

1 **P R O C E E D I N G S**

2 **CHAIRMAN GRAHAM:** Okay. Let's cycle back
3 around to Item Number 3.

4 **MS. BARRERA:** Good morning, Commissioners.

5 This docket concerns the complaint filed by
6 customers of Gainesville Regional Utilities containing
7 certain allegations about Gainesville's rates, wholesale
8 contract with Alachua, a proposed rate structure, and
9 the rate structure in existence at the time the
10 complaint was filed in July of 2013. Gainesville filed a
11 motion to dismiss the complaint. The complainants filed
12 a response, and we are here on the motion to dismiss.

13 Staff recommends dismissal with prejudice
14 those portions of the complaint over which the
15 Commission has no jurisdiction, which are the rates and
16 the wholesale contract. And staff also recommends
17 dismissal without prejudice of the portion of the
18 complaint regarding rate structure and to allow -- if
19 the complaint is dismissed, to allow the complainants to
20 file a complaint within 15 -- an amended complaint
21 within 15 days, or a complaint within 15 days.

22 **CHAIRMAN GRAHAM:** Thank you, staff.

23 Commissioners, Issue Number 1, oral arguments.
24 I'm inclined to grant the five-minute oral arguments.
25 If I don't hear any opposition, we'll go with that.

1 We'll start with Mr. Skop. I will let you
2 know when you have about a minute left, and then you can
3 kind of draw your conclusions.

4 **MR. SKOP:** Thank you, Mr. Chairman.

5 As a point of information, since GRU is the
6 movant, perhaps it would be more appropriate for Mr. May
7 to speak to GRU's motion first and allow us the
8 opportunity to respond.

9 **CHAIRMAN GRAHAM:** Mr. May, if that's okay.

10 **MR. MAY:** That would be fine, Mr. Chairman.

11 Good morning. I'm Bruce May with the law firm
12 of Holland and Knight. Our firm represents the City of
13 Gainesville, which does business as the Gainesville
14 Regional Utilities. With me this morning is Ms. Shayla
15 McNeill; she is to my left. Ms. McNeill is the city's
16 in-house utility counsel.

17 As you listen to the arguments today,
18 Commissioners, please keep in mind that the city is a
19 municipal utility governed by local elected officials.
20 The city has a strong interest in making sure that it
21 listens to and understands the concerns of its customers
22 and hopes that those concerns can be amicably resolved.
23 However, when a customer files a legal action against
24 the city based upon pleadings which do not comply with
25 Florida law, the city has no choice but to point out

1 these legal deficiencies and seek dismissal. That's
2 where we find ourselves today.

3 I would also ask that you keep in mind that
4 this agency does not have jurisdiction over the city's
5 revenue requirement, nor does it have jurisdiction over
6 the level or the dollar amount of the city's rates.
7 Under Florida law, the city's revenue requirement and
8 its rates are set solely by the city commission of
9 Gainesville, elected officials, but only after the city
10 commission receives extensive public input during
11 numerous public hearings.

12 With that said, Commissioners, the city
13 supports your staff's recommendation. And just as we
14 pointed out in our motion to dismiss, your staff has
15 recommended that the petition be dismissed for three
16 basic reasons. First, it is filled or replete with
17 claims that the city's rates are too high and its
18 wholesale contracts and wholesale rate structure are
19 improper. The Supreme Court has ruled that those claims
20 are clearly outside the Commission's jurisdiction over
21 municipals. Therefore, those claims should be
22 dismissed.

23 The second deficiency is that the petition
24 targets a fiction. The petition is largely dedicated to
25 vilifying a proposed two-tiered rate structure that the

1 city actually never adopted and simply doesn't exist.
2 This is a classic strawman argument and should be
3 dismissed.

4 Third, the petition makes conclusory
5 allegations about the inadequacies of the city's
6 existing rate structure without providing the Commission
7 or the city with the requisite notice of what the
8 petitioners believe those inadequacies are.

9 The petition also fails to put the Commission
10 and the parties on notice as to what specific relief is
11 being requested. Those are material defects,
12 Commissioners, under Florida's Administrative Procedures
13 Act. As your staff recommendation reflects, the
14 petition has serious flaws and you really have no
15 discretion today but to dismiss it, just as your staff
16 recommends.

17 Before I conclude, I want to briefly address
18 an erroneous argument that surfaces in the petitioner's
19 response to our motion to dismiss. Counsel suggests
20 that the petition he filed somehow entitles his clients
21 to a formal evidentiary hearing. That's incorrect. In
22 its response to our motion to dismiss, the petitioners
23 mention that the petition was filed pursuant to
24 Section 120.569. But what the petitioners do not advise
25 the Commission of is that that statute was amended in

1 1998 to make it clear that the right to an
2 administrative hearing is not automatic.

3 Prior to 1998, it was fairly common practice
4 for agencies to immediately commence formal evidentiary
5 hearings simply based on vague or speculative petitions
6 in hopes that those defects would be cured later during
7 the evidentiary hearing by motion practice before the
8 administrative law judge or the hearing officer. This
9 often left agencies such as yourself and other parties
10 to the proceeding in the difficult position of having to
11 speculate on what the hearing was all about. This led
12 to prolonged disputes over unnecessary issues, it led to
13 inordinate delays, and it ultimately increased costs.

14 Formal evidentiary hearings are expensive
15 propositions. To correct this problem, the legislature
16 amended Section 120.569 to require, to require an agency
17 like you to, quote, closely review the petition at the
18 front end of the process, and to dismiss the petition at
19 the front end of the process if it is based on
20 conclusory allegations, speculative injuries, and rates
21 that simply don't exist.

22 **CHAIRMAN GRAHAM:** Mr. May, you have a minute
23 left.

24 **MR. MAY:** Okay. Your staff recommendation
25 complies with that statutory mandate to the letter. As

1 staff explains, the petition was filed well before the
2 city finalized its rate structure and filed it with the
3 Commission. Because petitioners jumped the proverbial
4 gun, their pleadings make repeated allegations directed
5 at a rate structure that was never actually adopted by
6 the city.

7 As your staff correctly points out, the
8 allegations are far too speculative and the relief
9 requested is far too vague to entitle petitioners to an
10 evidentiary hearing. The petition itself needs to be
11 dismissed as a matter of law.

12 Going forward, Commissioners, if counsel is
13 intent on pursuing this matter any further, he needs to
14 amend his petition to cure these serious defects.
15 That's precisely what the law requires, and that's what
16 your staff has recommended. Thus, we would respectfully
17 request that you adopt or approve staff's
18 recommendation. Thank you.

19 I'll be available after Mr. Skop makes his
20 presentation to answer any questions.

21 **MR. SKOP:** Thank you, Mr. Chairman,
22 Commissioners. Nathan Skop appearing on behalf of Eye
23 Associates of Gainesville, LLC, and Debra Martinez.

24 Mr. May raised some points, and I'd like the
25 opportunity to briefly respond. As to the staff

1 recommendation, given the significant amount of time
2 that has passed since the filing of our petition, nearly
3 seven months, my clients support the staff
4 recommendation subject to comment and clarification. My
5 clients are certainly willing to amend the complaint to
6 update the ultimate facts supporting the stated cause of
7 action upon which relief can be granted.

8 It's important to recognize, however,
9 Commissioners, and Mr. Chairman, that the petitioners
10 cause of action in this docket is, has been, and always
11 will be about GRU's retail rate structure, retail
12 electric rate structure. The petition filed by the
13 petitioners was the initiation of formal proceedings
14 pursuant to Rule 25-22.306, Florida Administrative Code.

15 In a subsequent filing, the Commission
16 reclassified the petition as a complaint and revised the
17 docket title. The petition itself is supported by the
18 signatures of 112 GRU customers, and docket
19 correspondence letters exist from a state representative
20 who is also a GRU customer, and a congressman who also
21 has constituents that live in GRU's service territory.

22 But getting to the point, the Commission
23 clearly has jurisdiction over the retail electric rate
24 structure of a municipal utility pursuant to Sections
25 366.02(2) and 366.04(2)(b), Florida Statutes. GRU would

1 seek to have this Commission render the statutory
2 jurisdiction meaningless.

3 I think it's fair to say -- and, Mr. May, feel
4 free to opine -- but I think that it's fair to say that
5 the parties and PSC staff would all likely agree that
6 the Commission does have jurisdiction over GRU's retail
7 electric rate structure. And the standard of review
8 that this Commission should apply in reviewing the
9 complaint was that in order to sustain a motion to
10 dismiss, the moving party must show that accepting all
11 allegations as true and in favor of the complainant,
12 that the petition still fails to state cause of action
13 for which relief may be granted. GRU's motion fails to
14 meet this burden. Applying the standard of review to
15 petitioner's complaint, the GRU motion to dismiss should
16 be denied because the petition was facially sufficient
17 and stated a cause of action upon which relief may be
18 granted.

19 There's two issues. There's the existing rate
20 structure and proposed rate structure. Clearly there
21 were inequities in the rate structure. I think a lot of
22 this can be solved by amending the complaint.

23 My clients are somewhat puzzled, however, by
24 the staff recommendation to grant GRU's motion to
25 dismiss with prejudice on the nonjurisdictional issues

1 which my clients never sought to litigate in this
2 docket. The petitioners have the right to plead the
3 ultimate facts necessary to establish a stated cause of
4 action upon which relief may be granted by this
5 Commission, and in this case that's GRU's retail
6 electric rate structure.

7 The disputed issues of material fact and
8 relief sought in the petition did not raise nor request
9 any relief whatsoever on the nonjurisdictional issues.
10 Accordingly, the motion to dismiss the nonjurisdictional
11 issues upon which relief was not sought seems equally
12 moot.

13 Commissioners, the nonjurisdictional issues
14 which GRU complains upon in their motion were pled as
15 relevant facts within the background, background section
16 of the petition. These relevant facts are aggravating
17 factors demonstrating why review of the inequities
18 within GRU's retail electric rate structure are
19 critically important. So to make this analogy, it is
20 well known that GRU currently has the highest electric
21 rates in the State of Florida. And if the Commission
22 could take official recognition of this well-known fact,
23 then certainly a litigant should be able to plead a
24 relevant fact in the context of establishing the stated
25 cause of action related to GRU's retail electric rate

1 structure.

2 So, again, I think that the relief sought here
3 was to review the rate structure. The material issue or
4 disputed issues of material fact were all related to
5 GRU's retail electric rate structure. So with respect
6 to the relief sought, again, my clients are perfectly
7 happy to amend the complaint pursuant to the staff
8 recommendation.

9 Again, we would like to put this in a hearing
10 posture, conduct some discovery, put on some testimony,
11 and ultimately the Commission would have the authority,
12 at least in our opinion, based upon the reading of the
13 statute, to issue an order directing GRU, if it was
14 proven is based on the evidentiary record, to address
15 the inequalities within their retail electric rate
16 structure.

17 I don't believe that this Commission could
18 order GRU how to accomplish that, because rate structure
19 and rates are inextricably intertwined. But certainly
20 if inequities exist within the statutory jurisdiction
21 that this Commission enjoys on the electric retail rate
22 structure, then that's an issue squarely within the
23 Commission's jurisdiction. And 93,000 GRU customers,
24 including my clients, are looking to this Commission for
25 assistance in resolving those inequities.

1 Thank you, Mr. Chairman.

2 **CHAIRMAN GRAHAM:** Thank you, Mr. Skop.

3 Commissioners? Commissioner Brown.

4 **COMMISSIONER BROWN:** Thank you. A couple of
5 questions for Mr. May.

6 Could you tell us what the status is of the
7 city commission ordinance? Has it been codified and
8 issued by the city clerk?

9 **MR. MAY:** Commissioner Brown, this petition
10 that's before you today was filed well in advance of the
11 city finalizing its rates. The city actually filed its
12 rates, finalized its rates in August of last year. And
13 in accordance with your rules under Chapter 25-9, filed
14 the rate structure and the rates with you and your staff
15 at the end of last year.

16 The utility has received -- this is outside of
17 the -- obviously outside of the four corners of the
18 pleadings, but just to answer your question, the utility
19 has received a letter from your staff which has
20 administratively approved the rate structure. So that's
21 where we are today. To answer your question, yes, they
22 have, and it has been filed and it has been approved by
23 your staff administratively.

24 **COMMISSIONER BROWN:** This may be a question
25 for you or Mr. Skop regarding the existing rate

1 structure and how it differs from the previous rate
2 structure. Can you or Mr. Skop explain to us how they
3 differ?

4 **MR. MAY:** The rate structure that the City of
5 Gainesville has filed is essentially the same rate
6 structure that has been on file for the last seven
7 years, and it has been approved each year by this
8 Commission.

9 **COMMISSIONER BROWN:** Okay.

10 **MR. SKOP:** Mr. Chair. And to Commissioner
11 Brown's question, I would agree that it is a rate
12 structure. However, the inequities that exist within
13 that rate structure are disputed issues of material
14 fact. And I know that our original petition, again,
15 looked at the existing and the proposed rate structure.
16 The existing had inequities. It's our belief that the
17 implemented rate structure has those same inequities.
18 And notwithstanding Commission staff's administrative
19 approval action, again, what we're trying to do is
20 address and litigate the inequities within the retail
21 electric rate structure, and I think that's a credible
22 difference.

23 And one thing that I did not mention
24 previously, but it was in Docket 080665-EI, in re,
25 approval of long-term agreement for full requirement

1 electric service with Lee County Electric Cooperative,
2 that was an instance where the PSC had both rate
3 structure and rate jurisdiction, but it was asked to
4 look at FPL's proposed wholesale contract with Lee
5 County. And staff actually issued recommendations that,
6 you know, kind of pierced that veil a little bit to take
7 a look at some of the impact on the various rate classes
8 of customers as a result of that contract.

9 So it's not unprecedented, at least in my
10 opinion, for the Commission to look there. And in this
11 case it's a municipal, which makes it more difficult,
12 because the Commission does not have rate jurisdiction.
13 But the rate structure is an issue, and the rate
14 structure inequities are aggravated by some of these
15 nonjurisdictional issues that were merely pled as
16 ultimate facts in relation to support the stated cause
17 of action.

18 **COMMISSIONER BROWN:** Mr. Skop, in the oral
19 argument you stated, you seemed to be inclined to
20 support the staff recommendation to come back and amend
21 the complaint, is that correct?

22 **MR. SKOP:** Yes, ma'am.

23 **COMMISSIONER BROWN:** Okay. Because I think
24 there's some validity in the fact that the complaint
25 didn't really specify what the inequities are. I think

1 it needs to be more clear, so I -- thank you.

2 **CHAIRMAN GRAHAM:** Other Commissioners?

3 Okay. I'd like to entertain a motion.

4 Commissioner Brown.

5 **COMMISSIONER BROWN:** I move staff

6 recommendation.

7 **CHAIRMAN GRAHAM:** It has been moved and

8 seconded, staff recommendation.

9 Commissioner Edgar, did you have any comments?

10 **COMMISSIONER EDGAR:** I was going to make a

11 motion.

12 **CHAIRMAN GRAHAM:** Okay. It has been moved and

13 seconded, staff recommendation on all issues on Item

14 Number 3. Any further discussion?

15 Seeing none, all in favor say aye.

16 (Vote taken.)

17 **CHAIRMAN GRAHAM:** Any opposed?

18 By your action you've approved staff's

19 recommendation.

20 **MS. BARRERA:** Thank you.

21 **MR. MAY:** Thank you, Commissioners.

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STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 20th day of March, 2014.



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