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-EI Filed: June 19, 2014

LEE COUNTY ELECTRIC COOPERATIVE'S RESPONSE IN OPPOSITION TO THE BABCOCK RANCH'S MOTION FOR OFFICIAL RECOGNITION

Lee County Electric Cooperative ("LCEC") files its response in opposition to the Motion for Official Recognition dated June 12, 2014 (the "Motion") by the Babcock Ranch Community Independent Special District ("Babcock"). Official recognition should be denied, and the arguments related thereto rejected, because of the Motion's continued reliance on blatant and repeated misquotations of Chapter 2007-306, Laws of Florida (the "Babcock Special Act").

Babcock has gone to great lengths to try to convince the Commission, beginning with the caption of the proceeding itself, that it is authorized to serve as a "new electric service provider" and thus has the preemptive authority to provide "electric service" within its boundaries. In the Motion, Babcock cites Section 6(7)(a) of the Babcock Special Act as the essential provision underlying its extraordinary claim to an exclusive right to provide "electric service" in LCEC's pre-existing exclusive "electric service" territory. As a preliminary matter, Babcock mistakenly cites Section 6(7)(a) of the Babcock Special Act when it apparently intends to cite Section 6(7)(u). Much more importantly, Section 6(7)(u) of the Babcock Special Act does not use the oft-quoted term "electric service" at all. In fact, the term "electric service" does not appear anywhere in the Babcock Special Act.

Instead, the Babcock Special Act simply states that Babcock has the power "[t]o provide electricity and related infrastructure and to enter into public-private partnerships and agreements as may be necessary to accomplish the foregoing." Babcock Special Act at §6(7)(u). Contrary

to what Babcock would have the Commission believe, the provision of "electricity and related infrastructure" does not imply that Babcock is authorized to provide "electric service" as a retail serving electric utility. In fact, there are several ways that Babcock could "provide electricity and related infrastructure" without providing "electric service" as a retail utility. For instance, Babcock could "provide electricity" to itself for its own consumption or it could "provide electricity" by way of wholesale generation for resale to other utilities.[1]

Yet remarkably, Babcock repeatedly and incorrectly asserts that the operative section of the Babcock Special Act does use the explicit term "electric service" when it plainly does not. In apparent desperation, Babcock has directly misquoted Section 6(7)(u) not just once but at least four times in this proceeding, including twice in the instant Motion and twice in its response to LCEC's Motion to Dismiss.[2] To make matters worse, Babcock has then repeatedly emphasized the term "electric service", leaving the mistaken impression that the term appears in the Babcock Special Act, which it does not.[3] For example:

- Page 2 of the Motion misquotes the Babcock Special Act by asserting "the fact that the Legislature granted the District the power '<u>to provide electric service</u> …'" (emphasis added). The Legislature did no such thing; rather it simply authorized Babcock to provide "electricity and related infrastructure" not "electric service".

[1] LCEC discussed this in its Motion to Dismiss filed on April 15, 2014, at pages 6 and 7.

[2] For instance, on page 5 of Babcock's Response to LCEC's Motion to Dismiss, dated April 22, 2014, Babcock asserted that "[t]he Legislature provided no such limitation [i.e., comparable to the Lakewood Ranch Stewardship District] when it bestowed on the Babcock District the power **'to provide electric service and related infrastructure.'** " (Emphasis in original.) Likewise, footnote 2 of that same filing misquotes the Babcock Special Act by asserting that "[n]o conditions, limits or restrictions of any kind were placed on the Babcock District's power 'to provide electric service and related infrastructure.' " Indeed, like the Motion here, Babcock's filing on April 22, 2014, is filled with assertions of a purported authorization to provide "electric service" which does not itself appear in the Babcock Special Act. *See, e.g., Id.* at ¶¶ 11, 15, 18, 19, 21, 27, 29, 30, 35, 39, 45, 46, and 48.

[3] Note that the entire nature of this proceeding involves recognition of Babcock as an "electric service" provider, and it is the term "electric service" that Babcock insists appears in the Babcock Special Act, though it plainly does not.

- Page 3 of the Motion again misquotes the Babcock Special Act by asserting that it authorizes Babcock Ranch to " 'provide electric service and related infrastructure' " (emphasis added). Again, the actual language is "electricity" and not "electric service".
- Page 3 of the Motion then emphasizes in all-caps and bolded text that "[t]he fact is that the Legislature authorized the District **TO PROVIDE ELECTRIC SERVICE AND RELATED INFRASTRUCTURE."** (emphasis in original). Once again, Babcock forgets that the actual language is "to provide electricity and related infrastructure".
- Page 4 of the Motion further emphasizes in bolded and underlined text that "[i]n contrast to the Lakewood District Law, the Babcock Ranch Law grants the District the power **to provide electric service and related infrastructure**." (emphasis in original). Again, Babcock ignores that the actual language is "to provide electricity" not "electric service."

This mischaracterization is repeated throughout the Motion.

Not surprisingly, Babcock would prefer that the Babcock Special Act authorize it to provide "electric service"—so much so, apparently, that it is even willing to rewrite the Babcock Special Act for its benefit and then to chastise LCEC for not endorsing Babcock's misquoted version of the law. Indeed, Babcock asserts that LCEC "willfully ignores §6(7)(a) [sic] of the Babcock Ranch Law which provides the District the power to 'provide electric service and related infrastructure' within the District's boundaries." Motion at 3. As it turns out, Babcock is the only party willfully ignoring (and indeed misquoting) the plain language of the Babcock Special Act.

LCEC will not speculate on whether there was intent to mislead the Commission. Regardless of intent, the fact is that Babcock's repeated and blatant misquotations of the statutory language indeed mislead this tribunal, the parties and other interested persons. Even

where official recognition is ordinarily given, this level of improper argument should result in denial of the request.

WHEREFORE, LCEC respectfully requests that the Commission deny the request for official recognition sought by Babcock, and to provide any other relief that may be appropriate.

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