

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company (FPL) for authority to charge FPL rates to former City of Vero Beach customers and for approval of FPL's accounting treatment for City of Vero Beach transaction.

DOCKET NO. 20170235-EI

In re: Joint petition to terminate territorial agreement, by Florida Power & Light and the City of Vero Beach.

DOCKET NO. 20170236-EU  
ORDER NO. PSC-2018-0473-PCO-EU  
ISSUED: September 24, 2018

ORDER GRANTING  
REQUESTS FOR PROTECTIVE ORDER  
BY  
CIVIC ASSOCIATION OF INDIAN RIVER COUNTY, INC.  
AND  
CITY OF VERO BEACH

On September 21, 2018, pursuant to Rules 1.280 and 1.310, Florida Rules of Civil Procedure, the Civic Association of Indian River County, Inc. (CAIRC) filed a Motion for Protective Order from Indian River County's (County) Deposition of Mr. Jay Kramer. The CAIRC asserts that the County has scheduled a deposition for the CAIRC's witness, Mr. Kramer, who is unavailable and will be traveling for business during the time frame that the deposition is scheduled. The CAIRC also asserts that the County's Notice asks for documents unrelated to Mr. Kramer's testimony and over which Mr. Kramer has neither control nor oversight. The CAIRC asks for sanctions against the County in the form of legal fees and costs.

On September 24, 2018, the County filed its Response to CAIRC's Motion for Protective Order. The County asserts that CAIRC filed testimony of Jay Kramer on September 7, 2018, that on September 19, 2018, the County contacted counsel for CAIRC asking for dates to set a deposition for Jay Kramer. The County argues that CAIRC should not be permitted to shield witnesses from proper discovery and that a strong showing is required before a party will be denied entirely the right to take a deposition. The County is not intending to harass, threaten or intimidate the CAIRC and the County will be prejudiced if the CAIRC can file prefiled testimony of a witness and call a witness to testify without offering the parties a right to depose the witness.

Upon review, I shall grant the CAIRC's Motion for Protective Order and strike the County's Notice of Deposition of Mr. Jay Kramer. In this context, I note that the County took the case as it found it when it was granted intervention on September 6, 2017, including a discovery deadline of October 2, 2018. Under the circumstances, unless an alternative deposition date can be arranged by the parties, cross examination of Mr. Kramer by the County at hearing will have

to suffice. The Commission has no authority to assess the requested fees and costs against the County. *See e.g.*, Order No. PSC-09-0799-PAA-TP, issued on December 2, 2009, in Docket No. 20090430-TP, *In re: Amended petition for verified emergency injunctive relief and request to restrict or prohibit AT&T from implementing CLEC OSS-related releases by Saturn Telecommunication Services, Inc.*

On September 24, 2018, pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.280(c) and 1.310(b)(6), Florida Rules of Civil Procedure, the City of Vero Beach (COVB) filed a Motion for Protective Order. The COVB asserts that the CAIRC has set a deposition of the COVB Mayor Harry Howle as Mayor of the COVB. The COVB avers that it, and not the CAIRC, is entitled to select its public corporation representative. The COVB argues that the CAIRC has made it clear that it intends to depose Mayor Howle to speak on the COVB's behalf.

Also on September 24, 2018, the CAIRC filed its Response to the COVB's Motion for Protective Order from Scheduled Deposition of Harry Howle. The CAIRC asserts that Mayor Howle is being deposed as an individual and not as a representative of a corporate entity and that the use of the term "Mayor" is simply an honorific and is not an indication that he is testifying on behalf of anyone but himself.

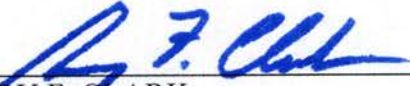
Upon review, I find the COVB to be persuasive and shall grant its Motion for Protective Order and strike the CAIRC's Notice of Deposition of Mayor Harry Howle.

Therefore, it is

ORDERED by Commissioner Gary F. Clark, as Prehearing Officer, that the Civic Association of Indian River County Inc.'s motion for protective order is granted and the notice of deposition of Mr. Jay Kramer is stricken. It is further,

ORDERED that the City of Vero Beach's motion for protective order is granted and the notice of deposition of Mayor Harry Howle is stricken.

By ORDER of Commissioner Gary F. Clark, as Prehearing Officer, this 24th day of September, 2018.

  
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GARY F. CLARK  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

CWM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review

ORDER NO. PSC-2018-0473-PCO-EU  
DOCKET NOS. 20170235-EI, 20170236-EU  
PAGE 4

appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.