
IN THE SUPREME COURT OF FLORIDA

CASE NO. 01-373

LEE COUNTY ELECTRIC
COOPERATIVE, INC.,

Appellant,

vs.

E. LEON JACOBS, JR., et al.,

Appellees.

ON REVIEW FROM THE PUBLIC SERVICE COMMISSION
Case No. PSC-01-0217-FOF-EC

REPLY BRIEF OF APPELLANT

HENDERSON FRANKLIN
STARNES & HOLT
John A. Noland
P.O. Box 280
Ft. Myers, Florida 33902

HOLLAND & KNIGHT LLP
Steven L. Brannock
D. Bruce May
P.O. Box 1288
Tampa, Florida 33601

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ARGUMENT IN REPLY

The briefs filed by Seminole and the Commission only serve to highlight the difficult task they face in this Court. First, although they both concede that Seminole is an "electric utility," they ask this Court to ignore the plain language of Section 366.04(2)(b), which confers jurisdiction to the Commission over the rate structure of *all* electric utilities. They then suggest that this Court ignore the purpose of the Grid Bill, which requires the Commission to exercise its powers to encourage electric power conservation and reliability within a coordinated grid. Finally, Seminole and the Commission ask this Court to rule that the Legislature intentionally left a regulatory gap with respect to Seminole's rate structure. Seminole argues that it has the power to adopt any rate structure it wishes, without any Commission oversight, even if its rate structure is not fair, just or reasonable, discourages conservation, and threatens reliability.

This Court should decline the invitation to ignore the letter and purpose of Section 366.04(2)(b). This Court should rule that the Commission has jurisdiction, thus giving effect to the plain language of the statute, fulfilling the purpose of the Grid Bill, and ensuring that there is no gap in rate structure regulation that would defeat the purpose of the statute.

The Commission's Exercise of Jurisdiction is Compelled by the Plain Language of the Statute.

One wonders how the statute at issue could be any clearer. The Commission has the power to "prescribe a rate structure for *all* electric utilities." § 366.04(2)(b) (emphasis added). Both Seminole and the Commission respond with the untenable argument that "all" really means "some." According to Seminole and the

Commission, the power to prescribe a rate structure for all electric utilities should be interpreted to read "all electric utilities selling at retail." As discussed in LCEC's Initial Brief, this Court may not add words to a statute or create limitations that do not otherwise exist. *See*, LCEC Initial Brief ("IB") at 14-17. Had the Legislature wished to narrowly restrict 366.04(2)(b) to retail sales, it would have been easy to do so by adding the word "retail" to the statute or by excepting wholesale sales of electricity by rural electric cooperatives from the application of Section 366.04. Indeed, the Legislature specifically excepted from the application of Section 366.04 certain sales of electricity at wholesale by investor-owned utilities. § 366.11, Fla. Stat. (2000).

¹ *See* IB at 15-16. The Legislature's decision to exempt only wholesale sales by investor-owned utilities must be interpreted as a decision not to exempt wholesale sales by rural electric cooperatives. *See* IB at 16.

As Seminole concedes, the Commission's interpretation of the statute must be overturned if it is "clearly contrary to the language of the statute." Seminole Brief ("SB") at 8, *citing*, *Greyhound Lines, Inc. v. Yarborough*, 275 So. 2d 1, 3 (Fla. 1973). It is "clearly contrary" to the statute to ignore the word "all", to add limitations that do not otherwise exist, and to infer an exemption that the Legislature expressly granted to investor-owned utilities but declined to grant in connection with rural electric cooperatives. IB at 16-17.

Left with nothing of substance, Seminole resorts to the simplistic argument that the statute must be ambiguous because of the split of opinion among the Commissioners. The argument that a difference of opinion creates an ambiguity is

¹ Rural electric cooperatives, including Seminole, are not investor-owned utilities. § 366.02(2), Fla. Stat. (2000).

often raised and just as often rejected. The fact that parties may argue over the interpretation of a statute or a contract provision does not make the provision ambiguous. *See Reno v. Koray*, 515 U.S. 50, 64-65 (1995) (a statute is not ambiguous just because there is a split of judicial authority). Indeed, if Seminole were correct on this point, there would never be a role for this Court.

This Court is the final arbiter of the Commission's jurisdiction. As the Commission concedes, this Court must decide *de novo* whether the statute at issue is clear. Commission Brief ("CB") at 5. Unless this Court finds an ambiguity in the simple phrase "all electric utilities" the decision must be reversed.

Seminole's Rate Structure is at Issue in this Case.

Implicitly recognizing the weakness of its argument that "all" electric utilities means all electric utilities except Seminole,² Seminole argues that its new rate schedule does not implicate the Commission's rate structure jurisdiction. To the contrary, LCEC's complaint clearly concerns rate structure issues. As explained in its initial brief, LCEC seeks to invoke the Commission's jurisdiction because Seminole has chosen a rate structure that does not properly mirror the costs of producing electricity. Seminole's rate structure shifts a higher percentage of its fixed costs from the existing "demand charge" to a new "production and fixed energy charge." *See* IB at 5-8. As a result, Seminole's new rate structure discourages conservation and threatens reliability. *See* IB at 19-20.

Seminole first argues that the Commission's rate structure jurisdiction does not include the power to review the method by which an electric utility structures its demand and energy charges. Significantly, the Commission reached no such conclusion. Instead, the Commission ruled that it had no rate structure jurisdiction over the wholesale sales of electric cooperatives:

"[W]e find that there are cogent reasons to believe that the Legislature did not intend for our rate structure jurisdiction to extend to the *wholesale rate structure* at issue in this case . . . [W]e believe that the Legislature did not intend our rate structure jurisdiction to apply to *wholesale rates* set by the terms of a negotiated contract between rural electric cooperatives."

In re: Complaint and petition by Lee County Electric Cooperative, Inc. for an investigation of the rate structure of Seminole Electric Cooperative, Inc.,

01 F.P.S.C. 1:375, 381-82, 2001 Fla. PUC LEXIS 150, *16 (2001) (hereinafter the "Order")

² As pointed out in LCEC's initial brief, Seminole is the only rural electric cooperative in Florida currently selling power only at wholesale.

(emphasis supplied).

The Commission's decision to rely on the distinction between retail and wholesale sales is important because it is an implicit concession by the Commission that demand and energy charges are normally a matter within the Commission's rate structure jurisdiction. This leaves Seminole and the Commission with only the argument, already refuted above, that "all electric utilities" must be construed to exclude sales at wholesale.

The Commission was careful not to adopt the narrow construction of "rate structure" urged by Seminole because such a construction would have been contrary to the Commission's own rules and its past interpretation of its rate structure jurisdiction.³ The Commission's rules define rate structure as "the classification system used in justifying different rates and, more specifically, to the rate relationship between various customer classes, *as well as the rate relationship between members of the customer class.*" Fla. Admin. Code R. 25-9.051(7) (emphasis supplied). This definition is completely contrary to Seminole's suggestion that rate structure jurisdiction is limited to only an examination of rates between various customer classes. See SB at 12-13. The rule makes clear that rate structure includes an examination of the rate relationship between members of a single customer class. Fla. Admin Code R. 25-9.051(7).

Thus, rate structure refers to the methods by which a utility chooses to recover its costs, not only among different classes, but within the same class. As the Commission has noted in describing the difference between "rate making" and "rate structure," "rate making relates to the determination of dollars required by a

³ Indeed, a contrary interpretation would have resulted in an amendment to its rule defining rate structure without going through appropriate rulemaking procedures. See §§ 120.52(15), 120.54, 120.56(4), Fla. Stat. (2000).

utility while rate structure relates to the method by which those dollars shall be generated through the schedules of the utility." *See In re: General investigation of fuel adjustment clauses of electric companies*, Docket No. 74680-CI, Order No. 6899, 1975 Fla. PUC Lexis 171 at *8 (1975).

The determination of the "method by which those dollars shall be generated through the rate schedules of the utility" is precisely what is at issue in this case. LCEC does not complain about the total amount of revenues required to be generated by Seminole's rates. LCEC's complaint refers to the method by which Seminole recovers those costs through its allocation of demand and energy charges. As described in detail in the initial brief, the method chosen by Seminole arbitrarily removes incentives for a customer to limit peak demand and as a result, inhibits energy conservation and favors the construction of otherwise uneconomic new generation, all of which is directly contrary to the Grid Bill. *See* IB at 20-22.

Several previous Commission cases describing its rate structure jurisdiction are illustrative. For example, the Commission has specifically determined that questions of demand and energy charges are within its rate structure jurisdiction. *See In re: Show cause to electric utilities as to why they should not eliminate declining block rates from their tariffs; In re: Coordinated decision making affecting the demand for electricity in Florida*, 80 F.P.S.C. 4:44, 1980 Fla. PUC Lexis 418 (1980). In these dockets, the Commission reviewed the rate structures at issue "to determine if their rate structures encouraged the wasteful use of energy." *Id.* at 45. The Commission required the elimination of declining block rates and the utilization of demand and energy charges to accurately reflect the true costs of providing service. *Id.* at 48-49. This is precisely what LCEC asks the Commission to do here – ensure that Seminole's demand and energy charges properly mirror the

cost of service.

Similarly, the Commission has utilized its rate structure jurisdiction to review the allocation between base facility and gallonage charges within a single customer class of water customers. *See In re: Application for rate increase in Brevard, Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, Volusia, and Washington Counties by Southern States Utilities, Inc.; Collier County by Marco Shores Utilities (Deltona); Hernando County by Spring Hill Utilities (Deltona)*, 98 F.P.S.C. 1:522, 537, 1998 Fla. PUC Lexis 147 (1998) ("some of the common rate structure changes include a change from a flat to metered rate (water and waste water), elimination of a minimum charge structure, and a change in the percentage revenue allocation between *base facility and gallonage charges*.") The base facility and gallonage charges at issue in that docket were substantially equivalent to the demand and energy charges at issue in this case. *Id.* at 537. *See also In re: Proposed tariff filing by the Withlacoochee River Electric Cooperative, Inc. to reduce rates for RS, GS, and IS customer classes*, 88 F.P.S.C. 12:202, 202, 1988 Fla. PUC Lexis 1859 (1988) (under the Commission's rate structure jurisdiction, tariff filings of cooperative utilities are reviewed to eliminate any unreasonable discrimination between, *and within*, the customer classes); *In re: Franchise Fee Rules 25-4.110, 25-6.100, 25-7.85, and 25-10.03, F.A.C.*, 82 F.P.S.C. 10:216, 218, 1982 Fla. PUC Lexis 197 (1982) (method of collecting franchise fees is a matter within the Commission's rate structure jurisdiction).

This Court's only decisions concerning the Commission's rate structure jurisdiction adopted the Commission's historical view that rate structure includes the rate structure within, as well as between, classes. *See Polk County v. Florida*

Pub. Serv. Comm'n., 460 So. 2d 370 (Fla. 1984); *City of Tallahassee v. Mann*, 411 So. 2d 162 (Fla. 1981). In these decisions, this Court upheld the Commission's decision that it had subject matter jurisdiction to consider the validity of a surcharge on customers located outside the City's municipal boundaries. Thus, even though only one customer class was at issue, this Court decided that the Commission had jurisdiction to review and prescribe the rate structure proposed by the utility.⁴ *Polk County*, 460 So. 2d at 372-73; *Mann*, 411 So. 2d at 163-64. There is no suggestion in this Court's opinion that rate structure jurisdiction was limited to only distinctions between different customer classes.

In short, there is no support for Seminole's suggestion that the allocation of demand and energy charges among members of a single class of wholesale customers is not an issue of rate structure. Interestingly, the Commission reached no such conclusion. Instead, the Commission focused on whether it had rate structure jurisdiction over wholesale electric cooperatives. This conclusion is contrary to the all inclusive language in the statute and must be reversed.

**Acceptance of Jurisdiction Fits Squarely
Within the Purpose of the Grid Bill.**

Seminole argues that the limited purpose of Commission regulation is to protect consumers from the exercise of monopoly power by utility companies. No doubt this is an important purpose of utility regulation, but it is certainly not the only

⁴ Customer class refers to "any group of customers distinguishable by load, consumption or other characteristics." Fla. Admin. Code 25-9.051(8). There was no argument in *Polk* or *Mann* that retail customers inside and outside the city limits were distinguishable in any way other than their geographical location.

purpose.⁵ Seminole completely overlooks the Grid Bill, the very statute that extended the Commission's jurisdiction over the rate structure of all electric utilities, including rural electric cooperatives. The Grid Bill gives the Commission the broad power to "require electric power conservation and reliability within a coordinated grid . . ." § 366.04(2)(c). The statute must be "liberally construed" for the accomplishment of its purposes. § 366.01, Fla. Stat. (2000).

LCEC's Initial Brief showed that review of Seminole's rate structure fits squarely within the power granted by the Commission to encourage conservation and ensure a reliable grid. § 366.04(2)(c). LCEC has petitioned the Commission because Seminole's new rate structure discourages conservation and threatens the reliability of the grid. *See* IB at 19-21. Seminole's response is to suggest that Section 366.04(2)(b) and (2)(c) must be read in isolation from one another. In essence, Seminole suggests that in determining the scope of the Commission's rate structure jurisdiction in Section 366.04(2)(b), this Court should turn a blind eye to the purpose of the Grid Bill as expressed in Section 366.04(2)(c). Such self-imposed myopia is contrary to every canon of statutory construction which requires legislative intent to be discerned by reviewing the statute as a whole. *E.g., Palm Beach Canvassing Bd. v. Harris*, 772 So. 2d 1273, 1287 (Fla. 2000). This is particularly true when the two provisions at issue are within the same section and were enacted at the same time as part of the comprehensive Grid Bill.

Indeed, the very fact that Seminole must artificially parse the statute into isolated sections to succeed shows the fundamental weakness in its position. This

⁵ Interestingly, the Commission cites to an article confirming that the intent behind the Grid Bill was to give the Commission the power to ensure a coordinated energy grid that "would use energy more efficiently." *See* CB at 10-11, *citing*, R. Bellak, M. Carter Brown, *Drawing the Lines: Statewide Territorial Boundaries for Public Utilities in Florida*, 19 Fla. St. U.L. Rev. 407, 414 (Fall 1991)

same weakness is also revealed by Seminole's insistence that the discussion in LCEC's brief concerning the problems caused by Seminole's rate structure is irrelevant. SB at 1 n.1. Seminole can hardly argue that its new rate schedule does not impact the Commission's rate structure jurisdiction and then complain when LCEC demonstrates how Seminole's new rates are structured and why this rate structure impacts the Commission's duty to promote conservation and reliability. Obviously, LCEC is not asking the Court to rule on the merits, but only to affirm that the Commission is the proper forum for the resolution of its concerns.

Nor does it matter that Seminole's rate structure is imposed by contract. Once again, the Commission has the duty to review the rate structure of all electric utilities. There is no exception for rate structures set by contract. What would be the purpose of such an exception? A rate structure that improperly discourages load management and is contrary to the interest of conservation and reliability is no less harmful because the rates were set pursuant to contract instead of unilaterally.⁶

Seminole concedes that the parties cannot limit by contract the Commission's jurisdiction. SB at 15. The fact is, Seminole and LCEC did not limit their remedies by contract. There is nothing in the contract that prohibits LCEC from petitioning the Commission if it is unsatisfied with the new rate structure.

LCEC's complaint against Seminole has nothing to do with the parties' contract. LCEC does not complain about the process by which the rate structure was adopted. LCEC does not ask the Commission to review Seminole's rates as opposed to its rate structure. Nor does it ask the Commission to resolve a contract

⁶ For example, what if Seminole imposed a rate structure that so weakened LCEC financially that it was forced out of business, thus leaving LCEC's 139,000 customers without a supplier of electricity. Does Seminole suggest that the Commission would have no role in reviewing this sort of destructive rate structure despite its direct impact on LCEC's customers?

dispute. LCEC seeks only to invoke the Commission's jurisdiction to review Seminole's rate structure pursuant to Section 366.04(2)(b).

Seminole places much reliance on *United Tel. Co. of Florida v. Pub. Serv. Comm'n*, 496 So. 2d 116 (Fla. 1986). *United Telephone* is irrelevant. As noted by Commissioner Jacobs in his dissent, the question before the Court in *United Telephone* was limited to whether the Commission had jurisdiction to rewrite revenue sharing contracts between telephone companies. The Court examined Chapter 364, Florida Statutes, which authorizes the Commission to regulate telephone companies, and found no authority under that statute to alter the contract in question. This Court did not hold that the Commission is precluded from asserting jurisdiction over a contractually determined rate structure of an electric utility like Seminole. In sharp contrast to *United Telephone*, LCEC seeks to invoke the Commission's specific statutory jurisdiction to prescribe a rate structure for all electric utilities. The Commission's legal staff reached precisely the same conclusion as Commissioner Jacobs, determining that the contract between the parties did not in any way alter the Commission's jurisdiction to prescribe a wholesale rate structure for all rural electric cooperatives. (R. 287.)

This Court Should Not Imply an Intentional Regulatory Gap.

The Commission and Seminole acknowledge that their interpretation of 366.04(2)(b) leaves a regulatory gap and suggest that this gap is intentional because rural electric cooperatives have traditionally been self-governing. Again, they miss the point. Establishing a limited rate structure jurisdiction in no way interferes with traditional self-governance. It merely ensures that there is a forum to regulate the rate structure of all electric utilities, including self-governing rural electric cooperatives.

Clearly, there is a legitimate state interest in such regulation. The United States Supreme Court in its opinion affirming state jurisdiction over a wholesale rural electric cooperative recognized that a cooperative's self-governing method of ownership did not preclude the risk that such an entity might engage in "economically inefficient behavior." *Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n.*, 461 U.S. 375, 394 (1983).

The Commission suggests that the Rural Utilities Service ("RUS") somehow fills this regulatory gap. This is simply not the case. RUS is nothing more than a lender and reviews Seminole's rate structure only for the purpose of determining whether it will generate sufficient revenue to retire its debt. RUS has no interest in whether the rate structure is designed to promote conservation and ensure reliability of the grid, nor any interest in whether the rate is fair, just and reasonable. That review is for the Commission under Section 366.04(2)(b). Thus, RUS review cannot substitute for the broad review compelled by Section 366.04.

The Commission also suggests that at the time the Florida Legislature enacted the Grid Bill in 1974, there was a "presiding sentiment" that the REA (predecessor agency of the RUS) had preemptive federal jurisdiction over rural electric cooperatives. Not only is this cavalier speculation, it also directly contravenes the REA's own guidelines which were in existence prior to the Florida Legislature's enactment of the Grid Bill. Indeed, as noted by the United States Supreme Court, the REA bulletin in place in 1972 specifically recognized that the REA's jurisdiction was not preemptive of state regulation:

Borrowers must, of course, submit proposed rate changes to any regulatory commissions having jurisdiction and must seek approval in the manner prescribed by those commissions having jurisdiction.

Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n., 461 U.S. 375,

387-88 (1983)(quoting REA Bulletin 111-4 (1972)). Notably, the Commission itself, in a 1981 order, held that the exercise of its rate structure jurisdiction over a rural electric cooperative would not be contrary to the policies of the REA.

Specifically, the Commission stated:

We have reviewed the statutes that establish the Rural Electrification Administration (REA) and the regulations it has promulgated. Neither the statutes nor the rules address any subject other than granting loans to cooperatives, and, neither specifies any detailed conditions of such loans. The Cooperative has provided a copy of an excerpt from a REA guideline on rate structures. However, the guideline appears to be advisory only, and does not contain any mandatory provisions. The Cooperative has provided no other evidence of contravention of REA policy or regulation.

In re: Show cause to electric utilities as to why they should not eliminate declining block rates, 81 F.P.S.C. 5:17, 17, 1981 Fla. PUC Lexis 492 (1981). The Commission's Brief overlooks this order.

If this Court were to interpret the statute so as to leave this regulatory gap, the circuit court, instead of the Commission, will be forced to undertake the complex task of analyzing Seminole's rate structure to determine whether it is within generally accepted rate-making procedures. *See* IB at 25-27. The Commission's response implicitly acknowledges this problem by reassuring this Court that the doctrine of primary jurisdiction will permit the circuit court to send this question to the Commission.

⁷ This begs the question, of course, why this statute should be interpreted so as to place complex rate structure questions within the jurisdiction of the circuit court

⁷ *See Flo-Sun, Inc. v. Kirk*, 783 So. 2d 1029, 1039-40 (Fla. 2001) (the judiciary should stay its hand and defer to the agency to “maintain uniformity” and to take advantage of the agency’s “specialized expertise”). Of course, there is no requirement that the circuit court take advantage of the discretionary doctrine of primary jurisdiction, thus raising the specter that various circuit courts around the state will reach inconsistent positions on important utility policy questions. *Id.* at 1039.

instead of the Commission, particularly when the Commission has rate structure jurisdiction over all electric utilities.

Seminole notes that the circuit court will have jurisdiction over any contractual claims LCEC chooses to bring against Seminole. Although circuit courts are equipped to deal with issues of contract construction, the circuit court is not equipped to determine an appropriate rate structure consistent with the purposes of the Grid Bill. In this regard, Seminole misunderstands the division of responsibilities between the Commission and the circuit court. LCEC asks the Commission to deal only with the narrow question of Seminole's rate structure. All other issues relating to the amount of the rates charged in the fulfillment of Seminole's contract obligations can be brought before the circuit court, which is well-equipped to deal with routine contract issues.

The Commission's Past Inaction is Irrelevant.

Seminole is forced to concede at the outset that the Commission's failure to exercise rate structure jurisdiction in the past does not prevent it from exercising such jurisdiction in the future. SB at 19. The Commission's powers do not atrophy with disuse. *See* IB at 27-30.

Moreover, it is misleading to suggest that the Commission has made an affirmative decision not to regulate in this area. As the Commission itself notes in the order under review, this issue is "one of first impression." *See* Order, 01 F.P.S.C. 1:375, 377; SB at 20 ("this is the first case in which this particular jurisdictional issue has been squarely presented for a Commission determination"). The fact that the Commission has not acted previously merely reflects the fact that no party has found it necessary to petition the Commission concerning issues of wholesale rate structure. As noted by LCEC's Initial Brief, the Commission had no

obligation to affirmatively test its jurisdiction in the absence of such a request. *See* IB at 30, *citing, United States v. American Union Trans., Inc.*, 327 U.S. 437, 455 n.18 (1946).

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Seminole also ignores that the Commission's earlier decision not to regulate in this area was influenced by misleading arguments submitted by Seminole. *See* IB at 28-29. Seminole incorrectly argued to the Commission in 1977 that the Commission had no jurisdiction over wholesale rate structure because it was pre-empted by FERC. In fact, FERC's predecessor had ruled ten years before that it did not have jurisdiction over the wholesale sales of rural electric cooperatives. *See Dairyland Power Cooperative*, 37 F.P.C. 12 (1967). Seminole now acknowledges that there is no pre-emption. *See* SB at 23, *citing, Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n*, 461 U.S. 375 (1983). Seminole's misleading advice in 1977 should not excuse the Commission's inaction now.

The Commission's historical inactivity is more an answer to Seminole's parade of horrors than it is a reflection of its jurisdiction. Seminole's suggestion that LCEC seeks a dramatic expansion of the Commission's jurisdiction is belied by the lack of previous controversies over wholesale rate structure.⁹ The past 25 years of utility regulation since the enactment of the Grid Bill should suggest that controversies over the rate structure of wholesale utilities are relatively rare. This does not mean that when such controversies exist, however, as in this case, that the Commission should decline to exercise jurisdiction. The sole question is whether

⁸ Similarly, it is irrelevant that LCEC has never previously found it necessary to complain about Seminole's rate structure. The whole point of LCEC's complaint is that Seminole's new rate structure is a dramatic departure from its historical rate structure.

⁹ Seminole presented no evidence to the Commission below that the acceptance of jurisdiction would result in a dramatic expansion of its workload.

the Legislature has granted jurisdiction over Seminole's rate structure. If it has, the Commission acknowledges that it must exercise that jurisdiction. *See* CB at 25.

CONCLUSION

For all of the foregoing reasons, the Commission's order rejecting the recommendations of its staff and granting the motion to dismiss should be reversed. This case should be remanded with instructions to reinstate LCEC's Complaint and to conduct appropriate regulatory proceedings.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to: **Richard Melson, Esquire**, Hopping, Green, Sams & Smith, P.A., 123 South Calhoun Street, Tallahassee, FL 32301; **William Cochran Keating, Esquire**, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850; **Robert A. Mora, Esquire**, Allen Law Firm, Post Office Box 2111, Tampa, FL 33601; and **Timothy Woodbury**, Seminole Electric Cooperative, Inc., Post Office Box 272000, Tampa, FL 33688-2000 on this ____ day of July, 2001.

CERTIFICATE OF TYPEFACE COMPLIANCE

Counsel for Appellant, Lee County Electric Cooperative, certifies that this Reply Brief is typed in 14 point (proportionately spaced) Times New Roman, in compliance with Rule 9.210 of the Florida Rules of Appellate Procedure.

John A. Noland
Florida Bar No. 175179
HENDERSON FRANKLIN
STARNES & HOLT
P.O. Box 280
Ft. Myers, FL 33902
Telephone: (941) 337-8438

Steven L. Brannock
Florida Bar No. 319651
HOLLAND & KNIGHT LLP
Post Office Box 1288
Tampa, Florida 33601-1288
Telephone: (813) 227-8500
Facsimile: (813) 229-0134

D. Bruce May
Florida Bar No. 354473
Karen D. Walker
Florida Bar No. 0982921
HOLLAND & KNIGHT LLP
Post Office Drawer 810
Tallahassee, Florida 32302
Telephone: (850) 224-7000

Attorneys for Appellant
Lee County Electric Cooperative, Inc.

TPA1 #1152426 v2