasing equipment which produces electricity rather than buying electricity that the equipment generates."

5. Later, the Commission examined a lease financing arrangement in which a manufacturer proposed to finance the expansion of its existing cogeneration facilities through a lease arrangement with a limited partnership, in which the lessor would own a cogeneration facility that would be leased and operated by the manufacturer. The manufacturer would lease an undivided interest in the facility in return for a fixed lease payment, would operate and maintain the facility, and would be entitled to a portion of the power generated from the facility. The remaining power would belong to the lessor and be sold to a utility. Importantly, the lessor was a limited partnership that was created and controlled by a wholly-owned subsidiary of the lessee manufacturer.[2] Although the lessee and its alter-ego lessor were not precisely identical, the Commission found that they shared a "unity of interests" that was "so 'related' that the arrangement surmounts the jurisdictional boundary identified in *PW Ventures*...." (Order No. 23729, November 7, 1990, Docket No. 900699-EQ, *In re: Petition of Seminole Fertilizer Corporation for a Declaratory Statement Concerning the Financing of a Cogeneration Facility*).

6. The Commission has firmly rejected efforts to circumvent the no-sale rule through creative business arrangements. For example, the Commission determined that

[2] A limited partnership organized under the Revised Uniform Partnership Act is a form of business organization distinct from a partnership organized under the Revised Partnership Act. A limited partnership consists of at least one general partner and one limited partner, and is controlled only by the general partner – in the *Seminole* case, the general partner was Seminole's wholly-owned subsidiary. Unlike a general partner, a limited partner is simply an investor, with limited rights and no liability for obligations of the partnership, no power to bind the partnership, and no fiduciary duty to the partnership. Accordingly, Seminole's wholly-owned subsidiary exercised total control over the limited partnership.

provision of electricity by the owner of a generator to tenants in an industrial park would subject owner to the Commission's jurisdiction as a public utility (Orders Nos. 17251 and 17523, issued on March 5, 1987 and May 7, 1987 in Docket No. 861621-EU, *In re: Petition of Timber Energy Resources, Inc. for a Declaratory Statement Concerning Sales as "Private Utility" Status*). Later, the Commission held that the lease of an ethanol plant to an unrelated operator on a "utilities included" basis would similarly constitute a sale, even though lease payments would not vary based on the amount of electricity or other utilities consumed by the tenant. (Order No. PSC-94-0197-DS-EQ, February 16, 1994, Docket No. 931190-EQ (*In re: Polk Power Partners, L.P*).

7. The Commission's decision in *Polk Power Partners* is particularly instructive. Polk sought, as does Southeast, to conflate the Commission's decisions in *Monsanto* and *Seminole* in an unsuccessful attempt to exempt from the Commission's jurisdiction transactions between completely unrelated entities. The Commission firmly rejected Polk's proposal, explaining that the *Monsanto* arrangement did not result in a sale because the lessee produced and consumed its own power using leased assets, while the *Seminole* transactions between corporate alter egos were not between "unrelated entities." In contrast, the Commission noted that Polk proposed to supply power for consumption by an unrelated entity.

8. Although Southeast provided very few details regarding the form of its proposed business arrangements with its secret partner, there is no indication whatsoever that they would have any relationship other than as co-investors in the generation equipment, and the secret partner's use of Southeast's exhaust gases. The petition clearly demonstrates that

these two unrelated entities[3] seek to jointly produce electricity for their individual consumption – and potentially for other end users – using one or more generators. This far exceeds the bounds of self-service the Commission established in *Monsanto,* where the producer and consumer of electricity were one and the same entity, or in *Seminole,* where corporate alter egos that were established by a single entity "solely for tax and financial reasons" shared such a "unity of interest" as to "surmount the jurisdictional boundary." In the instant case, Southeast seeks an exemption for two completely unrelated entities to join together in a de-facto partnership to jointly generate electricity for their individual consumption.

9. The Commission has already determined that generation is not "self-generation" where the end-user consumer of electricity "had only a partial ownership interest" in the generating facility. Order No. 17510, May 5, 1987, *In re: Petition of Metropolitan Dade County for Expedited Consideration of Request for Provision of Self-Service Transmission*) Accordingly, Southeast's discussion of the risks its unrelated partner will assume is irrelevant; as the Commission held in its *PW Ventures* order, "the jurisdictional boundary is marked by the separateness of the supplier and consumer of electricity..." The Commission examines assignment of risk only as between related parties, and only to determine whether the existence of separate entities has jurisdictional significance. The Commission has never implied that otherwise-unrelated entities may become related or create the requisite unity of interest and evade the Commission's regulatory jurisdiction simply by

[3] Although Glades assumes, for the purpose of discussion, that there is one "Confidential Partner," the declaration sought by Southeast is so broad that it would apply equally if there were multiple partners. Further, the petition provides no assurance that Southeast and its confidential partner will be the only owners of the generating equipment. Southeast asserts that ownership shares are determined by maximum power requirements, yet Southeast and its confidential partner would initially require only 11.5 MW of the initial 25 MW generating capacity.

agreeing to jointly generate electricity for their individual consumption and contractually assigning or assuming production risk. The Commission should not open the door to such a result by granting the declaratory statement sought by Southeast.

10. As it has in the past each time it was confronted with a similar request, the Commission should carefully consider the implications and possible consequences of its decision herein. If the Commission declares that the vaguely-described arrangement proposed by Southeast is beyond its regulatory jurisdiction, it will, in essence, authorize the creation of privately-held "utilities" that are immune from the Commission's regulatory jurisdiction. A residential or office condominium association could, for example, elect to build and own generating facilities as a "common element" (owned in common with all other unit owners) to serve the apartments or offices individually owned by its members.

11. If groups of large users are able to exempt themselves from the Commission's jurisdiction as Southeast proposes, the Commission would be unable, for example, to properly provide for the planning, development and maintenance of Florida's electric power grid that the Legislature determined in Section 366.04(5), Florida Statutes, is necessary to assure an adequate and reliable source of energy for operational and emergency purposes and avoid uneconomic duplication of facilities; would be unable to address territorial disputes between such customers and electric utilities pursuant to Section 366.04(2)(e); and could not enforce safety standards for the transmission and distribution facilities of such users pursuant to Section 366.04(6). In addition, such users would not be required to pay regulatory assessment fees as set forth in Section 366.14, Florida Statutes, which are necessary to support the Commission's regulatory role.

12. The Supreme Court recognized in *PW Ventures* that authorization of non-jurisdictional private "utilities" could not only lead to uneconomic duplication of facilities, but could result in cream-skimming of high-use customers, to the detriment of the customers served by regulated utilities:

> [O]ther ventures could enter into similar contracts with other high use industrial complexes . . . and drastically change the regulatory scheme in this state. The effect of this practice would be that revenue that otherwise would have gone to the regulated utilities which serve the affected areas would be diverted to unregulated producers. This revenue would have to be made up by the remaining customers of the regulated utilities since the fixed costs of the regulated systems would not have been reduced.

533 So. 2d 281, 283. Southeast's proposal should cause the Commission even more concern than PW Ventures' plan. As the Court explained in *PW Ventures,* "the expertise and investment needed to build a power plant, coupled with economies of scale, would deter many individuals from producing power for themselves rather than simply purchasing it." *Id.* at 284. These same barriers to entry will not exist, however, if the Commission permits unrelated parties to jointly generate power to meet their individual needs. There would be no reason to expect that other industrial users would not form similar alliances, which would exist outside of – and not subject to – the regulatory structure established by the Legislature and supervised by the Commission.

ALTERNATIVELY, SOUTHEAST'S PETITION SHOULD BE DENIED BECAUSE IT IS NOT WELL-PLEAD

13. Alternatively, if the Commission determines that there is an insufficient factual basis to declare that Southeast's petition describes a retail sale of electricity, the Commission

should deny the petition and decline to answer it because it is not well-plead. Section 120.565(2), Florida Statutes, provides that a "petition seeking a declaratory statement shall state *with particularity* the petitioner's set of circumstances" regarding which it seeks the agency's opinion (emphasis added). Administrative agencies may look to case law on declaratory judgments in civil proceedings for guidance in resolving petitions for declaratory statements under Section 120.565, Florida Statutes. *Couch v. State,* 377 So.2d 32, 33 (Fla. 1st DCA 1979). The Commission has done so in the past, noting that an entity seeking a declaratory statement must show that there is an "actual, present and practical need for the declaration," which must address a "present controversy." *See, e.g.,* Order No. PSC-04-0063-FOF-EU, January 22, 2004, Docket No. 013017-EU, *In re: Request for declaratory statement by Tampa Electric Company regarding territorial dispute with City of Bartow in Polk County,* citing *Couch* and *Sutton v. Department of Environmental Protection,* 654 So.2d 1047, 1048 (Fla. 5th DCA 1995).

14. The petitioners in *Monsanto* and *Seminole* provided the Commission with a detailed explanation of relevant facts necessary to understand their proposed business operations. *See, e.g.,* the detailed diagram provided by Seminole, which is attached hereto as Exhibit "A." In both cases, the petitioners identified the parties, described the form of business organization each party would adopt and explained the terms of the contractual relationships between them, including the basis for payment, assignment of operating risks, maintenance of and control over the facility, and disposition of the facility at the conclusion of the arrangement. The Commission carefully examined this information when making its determination. *See, e.g.,* addendum to the Staff Recommendation in *Seminole,* which is attached hereto as Exhibit "B." Southeast has provided none of this information, all of which

the Commission requires in order to determine whether Southeast's proposal is self-service or a retail sale under applicable precedent.

15. It is impossible to glean from Southeast's petition the basic information necessary to even understand its proposal, let alone determine that the parties' arrangements would not constitute a sale, as Southeast asserts. For example:

(a) The identity, form of business organization, and relationship between the parties was critical to the Commission's decision in *Monsanto* and *Seminole;* not only does this information demonstrate the "identity of ownership" or "unity of interests" between related parties, respectively, that the Commission found necessary to avoid a retail sale, but it also demonstrates the level of control one party may exercise over the other as well as assignment of risk. Southeast fails to identify its Confidential Partner, or even to state whether it is a corporation, partnership, or some other form of business entity. More importantly, however, Southeast fails to identify the form of business organization the parties will adopt for co-ownership of electrical generation equipment.

(b) Southeast asserts that it will "jointly hold legal title" to electrical generation components "via undivided ownership interests in that equipment," but fails to specify exactly what equipment would be co-owned, to identify the parties' relative responsibility for the costs and expenses associated with the equipment, or to provide sufficient detail from which the Commission could determine whether such financial responsibility is related to the consumption of energy.

(c) Southeast further fails to identify the owner(s) of the facility in which the jointly owned generating equipment will be installed, or to explain why "joint ownership" of equipment is at all relevant once the equipment has been integrated into an individually-

owned facility. Nor does Southeast identify the owner of the land on which the facility will be built, or the related transmission, distribution, switching and control equipment; and fails to explain how the owner(s) will be compensated and by whom. The Commission required such information to reach its determination that the *Monsanto* and *Seminole* lease-financing arrangements did not constitute a retail sale.

(d) The most glaring void in Southeast's petition is its failure to provide any details whatsoever regarding the parties' business arrangements, such as the form of their business organization, the terms of the contractual relationships between them, the basis for payment (both for expenses and between the parties), assignment of operating risks, maintenance of and control over the facility, and disposition of the facility at the conclusion of the arrangement. This information was essential to the Commission's determination that the carefully-structured arrangements in *Monsanto* and *Seminole* constituted financing vehicles between business entities with an "identity of ownership" or a "unity of interest" rather than a retail sale, and is equally essential to the Commission's determination herein.

(e) Further, although the petition alleges that each party's ownership interest in the generating equipment "will be at least as great as its maximum power requirements," there is no explanation of how or when such share will be determined; whether other parties will or could own shares, either through initial subscription or from one of the parties;[4] or whether the ownership share may change in the future if a party's "maximum requirements" change, which could indicate a retail sale.

16. The Commission has not hesitated to deny a petition for declaratory statement that lacks a sufficient factual basis, particularly when the requested statement seeks to define

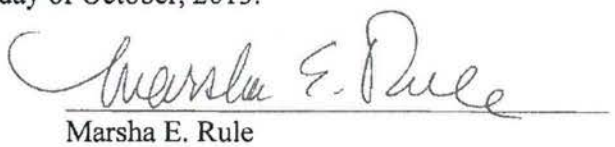
[4] As noted above, if ownership shares are determined by maximum power requirements, Southeast and its confidential partner would own only 46% of the initial (pre-expansion) generating equipment.

and limit the Commission's jurisdiction. In Order No. 25328, November 12, 1991, Docket No. 880069-TL, *In Re: Petitions of Southern Bell Telephone and Telegraph Company for a Rate Stabilization and Implementation Orders and Other Relief,* the Commission denied Southern Bell's petition for declaratory statement as not well-plead, noting that "the entire purpose of the Petition appears on its face to be an effort to have the Commission define the parameters of the Commission's jurisdiction regarding 'special needs' projects without the benefit of any specific facts regarding such 'special needs.'" Southeast's petition similarly seeks to have the Commission define and limit the parameters of its jurisdiction over Southeast's proposed business plan without the benefit of any specific facts, and should be denied for that reason.

CONCLUSION

As in *PW Ventures,* the declaratory statement sought by Southeast requires "a line to be drawn somewhere," yet Southeast has failed to provide the Commission with sufficient factual basis to permit it to draw a jurisdictional line that meaningfully delineates self-service from retail service. Based on the few details provided by Southeast, the Commission should declare that the contemplated arrangements would constitute a retail sale which would subject the participants to the Commission's jurisdiction as public utilities. Alternatively, if the Commission finds that the petition lacks sufficient facts to make that determination, it should deny the petition as not well-plead. In any event, the Commission should decline to provide Southeast with a "green light" for its vaguely-described plan.

Respectfully submitted this 8th day of October, 2013.



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Attorneys for Glades Electric Cooperative, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail and (where indicated) electronic mail on this 8th day of October, 2013, to the following:

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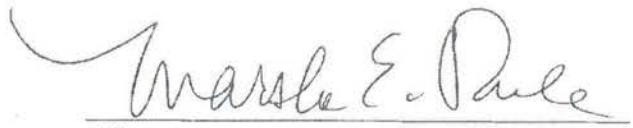
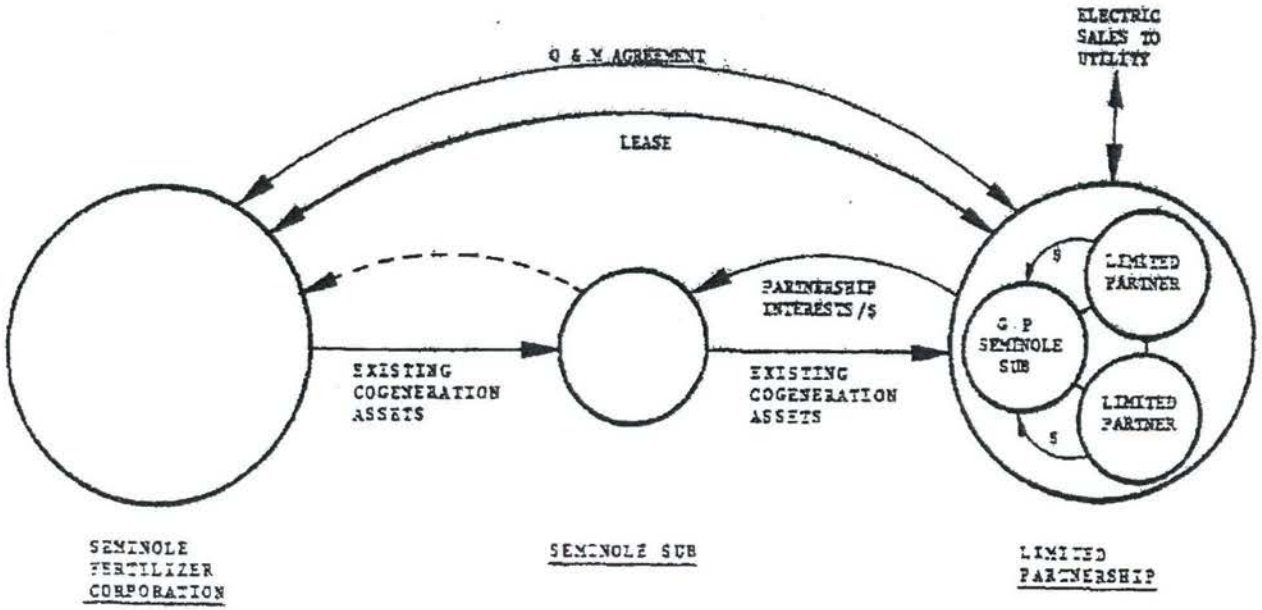


Attorney

Exhibit "A"

Attachment "A" to Seminole's Petition for Declaratory Statement
Docket No. 900699-EG

Exhibit "A"



ATTACHMENT A

Exhibit "B"

Addendum to Staff Recommendation re: Seminole's Petition for Declaratory Statement
Docket No. 900699-EG

Exhibit "B"

M E M O R A N D U M

October 11, 1990

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF APPEALS (BELLAK, MILLER) CM
DIVISION OF ELECTRIC AND GAS (DEAN, HAFF) J.W.D.

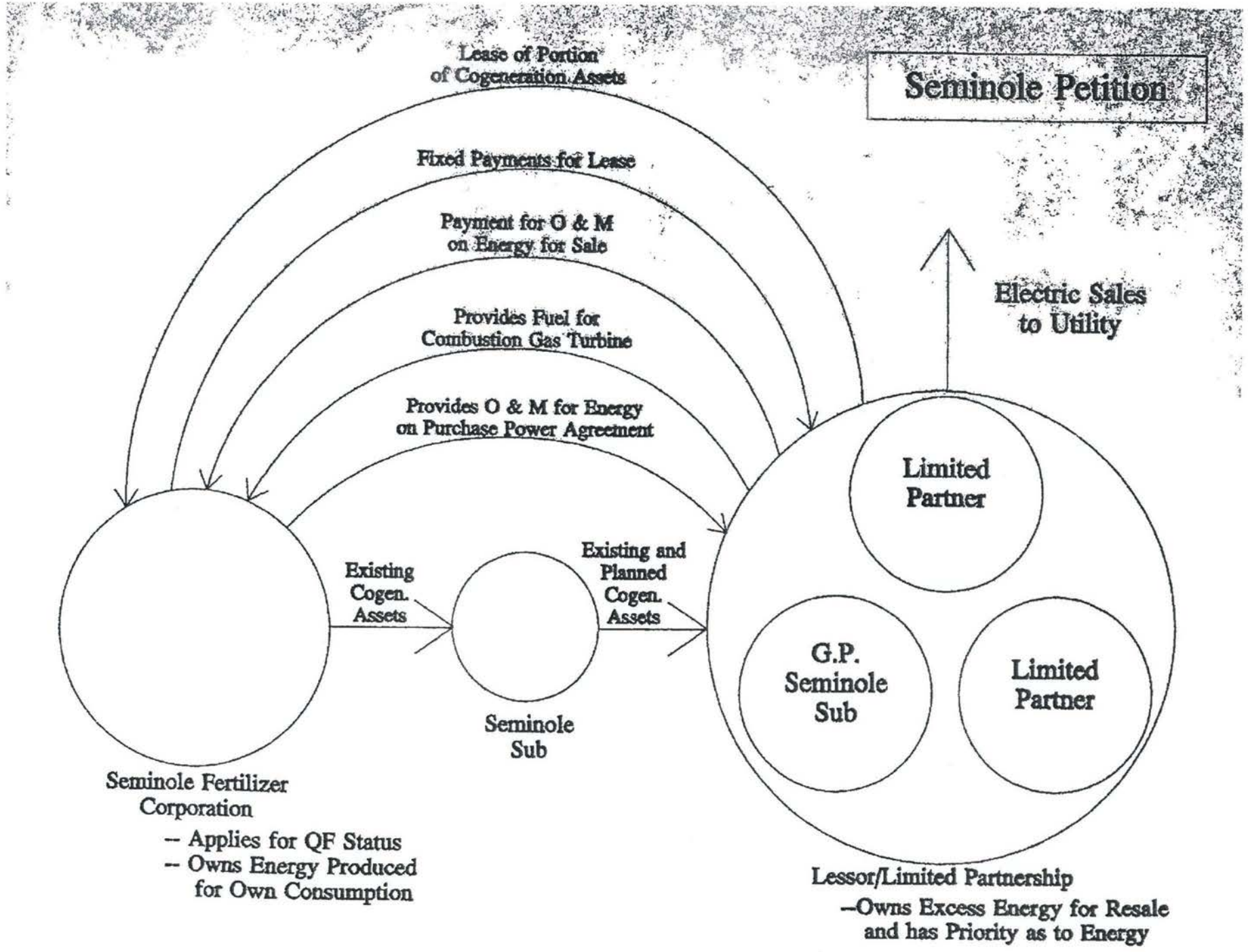
RE : PETITION FOR DECLARATORY STATEMENT BY SEMINOLE FERTILIZER CORPORATION, DOCKET NO.: [redacted] 900699-EG

This should be placed with the Recommendation for Item #3 for October 16, 1990, agenda.

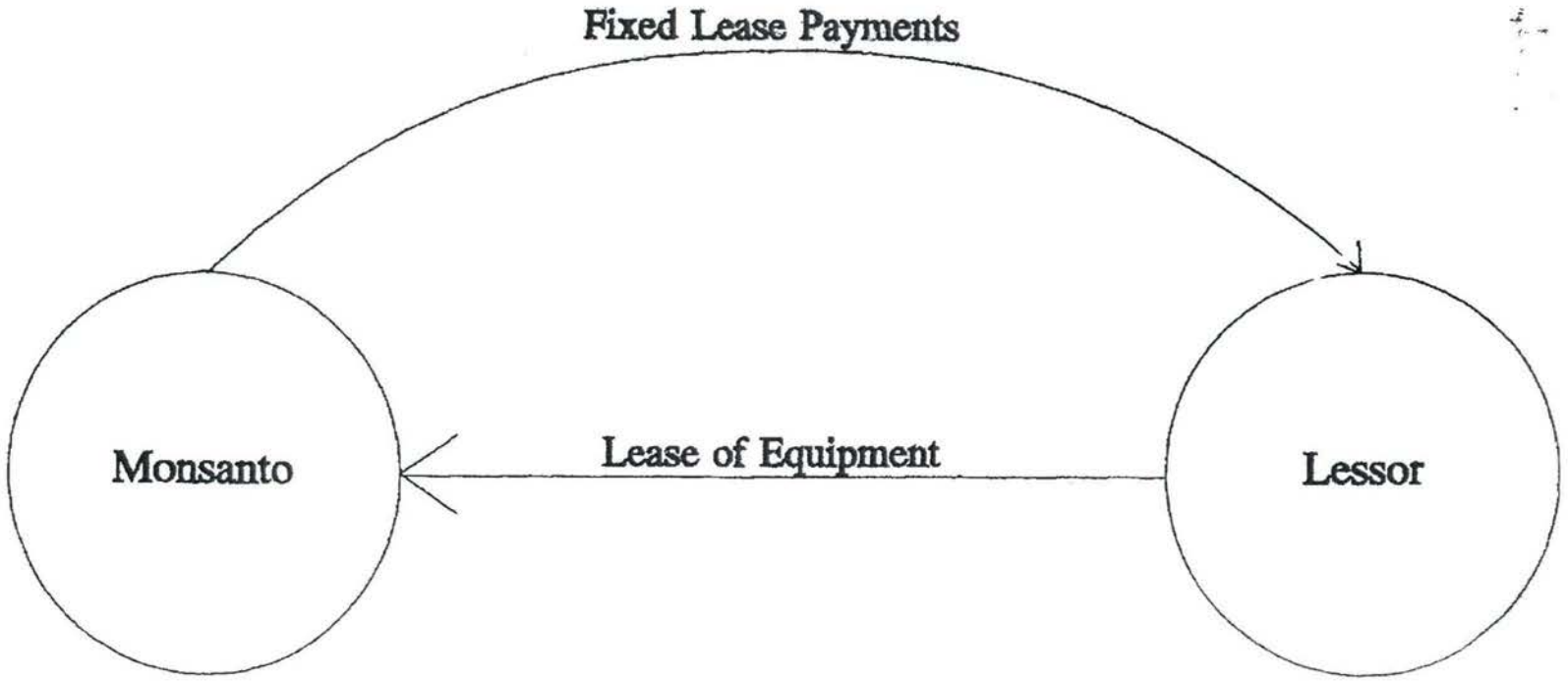
In an attempt to highlight the facts depicted in the Seminole petition, scheduled for the October 16, 1990, agenda, we have prepared the attached charts. The first illustrates Seminole's proposal which is currently at issue. The second chart shows the Monsanto factual scenario, which the Commission approved by holding there was no prohibited retail sale of electricity. The third chart is intended to illustrate the PW Ventures factual scenario. The Commission rejected the financing proposal in PW Ventures and determined there would be a retail sale. That case went to the Florida Supreme Court and the Court upheld the FPSC determination. Thus, one chart illustrates a factual case which is permitted as an unregulated entity; another shows a factual case which was held to be a prohibited retail sale.

Allison Orange of DIP and Iris Giuliani of the Executive Director's office did the excellent work on these charts.

CBM:prl
Attachments
0062


Seminole Petition
Lease of Portion of Cogeneration Assets
Fixed Payments for Lease
Payment for O & M on Energy for Sale
Provides Fuel for Combustion Gas Turbine
Provides O & M for Energy on Purchase Power Agreement
Electric Sales to Utility
Existing Cogen. Assets
Existing and Planned Cogen. Assets
Limited Partner
G.P. Seminole Sub
Limited Partner
Seminole Sub
Seminole Fertilizer Corporation
-- Applies for QF Status
-- Owns Energy Produced for Own Consumption
Lessor/Limited Partnership
--Owns Excess Energy for Resale and has Priority as to Energy

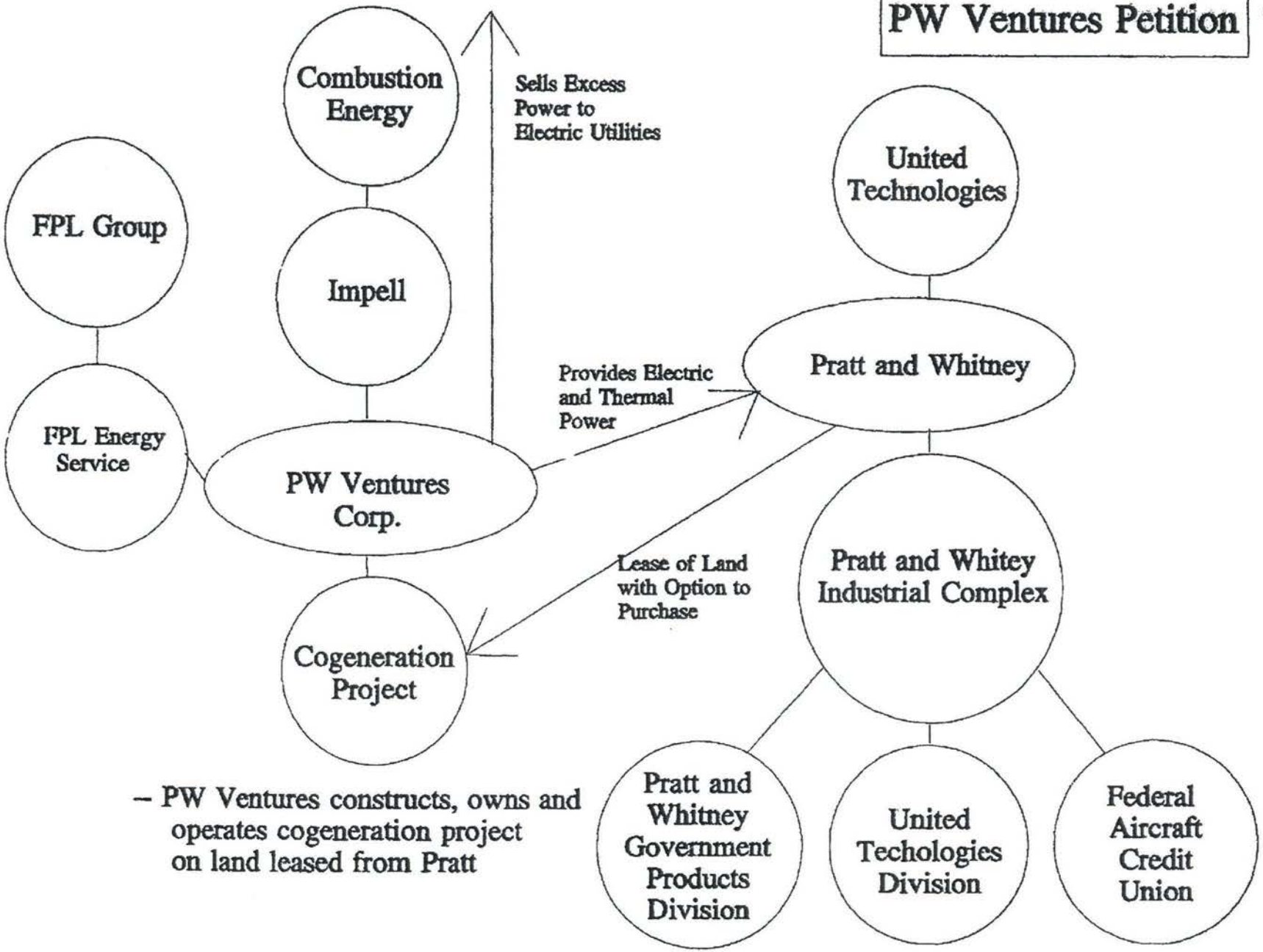
Monsanto Petition



-- owns and consumes on-site all steam and electric power produced by equipment

-- provides fuel for facility to operate

PW Ventures Petition



– PW Ventures constructs, owns and operates cogeneration project on land leased from Pratt

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Southeast Renewable Fuels, LLC, for a Declaratory Statement Regarding Co-Ownership of Electrical Cogeneration Facilities in Hendry County	)	Docket No. 130235-EQ
	)	Filed: October 8, 2013

GLADES ELECTRIC COOPERATIVE, INC.'S
MOTION TO ADDRESS THE COMMISSION

Pursuant to Rule 25-22.0021(7), F.A.C., Glades Electric Cooperative, Inc. ("Glades") moves the Florida Public Service Commission for permission to address the Commission regarding the issues raised by the declaratory statement petition filed by Southeast Renewable Fuels, LLC ("Southeast") in this proceeding and states in support:

1. Glades respectfully submits that its participation in the Agenda Conference at which Southeast's Petition is considered will facilitate the Commission's deliberation of the issues raised by Southeast. The Petition raises significant issues with respect to the statutory basis for and policy implications of the declaration requested which have not previously been considered by this current Commission.

2. On October 8, 2013, Glades filed its Motion for Leave to Intervene as well as its proposed Response to the Southeast petition. Glades seeks to address the Commission to explain how its substantial interests are subject to determination or will be affected by the declaratory statement sought by Southeast, to explain its position, and to answer questions.

3. Accordingly, Glades believes that permitting its participation at the Agenda Conference will aid in the Commission's understanding of the serious deficiencies in the Petition and the impact the disposition of the Petition will have on Glades and its member-owners,

particularly since the issues raised by Southeast have not been addressed by the Commission for many years.

WHEREFORE, Glades respectfully requests that it be granted the opportunity to address the Commission on its Motion for Leave to Intervene as well as the merits of Southeast's Petition for Declaratory Statement.

Respectfully submitted this 8th day of October, 2013.

Marsha E. Rule
Florida Bar Number 0302066

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Attorneys for Glades Electric Cooperative, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail and (where indicated) electronic mail on this 8th day of October, 2013, to the following:

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