

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-14-0311-PCO-EM
ISSUED: June 13, 2014

ORDER DENYING MOTION TO STRIKE

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.¹ 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 (FAR), 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. Babcock Ranch filed its Response in Opposition to TECO's motion on May 16, 2014. TECO's motion was granted by Order No. PSC-14-0302-PCO-EM, issued June 12, 2014.

On May 20, 2014, Babcock Ranch filed a Motion to Strike the comments filed by FECA in response to the Commission's FAR request. Babcock Ranch contended that even though Section 120.542, Florida Statutes (F.S.), and Rule 25-9.044(2), F.A.C., permit comments by "interested persons" on petitions for waiver of administrative agency rules, FECA is not an

¹ 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.

interested person because its interest in this proceeding is purely speculative. Babcock Ranch asserted that FECA has not shown that it or its member electric cooperatives will 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.² According to Babcock Ranch, the facts of this case are unique and not likely to be repeated to harm FECA's or its member cooperatives' interests, and FECA had failed to request leave of the presiding officer to file its comments. Babcock Ranch requested that all of FECA's comments be stricken from the record of this proceeding, or in the alternative, those comments relating to any matters other than the petition for rule waiver should be stricken.

On May 27, 2014, FECA filed its response to Babcock Ranch's motion to strike, stating that FECA filed its comments on Babcock Ranch's petition in accordance with the Commission's FAR notice as Section 120.542, F.S., and Rule 25-9.044(2), F.A.C., permit. FECA argued that it has not requested party status in the case and is not subject to the standards for participation as a party. FECA asserted that all of its comments were directed toward the rule waiver petition because the issues raised by Babcock Ranch's notice of new municipal electric utility and the request for rule waiver are co-dependent and cannot be addressed separately. FECA also contended that Babcock Ranch had not identified which specific portions of its comments were related to matters other than the rule waiver petition. FECA argued that it was not required to seek permission from the presiding officer to file comments, because the Commission had already invited comments in its FAR notice.

The Commission will address Babcock Ranch's entire case through its PAA procedure at a regularly scheduled and properly noticed Agenda Conference, at which all interested persons will be invited to participate. The Commission also invited comments on Babcock Ranch's petition in its March 28, 2014 FAR notice. Babcock Ranch suggested that FECA 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 rule waiver or other 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.


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 an organization representing rural electric cooperative utilities subject to the Commission's regulation, FECA has an interest in matters that affect the scope and effectiveness of that authority, and the Commission may benefit from its perspective.

² See AgriCo Chemical Company v. Department of Environmental Protection, 406 So. 2d 478 (Fla. 1st DCA 1981).

Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that Babcock Ranch's Motion to Strike is denied.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 13th day of June, 2014.


LISA POLAK EDGAR
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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.

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.