

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.C., by Babcock Ranch Community Independent Special District.

DOCKET NO. 140059-EM  
ORDER NO. PSC-14-0302-PCO-EM  
ISSUED: June 12, 2014

ORDER GRANTING TAMPA ELECTRIC COMPANY'S  
MOTION FOR LEAVE TO SUBMIT COMMENTS

On March 24, 2014, Babcock Ranch Community Independent Special District (Babcock Ranch) filed a Notice of New Municipal Electric Service Provider and Petition for Waiver of Rule 25-9.0044(2), Florida Administrative Code (F.A.C.). Babcock Ranch asserted that a special law, Chapter 2007-6, Laws of Florida, established the Babcock Ranch Special District and authorized it to be a municipal electric service provider within the special district boundary delineated in the law. Babcock Ranch asked the Commission to acknowledge it as a new municipal electric utility with the authority to provide electric service within the special district boundary.<sup>1</sup> Babcock Ranch also petitioned the Commission for a waiver of subsection (2) of Rule 25-9.044, F.A.C., Change of Ownership, which requires a new utility to adopt the tariffs of its predecessor utility or file new tariffs under which it intends to operate. Babcock Ranch asserted that it could not fulfill the Rule's requirement because it does not have facilities in place to provide electric service at this time.

The Commission published a notice of Babcock Ranch's rule waiver petition in the March 28, 2014 edition of the Florida Administrative Register, requesting comment on the petition by April 11, 2014. On that date, Florida Power & Light Company (FPL), Lee County Electric Cooperative (LCEC), and the Florida Electric Cooperatives Association (FECA) filed comments. On April 15, 2014, LCEC filed a Motion to Dismiss Babcock Ranch's Notice and Petition for Waiver on the grounds that Babcock Ranch had failed to state a cause of action upon which relief could be granted. Babcock Ranch filed a response to LCEC's motion to dismiss on April 22, 2014. On May 8, 2014, FPL filed an unopposed Motion for Leave to Submit Supplemental Comments on Babcock Ranch's filing, which was granted by Order No. PSC-14-0248-PCO-EM, issued May 21, 2014.

On May 13, 2014, Tampa Electric Company (TECO) filed a Motion for Leave to File Attached Comments regarding Babcock Ranch's filing. TECO asserted that as an investor-owned electric utility regulated by the Commission under Chapter 366, Florida Statutes (F.S.), it has a significant interest in the construction and legal interpretation of the applicable statutes in this case. TECO suggested that its comments could assist the Commission in its consideration of Babcock Ranch's filing.

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<sup>1</sup> The special district boundary overlaps territory allocated to Lee County Electric Cooperative (LCEC) and Florida Power & Light Company (FPL) by an existing Commission-approved territorial agreement. The boundary for the proposed municipal electric utility territory differs from the boundary established by Chapter 2007-6, because it excludes several existing points where Lee County Electric Cooperative currently provides service.

On May 16, 2014, Babcock Ranch filed its Response in Opposition to TECO's motion. Babcock Ranch asserted that the motion should be denied because TECO's only interest in the proceeding is the adverse effect the outcome of this case might have on it and other regulated utilities in the future. Babcock Ranch argued that interest is speculative and insufficient to allow TECO to participate as a party because it will not suffer an injury in fact of sufficient immediacy to entitle it to a formal administrative hearing, and its interest is not of the type the proceeding is designed to protect.<sup>2</sup> Babcock Ranch also contended that the Commission has no express procedure to authorize a person to comment on the merits of a case where the substantial interests of other parties are at stake, even in Proposed Agency Action (PAA) proceedings. Babcock Ranch asserted that the Commission has denied party status to proposed intervenors in several PAA cases, and only granted interested persons participation as "amicus curiae" in limited circumstances where the participants' substantial interests were clear. According to Babcock Ranch, the facts of this case are so unique that they are not likely to be repeated to harm TECO's interests.

As Babcock Ranch mentions, the Commission will address this case through its PAA procedure at a regularly scheduled and properly noticed Agenda Conference, at which all interested persons will be invited to participate. Babcock Ranch suggests that TECO is not an "interested person" here because it cannot show the same substantial interests as a party to a formal administrative proceeding under Florida's Administrative Procedure Act, Chapter 120, F.S. However, the statute does not require and the Commission does not impose that strict standard upon interested persons participating in informal proceedings, such as a PAA. Generally, the Commission invites broad participation in its proceedings, to better inform itself of the scope and implications of its decisions. Even where the Commission has denied formal intervention in a docket it has permitted participation by the same entity as an interested person in its PAA process.<sup>3</sup>

The issues to be addressed in this docket include consideration of the Commission's authority over the establishment and effectiveness of electric service territorial agreements in Florida. While Babcock Ranch suggests that the facts of this docket are unique, the principles implicated concern the Commission's statewide authority. As a public utility subject to Commission regulation, TECO has an interest in matters that affect the scope and effectiveness of that authority, and the Commission may benefit from its perspective. Therefore, TECO's

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<sup>2</sup> See Agrico Chemical Company v. Department of Environmental Protection, 406 So. 2d 478 (Fla. 1st DCA 1981).

<sup>3</sup> See, for example: Order No. PSC-96-0158-PCO-EU, issued February 5, 1996, in In Re: Petition of Jacksonville Electric Authority to resolve a territorial dispute with Florida Power and Light Company in St. Johns County, ("Although Florida Steel shall not be granted intervenor status, it has ample opportunity to participate at the February 6, 1996, Commission Agenda Conference at which the proposed territorial agreement is scheduled to be addressed. . ."); and Order No. PSC-13-0161-PCO-EM, issued April 19, 2013, in In re: Complaint of Robert D. Reynolds and Julianne C. Reynolds against the Utility Board of the City of Key West, Florida d/b/a Keys Energy Services regarding extending commercial electrical transmission lines to each property owner of No Name Key, Florida, ("Although Ms. Roemmele-Putney has been denied intervention, she shall be permitted to file a brief on the legal issues, if she so chooses. Also, the Commission has the discretion to hear from interested persons at its Agenda Conferences, and I will recommend to the Commission that Ms. Roemmele-Putney be permitted to address it on May 14<sup>th</sup>).

Motion for Leave to File Attached Comments is granted. Babcock Ranch may respond to TECO's comments within seven days of the issuance of this Order.

Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that TECO's Motion for Leave to File Attached Comments is granted. It is further

ORDERED that Babcock Ranch may file a response to TECO's comments within seven days of the issuance of this Order.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 12th day of June, 2014.



LISA POLAK EDGAR  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.