

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement regarding the Florida Public Service Commission's jurisdiction to adjudicate the Town of Indian River Shores' constitutional rights.

DOCKET NO. 160013-EU
ORDER NO. PSC-16-0073-PCO-EU
ISSUED: February 17, 2016

ORDER GRANTING MOTION TO INTERVENE OF THE CITY OF VERO BEACH

On January 5, 2016, the Town of Indian River Shores, Florida (Indian River Shores) filed a Petition for Declaratory Statement (Petition) requesting that the Florida Public Service Commission issue a declaratory statement on whether the Commission has jurisdiction under Chapter 366, Florida Statutes (F.S.), or any other applicable law, to adjudicate the Town's rights under Article VIII, Section 2(c), Florida Constitution, as further codified in Section 166.021, F.S., to be protected from unconsented exercises of extra-territorial powers by the City of Vero Beach. A Notice of Declaratory Statement was published in the Florida Administrative Register on January 7, 2016.

The City of Vero Beach's Motion to Intervene

On January 27, 2016, the City of Vero Beach (Vero Beach) filed a Motion to Intervene in this proceeding. Vero Beach states that it provides retail electric service to customers within the Town pursuant to territorial agreements with FPL, which agreements have been approved by the Commission's Territorial Orders. Vero Beach alleges that to provide service to its customers, including Indian River Shores, it operates transmission lines and related facilities and distribution lines and facilities, and has entered into long-term agreements by which it acquired, and continues to acquire, bulk electricity from other power plants and providers.

Vero Beach states that its substantial interests will be directly affected by the declaratory statement sought by Indian River Shores in its Petition because the Commission's response will directly impact Vero Beach's status under, and the validity and effectiveness of, the Commission's Territorial Orders pursuant to which Vero Beach provides electrical service in the subject areas of Indian River Shores. Vero Beach states that it is specifically referenced in the requested declaratory statement in the Petition and that the underlying gravamen of the Petition is its assertion that Vero Beach has no inherent statutory authority to exercise extra-territorial powers within the corporate limits of Indian River Shores. Vero Beach states that any declaration addressing those issues will directly affect Vero Beach's substantial interests, and accordingly, Vero Beach is entitled to intervene in this docket.

Standard for Intervention

Pursuant to Rule 28-105.0027(1), F.A.C., persons other than the original parties to a pending proceeding whose substantial interests will be affected by the disposition of the declaratory statement and who desire to become parties may move the presiding officer for leave to intervene. Petitions for leave to intervene must be filed within 21 days after publication of the Notice of the Petition for Declaratory Statement in the Florida Administrative Register. The motion to intervene must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the declaratory statement. Rule 28-105.0027(1), F.A.C., states that the presiding officer shall allow for intervention of persons meeting the requirements for intervention of the rule, and that the presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

Pursuant to Section 120.565, F.S., a person seeking to intervene in a proceeding in which a party is seeking a declaratory statement must establish that: (1) its substantial interest will be affected by the proceeding; and (2) it desires to become a party to the proceeding. AmeriLoss Pub. Adjusting Corp. v. In re: Lightbourn, 46 So. 3d 107, 111 (Fla 3d DCA 2010). In order to show substantial interest in the outcome of a proceeding, a person must show that: (1) it will suffer injury in fact which is of sufficient immediacy to entitle it to the relief requested; and (2) this substantial injury is of a type or nature that the proceeding is designed to protect. The first prong of the test addresses the degree of injury. See Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981), rev. den., Freeport Sulphur Company v. Agrico Chemical Company, 415 So. 2d 1359 (Fla. 1982), and rev. den., Sulphur Terminals Company v. Agrico Chemical Company, 415 So. 2d 1361 (Fla. 1982). The second addresses the nature of the injury. Id.; see also Nuvox Communs., Inc. v. Edgar, 958 So. 2d 920 (Fla. 2007)(where the Court affirmed the Commission's determination of Joint CLEC's lack of standing to challenge a PAA Order based on failure to meet Agrico standing requirements). The "injury in fact" must be both real and immediate and not speculative or conjectural. See Ameristeel Corp v. Clark, 691 So. 2d 473, 477-78 (Fla. 1997).

Analysis & Ruling

It appears that Vero Beach's Motion to Intervene demonstrates that Vero Beach's substantial interests will be directly affected by the declaratory statement and that this substantial injury is of a type or nature that the proceeding is designed to protect. Therefore, Vero Beach meets the requirements of Rule 28-105.0027, F.A.C., and the two-prong standing test of Agrico. Thus, pursuant to Rule 28-105.0027, F.A.C., Vero Beach's Motion to Intervene is granted.

Pursuant to Rule 25-22.039, F.A.C., intervenors take the case as they find it. Vero Beach must comply with all standards, rules, statutes, and procedures that apply to and are expected of all other parties to the proceeding and shall be required to stay within the scope of this proceeding as it has been and will be established.

Based on the foregoing, it is

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that the City of Vero Beach's Motion to Intervene is hereby granted. It is further

ORDERED that all parties to this proceeding shall furnish copies of all documents which may hereinafter be filed in this proceeding to:

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By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 17th day of February, 2016.



RONALD A. BRISÉ

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.

KGWC

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 of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.