BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice Pursuant to Rule 25-9.044, Florida Administrative Code of New Electric Service Provider, Babcock Ranch Community Independent Special District, and Request for Partial Waiver	Docket No. 140059-EM Filed: June 20, 2014

BABCOCK RANCH COMMUNITY INDEPENDENT SPECIAL DISTRICT'S RESPONSE TO 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

The Babcock Ranch Community Independent Special District ("Babcock Ranch District" or "District"), by and through its undersigned counsel, provides this response to the comments filed by Tampa Electric Company ("Tampa Electric").

1. Tampa Electric alleges that Commission acknowledgment of the Babcock Ranch District as a new electric service provider would be detrimental to all electric customers in Florida (Comments, p.1). The District's Notice discloses that there are only five small, current customers served by LCEC within the District's borders. LCEC's assets serving these customers are limited, significantly depreciated and inconsequential. All land in the District is owned by Babcock Property Holdings, Inc. ("BPH"), a principal proponent of the District's creation, and the entity most closely aligned with the District's future -- and whether the District can successfully achieve the 3 goals the Legislature has established for it when developing land within the District: (1) to ensure cost-effective development and administration of the District; (2) to develop the land in an environmentally friendly way; and (3) to avoid urban sprawl. The District is authorized to represent to the Commission that BPH, as the sole landowner and only

future customer of the District which is currently identifiable in the area established by the Legislature and identified in the Notice as the District's electric boundary, that BPH is in full agreement with the District's Notice and all positions taken to date by the District in this proceeding. BPH further completely supports this Commission granting the District's requests pursuant to the filed Notice. BPH is aware of no detrimental impact whatsoever, from its perspective as the sole identifiable customer of the District, from the Commission's acknowledgment of the District's legislatively-authorized powers with regard to electric service. In fact, the District is authorized to inform the Commission that BPH, the sole landowner and potential customer, agrees with the District that the Babcock Ranch Law was passed, at least in part, to avoid the inefficiencies and excessive costs which BPH and the future residents of Florida's newest city would be forced to bear if electric service were to be rendered by two electric providers, based on arbitrary boundaries, agreed to between two utilities in 1965 when the property was totally undeveloped. The boundary indicated in the LCEC/FPL territory agreement remains to this day an arbitrary division of undeveloped property which bears no logical relationship to the contemplated development.

2. Tampa Electric claims that "Babcock Ranch is not intended to operate as an electric utility" and is not "a new municipal service provider, or a municipality for any purpose,…" Like LCEC, Tampa Electric refuses to recognize the Legislature's obvious intent to provide the District the power to make the best choice of three alternatives for providing electric service within District boundaries. The District may (1) provide electric service directly, hence the Legislature gave the District the power to construct the necessary electric-related "infrastructure"; or (2) the District may create a public-private partnership to provide such service; or (3) the District may contract with a third party to provide electric service.

3. The District may select any of these choices without acting in a manner inconsistent with Florida's Grid Bill. The ultimate provider of service, whether the District or otherwise, will be regulated by the Commission to the extent authorized by Florida law. Thus, the Babcock Ranch Law and the Grid Bill may be read to complement or supplement each other, consistent with the Supreme Court opinion in Banana River Props. v. City of Cocoa Beach, 287 So. 2d (1973).

4. The District, working closely and cooperatively with BPH, is convinced and confident of its ability to either provide electric service directly within the District's boundaries, partner with a third party to do so (public-private partnership), or contract with third parties for the provision of such service by such third party or parties – whichever method will be the most efficient, cost-effective, environmentally friendly means of having the lands within the District served, and while also avoiding urban sprawl – just as the Legislature intended in the Babcock Ranch Law.

5. Like it did in 1967 with the Reedy Creek Improvement District, the Legislature has demonstrated its confidence in the Babcock Ranch District to develop nearly 14,000 acres of previously undeveloped land and to be responsible for providing virtually all municipal functions, in addition to electric service, including water management and control, water and wastewater service and facilities, bridges and culverts, transportation and related infrastructure, transit services and facilities, environmental cleanup and remediation, environmental conservation and mitigation, parks, recreational, cultural and educational uses, libraries, fire protection, emergency medical and rescue response services, schools, security services, mosquito control, waste collection and disposal, affordable housing and housing assistance,

communications services, and health care facilities) within the District's legislatively-established boundaries.

6. Moreover, Florida's courts have confirmed confidence in the District's ability to carry out the tasks set forth by the Legislature in the Babcock Ranch Law by authorizing the District to issue $10.5 billion of bonds necessary to finance the construction of required assets to provide these municipal functions. Babcock Ranch Community Independent Special District, a local unit of special-purpose government organized and existing under the laws of the State of Florida v. Florida, Case No. 07-3981-CA, dated April 1, 2008. Specifically, paragraph 6 of the court's order states:

> The District was established for the purpose of financing and managing the acquisition, construction, installation, maintenance, and operation of facilities, services, and improvements within and without the boundaries of the District, to consist of other improvements permitted by the Act, including but not limited to roads, stormwater management, utilities, and other improvements (the "Capital Improvement Program").

7. Tampa Electric's comments suggest that language in the Babcock Ranch Law passed by the Florida Legislature in 2007 (Chapter 2007-306) which grants the District the power "to provide electric service and related infrastructure" within the District's boundaries, or to otherwise contract for such service, should be ignored by the Commission. Tampa Electric's argument is based on an erroneous reading of the Babcock Ranch Law. The Babcock Ranch Law directs that in exercising its powers, the District will act as a municipal service provider subject to Public Service Commission jurisdiction and not in a manner inconsistent with such jurisdiction. The Legislature took extra pains to reveal in the preamble and findings of the Babcock Ranch Law, the unique character and status it was bestowing on the District to create a virtual new city. Yet, Tampa Electric's comments would suggest that the Legislature was

ignorant of what it was doing by granting the District the power to provide electric service or otherwise contract therefor.

8. Tampa Electric appears to agree with LCEC that there is some "sanctity" of territorial agreements between existing electric utilities. However, even the terms of such territorial agreements, including the 1965 LCEC/FPL territorial agreement, provide that changed circumstances may occur which would cause their modification. The Legislature's passage of the Babcock Ranch Law in 2007 undoubtedly represents such a changed circumstance.

9. While Tampa Electric prefers to characterize the District's Notice as some usurpation of the Commission's prerogatives, the District merely is requesting that the Commission acknowledge the powers granted to the District by the Legislature. The District re-affirms its submission to the Commission's jurisdiction in the same manner, and to the same extent, as the other municipal electric service providers in this State.

10. The fact that a 1965 LCEC/FPL service territory agreement exists does not eliminate for all time the possibility that a third party electric service provider may appear to provide service in the area identified in such territory agreement. As the District has noted, the City of Winter Park entered the utility business in 2005 (and now contracts with a third party to operate its utility facilities) despite the existence of a territory agreement between Florida Power Company and another utility, which included the land within Winter Park's political boundary. The Commission only approved a territory agreement between the City of Winter Park and Duke Energy Florida, Inc., the successor to Florida Power Corp., by Order No. 130267-EU dated February 24, 2014, nearly 10 years after the City entered the electric utility business.

11. The Commission also has addressed situations where the Commission approved a territory agreement dividing land between Utility A and Utility B, only to discover that Utility A

also had agreed in a second territory agreement with Utility C that Utility C could serve a portion of the same service area which Utility A had agreed that Utility B could serve. Facts such as these refute the alleged "sanctity" of territory agreements which Tampa Electric attempts to bestow on them.

12. Finally, there should be no doubt that the Commission can withdraw or modify its approval of a territory agreement if it so desires in this proceeding together with the acknowledgment of the District as Florida's newest electric service provider. See, Peoples Gas v. Mason, 187 So. 2d 187, 189 (Fla. 1966), where the Court stated:

> Nor can there be any doubt that the commission may withdraw or modify its approval of a service area agreement, or other order, in proper proceedings initiated by it, a party to the agreement, or even an interested member of the public.

Territory agreements are not sacrosanct.

13. Tampa Electric states that it "relies heavily on the stability provided by the Commission's approval and enforcement of territorial agreements between and among electric utilities" and "makes significant decisions, both investment and operational, in reliance upon that stability." Tampa Electric is not authorized, by statute or territory agreement, to provide electric service within the boundary of the Babcock Ranch District. LCEC purchases 100% of its power requirements from FPL. LCEC's payments to FPL do not include payments to compensate FPL or otherwise reserve generating capacity on FPL's system. In short, LCEC has done little to date in the expectation of providing electric service in the District.

Respectfully submitted this 20th day of June, 2014.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy of the foregoing was furnished by electronic mail to the following this 20th day of June, 2014:

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