

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory)
statement or other relief regarding) DOCKET NO. 140142-EM
the expansion of the Vero Beach)
electric service franchise agreement,)
by the Board of County Commissioners,) FILED: JULY 29, 2014
Indian River County, Florida.)
_____)

MOTION TO INTERVENE OF THE CITY OF VERO BEACH

The City of Vero Beach (the "City"), pursuant to Chapters 120 and 366, Florida Statutes ("F.S."),¹ and Rules 25-22.039, 28-105.0027, 28-106.201, and 28-106.205, Florida Administrative Code ("F.A.C."), hereby respectfully files this motion to intervene (the "Motion to Intervene") in the above-styled docket.

In summary, on July 21, 2014, the Board of County Commissioners, Indian River County, Florida (the "Board") initiated this docket by filing with the Florida Public Service Commission (the "Commission") a "Petition for Declaratory Statement and Such Other Relief as May be Required" (the "Petition"). In the Petition, the Board seeks declaratory statements from the Commission on 14 specifically enumerated questions involving the provision of electric service to certain unincorporated areas of Indian River County (the "County") currently served by the City pursuant to a territorial agreement

¹ All references herein to the Florida Statutes are to the 2013 edition thereof.

with Florida Power & Light Company ("FPL") approved by the following Commission orders: In re: Application of Florida Power and Light Company for approval of a territorial agreement with the City of Vero Beach, Docket No. 72045-EU, Order No. 5520 (August 29, 1972); In re: Application of Florida Power & Light Company for approval of a modification of territorial agreement and contract for interchange service with the City of Vero Beach, Florida, Docket No. 73605-EU, Order No. 6010 (January 18, 1974); In re: Application of FPL and the City of Vero Beach for approval of an agreement relative to service areas, Docket No. 800596-EU, Order No. 10382 (November 3, 1981); In re: Application of FPL and the City of Vero Beach for approval of an agreement relative to service areas, Docket No. 800596-EU, Order No. 11580 (February 2, 1983); and In re: Petition of Florida Power & Light Company and the City of Vero Beach for Approval of Amendment of a Territorial Agreement, Docket No. 871090-EU, Order No. 18834 (February 9, 1988) (collectively referred to as the "Commission's Territorial Orders"). As the incumbent utility providing service pursuant to the Commission's Territorial Orders, the City's substantial interests will be directly affected by many, if not all, of the declaratory statements sought by the Board. Accordingly, the City respectfully seeks the Commission's authorization to intervene

in this docket so that it can file pleadings, memoranda, or briefs in response to the Petition.

In further support of its Motion to Intervene, the City states as follows.

PROCEDURAL BACKGROUND

1. The name, address, and telephone number of the City of Vero Beach are as follows:

The City of Vero Beach
James R. O'Connor, City Manager
1053 20th Place
Vero Beach, FL 32960

2. All pleadings, orders and correspondence should be directed to the City's representatives as follows:

Robert Scheffel Wright (schef@gbwlegal.com)
John T. LaVia, III (jlavia@gbwlegal.com)
Gardner, Bist, Wiener, Wadsworth, Bowden, Bush,
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with a courtesy copy to:

Wayne R. Coment, City Attorney (wcoment@covb.org)
City of Vero Beach
P.O. Box 1389
1053 20th Place
Vero Beach, Florida 32961-1389
Telephone: (772) 978-4730
Facsimile: (772) 978-4733

3. The agency affected by this Motion to Intervene is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

4. This docket was initiated by the Board's filing of its Petition on July 21, 2014. Accordingly, pursuant to Rules 25-22.039 and 28-105.0027, F.A.C., this Motion to Intervene is timely filed.

STATEMENT OF AFFECTED INTERESTS

5. The City is a municipal electrical utility and, as such, the City is an "electric utility" pursuant to Section 366.02(2), F.S.

6. The City has operated a municipal electric utility system since 1920, when it purchased a small power plant, poles, and lines from the Vero Utilities Company. The City provides retail electric service to customers inside the City limits and outside the City limits within the County pursuant to territorial agreements with FPL, which agreements have been approved by the Commission's Territorial Orders. On information and belief, the City states that the City provided service to unincorporated areas of Indian River County before any of the Commission's Territorial Orders were issued, and also before any franchise agreement existed between the City and the County. To provide service to its customers, the City operates an electric generating plant, transmission lines and related facilities, and distribution lines and facilities (collectively the "City Electric System"). In addition to the electricity generated by

the City's power plant, the City has also acquired, and continues to acquire, bulk electricity from other power plants and providers in order to serve its retail customers.

7. The City's substantial interests will be directly affected by the declaratory statements sought by the Board in its Petition. The Commission's responses to the Board's Petition will directly impact the City's status under - and the validity and effectiveness of - the Commission's Territorial Orders by which the City provides electrical service in the subject areas of the County. In fact, the City is referenced by name in 11 of the 14 specifically enumerated requests for declaratory statements (requests "d" through "n") in the Petition. Moreover, the gravamen of the Board's Petition is its assertion that the franchise agreement between the County and the City - as distinct from the Commission's Territorial Orders - is the only source of the City's authority to operate that portion of the City Electric System located in unincorporated Indian River County. Any declaration addressing this assertion will directly affect the City's substantial interests, and accordingly, the City is entitled to intervene in this docket.

STATEMENT OF DISPUTED ISSUES OF MATERIAL FACT

8. With regard to this Motion to Intervene, the City does not believe that there are any disputed issues of material fact. The City is expressly named in 11 of the 14 declarations

requested by the Board, and the City's substantial interests will be determined by the Commission's declarations with respect to such issues.

9. With regard to the Board's request for a declaratory statement, Section 120.565, F.S., provides that the declaratory statement applies to the Board's "particular set of circumstances." Accordingly, the Commission does not determine disputed issues of fact in this proceeding.²

STATEMENT OF ULTIMATE FACTS ALLEGED

10. With regard to the Motion to Intervene, the City has demonstrated that its substantial interests will be affected by the Commission's decisions herein, and accordingly, the City is entitled to intervene in this docket.

11. With regard to the County's Petition, the City believes that the Board's assertions are legally incorrect, in that the Commission has exclusive jurisdiction over territorial matters pursuant to Section 366.04(2), Florida Statutes (2014), and thus the Board's assertions based on its franchise agreement are irrelevant to the Commission's jurisdiction and to the City's right and authority to serve customers pursuant to the Commission's Territorial Orders.

² To the extent that any of the facts set forth in the Petition are inaccurate or incomplete, the City will identify them in its responsive pleadings or brief.

STATUTES AND RULES THAT ENTITLE THE CITY TO RELIEF

12. The applicable statutes and rules that entitle the City to intervene in this docket include, but are not limited to, Sections 120.565, 120.569, and 120.57(1)&(2), F.S., and Rule 25-22.039, Rule 28-105.0027, and Chapter 28-106, F.A.C. The cited rules provide that persons whose substantial interests will be affected by agency action, including declaratory statements, are entitled to intervene, and specifically to intervene in this declaratory statement proceeding. The cited sections of Chapter 120 provide that persons whose substantial interests will be affected are entitled to participate in this type of proceeding.

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, the City respectfully requests the Commission to enter its order GRANTING this Motion to Intervene and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents to the City's representatives indicated in paragraph 2 above.

Respectfully submitted this 29th day of July, 2014.



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Attorneys for the City of Vero Beach

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic delivery, on this 29th day of July, 2014.

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