

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and Petition of the City
of Cape Coral, Florida, for an investigation
into the rate structure of Lee County Electric
Cooperative, Inc.

DOCKET NO.: 160060-EC

DATE: November 15, 2016

**LEE COUNTY ELECTRIC COOPERATIVE, INC.'S MOTION TO STRIKE THE CITY
OF CAPE CORAL'S UNAUTHORIZED FILING**

Lee County Electric Cooperative, Inc. ("LCEC"), pursuant to Rule 28-106.204, Florida Administrative Code, moves to strike portions of the City of Cape Coral's letter filed on November 10, 2016, and states:

On March 15, 2016, the City of Cape Coral ("Cape Coral") filed its complaint and petition challenging LCEC's rate structure. On April 12, 2016, LCEC filed a motion to dismiss and to strike parts of Cape Coral's complaint and petition ("Motion to Dismiss"). Cape Coral's response to the Motion to Dismiss followed on April 19, 2016. Prior to a ruling on LCEC's motion, on August 15, 2016, and with LCEC's consent, Cape Coral asked the Commission to hold the action in abeyance so that the parties might resolve the matter. On September 1, 2016, and October 5, 2016, Cape Coral submitted additional agreed-upon requests to hold the matter in abeyance.

Now, on November 10, 2016, Cape Coral has filed a letter, seeking not only to lift the abeyance but also asking the Commission to consider 54 pages of misguided argument in favor of allowing its complaint and petition to go forward.

Portions of the letter that go beyond lifting the abeyance should be struck as unauthorized. The Uniform Rules of Procedure only contemplate the filing of motions and "a response in opposition" to each motion—that is all. *See* Fla. Admin. Code R. 28-106.204. Cape Coral's letter is an obvious attempt to offer additional material to bolster its previously filed response in

opposition to LCEC's Motion to Dismiss. But the Rules only authorize "a response in opposition." Cape Coral filed that single authorized response months ago.¹

Because nothing in the Uniform Rules or the Commission's rules contemplate supplemental filings beyond a motion and a response, the Commission has consistently disallowed such unauthorized filings. *See, e.g., In Re: Petition for Increase in Rates by Florida Power & Light Co.*, Order No. PSC-16-0323-PCO-EI, Docket No. 160021-EI (August 9, 2016); *In Re: Petition for Increase in Rates by Florida Power & Light Co.*, Order No. PSC-09-0280-PCO-EI, Docket No. 080677-EI (Apr. 29, 2009); *In Re Bellsouth Telecommunications, Inc.*, Order No. PSC-04-0636-FOF-TL Docket No. 031038-TL, (July 1, 2004); *In re: Complaint against Verizon Florida, LLC and MCI Communications Services, Inc.*, Order No. PSC-11-0359-PCO-TP, Docket No. 110056-TP (Aug. 26, 2011) at 1. In accordance with its long-standing practice, the Commission should disallow those portions of Cape Coral's letter that reargue its previously filed response in opposition to LCEC's Motion to Dismiss.

WHEREFORE, LCEC respectfully requests that the Commission strike Cape Coral's unauthorized filing.

¹ To the extent Cape Coral would characterize its letter as a motion, the letter fails to comply with Rule 28-106.204(3), which requires all motions other than a motion to dismiss include a statement that the movant has conferred with the opposing party and whether that party objects to the motion.

Respectfully submitted this 15th day of November, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by electronic mail to: Brian P. Armstrong, P.O. Box 5055, Tallahassee FL 32314-5055 [Brian@brianarmstronglaw.com]; Dolores Menendez, City of Cape Coral, 1015 Cultural Park Boulevard, Cape Coral FL 33990 [dmenendez@capecoral.net]; Danijela Janjic, Office of the General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850 [djanjic@psc.state.fl.us] this 15th day of November, 2016.

/s/ D. Bruce May, Jr.

D. Bruce May, Jr.