

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Notice of new municipal electric service) Docket No. 140059-EI
provider and petition for waiver of)
Rule 25-9.044(2), F.A.C., by Babcock Ranch) Filed: April 11, 2014
Community Independent Special District)
_____)

**FLORIDA POWER AND LIGHT’S COMMENTS ON BABCOCK RANCH
COMMUNITY INDEPENDENT SPECIAL DISTRICT’S NOTICE OF NEW
MUNICIPAL ELECTRIC SERVICE PROVIDER AND PETITION FOR WAIVER
OF RULE 25-9.044(2), F.A.C.**

Florida Power & Light Company, Inc. (“FPL”) hereby submits, pursuant to the public notice provided by the Florida Public Service Commission in the March 28, 2014, Florida Administrative Register (“F.A.R.”), its comments on Babcock Ranch Community Independent Special District’s (the “District’s”) Notice of New Municipal Electric Service Provider and Petition of Waiver of Rule 25-9.044(2), Florida Administrative Code (“F.A.C.”) (the “Notice and Petition”), and states:

1. On March 24, 2014, the District filed its Notice and Petition pursuant to Rule 25-09.44, F.A.C., identifying the District a new municipal electric service provider to operate within the District’s boundaries in Charlotte County, Florida, and requesting a temporary waiver of Rule 25-9.044(2), F.A.C.
2. On March 28, 2014, the Commission published notice of the Notice and Petition in the Florida Administrative Register, (the “public notice”) which provided an opportunity for comments within 14 days of publication. These comments are submitted pursuant to the public notice.
3. The boundaries identified by the District in its Notice and Petition fall within the existing FPL and the Lee County Electric Cooperative (“LCEC”) service territories. FPL and LCEC

have a territorial agreement approved by the Commission governing those areas.¹ That territorial agreement contains no provision for the area identified by the District to be served by any entity other than (as appropriate) FPL or LCEC.

4. FPL notes the District's assertion that it is authorized under Section 6(7)(u) of Chapter 2007-306, Laws of Florida (the "Babcock Ranch Law") to "provide electricity and related infrastructure and to enter into public-private partnerships and agreements as may be necessary to accomplish the foregoing" and to do so within territory subject to the FPL and LCEC territorial agreement. The Notice and Petition does not seek formal Commission approval, authorization or other substantive action with respect to this assertion, but rather asks the Commission to "acknowledge the District as a new municipal electric service provider with the authority to provide electric service within that portion of the District's boundaries identified in Appendix C" It is unclear to FPL what regulatory significance the District contemplates this "acknowledgement" as having.² Therefore, FPL takes no position at this time on the District's assertions, but reserves the right to participate in this proceeding and to present its position on such issues as may be relevant to the disposition of District's request. FPL intends to work with the District and LCEC toward mutually agreeable terms for electric service within the boundaries

¹ The original agreement was approved in Docket No. 7424-EU by Order No. 3799, issued April 28, 1965. An amendment to the original agreement was approved in Docket No. 850129-EU by Order No. 20817, issued February 28, 1989. Subsequently, FPL and LCEC entered into a new territorial agreement which modified the territorial boundaries between FPL and LCEC's retail service areas in Charlotte, Collier, Hendry and Lee Counties. Docket No., 930092-EU, Order No. PSC-93-0705-FOF-EU, issued May 10, 1993. The new agreement was modified in Docket No, 970105, Order No. PSC-97-0527-FOF-EU, issued May 7, 1997.

² The District attempts to analogize its requested acknowledgement to the Commission's action in Order No. 18224, where the Commission acknowledged a notice of transfer of electric utility services from Reedy Creek Utilities Company ("RCUC") to Reedy Creek Improvement District ("RCID"). Notice and Petition at ¶¶ 15-18. That notice is not analogous here. RCID was created in 1967 by Chapter 67-764, Laws of Florida. RCUC began providing electric several years later, presumably with the consent of RCID. *See* Order No. 5625, Docket No. 73042-EU, dated January 17, 1973. Order No. 18224 concerned the notice that RCID gave pursuant to Rule 25-9.044, F.A.C., that it was adopting and ratifying RCUC's existing rates. As with the RCUC's initial provision of electric service, this transfer appears to have been by mutual agreement of RCUC and RCID. The contrasts here are significant: (i) the District is seeking to serve an area within FPL's and LCEC's existing service territories, (ii) the District is not adopting or ratifying existing rates (or, for that matter, proposing its own rates); and (iii) there is no consensus on the transfer of electric service to the District or the terms thereof.

identified by the District.

5. The Notice and Petition requests a temporary waiver of Rule 25-9.044(2), F.A.C., which sets forth the following requirement for a new utility:

*“Within thirty (30) days after the filing of such adoption notice by a public utility which then had no tariff on file with the Commission, said utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or make application to the Commission for such other tariff as it may propose to put into effect in lieu thereof.”*¹

6. Subject to the reservation of rights and opportunity to participate in the proceeding noted above, FPL has no objection to Babcock Ranch’s request for a temporary waiver of Rule 25-9.044(2), F.A.C.

Respectfully submitted this 11th day of April, 2014.

John T. Butler, Assistant General Counsel –
Regulatory
Scott A. Goorland, Principal Attorney
Attorneys for Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Telephone: (561) 691-7101
Facsimile: (561) 691-7135

By: /s/ Scott A. Goorland
Scott A. Goorland
Florida Bar No. 0066834

CERTIFICATE OF SERVICE
Docket No. 140059-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery or this 11th day of April, 2014, to the following:

Nabors Law Firm
Brian P. Armstrong/William C. Gardner
1500 Mahan Drive,
Suite 200
Tallahassee, FL 32308
Phone: (850) 224-4070
FAX: (850) 224-4073
Email: barmstrong@ngnlaw.com

By: /s/Scott A. Goorland
Scott A. Goorland
Florida Bar No. 0066834