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May 13, 2014

HAND DELIVERED

RECEIVED FPSC  
14 MAY 13 PM 3:05  
COMMISSION  
CLERK

Ms. Carlotta S. Stauffer  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Notice of new municipal electric service provider and petition for waiver  
of Rule 25-9.044(2), F.A.W., by Babcock Ranch Community Independent  
Special District: FPSC Docket No. 140059-EM

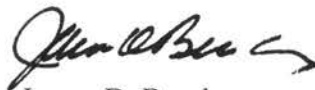
Dear Ms. Stauffer:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa  
Electric Company's Motion for Leave to File Attached Comments.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this  
letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,



James D. Beasley

JDB/pp  
Enclosure

cc: All Parties of Record (w/enc.)

COM \_\_\_\_\_  
AFD \_\_\_\_\_  
APA \_\_\_\_\_  
ECO 5 \_\_\_\_\_  
ENG 5 \_\_\_\_\_  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of new municipal electric service provider and petition for waiver of Rule 25-9.044(2), F.A.W., by Babcock Ranch Community Independent Special District. )  
 ) DOCKET NO. 140059-EM  
 )  
 ) FILED: May 13, 2014  
 )  
\_\_\_\_\_ )

**TAMPA ELECTRIC COMPANY'S  
MOTION FOR LEAVE TO FILE ATTACHED COMMENTS**

Tampa Electric Company ("Tampa Electric" or "the company"), pursuant to Rule 28-106.204, Florida Administrative Code, submits this its motion for leave to file the attached comments regarding the Notice of New Municipal Electric Service Provider and Petition for Waiver of Rule 25-9.044(2), Florida Administrative Code, (the "Notice and Petition") filed on behalf of Babcock Ranch Community Independent Special District ("Babcock Ranch") and, says:

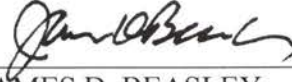
1. Tampa Electric Company is an investor-owned electric public utility regulated by this Commission pursuant to Chapter 366, Florida Statutes. As such, Tampa Electric has a significant interest in the manner in which Chapter 366, Florida Statutes, is construed in connection with other laws that may affect public utilities in this state.

2. Given the above interest, Tampa Electric desires to be heard regarding the legal interpretations underlying the Notice and Petition. Tampa Electric believes that its input may assist the Commission in disposing of the Notice and Petition.

WHEREFORE, Tampa Electric Company moves the Commission for leave to file the attached comments addressing matters asserted in the Notice and Petition.

DATED this 13<sup>th</sup> day of May 2014.

Respectfully submitted,



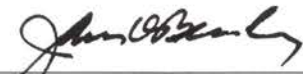
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Post Office Box 391  
Tallahassee, Florida 32302  
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion, filed on behalf of Tampa Electric Company, has been furnished by electronic mail this 13<sup>th</sup> day of May 2014 to the following:

<p>Ms. Martha Brown Senior Attorney Office of General Counsel Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 <a href="mailto:mbrown@psc.state.fl.us">mbrown@psc.state.fl.us</a></p> <p>Mr. D. Bruce May, Jr. Mr. Kevin Cox Holland &amp; Knight, LLP Post Office Drawer 810 Tallahassee, FL 32302-0810 <a href="mailto:bruce.may@hkclaw.com">bruce.may@hkclaw.com</a> <a href="mailto:kevin.cox@hkclaw.com">kevin.cox@hkclaw.com</a></p> <p>Mr. Dennie Hamilton Mr. Frank R. Cain, Jr. Lee County Electric Cooperative, Inc. P.O. Box 3455 North Ft. Myers, FL 33918-3455 <a href="mailto:dennie.hamilton@lcec.net">dennie.hamilton@lcec.net</a> <a href="mailto:frank.cain@lcec.net">frank.cain@lcec.net</a></p> <p>Mr. Brian P. Armstrong Mr. William C. Gardner Mr. John R. Jenkins Nabors, Biglin &amp; Nickerson, P.A. 1500 Mahan Drive, Suite 200 Tallahassee, FL 32308 <a href="mailto:barmstrong@ngnlaw.com">barmstrong@ngnlaw.com</a> <a href="mailto:bgarner@ngnlaw.com">bgarner@ngnlaw.com</a> <a href="mailto:jjenkins@ngnlaw.com">jjenkins@ngnlaw.com</a></p>	<p>Mr. William B. Willingham Ms. Michelle L. Hershel Florida Electric Cooperatives Assn., Inc. 2916 Apalachee Parkway Tallahassee, FL 32301 <a href="mailto:fecabill@embarqmail.com">fecabill@embarqmail.com</a> <a href="mailto:mhershel@feca.com">mhershel@feca.com</a></p> <p>Mr. John T. Butler Mr. Scott A. Goorland Florida Power &amp; Light Company 700 Universe Boulevard Juno Beach, FL 33408-0420 <a href="mailto:john.butler@fpl.com">john.butler@fpl.com</a> <a href="mailto:scott.goorland@fpl.com">scott.goorland@fpl.com</a></p> <p>Ms. Paula K. Brown, Manager Regulatory Coordination Tampa Electric Company Post Office Box 111 Tampa, FL 33602 <a href="mailto:regdept@tecoenergy.com">regdept@tecoenergy.com</a></p> <p>Mr. John A. Noland Henderson Law Firm P. O. Box 280 Ft. Myers, FL 33902 <a href="mailto:john.noland@henlaw.com">john.noland@henlaw.com</a></p> <p style="text-align: center;"> _____ ATTORNEY</p>
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of new municipal electric service )  
provider and petition for waiver of Rule ) DOCKET NO. 140059-EM  
25-9.044(2), F.A.W., by Babcock Ranch )  
Community Independent Special District. ) FILED: May 13, 2014  
\_\_\_\_\_ )

**TAMPA ELECTRIC COMPANY'S COMMENTS  
ON NOTICE OF NEW MUNICIPAL ELECTRIC SERVICE  
PROVIDER AND PETITION FOR WAIVER OF RULE  
25-9.044(2), FLORIDA ADMINISTRATIVE CODE, FILED BY  
BABCOCK RANCH COMMUNITY INDEPENDENT SPECIAL DISTRICT**

Tampa Electric Company ("Tampa Electric" or "the company") provides the following comments regarding the Notice of New Municipal Electric Service Provider and Petition for Waiver of Rule 25-9.044(2), Florida Administrative Code, (the "Notice and Petition") filed on behalf of Babcock Ranch Community Independent Special District ("Babcock Ranch"):

1. Tampa Electric supports the Motion to Dismiss the Notice and Petition filed by Lee County Electric Cooperative, Inc. ("LCEC") on April 15, 2014. Tampa Electric believes that Babcock Ranch's flawed interpretation of the special act that created it, if given effect, would have a significant adverse impact on the orderly, reliable and cost-effective provision of electric utility service in this state, to the detriment of all customers who rely upon that service.

2. The Notice and Petition erroneously claims a "primacy" right for Babcock Ranch to provide electric utility service within Babcock Ranch's boundaries, in contravention of the territorial agreement between Florida Power & Light Company ("FPL") and Lee County Electric Cooperative, Inc. ("LCEC"), first approved by the Commission in 1965. Babcock Ranch's position ignores the provision of the special act that created it which clearly states that the powers it grants to Babcock Ranch are ". . .subject to, and not inconsistent with, the regulatory

jurisdiction and permitting authority of all other applicable governmental bodies, agencies, and any special districts having authority with respect to any area included therein. . . ." Consequently, the special act's grant of authority for Babcock Ranch to "provide electricity" is clearly subordinate and subject to the Commission's existing and exclusive authority over territorial agreements, including the agreement between FPL and LCEC.

3. Babcock Ranch's erroneous claim of "primacy" under the special act contravenes the Commission's exclusive regulatory jurisdiction under Florida's grid bill, including the jurisdiction to approve territorial agreements setting forth territorial boundary lines. As set forth in Section 366.04, Florida Statutes, this jurisdiction "shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and, in case of conflict therewith, all lawful acts, orders, rules, and regulations of the Commission shall in each instance prevail."

4. Babcock Ranch's "primacy" argument in its Notice and Petition and its preemption argument in paragraph 39 of its response to LCEC's Motion to Dismiss have no merit. There is nothing in the special act that suggests the Legislature intended to preempt the Commission's preexisting approval of the LCEC-FPL territorial agreement. For the special act to have any impact on the Commission's overarching grid law authority, there would have to be something to that effect expressly provided in the special act or the special act would have to be so inconsistent with the existing general law as to constitute an implied repeal thereof. Banana River Props. v. City of Cocoa Beach, 287 So.2d 377, 379 (Fla. 1973)

. . . holding that 'the provisions of an earlier general law ... and the provisions of a later special act ... must be read together, each complementing or supplementing the other and each must be given effect unless there is a positive repugnancy between the two.... It is the duty of the court to reconcile any conflicts so that an implied repeal does not result.'

5. Here there is no conflict between the special act and the grid law as implemented by the Commission because the special act on its face indicates that Babcock Ranch is not intended to operate as an electric utility. The special act does not refer to Babcock Ranch as an electric utility, nor does it empower Babcock Ranch to perform any of the functions an electric utility needs to perform in order to operate as an electric utility. The special act does not provide Babcock Ranch the power of eminent domain for the taking of property for use in providing electric service, nor does it provide Babcock Ranch any power to charge rates for electric service or to discontinue such service for non-payment of such rates. Moreover, nothing in the special act states that Babcock Ranch is authorized to provide "electric service". Clearly the special act evidences no legislative intent for Babcock Ranch to operate as an electric utility. Consequently, the special act does not conflict with the preexisting law of the grid bill or the Commission's preexisting approval of the LCEC-FPL territorial agreement pursuant to its authority under the grid bill.

6. As reflected in LCEC's Motion to Dismiss, the Notice and Petition does not establish Babcock Ranch to be a new municipal electric service provider, or a municipality for any purpose, and the Petition for Waiver fails to satisfy any of the requirements of Section 120.542, Florida Statutes.

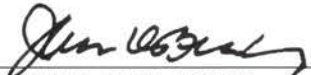
7. Babcock Ranch's Notice and Petition erroneously attempts to equate its position with that of Reedy Creek Improvement District ("Reedy Creek"), created in 1967 by Special Act. LCEC's Motion to Dismiss describes in detail the flaws of that comparison. It is telling that Babcock Ranch's reply to LCEC's Motion to Dismiss abandons all reference to Reedy Creek, and rightly so, given the fact that the Special Act at issue here does not authorize Babcock Ranch to operate as an electric utility.

8. Tampa Electric relies heavily on the stability provided by the Commission's approval and enforcement of territorial agreements between and among electric utilities in Florida. The company makes significant decisions, both investment and operational, in reliance upon that stability. Tampa Electric views Babcock Ranch's interpretation of the special act that created it as a threat to the stability provided by the Commission's territorial regulation – an interpretation that would set bad precedent and hinder the Commission's ability to actively and effectively supervise the provision of electric utility service throughout Florida under the grid bill.

9. Given all of the above deficiencies and those addressed in LCEC's Motion to Dismiss, the Notice and Petition should be dismissed with prejudice.

DATED this 13<sup>th</sup> day of May 2014.

Respectfully submitted,

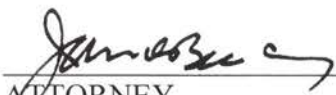
  
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