

**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. _____

Filed: March 15, 2016

**COMPLAINT AND PETITION OF THE CITY OF CAPE CORAL, FLORIDA,
FOR AN INVESTIGATION INTO THE RATE STRUCTURE
OF LEE COUNTY ELECTRIC COOPERATIVE, INC.**

BEFORE THIS COMMISSION, the City of Cape Coral, Florida (“Cape Coral” or “City”), pursuant to Section 366.04, Florida Statutes and Sections 25-9.050 through 25-9.056, Florida Administrative Code (“FAC”), files this Complaint against Lee County Electric Cooperative, Inc. (“LCEC”) for its discriminatory, arbitrary, unfair, unjust, and unreasonable rate structure, and petitions the Florida Public Service Commission (“Commission”) to investigate said rate structure as adopted in LCEC rate schedules on file with the Commission. In support hereof Cape Coral states as follows:

I. Service

The name, address and telephone number of Complainant/Petitioner, the City of Cape Coral, Florida, for purposes hereof are as follows:

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The agency affected by this Complaint and Petition is:
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

II. **Background**

1. **Lee County Electric Cooperative, Inc.** LCEC is a not for profit rural electric distribution cooperative which is organized under Chapter 425, Florida Statutes. LCEC is engaged in the distribution and sale of electric energy within its Commission approved service territory located in the predominantly rural areas of five southwest Florida counties: Charlotte, Collier, Hendry, Broward and Lee. LCEC's address is 4980 Bayline Drive, North Fort Myers, Florida 33917.

2. Since LCEC is a not for profit cooperative, each entity receiving electric service from LCEC is a member of the cooperative and owner of the cooperative's assets ("member/owners").

3. LCEC serves approximately 202,000 member/owners, nearly 89,000 or approximately forty-five percent (45%) of whom are located in Cape Coral.

4. LCEC purchases all of its power requirements from Florida Power & Light Company (FPL) pursuant to a wholesale power agreement, thus LCEC is a distribution only electric cooperative.

5. Upon information and belief, on or about December, 2014, LCEC sold all of its 230 kv transmission assets to FPL.

6. Chapter 425, Florida Statutes, the statute pursuant to which LCEC was organized, is known as the Rural Electric Cooperative Law (hereafter the “Rural Cooperative Law”). See, section 425.01, Florida Statutes. The Rural Cooperative Law sets forth the purpose, powers and duties of rural cooperatives operating in the State of Florida.

7. LCEC transferred to FPL in 2015 thousands of acres of service territory inside of which LCEC served only five buildings (a melon barn, a sod maintenance barn, a pump house, a building for storage of mining equipment and a fire station); in a territory swap. The obvious rural nature of this vast territory is demonstrative of those predominantly undeveloped portions of LCEC’s remaining service territory. Former LCEC customers in the area and any new customers in the territory will now receive FPL’s lower monthly rates and contributions in aid of construction charges.

8. Section 425.02 of the Rural Cooperative Law, titled “Purpose,” provides that rural cooperatives such as LCEC are organized for the sole purpose “[of] supplying electric energy and promoting and extending the use thereof in rural areas.”

9. Section 425.03(1) of the Rural Cooperative Law defines a “rural area” as “any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough having a population in excess of 2,500 persons.”

10. Section 425.04(4) of the Rural Cooperative Law, titled “Powers,” further provides that a rural cooperative shall have the power “to generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10 percent of the number of its members.”

11. Upon information and belief, Cape Coral is the only major city located within LCEC’s service territory and is the location of approximately 45 percent of LCEC’s customer base and annual revenue (approximately \$175 million of LCEC’s total revenue of approximately \$400 million is generated from within the City).

12. Cape Coral is the only major city out of Florida’s top 10 which receives electric service from a rural electric cooperative:

- a. Jacksonville: municipal/ Jacksonville Electric Authority
- b. Miami: investor owned utility (“IOU”)/ Florida Power & Light
- c. Tampa: IOU/ Tampa Electric
- d. Orlando: municipal/ Orlando Utilities Commission
- e. St. Petersburg: IOU/ Duke Energy Florida
- f. Hialeah: IOU/ Florida Power & Light
- g. Tallahassee: municipal/ City of Tallahassee
- h. Fort Lauderdale: IOU/ Florida Power & Light
- i. Port St. Lucie: IOU/ Florida Power & Light
- j. Cape Coral: rural electric cooperative/ Lee County Electric Cooperative, Inc.
[see www.florida-demographics.com]

13. In a “Frequently Asked Questions” area on LCEC’s website, LCEC explains the unique character of its member/owners as follows:

Because the members own LCEC, members are responsible for providing a portion of the capital necessary to operate LCEC. This portion of the operating money is provided through your electric charges. Business expenses involved in operating LCEC include paying the principal and interest on debt, purchasing equipment, paying wages, building substations, purchasing poles and electric lines, and providing electrical services to all of our members.

14. Despite its characterization as a not for profit entity, in addition to the operating expenses identified above, LCEC collects profits from its member/owners each year, referred to as “equity capital.” Total equity capital maintained by LCEC exceeds \$350 million. Equity capital is explained by LCEC to its member/owners as follows: “Throughout the year LCEC pays all of its operating expenses from money collected through monthly billing. Once all the operating expenses are paid the amount left at year-end is our net margin.” Until returned to the member/owners this “net margin” or “equity capital” is no different than accumulated profits.

15. Upon information and belief, as early as November, 2015, LCEC has been consulting with a cost of service expert regarding a potential new cost of service study. Each day that existing LCEC rates and charges remain in effect, Cape Coral, its residents and businesses are paying discriminatory rates and charges that likely subsidize other LCEC customers. Any study performed by LCEC must be performed on an expedited basis and must include an analysis of the cost of serving electricity specifically within the municipal boundaries of the City of Cape Coral to eliminate such discrimination by reducing rates and charges collected from member/owners within the City.

16. **City of Cape Coral, Florida.** The City of Cape Coral, Florida, is located in Lee County, Florida and is a member/owner of LCEC. The City receives electric service from LCEC under different service classifications, including the residential service classification, in many locations throughout the City. Cape Coral is Florida’s tenth largest city.

17. Cape Coral possesses all of the characteristics of an urban area previously made noteworthy in prior Commission orders such as “sidewalks, underground utilities, phone, cable TV, sewer, garbage services and municipal police and fire protection” (see “In re: Petition to

resolve territorial dispute with Gulf Power Company in Okaloosa County by Choctawhatchee Electric Cooperative, Inc.,” Docket no. 100304, order no. 11-0340 issued August 15, 2011). Cape Coral also provides its inhabitants with central water service, is lighted by 12,000 of LCEC’s 18,000 street lights, operates centralized emergency management offices, public works and recreation departments, traffic control systems, paved roads, a municipal charter school system and other amenities typical of a city its size and sophistication.

18. In 2013, due to the urban nature of Cape Coral and the density of its population, LCEC served approximately 746 member/owners per square mile within the municipal boundaries of Cape Coral.

19. To compare, in 2013 LCEC served approximately 55 member/owners per square mile throughout the remainder of LCEC’s service territory which spans the predominantly rural areas of five counties, Lee, Charlotte, Hendry, Broward and Collier.

20. The service area of Cape Coral’s municipal boundaries is 119 square miles. LCEC’s service territory comprises 2,084 square miles. Thus, the municipal boundaries of Cape Coral constitute approximately 5 percent of LCEC’s service territory.

21. Upon information and belief, Cape Coral is the only major Florida city receiving electric service from a rural electric cooperative.

III. Franchise

22. LCEC uses Cape Coral’s streets, roads, rights of way and public utility easements located within the City’s municipal boundaries to provide electric service within the City. It is authorized to do so pursuant to a franchise agreement with the City originally adopted by Cape Coral Ordinance 36-71, and amended by Cape Coral Ordinance 63-86 (collectively referred to

hereafter as the “Franchise Ordinance”). LCEC accepted the terms of the Franchise Ordinance and the Franchise Ordinance became effective in 1971 and 1986, respectively.

23. Section 6 of the Franchise Ordinance states: “All rates and rules and regulations established by [LCEC] from time to time shall, at all times, be reasonable, and [LCEC] rates for electricity shall at all times be subject to such regulations as may be provided by law.”

24. As explained in this Complaint and Petition, Cape Coral believes that LCEC’s current rate structure is not premised upon proper cost causation principles and otherwise is unfair, unjust, unreasonable and results in discriminatory rates and charges to the City, its inhabitants and businesses.

IV. Material Differences Between Cape Coral and the Remainder of LCEC’s Service Territory Exist Which Justify the Creation of a New Service Classification

25. The facts presented in this Complaint and Petition reveal many unique circumstances pertinent to the current provision of service by LCEC within the municipal boundaries of the City of Cape Coral.

26. Much of LCEC’s service territory in Charlotte, Collier, Hendry, Broward and Lee Counties remains rural in character.

27. Cape Coral long has been an urbanized population center.

28. Cape Coral is the only major Florida city currently being served by a rural cooperative.

29. As many as 45 percent or more of LCEC’s member/owners are situated within the City.

30. The 119-square-mile area within the City’s municipal boundaries constitutes only 5 percent of the nearly 2,100-square-mile LCEC service territory in total.

31. Based upon these obvious disparities which were similarly recognized by the Commission in its Order No. 20768 (further discussed below), Cape Coral requests that, at a minimum, the Commission investigate whether it is fair and reasonable for Cape Coral, its residents and businesses to be identified in distinct rate classifications and charged distinct rates to remove unfair, unjustified and discriminatory subsidies which Cape Coral suspects exist under the current LCEC uniform rate schedules.

V. The Commission Possesses Jurisdiction to Modify LCEC's Rate Structure

32. This Complaint and Petition seeks Commission investigation into the rate structure of LCEC to determine whether such rate structure is unfair, unjust, unreasonable, and discriminatory based on the different service characteristics within the City's municipal boundary compared to those that exist outside the City's municipal boundary. As a customer of LCEC receiving service under more than one service classification, including the residential service class, the City's interests are adversely affected by application of LCEC's current unfair, unjust and unreasonable rate structure. Further, LCEC's current rate structure discriminates against the City and all residents and businesses within the City's municipal boundaries.

33. The Commission has jurisdiction over the rate structure of rural electric cooperatives as noted in Order No. 15497, issued on December 24, 1985 in "In re: Petition of Florida Home Builders Association for Declaratory Statement" (Docket No. 850595) (hereafter the "Rate Structure Order")(citing, City of Tallahassee v. Mann, 411 So. 2d 162, 163 (Fla. 1981)).

34. The Rate Structure Order addressed a declaratory statement petition filed by the Florida Home Builders Association seeking Commission review of contributions in aid of

construction (“CIAC”) charges initiated by a rural electric cooperative known as Withlacoochee Electric Cooperative, Inc. (“Withlacoochee”).

35. The Commission found that it possessed jurisdiction to address the proposed CIAC charges as part of Withlacoochee’s rate structure. The Commission specifically stated as follows:

The CIAC of [Withlacoochee] applies equally to all classes of customers, despite the fact that construction costs may vary by class or within a class. Therefore the existence of [Withlacoochee’s] CIAC policy clearly relates to and affects the relationship between classes and within classes. The existence of this CIAC also involves how [Withlacoochee] allocates its total revenues among customers. As such the imposition of a CIAC constitutes a classification system. For the foregoing reasons, we find that the CIAC of [Withlacoochee] constitutes a rate structure matter subject to the jurisdiction of this Commission (emphasis added).

36. The current rate structure of LCEC applies equally to all classes of customers, despite the likelihood that vast disparities in cost of service and other unique characteristics exist between and among LCEC customers served within the municipal boundaries of Cape Coral, including the City, and the remainder of LCEC’s customers located in the predominantly rural areas of the five counties in which LCEC provides service. These disparities affect the relationship between and among customers in ways which should and must be reflected in different rate classifications.

VI. The Commission Has Authority to Review and Prescribe LCEC’s Rate Structure

37. The Commission possesses authority to exercise jurisdiction over LCEC’s rate structure by statute and Commission precedent.

38. Section 366.04(2)(b), Florida Statutes, states that the Commission has the power “[t]o prescribe a rate structure for all electric utilities.” Section 366.02(2), Florida Statutes,

defines “Electric Utility” as “any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.” Because LCEC is a rural electric cooperative which owns an electric distribution system in Florida, it is therefore an “electric utility” as defined in Section 366.02(2), Florida Statutes.

39. The Commission’s Rate Structure Order, discussed earlier in this Complaint/Petition, and other proceedings discussed later herein, provide Commission precedent for the exercise of Commission jurisdiction relating to the rate structures of rural cooperatives.

40. The Commission clearly has the authority “to prescribe a rate structure” for LCEC.

VII. The Rate Structure Imposed by a Not for Profit Electric Cooperative Serving in an Urbanized Area Must Properly Apply Cost Causation Ratesetting Principles

41. The Commission’s rate structure jurisdiction gives it broad authority to review any discriminatory effects of a rate structure, as well as to consider whether the rate structure properly applies cost causation principles.

42. Section 25-9.051, FAC, establishes that in exercising its rate structure jurisdiction over a rural electric cooperative, the Commission may review the rate relationship between various customer classes. A customer class is defined in Section 25-9.051(8), FAC, as any group of customers distinguishable from other customers by load, consumption, or other characteristics.

43. Section 25-9.052, FAC, states that in prescribing a fair, just and reasonable rate structure, the Commission may consider, among other things, the cost of providing service to each customer class, the load characteristics of various classes of customers, fairness in apportioning costs and the avoidance of undue discrimination. It is therefore appropriate for the

Commission to investigate cost causation and other pertinent rate setting matters when considering the existing LCEC rate structure.

44. Specifically, the Commission should apply sound regulatory rate setting principles when reviewing the rate relationship between LCEC's densely packed and likely higher load factor customer base within Cape Coral (approximately 750 customers per square mile in a 119 square mile area) and the customers in predominantly rural areas which LCEC serves throughout the remainder of the LCEC service territory (only 55 customers per square mile in an area comprising nearly 2,000 square miles).

45. The Commission has modified rural electric cooperative rate structures to reflect cost of service differences between customers served in rural areas versus customers in urban areas which typically are served by investor-owned utilities. In Docket No. 020537, "Petition for Approval of Modification of Electric Rate Schedules by Choctawhatchee Electric Cooperative, Inc." (Order no. 02-1169 issued August 26, 2002) (the "Order Identifying Disparities Among Rural Cooperatives and IOUs"), the Commission order elaborated upon several typical characteristics of rural electric cooperatives that may be taken into consideration in establishing the rate structures of rural electric cooperatives. Among such characteristics discussed by the Commission in that proceeding (emphasis added):

First, [rural electric cooperative] has a density of ten customers per mile, while most investor-owned utilities have a density of fifty-five customers per mile or greater. In a high-density service territory, several customers may be served by a single transformer, while in a sparsely populated rural area there is usually one transformer for each residential account. Thus, the significant costs of constructing and maintaining a mile of line in a rural service territory are spread to a significantly fewer number of customers.

Second, [rural electric cooperatives] rural service territory is quite different from an urban investor-owned utility. Urban areas are normally occupied throughout the year, and customers usually consume a large amount of electricity that varies seasonally with their heating and cooling

load. By contrast, [rural electric cooperative] provides service to a significant number of barns, stock tanks, electric fences, hunting cabins, and vacation homes. These types of customers consume small amounts of electricity during the course of the year, and their usage is sporadic. A rate design with a relatively low customer charge and high energy charge for these customers may not recover the costs of investment necessary to serve their load.

Third, [rural electric cooperative] has many customers taking service under multiple accounts. Presently, it is relatively expensive to hire an electrician to extend a line from a customer's existing meter to a barn, well, stock tank, or electric fence. Customers typically find that it is cheaper to establish a separate account with [rural electric cooperative] which then incurs these costs....the higher proposed customer charges based on the [new proposed rate structure methodology] will provide a better price signal and reduce the subsidization of these multiple account customers.

Fourth, [rural electric cooperative] has been experiencing financial hardships, ... The proposed higher customer charges designed using the [new proposed rate structure methodology] should stabilize [rural electric cooperative's] revenues.

46. In Order no. 20768, which will be referred to herein as the "Rural Cooperative CIAC Order," issued on February 17, 1989, the Commission confirmed that "[the Commission has] endorsed the concept of cost based rates on numerous occasions" and that "to be fair, just and reasonable, a charge must be cost based for all classes" ("Petition of Florida Home Builders Association to review and remedy unfair and unreasonable rate structure of Withlacoochee River Electric Cooperative, Inc.," Docket no. 880585).

47. The Rural Cooperative CIAC Order was issued following the Commission's determination that CIAC charges are reviewable as part of a rural cooperative's rate structure in the Commission's Rate Structure Order. The Rural Cooperative CIAC Order indicates that in response to the Rate Structure Order, the rural cooperative was made to perform a cost of service study addressing cost causation factors for different customer groups. In affirming the proposed uniform CIAC charge at issue for two types of customer classes but finding such uniform CIAC charge deficient for a third class of customers, the Commission found as follows:

[Rural cooperative] argued that the higher load factors of these larger customers provided a benefit to the general body of ratepayers which offsets the need to charge a cost-based CIAC. While we recognize that higher load factor customers lower the per KWH cost of purchased power, this lower cost should be properly reflected in the tariff charges which recover these costs. To argue that a high load factor justifies a non-cost based CIAC would result in double counting these benefits assuming [rural cooperative's] other tariff charges are properly designed.

48. The Commission thus granted, in part, the petition of the Florida Home Builder's Association and "Ordered that [rural cooperative] shall file with this Commission within 120 days from the date of this Order a fully allocated cost of service study to support an appropriate CIAC charge for large power users in its service area." (Rural Cooperative CIAC Order at 5).

49. As demonstrated in this Rural Cooperative CIAC Order, the Commission possesses jurisdiction to require a rural cooperative to provide sufficiently detailed cost of service information to permit the Commission to review in their entirety the rate schedules, service classifications and rate design applied by rural cooperatives to their customers.

50. The Commission can and should modify an electric cooperative's rate structure and rate design to insure that fair, just, reasonable and non-discriminatory rates are applied based upon the unique circumstances that confront each cooperative and its member/owners. The Commission should order LCEC to file a fully allocated cost of service study and investigate the rate structure of LCEC to establish a rate structure and rate design which addresses the unique circumstances presented in this Complaint and Petition.

VIII.LCEC Must Comply with Commission Regulations Relating to Electric Rate Structures

51. By order of the Commission issued January 3, 1979, rural electric cooperatives and municipal electric utilities were directed to file their rate structures with the Commission. "In

re: General Investigation as to Rate Structure for Municipal Electric Systems and Rural Electric Cooperatives,” 5 FPSC 3 (1979).

52. The Commission subsequently adopted Sections 25-9.050 through 25-9.056, FAC, which establish the format for documenting proposed electric rate structures as well as the procedure the Commission will follow to review an electric cooperative’s rate structure. “In re: Proposed Amendment of Rule 25-9.01 and New Parts IV and V of Chapter 25-9 relating to Rate Structure of Rural Electric Cooperatives and Municipal Electric Systems,” 6 FPSC 581 (1979).

53. Section 25-9.050(1) expressly states that these rules apply to rural electric cooperatives and prescribes the procedure to be followed by such utilities in submitting documentation of rate schedules; including supporting information.

54. There is no doubt that the Commission is empowered to review the rate structure of rural cooperatives and to order that a utility-specific cost study and an analysis of utility-specific cost and operating data be prepared and filed with the Commission. Cape Coral, by this Complaint and Petition, has provided sufficient information to establish the likelihood that LCEC’s cost of serving electricity within the municipal boundaries of the City is significantly different than LCEC’s cost of providing electricity to the remainder of the predominantly rural areas which it serves in Charlotte, Collier, Hendry, Broward and Lee Counties.

55. The Commission is well within the purview of its power to direct LCEC to provide sufficient cost of service information to allow the Commission to determine the derivation of the existing rate structure; the derivation of the costs of providing service to two distinct areas, specifically, areas within the municipal boundaries of Cape Coral versus areas outside of Cape Coral; and whether the existing rate structure and rate design unduly

discriminate against the City, its residents and businesses such that distinct “in city” rate classifications should be established.

56. The existence of a completely urbanized area within the midst of LCEC’s predominantly rural service territory may require consideration of the deletion of Cape Coral from LCEC’s service territory. In Alabama Electric Cooperative Inc. v. First National Bank of Akron Ohio, 684 F 2d 789 (11th Cir. 1982), a federal appellate court noted that the language of Florida’s Rural Cooperative Law “authorizes a rural electric coop to serve some non-rural areas, indicating that [rural cooperative’s] service to the four municipalities did not deprive it of its ‘rural’ character.” The court recognized that Florida law “allows a rural coop to serve up to ten percent non-rural membership.” Unlike the facts presented in this Complaint and Petition, the population of the four cities served by the rural cooperative in Alabama Electric Cooperative did not constitute more than 10% of the rural cooperative’s member/owners; in contrast, LCEC member/owners within the urbanized municipal boundaries of Cape Coral represent approximately 45% of LCEC’s total member/owners.

57. At present, and by this Complaint and Petition, Cape Coral requests that the Commission recognize the obvious disparities in the cost of providing electric service within the municipal boundaries of Cape Coral as compared to the predominantly sparsely populated and geographically dispersed areas of the remaining portions of LCEC’s service territory; order LCEC to conduct and file a fully allocated cost of service study for these two areas (inside City and outside City); and establish a new distinct service classification for LCEC service within Cape Coral’s municipal boundaries (and resulting rates and charges).

In City/Out of City Rate Structures

58. In City/Out of City Rate Structures are charged by electric utilities located across the United States.

59. The City of Austin, Texas; City of Wadsworth, Ohio; City of Volga, South Dakota; City of Sturgis, Michigan; the City of Bryan, Ohio are among those electric utilities charging in city/out of city rates.

60. In City/Out of City rate structures should be adopted to address cost disparities between service in rural compared to urban areas.

61. Florida electric utilities also have included out of city rate service classifications in their rate structures. Clay Utility Co. v. City of Jacksonville, 227 So.2d 516 (1st DCA 1969); Cooper v. Tampa Electric Co., 154 Fla. 410, 17 So.2d 785 (Fla 1944).

62. In City/Out of City rate classifications are commonplace among Florida water and wastewater utilities. The Florida Supreme Court has upheld a Florida statute which authorizes municipal water utilities to apply a 25% surcharge to customers located outside of the municipality's boundaries. The utility could also apply a higher surcharge if a cost of service study is performed which supports a higher surcharge; the critical principle to be applied is cost causation. See Mohme v. City of Cocoa, 328 So.2d 422 (Fla 1976).

63. There is no limit to the ability of any utility, electric or otherwise, to identify the cost of serving customers in a specific area so as to permit consideration of whether the establishment of a new customer service classification is required. The cost of service can be identified; it is simply a question of whether the utility is willing to cooperate to calculate the specific cost of serving within a specific area and thus, potentially identifying a new service class of customers. Where unique circumstances exist, such circumstances must be reflected in rate classifications to the extent such circumstances result in material cost of service differences.

64. In City of Tallahassee v. Public Service Commission, 441 So. 2d 620 (Fla 1983), the Florida Supreme Court upheld a Commission order eliminating a 15% rate surcharge which Tallahassee had imposed on non-City residents. The Supreme Court recognized that “there was evidence that the average cost of distribution equipment was associated with population density but that the City had failed to show that there was a high degree of correlation between population density and the City’s boundaries.” The Court also referred to evidence presented by Commission staff that the incremental cost of adding customers outside the city limits was lower than the incremental cost of adding new customers inside the city; and Tallahassee’s boundaries were subject to sudden change through annexations which were unrelated to the population density of the areas annexed (thus, a customer formerly paying “outside the city” rates would move to “inside city rates” by simple annexation of the land the customer lived on). The Court found that this evidence supported a Commission finding that it was unduly discriminatory to non-Tallahassee residents to apply a rate surcharge to their rates.

65. The Supreme Court, in affirming the Commission’s refusal to initiate rulemaking to address in city/out of city rate structures generically, further noted that “the factual situations under which particular surcharge issues arise will be quite diverse and for this reason, the PSC should not be compelled to promulgate restrictive rules in an area demanding flexibility.” The Court thus instructed that “[t]he Commission’s finding that the City’s boundaries were not a reasonable basis for creating a customer classification was based on evidence unique to the City of Tallahassee and does not constitute an ironclad rule which will automatically apply to all other municipalities.”

66. As the Supreme Court's opinion in City of Tallahassee confirms, the Commission possesses authority to require an "electric utility" (which includes municipalities and rural cooperatives) to produce cost of service justification for its rate structure.

67. Unlike Tallahassee, LCEC's 2,100 square mile service territory spans vast, largely undeveloped rural areas in five counties, Lee, Charlotte and Collier, Broward and Hendry Counties. The non-City residents served by Tallahassee were in proximity to the Tallahassee's municipal boundaries and thus such areas easily could be annexed into Tallahassee. This is not the case for Cape Coral and the remainder of LCEC's member/owners.

68. There were no facts presented in the Tallahassee proceeding, as exists here, to show that 45 percent of the utility's customers reside in an urban area comprising only 119 square miles of the utility's total 2,100 square mile service territory; or that the utility serves nearly 750 customers per square mile in the city compared to only 55 customers per square mile outside of the city; or that the utility's assets are distribution related only, no generating assets, since 100 percent of the power provided by the utility is purchased from another utility. Each of these facts are presented to the Commission by Cape Coral in this Complaint/Petition but did not exist in the Tallahassee proceeding.

69. On the other hand, certain facts presented by Tallahassee in the City of Tallahassee proceeding are analogous to the facts which a hearing likely will show to exist in the Cape Coral/LCEC circumstances presented herein, notably:

At the hearing the City attempted to establish a reasonable basis for its surcharge by showing that it costs more to serve customers residing outside the city limits than it did to serve those residing inside. An accountant testified that in figuring the difference in cost of serving different geographic locations, the City focused on the distribution costs since they were more clearly linked with service location than were generation or transmission costs which served the whole system. He also testified that he performed a statistical analysis showing that increases in population cause increased demand resulting in a need for additional distribution

facilities. A city engineer testified that higher distribution costs were associated with rural areas because less densely populated areas required more transformers, and that such rural transformers were usually smaller and less efficient than the larger transformers that could be used to serve more densely populated areas. Another accountant testified that his firm calculated the actual costs of distribution equipment and allocated these costs to inside or outside the city limit categories depending upon the location of the equipment. The costs of distribution equipment which could not be specifically identified were allocated to these two categories based on the respective percentage of population growth.

70. Cape Coral is entitled to a Commission order requiring LCEC to conduct and file cost of service support to establish that its rate structure is just, fair, reasonable and not discriminatory in the same way that the non-City residents of Tallahassee were entitled to a Commission investigation of Tallahassee's application of an out of city surcharge in that proceeding.

IX. The Commission Should Investigate LCEC's Rate Structure to Determine if the Rate Structure is Fair, Just, Reasonable and Non-Discriminatory

71. The Commission has recognized that a rural electric cooperative's rate structure should be based on cost of service studies since initially asserting its jurisdiction over rural cooperatives in 1979. "In re: Investigation as to rate structure of municipal electric systems and rural electric cooperatives," 6 FPSC 519 (1979).

72. Cape Coral believes LCEC's rate structure is arbitrary, unfair, unjust, unreasonable and discriminatory primarily because it does not reflect cost differences between LCEC's service in the predominantly rural areas it serves compared to service provided to the City, its inhabitants and businesses. Other reasons supporting the City's belief that the current rate structure is flawed in these ways may be uncovered after (a) LCEC has filed an appropriate fully allocated cost of service study and (b) the Commission has held hearings during which the City will be granted the opportunity to review LCEC's cost of service study, present evidence

and cross examine LCEC witnesses related to LCEC's rate structure, rate design and cost of service study.

73. Cape Coral has made numerous requests to LCEC for more than one year seeking relevant cost of service information necessary to analyze whether the disparities in LCEC's costs to serve inside Cape Coral compared to outside of Cape Coral justify the establishment of distinct service classifications for LCEC member/owners located in Cape Coral's municipal boundaries. LCEC has rejected every request, refused to provide such information and, instead, directed the City to this Commission to secure it.

74. LCEC purchases 100 percent of its power from FPL. There are no electric generating plants or costs associated therewith to be allocated to customer classes. Therefore, LCEC's capital investments largely consist of distribution related equipment only.

75. LCEC has refused to provide the City any information which identifies LCEC assets and costs within municipal boundaries. Therefore, LCEC has thwarted the City's ability to provide this Commission with such information or any ability to estimate actual LCEC cost of service within City municipal boundaries.

76. Nevertheless, Cape Coral has presented herein sufficient information to justify the investigation of LCEC's cost of serving within and outside Cape Coral so that a rate structure which tracks LCEC's cost of serving its member/owners, by appropriate service, rate design and cost classifications, is established.

77. The Commission, since the initial assertion of jurisdiction over rural cooperatives' rate structures in 1979, also has stated that rate structures which track costs promote energy conservation. This is yet another reason to require LCEC to perform a cost of service study.

78. It also is particularly important that the Commission initiate this rate structure investigation as Cape Coral is aware that LCEC's current rate structure permits LCEC to recover profits each year from its customers, which LCEC refers to as "equity capital."

79. Upon information and belief, LCEC recovers excessive profits ("equity capital") under its current rate structure such that LCEC has accumulated more than \$350 million of its owner/members' money. This level of accumulated profits is excessive as it constitutes a ratio of equity capital to net investment in utility assets of approximately 53 percent whereas, upon information and belief, the required ratio for financial integrity is only 30 percent and the average such ratio for rural cooperatives is only 43 percent.

80. Should Cape Coral be correct that the current LCEC rate schedules result in excessive rates charged within the City's municipal boundaries, and such rates are unfair, unjust and unreasonable, and thus discriminate against the City, its inhabitants and businesses, then each month that goes by, the City, its inhabitants and businesses are contributing disproportionately to these excessive profits of LCEC. The prompt modification of the LCEC rate structure to apply distinct "in city" rates is the only means of eliminating this gross discrimination.

81. Cape Coral also submits to the Commission that should LCEC's rate structure be proven to result in unfair, unjust, unreasonable and discriminatory rates being charged to LCEC's member/owners within the municipal boundaries of Cape Coral, additional consideration of rate relief or possibly immediate refunds of such equity capital to member/owners in Cape Coral should be considered.

82. Commission review of LCEC rate structures, after the filing by LCEC of a fully allocated cost of service study for all LCEC rate structures and charges, is the only means, and a

necessary step, to eliminate the harm perpetrated by LCEC's existing discriminatory rate structure (and resulting rates and charges).

83. To Cape Coral's knowledge, LCEC has never submitted any supporting cost of service documentation to the Commission to enable the Commission to determine whether LCEC's rate structure and rate design is fair, just, reasonable and non-discriminatory. The Commission should review and investigate LCEC's current rate structure and related issues through an investigation and evidentiary hearing into LCEC's rate structure.

X. **The Commission should order LCEC to file supporting cost of service information for its rate structure and rate design so that the Commission may review LCEC's rate structure and determine whether it is fair, just, reasonable and non-discriminatory to the City of Cape Coral, as well as the residents and businesses located within the City's municipal boundaries**

84. Cape Coral submits that LCEC's current rate schedules result from a rate structure and rate design that discriminates against customers receiving service within the municipal boundaries of Cape Coral, by effectively requiring these customers to subsidize other LCEC customers. The rate structure is also arbitrary and unreasonable, and not reflective of cost causation or sound regulatory principles. The Commission should therefore require LCEC to file a fully allocated cost of service study and conduct a full investigation and evidentiary hearing on the rate structure established in LCEC's current rate schedules to resolve these and such other issues as the Commission deems appropriate.

85. The importance of establishing cost-based rates to LCEC's member/owners, under the unique circumstances identified in this Complaint and Petition, where 45 percent of LCEC's member/owners are located within the confines of one municipality's boundaries while the remainder of the member/owners are geographically disbursed throughout the predominantly undeveloped and rural areas of five large Florida Counties, cannot be understated. A review of

the petitions for Commission review filed by Florida Power & Light in only the last few years demonstrates the vigorous review and analysis applied to confirm that FPL rates and charges are applied only to the correct customer classes and are cost-based and thus fair, just, reasonable and non-discriminatory:

- a. Docket 160001: Fuel and purchased power cost recovery clause
- b. Docket 150075: Petition for approval of arrangement to mitigate impact of unfavorable Cedar Bay power purchase obligation
- c. Docket 150108: Petition for approval of renewable energy tariff
- d. Docket 150085: Petition for approval of demand side management plan
- e. Docket 150007: Environmental cost recovery clause
- f. Docket 150009: Nuclear cost recovery clause
- g. Docket 140197: Petition for approval of base rate adjustment for extended power uprate project
- h. Docket 140082: Petition for change to requirements regarding pole inspections and load assessment
- i. Docket 140066 petition for approval of amendment to underground residential and commercial differential tariffs
- j. Docket 140068; Petition for approval of a renewable energy tariff and standard offer contract
- k. Docket 130286 Petition for approval of new commercial/residential service rider
- l. Docket 130223: Petition for approval of optional non-standard meter rider

86. Member/owners of LCEC are entitled to no less scrutiny by this Commission of the rate structure and rate classifications established by LCEC to insure that they are cost-based and otherwise fair, just, reasonable and non-discriminatory as this Commission applies to investor-owned utility rate structures. This Commission possesses the jurisdiction and authority to apply such scrutiny. Cape Coral requests that it do so by ordering LCEC to conduct and file a fully allocated cost of service study to support its rate structure and resulting rates and charges.

XI. LCEC Has Imposed Contributions In Aid of Construction Charges and Policies as well as LED street lighting rates which are Unfair, Unjust, Unreasonable and Discriminatory; the Commission should order LCEC to file supporting cost of service information for such rates and charges

87. The City Council of the City of Cape Coral has been advised by a contractor who has constructed hundreds of homes within the City (hereafter, "Contractor") that LCEC has initiated the collection of contributions in aid of construction charges. The contractor informed the City Council that he had never been asked to pay such a CIAC charge to LCEC in similar circumstances in the past. Subsequently, the City Council heard from other City residents that LCEC had initiated the collection of CIAC charges.

88. Contractor and City subsequently sought information from LCEC similar to the information required to be disclosed pursuant to Commission Rule 25-6.064, Florida Administrative Code, to substantiate the amount of its CIAC charges as well as additional information including:

- a. Date of initiation of collection of CIAC charges;
- b. Proof of costs of installation of assets for which CIAC charges had been collected;
- c. Copies of LCEC CIAC charge invoices to inhabitants, building contractors and businesses located in Cape Coral for the past 4 years; and
- d. Whether LCEC would treat the CIAC charges paid as refundable advances and thus refund a portion of CIAC charges paid if subsequent new customers connect to the assets and additional CIAC charges are assessed by LCEC.

88. To date, LCEC has refused to provide the City, Contractor or City inhabitants and businesses with this information.

89. LCEC has instructed the City, Contractor and a homeowner to file a complaint with the Florida Public Service Commission if there are concerns relating to LCEC's CIAC charges and policies.

90. The City also has been charged hundreds of thousands of dollars of CIAC charges by LCEC. The source of City revenue used to pay such CIAC charges to LCEC is city general revenue collected in the form of taxes and other funds paid by residents and businesses in the

City. In an attempt to insure the prudent and judicious expenditure of taxpayer funds, the City requested that LCEC provide the City with similar information to the information requested by Contractor to substantiate LCEC's CIAC charges. No substantiating information has been provided to the City by LCEC to date.

91. The Commission's Rate Structure Order and Rural Cooperative CIAC Order, discussed earlier in this Complaint and Petition, make clear that when addressing CIAC charges "the existence of [rural cooperative's] CIAC policy clearly relates to and affects the relationship between classes and within classes. The existence of this CIAC also involves how [rural cooperative] allocates its total revenues among customers. As such the imposition of a CIAC constitutes a classification system. For the foregoing reasons, we find that the CIAC of [a rural cooperative] constitutes a rate structure matter subject to the jurisdiction of this Commission (emphasis added)."

92. On March 1, 2016, LCEC filed tariff sheets proposing modification of its rates for LED street lighting. The filing is devoid of any cost of service information supporting the proposed charges. Instead, the filing requests that existing rates remain in place "unless modified and approved in the future based upon a cost of service study." Cape Coral submits that a cost of service study is a prerequisite to the establishment of any rates and charges. Cape Coral further submits that it is unconscionable for LCEC to propose that the City continue to pay existing lighting rates. The new LED lighting fixtures have vastly longer useful lives, require far less energy and maintenance and, based upon the experiences of other utilities which have performed the LED lighting conversion which LCEC only now is pursuing, such modernization should result in reduced costs and thus reduced rates and charges to the City; particularly if a revised rate structure is established by the Commission based upon appropriate cost causation principles.

92. LCEC has refused to provide any information to the City which would establish that its CIAC charges or recently proposed LED lighting rates are premised upon a fully allocated cost of service study such that all distinct customer classes are charged cost of service based CIAC charges and LED street lighting rates.

93. LCEC is obligated to apply rate structures which result in fair, just, reasonable and non-discriminatory charges, not just for CIAC and LED street lighting but for all other rates and charges for service applied within the municipal boundaries of Cape Coral. The Commission possesses jurisdiction to review LCEC's CIAC charges and LED rates as they are currently premised upon a discriminatory rate structure. LCEC has refused to provide cost of service information to Cape Coral despite the City's repeated requests for such information. The Commission should require LCEC to conduct and file with the Commission a fully allocated cost of service study addressing in City and out of City costs of service together with any other information purported to support LCEC's CIAC charges and LED street lighting rates, in addition to all other rates and charges collected by LCEC from member/owners within Cape Coral's municipal boundaries.

XII. Request for Relief

WHEREFORE, for the foregoing reasons, Cape Coral respectfully requests that the Commission:

1. Require LCEC to conduct and file, on an expedited basis, a fully allocated cost of service study which justifies its current rate structure and rate design, including, but not limited to justification for its use of uniform rates and charges for in City and out of City service, including CIAC charges, and LED lighting charges that disproportionately impact the City, as well as inhabitants and businesses located within Cape Coral's municipal boundaries; and

2. Initiate a hearing process on an expedited basis for review of LCEC's cost of service study by the Commission as well as the City of Cape Coral and other interested persons impacted by LCEC's current unfair, unjust, unreasonable and discriminatory rate structure; and

3. Order such other relief for the City of Cape Coral, its inhabitants and businesses as the Commission may deem just and proper.

Respectfully submitted this 15th day of March, 2016.

s/ Brian P. Armstrong
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery and U.S. Mail to D. Bruce May, Esq., Holland & Knight, Bank of America Building, Suite 600, 315 South Calhoun Street, Tallahassee, Florida 32301, and to Dennie Hamilton, CEO, Lee County Electric Cooperative, Inc., 4980 Bayline Drive, North Fort Myers, Florida 33917, on this 15th day of March, 2016.

By: /s/ *Brian P. Armstrong*
Brian P. Armstrong, Esq.
Florida Bar No. 888575