State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 22, 2014

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk

FROM: Kathryn Cowdery, Office of the General Counsel

RE: Docket No. 140142-EM

Please file the attached document in the docket file listed above.

Thank you.

Attachment

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

STATE OF FLORIDA

OFFICE OF THE GENERAL COUNSEL
S. CURTIS KISER
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

July 22, 2014

Kenneth J. Plante, Coordinator
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, FL 32399-1400

Via e-mail

RE: Petition for declaratory statement or other relief regarding the expiration of the Vero Beach electric service franchise agreement, by the Board of County Commissioners, Indian River County, Florida.
Docket No. 140142-EM

Dear Mr. Plante:

The Florida Public Service Commission received a Petition for Declaratory Statement from the Board of County Commissioners, Indian River County, Florida on July 21, 2014. A copy of the petition is enclosed. A notice will be published in the Florida Administrative Register on Thursday, July 24, 2014.

Sincerely,

Kathryn G. W. Cowdery
Senior Attorney
Office of the General Counsel

Enclosure

GONZALEZ
SAGGIO
HARLAN

July 21, 2014

BY ELECTRONIC FILING
Carlotta S. Stauffer, Commission Clerk
Room 152, Gunter Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No.
Board of County Commissioners, Indian River County, Florida
Petition for Declaratory Statement

Dear Ms. Cole:

On behalf of the Board of County Commissioners, Indian River County, Florida, attached for filing and the initiation of a new docket is the electronic copy of the Board's Petition for Declaratory Statement and Such Other Relief As May be Required. If there are any questions regarding this matter, please contact me at 702-0090.

Thank you for your assistance with this filing.

Sincerely yours,

s/ Floyd R. Self

Floyd R. Self, B.C.S.
Counsel for Indian River County

FRS/bhs
Enclosures
cc: Dylan Reingold, Esq., County Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Declaratory Statement Before the Florida Public Service Commission by the Board of County Commissioners, Indian River County, Florida	)	Docket No.: Filed: July 21, 2014

PETITION FOR DECLARATORY STATEMENT AND SUCH OTHER RELIEF AS MAY BE REQUIRED

The Board of County Commissioners, Indian River County, Florida (the "Board"), by and through its undersigned counsel, pursuant to Section 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code, hereby files this Petition for a Declaratory Statement from the Florida Public Service Commission ("PSC" or "Commission"). This Petition seeks a declaration regarding the rights, duties, and responsibilities of the Board once the electric service franchise granted by Board to the City of Vero Beach, Florida ("COVB") for certain unincorporated areas of Indian River County (the "County") expires in 2017 and how electric service may thereafter be provided to those County customers, including offices and departments of the Board. In the alternative, or to the extent necessary, the Board also requests that the PSC initiate such proceedings as are authorized within the PSC's jurisdiction to address the territorial agreements, service boundaries, and electric grid reliability responsibilities so as to ensure the continued and uninterrupted supply of electric service throughout the County. In support of its Petition, the Board states as follows:

I. Introduction

1. Petitioner's name and address:

Board of County Commissioners, Indian River County, Florida
Administration Building A
1801 27th Street
Vero Beach, FL 32960-3365

2. All notices, orders, or documents regarding this Petition should be directed to:

Dylan Reingold, Esq.
County Attorney
County Attorney's Office
1801 27th Street
Vero Beach 32960-3388
Phone: (772) 226-1427
Email: dreingold@ircgov.com

Floyd R. Self, B.C.S.
Gonzalez Saggio & Harlan LLP
3411 Capital Medical Blvd.
Tallahassee, Florida 32308
Phone: (850) 702-0090
Email: floyd_self@gshllp.com

3. The County was established by an act of the Florida Legislature on June 29, 1925. Pursuant to the Constitution and laws of the State of Florida, the County is a non-charter county with home rule powers granted by Chapter 125, Florida Statutes. The County is governed by a five member Board of County Commissioners elected at large from the five districts within the County. The Board is the duly authorized "legislative and governing body" of the County with such powers of county government including, *inter alia*, the legal ability to prosecute this legal cause.[1]

II. Declaratory Statement Requested

4. As is more fully discussed below, on January 27, 1987, the Board adopted Resolution 87-12, which granted to COVB an exclusive electric service franchise (the "Franchise") for certain unincorporated geographic areas of the County (the "Franchise Area").

[1] Section 125.01(1)(b), Florida Statutes.

See attached Exhibit A. COVB accepted the Franchise on March 5, 1987. *See* attached Exhibit A, at page 6 of 18. Pursuant to the Franchise, over time COVB has erected within the Franchise certain poles, fixtures, conduits, wires, meters, cables, and other such electric transmission and distribution facilities for the purpose of supplying electricity within the Franchise ("Electric Facilities"). By its terms, the Franchise shall expire on March 4, 2017, absent a mutual agreement to continue.

5. On February 22, 2012, the Board properly noticed COVB that it shall not renew the Franchise when it expires. *See* attached Exhibit B.

6. Electric service within certain other geographic areas of the County is provided by Florida Power & Light Company ("FPL"). As is also further discussed below, the PSC has issued a series of orders approving the electric service areas and territorial boundaries between COVB and FPL.

7. In order to properly plan for the seamless continuation of electric service to those county customers, including offices and departments of the Board, located within the Franchise Area, the Board is in need of a declaration from the PSC regarding the effect of the expiration of the Franchise on a number of critical matters affecting the substantial interests of the Board. Specifically, the Board requests a declaratory statement on the rights, duties, and responsibilities of the Board, on its own behalf as a Florida government entity and electric service customer as well as on behalf of its citizens in the Franchise Area who are COVB electric service customers, on the following questions:

a. Will the Board become a "public utility" as that term is defined in Section 366.02(1), Florida Statutes, if the Board assumes ownership of the Electric Facilities and the Board supplies electric service through the Electric Facilities to those customers currently served by the Electric Facilities?

b. Will the Board become an "electric utility" as that term is defined in Section 366.02(2), Florida Statutes, if the Board assumes ownership of the Electric Facilities and the Board supplies electric service through the Electric Facilities to those customers currently served by the Electric Facilities?

c. Will the Board become a "public utility" as that term is defined in Section 366.02(1), Florida Statutes, or an "electric utility" as that term is defined in Section 366.02(2), Florida Statutes, if the Board assumes ownership of the Electric Facilities and the Board leases or otherwise conveys the Electric Facilities to FPL or some other provider of electric service (e.g., a public utility, another municipality, or a cooperative) that would supply electric service through the Electric Facilities and other necessary equipment to customers within the geographic area of the Franchise?

d. Once the Franchise expires, what will be the legal status of the COVB-FPL territorial agreements and boundaries approved by the PSC? Will the territorial agreements and boundaries approved by the PSC between COVB and FPL become invalid in full or in part (at least with respect to the Franchise Area)?

e. Once the Franchise expires and if the territorial agreements and boundaries approved by the PSC between COVB and FPL become invalid in full or in part (at least with respect to the Franchise Area), with respect to the PSC's jurisdiction under Chapter 366, Florida Statutes, if the Board chooses to supply electric service in the geographic area described by the Franchise, are there any limitations on the Board's ability to enter into a territorial agreement with FPL regarding their respective service areas within the county?

f. Once the Franchise expires and if the territorial agreements and boundaries approved by the PSC between COVB and FPL become invalid in full or in part (at least with respect to the Franchise Area), with respect to the PSC's jurisdiction under Chapter 366, Florida Statutes, are there any limitations on the Board's ability to grant FPL an exclusive franchise to supply electric service within the geographic area described by the Franchise and for FPL to serve such customers?

g. Once the Franchise expires and if the territorial agreements and boundaries approved by the PSC between COVB and FPL remain valid, do the PSC's orders regarding the territorial agreements and boundaries in any manner limit or otherwise preclude the Board from supplying electric service within the geographic area described by the Franchise?

h. Once the Franchise expires and if the territorial agreements and boundaries approved by the PSC between COVB and FPL remain valid, do the PSC's orders regarding the territorial agreements and boundaries in any manner limit or otherwise preclude the Board from granting an exclusive franchise to FPL that would authorize FPL to supply electric service to customers within the geographic area of the Franchise and for FPL to serve such customers?

i. Once the Franchise expires, and COVB is no longer legally authorized to utilize the County's rights of way, to the extent the Board takes such actions as to ensure the continued and uninterrupted delivery of electric service to customers in the Franchise Area, by the Board, FPL, or some other supplier, are there any electric reliability or grid coordination issues that the Board must address with respect to the PSC's jurisdiction under Chapter 366?

j. What is the PSC's jurisdiction with respect to Section 366.04(7), Florida Statutes? Does COVB's failure to conduct an election under Section 366.04(7), Florida Statutes, have any legal effect on the Franchise or the Board's duties and responsibilities for continued electric service within the Franchise area?

k. Once the Franchise expires, and customers in the Franchise Area are being served by a successor electric service provider, does the Board have any legal obligations to COVB or any third parties for any COVB contracts for power generation capacity, electricity supply, or other such matters relating to electric service within the Franchise Area?

l. If the Board grants COVB a temporary extension in the Franchise for the limited purpose and for a limited time in order to seamlessly and transparently transition customers in the Franchise Area to a new electric service provider, are there issues or matters under Chapter 366 or the PSC's rules and orders that must be addressed by the Board for the transition period?

m. What is the PSC's jurisdiction, if any, with respect to the Electric Facilities once the franchise has expired? Is there any limitation or other authority under Chapter 366 impacting a successor electric service provider from buying, leasing, or otherwise lawfully acquiring the Electric Facilities in the Franchise Area from COVB?

n. Does the PSC have the legal authority to invalidate or otherwise supersede the Board's decision to terminate the Franchise and to designate COVB the electric service provider in the Franchise Area?

8. The Board has a present, actual need for the PSC to answer these questions given the Board's particular set of circumstances. The Board, as a public body under Florida law, needs to understand the applicability of Chapter 366 and the PSC's rules and orders to the facts and issues presented herein so that the Board will to be able to properly plan, prepare, and designate a successor electric service provider in the Franchise Area and to undertake such other actions as may be necessary under its powers and authority to ensure the availability of safe, reliable, and cost effective electric service in the Franchise Area after the Franchise expires.

III. Declaratory Statement Statutes, Rules, and Orders

9. The statutes relevant and applicable to the requested declaratory statement are as follows:

a. Section 120.565(1)-(2), Florida Statutes, which provides in its entirety:

> 120.565 Declaratory statement by agencies.—
> (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
> (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

b. Section 366.02, Florida Statutes, which provides in pertinent part:

> 366.02 Definitions.—As used in this chapter:
> (1) "Public utility" means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term "public utility" does not include either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof;
> . . .

(2) "Electric utility" means 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.
(3) "Commission" means the Florida Public Service Commission.

c. Section 366.04(1), Florida Statutes, which provides in pertinent part:

366.04 Jurisdiction of commission.—
(1) In addition to its existing functions, the commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service; assumption by it of liabilities or obligations as guarantor, endorser, or surety; and the issuance and sale of its securities, . . . The jurisdiction conferred upon the commission shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and, in case of conflict therewith, all lawful acts, orders, rules, and regulations of the commission shall in each instance prevail.

d. Section 366.04(2), Florida Statutes, which provides in pertinent part:

366.04 Jurisdiction of commission.—
. . .
(2) In the exercise of its jurisdiction, the commission shall have power over electric utilities for the following purposes:

. . .
(c) To require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes.
(d) To approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. However, nothing in this chapter shall be construed to alter existing territorial agreements as between the parties to such agreements.
(e) To resolve, upon petition of a utility or on its own motion, any territorial dispute involving service areas between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. In resolving territorial disputes, the commission may consider, but not be limited to consideration of, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population, the degree of urbanization of the area, its

proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services.

. . .

e. Section 366.04(7), Florida Statutes, which provides in its entirety:

366.04 Jurisdiction of commission.—

. . .

(7)(a) As used in this subsection, the term "affected municipal electric utility" means a municipality that operates an electric utility that:

1. Serves two cities in the same county;
2. Is located in a noncharter county;
3. Has between 30,000 and 35,000 retail electric customers as of September 30, 2007; and
4. Does not have a service territory that extends beyond its home county as of September 30, 2007.

(b) Each affected municipal electric utility shall conduct a referendum election of all of its retail electric customers, with each named retail electric customer having one vote, concurrent with the next regularly scheduled general election following the effective date of this act.

(c) The ballot for the referendum election required under paragraph (b) shall contain the following question: "Should a separate electric utility authority be created to operate the business of the electric utility in the affected municipal electric utility?" The statement shall be followed by the word "yes" and the word "no."

(d) The provisions of the Election Code relating to notice and conduct of the election shall be followed to the extent practicable. Costs of the referendum election shall be borne by the affected municipal electric utility.

(e) If a majority of the affected municipal electric utility's retail electric customers vote in favor of creating a separate electric utility authority, the affected municipal electric utility shall, no later than January 15, 2009, provide to each member of the Legislature whose district includes any portion of the electric service territory of the affected municipal electric utility a proposed charter that transfers operations of its electric, water, and sewer utility businesses to a duly-created authority, the governing board of which shall proportionally represent the number of county and city ratepayers of the electric utility.

f. Section 366.05(7)-(8), Florida Statutes, which provides in its entirety:

> 366.05 Powers.—
> . . .
> (7) The commission shall have the power to require reports from all electric utilities to assure the development of adequate and reliable energy grids.
> (8) If the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, including inadequacies in fuel diversity or fuel supply reliability, it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will accrue to the electric utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission facilities, with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to ensure compliance. The electric utilities involved in any action taken or orders issued pursuant to this subsection shall have full power and authority, notwithstanding any general or special laws to the contrary, to jointly plan, finance, build, operate, or lease generating and transmission facilities and shall be further authorized to exercise the powers granted to corporations in chapter 361. This subsection shall not supersede or control any provision of the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518.

10. The rules relevant and applicable to the requested declaratory statement are as follows:

a. Rule 25-6.0439, Florida Administrative Code, which provides in its entirety:

> Territorial Agreements and Disputes for Electric Utilities – Definitions.
> For the purpose of Rules 25-6.0440, 25-6.0441 and 25-6.0442, F.A.C., the following terms shall have the following meaning:
> (1) "Territorial agreement" means a written agreement between two or more electric utilities which identifies the geographical areas to be served by each electric utility party to the agreement, the terms and conditions pertaining to implementation of the agreement, and any other terms and conditions pertinent to the agreement;
> (2) "Territorial dispute" means a disagreement as to which utility has the right and the obligation to serve a particular geographical area.

b. Rule 25-6.0441(1), Florida Administrative Code, provides in pertinent part:

> Territorial Disputes for Electric Utilities.
> (1) A territorial dispute proceeding may be initiated by a petition from an electric utility requesting the Commission to resolve the dispute. Additionally the Commission may, on its own motion, identify the existence of a dispute and order the affected parties to participate in a proceeding to resolve it. . . .

11. Although the questions presented by this Petition have previously never been explicitly addressed by the PSC, several Commission orders are also relevant to this declaratory statement request:

a. *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, "Order" (August 29, 1972).

b. *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, "Order Approving Modification of Territorial Agreement" (January 18, 1974).

c. *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, "Notice of Intent to Approve Territorial Agreement" (November 3, 1981).

d. *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, "Consummating Order Approving Territorial Agreement" (February 2, 1983).

e. *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, "Notice of Proposed Agency Action, Order Approving Amendment to Territorial Agreement Between Florida Power & Light Company and the City of Vero Beach" (February 9, 1988).

12. Together these statutes, rules, and orders support the issuance of the requested declaratory statement from the PSC.

IV. How the Statutes, Rules, and Orders Substantially Affect Board

13. Pursuant to Rule 28-105.002(5), Florida Administrative Code, the Board provides the following statement as to how the above-cited statutes, rules, and orders may substantially affect the interests of the Board.

14. Chapter 366, Florida Statutes, differentiates between "public utilities," investor owned electric utilities such as FPL, and "electric utilities," a classification that includes municipal electric utilities such as COVB. While the Commission's jurisdiction with respect to electric utilities is more limited than with public utilities, Section 366.04(2) grants to the PSC specific jurisdiction to approve territorial agreements for both public utilities and electric utilities and upon petition or its own motion to resolve territorial disputes. On the basis of this statutory authority, COVB and FPL have entered into a series of territorial agreements and boundaries that have been approved by the PSC as is set forth in more detail below. While these territorial agreements and boundaries determine the service areas of each utility, COVB's fundamental legal authority to provide electric service outside its city limits and within the unincorporated areas of the County is expressly granted by, and dependent upon, the Board's Franchise to COVB.

15. The Franchise grants to COVB (1) the exclusive right to supply electric service to certain parts of the unincorporated areas of the County, and (2) the right to utilize the streets, bridges, alleys, easements, and public places for the placement of its facilities for a period of 30 years.

16. By its terms, and upon proper notice, the Franchise is going to expire on March 4, 2017, and the Board is not going to continue or otherwise grant COVB a new franchise to provide electric service to the residents in the Franchise Area. Without the Franchise, COVB will no longer have the legal authority to occupy or otherwise utilize the roadways, easements, and public property within the Franchise Area. Without this legal authority, COVB will not be authorized or permitted to provide electric service within the Franchise Area. Thus, the expiration of the Franchise calls into question the territorial agreements and boundaries approved by the PSC since the underlying legal authority for those PSC approved territorial agreements and boundaries will no longer exist.

17. In order for the Board to properly assess the impact of the Franchise expiration on its particular circumstances as a COVB electric customer and as the sole authority to grant a franchise to a successor electric supplier, the Board is seeking the PSC's answers to a series of questions regarding the interpretation of these statutes, rules, and orders with respect to whether the Board chooses to provide electric service or whether it grants a franchise to FPL or some other electric service provider along with other interrelated questions.

18. In addition, the PSC has authority, under Section 366.04(2), with respect to electric reliability and the electric grid. The Board is seeking the PSC's statement regarding the Board's responsibilities regarding the electric reliability and the electric grid within the County in view of the Franchise termination. Further, the Board is seeking to comprehensively

understand its role and the associated legal rights, duties, and responsibilities with respect to the provisioning of electric service within the Franchise Area and the potential issues that may be associated with granting a franchise to a successor provider.

19. Finally, the Legislature passed Section 366.04(7), for the purpose of allowing electric service customers of an "affected municipal electric utility" the opportunity to choose self-governance. According to COVB's own records,[2] COVB's customer base was within the customer range set forth in this statute and COVB otherwise met all of the other statutory preconditions for such an election.[3] However, COVB failed to conduct the required election. Since these requirements specifically appear within a section of the statutes identified as "Jurisdiction of the Commission," the Board needs to understand what jurisdiction, if any, this statute directly or indirectly granted to the PSC and what consequences, if any, the failure to undertake this election has on the Board as a customer, the present supplying of electricity by COVB, the effect of the expiration of the Franchise, and the Board's planning and preparation for a successor electric service provider in the Franchise Area. This issue is especially important since more than half of the COVB customers are outside the city limits and these customers have no vote, no voice, and no redress to the Vero Beach City Commission or city officials since they cannot vote in city elections.

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[2] City of Vero Beach, Florida, *Comprehensive Annual Financial Report for the Fiscal Year Ending September 30, 2013*, at 152-153 ("COVB 2013 Report") (reflecting an electric customer base for fiscal year 2007 of 33,442, which is well within the statutory range of "30,000 and 35,000 retail electric customers as of September 30, 2007" that is set forth in Section 366.04(7)(a)3, Florida Statutes). Total customers for Fiscal Years 2004 to 2013 range from a low of 32,084 in 2004 to a high of 34,308 in 2013. These numbers are consistent with the numbers COVB has reported to the PSC. Florida Public Service Commission, *2012 Statistics of the Florida Electric Utility Industry*, Table 33, "Average Number of Customers by Class of Service by Utility, 2012."

[3] Those other statutory conditions are a municipality that operates an electric utility that serves two cities, in a non-charter county, and does not serve outside its home county. Section 366.04(7)(a), Florida Statutes.

V. The Board's Electric Franchise to COVB

20. Prior to the 1987 Franchise granted by the Board to COVB, as far as the Board can presently ascertain there was no previous franchise or other agreement between COVB and the Board for electric service by COVB within the unincorporated areas of the County. On information and belief, prior to the Franchise any COVB electric service within the unincorporated areas of the County was ancillary to COVB's service within its city limits and subject to general law and common law principles regarding its occupation of the streets, easements, and other public property within the unincorporated areas of the County.

21. The granting of an electric service franchise to COVB for electric service outside its city limits significantly and materially changed the relationship between the parties. As a contract, the Franchise established and controls the rights, duties, and responsibilities of COVB with respect to its electric service within the unincorporated areas of the County. The Franchise contained the following key terms and conditions:

a. The scope of the Franchise permitted COVB as the Grantee, "the sole and exclusive right, privilege or franchise to construct, maintain, and operate an electric system in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public places throughout certain unincorporated areas of Indian River County, Florida, (herein call the "Grantor"), as such Franchise limits are or may be defined in the Service Territory Agreement between the City of Vero Beach, Florida and Florida Power and Light Company." Exhibit A, Franchise Section 1.

b. The period of the Franchise was for "thirty (30) years from the date of acceptance." Exhibit A, Franchise Section 1.

c. The exclusiveness of the Franchise was further confirmed in Section 8, whereby "the Grantor agrees not to engage in or permit any person other than the Grantee to engage in the business of distributing and selling electric power and energy during the life of this franchise or any extension thereof in competition with the Grantee."

d. The Franchise may be renewed upon the mutual agreement of the parties five years in advance of the expiration. Exhibit A, Franchise Section 13.

22. It is important to note that the Franchise by its express language does not in any manner purport to limit or otherwise affect the electric service provided by COVB within its own corporate limits. In addition, the Franchise by its express language does not in any manner grant or otherwise purport to limit or affect the electric service provided by COVB within the corporate limits of the Town of Indian River Shores, Florida, which was incorporated as a municipality in 1953, and which has its own separate electric franchise agreement with COVB regarding service within its corporate limits.

23. A franchise is a privilege and not an absolute or unregulated right.[4] The Board has broad authority with respect to utilities utilizing its rights of way and other public property, including the ability to deny use.[5] Thus, once the Franchise became effective, COVB's electric service within the unincorporated areas of the County became totally and completely dependent upon and subject to the legal authority provided by this contract.[6] Once accepted, the Franchise

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[4] *New Orleans Gaslight Company v. Drainage Commission of New Orleans*, 197 U.S. 453 (1905).

[5] *See* Section 337.401(2), Florida Statutes, which provides in part, "No utility shall be installed, located, or relocated unless authorized by a written permit issued by the authority." The "authority" is defined as "local governmental entities, referred to in ss. 337.401-337.404" that "have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining along, across, or on any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section as the 'utility'." Section 337.401(1), Florida Statutes.

[6] *Florida Power Corp. v. City of Castleberry*, 793 So.2d 1174 (Fla. 5th DCA 2001).

provides the sole legal authority for COVB to occupy or in any manner utilize the streets, bridges, alleys, easements, or other public places within the unincorporated areas of the County to provide electric service.[7] Further, COVB's right to provide electric service was not irrevocable or in perpetuity because the Franchise clearly and unambiguously limited COVB's service to 30 years unless mutually extended.[8] Regardless of whatever may have existed prior to the Franchise, COVB's right and ability to deliver electric service throughout the Franchise Area to the Board or any other customers was expressly conditioned upon the rights and conditions granted in the Franchise reflecting COVB's clear status as a "Grantee" in the Franchise.

24. On March 5, 1987, COVB formally accepted the Franchise, thus starting the 30 year term of the Franchise. *See* Exhibit A, Franchise, at page 6 (acceptance signature and seal). This acceptance of the Franchise binds COVB to all of the terms of the Franchise, including the 30 year term. This means that any contracts, agreements, or other actions of COVB with respect to its provisioning of electric service within the Franchise Area are expressly conditioned upon and limited to only that which has been granted by the Franchise.

25. By a letter dated February 22, 2012, from Gary C. Wheeler, the Chairman of the Board, to Pilar Turner, the Mayor of the COVB, Chairman Wheeler provided a formal written notice that the County would not be renewing the Franchise upon its expiration. *See* attached Exhibit B. Since the Franchise requires an affirmative effort to renew "upon the agreement of both parties," the Board's notice of nonrenewal means that the Franchise shall expire at the end of the thirty year period on March 4, 2017.

26. The five year advance notice requirement provides both parties with the opportunity to reasonably prepare for the termination of the Franchise. It is the Board's duty and

[7] *Lee County Electric Coop., Inc. v. City of Cape Coral*, 2014 WL 2218972 (Fla. 2nd DCA 2012).
[8] *Florida Power Corp. v. City of Castleberry*, 793 So.2d, at 1179.

intent to make those necessary arrangements as will ensure the seamless and uninterrupted provision of electric service to customers within the Franchise Area. Based upon the PSC's answers to this Petition, the Board will move forward with the determination of a successor electric service provider so a new franchise may be granted if required. If the timing and logistics of an uninterrupted transition necessitate a temporary and time limited extension to COVB, the Board is prepared to act responsibility and appropriately. However, the Board shall do everything within its power to transition electric service within the Franchise Area to a new electric supplier as soon as it can be efficiently and effectively accomplished to coincide with the termination of the Franchise.

27. The Franchise does not expressly indicate what shall happen to the Electric Facilities located on the County's streets, alleys, bridges, easements, or other public places throughout the incorporated areas of the County. Given the conditional nature of a utility's placement of facilities pursuant to a franchise,[9] after the expiration of the Franchise COVB shall no longer have any right to occupy the County's property or utilize any public easements. Thus, COVB shall be required to remove the Electric Facilities unless COVB can negotiate a sale or other transfer to the successor electric service provider. Again, the Board shall work with COVB, the successor electric service provider, and the PSC to ensure a seamless and uninterrupted transfer of electric service consistent with applicable law.

VI. The COVB-FPL Territorial Agreements

28. The Franchise explicitly provides that the unincorporated areas of the County that are the subject of the COVB exclusive electric service area shall be as defined by "the Service

[9] *Lee County Electric Coop., Inc. v. City of Cape Coral*, 2014 WL 2218972, at *3.

Territory Agreement between the City of Vero Beach, Florida and Florida Power and Light Company." *See* Exhibit A, Franchise Section 1.

29. The "service territory agreement" referenced in the Franchise would be the various territorial agreements and boundaries that have been filed and approved by the PSC. The PSC has clear authority under Section 366.04(2) over "electric utilities" to "approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction."[10] COVB is an "electric utility" as that term is defined in Section 366.02(2) because it is a "municipal electric utility." Florida Power and Light Company ("FPL"), as an investor owned electric utility, is a "public utility" as that term is defined in Section 366.02(1), and also an "electric utility" for purposes of 366.04(2)(d).

30. According to the PSC's records, over the years COVB and FPL have executed various service territory agreements and amendments, the earliest of which predate the Franchise. On November 1, 1971, COVB and FPL executed their first "Territorial Agreement and Contract for Interchange Service" (the "1971 TA"). This 1971 TA was submitted to the PSC by FPL for approval on January 24, 1972, in Docket No. 72045, and it was approved by the Commission on August 29, 1972, in Order No. 5520. In approving the terms of the territorial agreement, the PSC found "that the approval of this agreement should better enable the two utilities to provide the best possible utility services to the general public at a less cost as the result of the removal of duplicate facilities." Order No. 5520, at page 2.

31. Over the ensuing years, the service areas and territorial boundary between COVB and FPL have changed reflecting the growth in development and population expansion that has occurred in the County. In recognition of these changes, COVB and FPL executed an

[10] Section 366.04(2)(d), Florida Statutes.

amendment to the 1971 TA that was approved by Order No. 6010, on January 8, 1974, in Docket No. 73605.

32. The next recorded change in the service territories occurred on June 11, 1980, when FPL and COVB executed a "Territorial Boundary Agreement." This agreement was submitted to the PSC in Docket No. 800596 and subsequently approved by Order No. 10382 (November 3, 1981) and Order No. 11580 (February 2, 1983). This agreement had the effect of transferring approximately 146 accounts and associated facilities from COVB to FPL and 22 accounts and associated facilities from FPL to COVB. This agreement would have been the "service territory agreement" as then in effect at the time of the granting of the Franchise by Board to COVB in 1987 and these two orders are attached to the Franchise. *See* Exhibit A to this Petition, at pages 8 to 18.

33. COVB and FPL executed an "Amendment to Territorial Boundary Agreement" on September 18, 1987. This agreement between COVB and FPL was the first to occur after the granting of the Franchise to COVB. This Amendment was approved by the PSC in Docket No. 871090 by Order No. 18834 (February 9, 1988) and was intended to address electric service by COVB to a new subdivision, which at that time had no customers. On information and belief, this was the last service area agreement executed by COVB and FPL and approved by the PSC.

34. Together, these various agreements and orders establish the boundaries and geographic areas for the unincorporated portions of the County that is provided electric service by COVB pursuant to the exclusive electric service territory granted by the Franchise.

35. In 2013, COVB and FPL agreed to the sale of the entire COVB electric utility system to FPL, and the sale of the electric system contemplates FPL serving the Franchise Area as well as within the city limits of Vero Beach and within the Town of Indian Shores. At this

time, that sale is still pending. On information and belief, there are several outstanding issues yet to be resolved before the sale may close and the electric service transfers from COVB to FPL. The Board supports this sale, and is prepared to negotiate the necessary franchise agreement and any other required documentation within the Board's authority that would enable FPL to serve customers the Franchise Area. However, there have been some reports suggesting that the transfer may not be completed. Without becoming engaged in whether the sale from COVB to FPL will occur, the Board has a duty and obligation to its citizens within the Franchise Area to ensure that they have high quality, reliable, affordable, and uninterrupted electric service. Therefore, the Board is proceeding with this Declaratory Statement in order to be fully apprised of its rights, duties, and responsibilities in the event the sale to FPL does not close. During this five year transition, the PSC's answers to the Board's questions will help the Board to understand the actions it must take so that Board and other customers currently served by COVB within the Franchise Area will continue to have electric service after expiration of the Franchise.

VII. Declaratory Statement Need and Analysis

36. COVB's electric service within the Franchise Area has become increasingly more contentious and controversial. Municipal electric utility customers generally have a voice in the utility's operation and management through their elected city representatives. But the customers in the Franchise Area have no voice and no redress at all to any governmental authority – since they reside outside the corporate city limits they have no vote in Vero Beach city elections and most municipal utility actions are outside the authority of the PSC.

37. Approximately half of COVB's electric customers are outside the city limits in the unincorporated parts of the County.[11] While the exemption from PSC jurisdiction for municipal utilities is understandable where the customers are all or mostly all city residents, here the majority of the utility's customers have no political or regulatory recourse regarding their electric service provider. This situation is especially egregious since COVB has refused to comply with the requirements of Section 366.04(7), Florida Statutes, by failing to conduct an election or to otherwise create an electric utility authority that would include representation of non-city customers.

38. This lack of representation is realized through the substantial subsidization of COVB's general government operating budget from non-city electric ratepayers. According to COVB, property tax revenues constitute 20% of the total general government revenue in the fiscal year ending September 30, 2013, but transfers from enterprise funds were 35%, most of which are from the electric utility operations.[12] More specifically, property tax revenues in fiscal 2013 were $4,115,113[13] whereas net transfers to general revenue from just the electric utility were $5,438,214.[14] This means that the non-city Franchise Area customers who receive no city services are contributing two-thirds as much revenue to general government as is generated by the city's property taxes.[15]

39. This subsidization of city services by non-residents is especially offensive when COVB's rates are compared to FPL's. A COVB residential customer living across the street

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[11] Based upon the 6% fee-in-lieu-of-franchise revenue paid by COVB to the County, the Board estimates that approximately fifty percent of the total COVB customer base lives in the incorporated areas of the County. The Board understands that another ten percent of the customers live in the Town of Indian Shores, meaning something less than 40 percent of the COVB electric customers actually live in the city.

[12] COVB 2013 Report, at 10.

[13] COVB 2013 Report, at 22 and 32.

[14] COVB 2013 Report, at 44

[15] Inclusion of the Town's customers in this analysis would mean that all non-city electric ratepayers are paying to general government about 80% as much as is generated from property taxes.

from an FPL customer can pay approximately a third more for the same amount of electricity.[16] It seems that while FPL has become more efficient and cost effective over time, COVB's electric utility has become more expensive to and more dependent upon its non-city customers as a source for general government funding.

40. As a COVB electric customer and as the elected representative of all of the citizens of Indian River County, the Board is especially mindful of its role in ensuring that all of its citizens, and especially the citizens in the Franchise Area, have access to high quality, cost-effective electric service. The health, safety, and welfare of our citizens depend upon this indispensable service, and reliable and affordable electricity is vital to the economic development and well-being of our entire County.

41. With the input of our citizens and after careful and deliberative thought and analysis, the Board determined that it would not renew the Franchise granted to COVB when it expires on March 4, 2017. The Board's authority to grant or not to renew franchises is fundamental under Florida law.[17] The PSC is without authority with respect to such franchises.[18]

42. Subsequent to the notice to COVB that the Board would not be renewing COVB's electric service franchise, COVB and FPL have agreed to plan for FPL to acquire the COVB electric utility. The particular details of that transaction are not germane to this Petition other than for the Board to advise the PSC that it strongly supports the transfer to FPL. If the proposed transfer from COVB to FPL is successfully concluded, the questions posed herein will be unnecessary. In that case, the Board shall undertake such necessary actions within its authority,

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[16] Florida Public Service Commission, *2012 Statistics of the Florida Electric Utility Industry*, Table 37, "Price of Residential Service December 31, 2012," at page 46, assuming 1,000 KHW exclusive of taxes.

[17] Counties, such as Indian River County, that do not operate under county charters have such power of self-government as is provided by general or special law. Florida Constitution Article VIII § 1(f)-(g); Sections 125.01 and 125.42, Florida Statues.

[18] *Santa Rosa County v. Gulf Power Co.*, 635 So.2d 96 (Fla. 1st DCA 1994), *rev. den.*, *Gulf Power Co. v. Santa Rosa County*, 645 So.2d. 452 (Fla. 1994).

including a temporary franchise extension to COVB and the granting of an appropriate going-forward franchise to FPL, so as to facilitate the seamless and uninterrupted transfer of customers to FPL.

43. The transfer of electric service to FPL would be good for the County and all of its citizens. However, until the transfer is completed, the Board has a responsibility to plan for the contingency where the transfer does not occur. It is in this context that Board has caused to be prepared and filed this Petition. While the Franchise does not expire for almost three years, time is of the essence in the PSC addressing the Board's questions regarding its present particular circumstances and to remove any doubts as to how the statutes, rules, and orders apply to the Board. As this Commission is well aware, it takes considerable time to plan, develop, and construct utility plants, lines, stations, and other infrastructure. The Board is concerned whether the transition to a new electric service provider in the Franchise Area can be accomplished in time for the March 2017 switchover so electric service will be uninterrupted. Thus, the questions presented herein must be addressed now so the Board understands how the PSC's governing statutes, rules, and orders impact the Board in the termination of the Franchise and the grant of any new franchise to a successor so customers will not be adversely impacted.

44. Once the Franchise expires on March 4, 2017, COVB shall no longer have any right "to construct, maintain, and operate an electric system in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public places throughout certain unincorporated areas of Indian River County, Florida." Exhibit A, Franchise Section 1. Without any legal authority to place its Electric Facilities in the Franchise Area, COVB shall not have any legal authority to use those facilities to deliver electricity to customers in the incorporated areas

of the County.[19] In a dispute between two municipalities where one municipality was providing utility services to customers resident in the other, the Florida Fourth District Court found that in the absence of a franchise a governmental body with franchise authority does not have to "permit the intrusion and maintenance" of the municipality's utility lines and services within its jurisdiction, and the utility could be and was expelled.[20]

45. While the PSC has previously approved several orders addressing territorial agreements and boundaries between COVB and FPL which have had the effect of dividing electric service in the County between them, it is fundamental that any designation of an electric service area by the PSC is contingent upon the utility's lawful right to provide service within that geographical area. As has already been discussed, once the Franchise was accepted by COVB, its electric service to the unincorporated areas of the County became expressly conditioned upon and subject to the grant of rights, duties, and responsibilities set forth in the Franchise.

46. Over a century ago, the Florida Supreme Court recognized that a utility's placement of facilities is not absolute, but that it is subservient to the legal right to occupy or utilize the property where it places it facilities.[21] Even where the placement of utility assets precedes a franchise, such use of preexisting easements does not create or vest the utility with a property interest that is superior to the government's authority or otherwise supersedes the right

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[19] Since the Franchise has no legal effect within the city limits of COVB, COVB shall be free to continue to provide electric service to the residents within its corporate city limits. Likewise, with respect to the Town of Indian Shores, which has granted its own franchise to COVB for COVB to provide electric service to the Town's residents, since the Franchise addresses only certain specific areas within the unincorporated area of the County, any continuation of electric service by COVB to the Town is a matter between the Town and COVB and not within the scope of this Petition. However, the Board recognizes that its actions could impact the Town as it deals with similar issues.

[20] *City of Indian Harbour Beach v. City of Melbourne*, 265 So.2d 422, 424-25 (Fla. 4th DCA 1972). It should be added that the court ordered that the termination of services "not be done precipitously but shall be accomplished within a reasonable length of time so as to not interrupt service to users, taking into account the amount of time required for Indian Harbour Beach to obtain a substitute source of water." *Id.*, at 425.

[21] *Anderson v. Fuller*, 41 So. 684, 688 (Fla. 1906).

of the public.[22] Thus once the Franchise expires, and COVB is without legal authority to occupy or provide service within the unincorporated areas of the County. This means that the territorial agreements and boundaries must therefore become invalid as well, or at least invalid with respect to the Franchise Area. The expiration of the Franchise, and thus the underlying legal authority for the territorial agreements and boundaries calls into question the PSC's orders approving such agreements and may otherwise impact the Board's decision process with respect to a successor electric utility. The termination of the Franchise also constitutes a prima facie case of "changed conditions or other circumstances" meriting further proceedings in which a factual and legal record could be developed that would enable the PSC to void, amend, or take such other actions with respect to the prior territorial orders.[23]

47. In the meantime, the Board shall undertake such actions as will facilitate the continuation of electric service within the Franchise Area in the event the transfer to FPL does not occur. One option may be for the Board to acquire the Electric Facilities and to make such arrangements for the Board to resell electric service to those customers within the Franchise Area. Since the Board possesses those powers of self-government as is provided by general or special law, those powers include municipality powers which encompass the ability to offer utility service, such as the water and wastewater services the Board already currently provides throughout the County.[24] To the extent the Board would offer electric service within the Franchise area, pursuant to its municipal powers the Board would be a municipal electric utility,

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[22] *Lee County Electric Coop. v. City of Cape Coral*, 2014 WL 2218972, at *3.
[23] *Peoples Gas System, Inc. v. Mason*, 187 So. 2d 335, 339 (Fla. 1966); *Austin Tupler Trucking, Inc. v. Hawkins*, 377 So.2d 679 (Fla. 1979); *Reedy Creek Utilities Co. v. Florida Public Service Commission*, 418 So.2d 249 (Fla. 1982); *Florida Power & Light Co. v. Florida Public Service Commission*, 626 So.2d 660 (Fla. 1993).
[24] Section 125.01(1)(q), Florida Statutes.

and thus an electric utility, within the scope of Section 366.02(2) and thus not a public utility under Section 366.02(1).

48. An alternative approach for continued electric service within the Franchise Area would be for the Board to grant a franchise to a utility such as FPL that would then offer electric services within the Franchise Area. The new provider could acquire the Electric Facilities directly from COVB or otherwise construct such necessary facilities that would enable it to provide electric service. To facilitate service, the Board may seek to acquire the Electric Facilities that it could then lease or otherwise convey to the new provider that would be supplying the electric service. Regardless whether the Board owned the Electric Facilities, the Board would not be a public utility or an electric utility within the meaning of Sections 366.02(1) and 366.02(2) since the new provider, and not the Board, would be the entity "supplying electricity . . . to or for the public" within the meaning of the statute.

49. With respect to the territorial agreements and boundaries approved by the PSC, once the Franchise has expired the Board believes that those agreements and boundaries shall be invalid and void or voidable at least with respect to the Franchise Area. Without the legal authority of the Franchise to provide service and the Board's permission to utilize the roads, rights of way, and other County property within the Franchise Area, COVB will not be able to lawfully deliver electricity within the Franchise Area. Based upon these changed facts and circumstances, it would be appropriate for the PSC to initiate the necessary proceedings to modify its previous COVB-FPL territorial orders.[25]

50. Likewise, to the extent the Board determines that it shall provide electric service within the Franchise area, the Board believes it would be appropriate to enter into a territorial

[25] Absent other legal action, the Board recognizes that the territorial areas and boundaries between COVB and FPL would remain effective with respect to service within the corporate limits of Vero Beach and Indian River Shores.

agreement with FPL to identify the respective geographic service areas of each utility. In the absence of any other PSC action to readdress its previous COVB-FPL territorial orders once the Franchise expires, submission of such a territorial agreement to the PSC for approval would be based upon "changed conditions or other circumstances" permitting a modification to the previous COVB-FPL territorial orders under the *Peoples Gas* principles. Thus, the COVB-FPL orders would not serve as any limitation on the Board's ability to provide electric service within the Franchise Area.

51. After the expiration of the Franchise, the Board believes that there would be no limitation on the Board's authority to grant a franchise to FPL or any other successor electric provider within the Franchise Area. Under Chapter 366, the PSC does not have any enumerated authority to grant franchises nor has the PSC "preempted the counties' rights to convey franchises to electric utilities, because the PSC does not have unconditional authority to issues certificates of convenience and necessity to electric utilities."[26] As previously discussed, the expiration of the Franchise and the granting of a franchise to FPL are "changed conditions or other circumstances" that would enable the PSC to reopen and void or otherwise modify the previous COVB-FPL territorial orders.

52. The Board believes that by now planning and preparing for a successor electric service provider, including the grant of a new franchise, the Board is properly addressing electric reliability and grid coordination issues within its authority. The Board is seeking the PSC's confirmation of this. Further, if the PSC believes that there are any additional matters that the Board should address on this subject *vis a vis* Chapter 366 or the Commission's rules and orders,

[26] *Santa Rosa County v. Gulf Power Company*, 635 So.2d at 98.

the Board is seeking the PSC's advice and recommendations with respect to those matters as well.

53. A serious concern of the Board is the suggestion that COVB's underlying contracts for wholesale power with third parties, such as the Orlando Utilities Commission ("OUC") and the Florida Municipal Power Authority ("FMPA"), may somehow permanently bind or otherwise obligate the customers in the Franchise Area to only COVB's electric service regardless of any termination of the Franchise. The Board believes that the termination of the Franchise will completely sever COVB's legal right and ability to serve the Franchise Area. As a matter of law, a utility can only serve subject to its underlying legal authority to erect facilities and operate its system, which requires a franchise. Since the Board is the sole entity with the legal authority to grant a franchise within the unincorporated areas of the County, the expiration of the Franchise terminates COVB's legal authorization to serve in the Franchise Area. This termination of service comes without any liability or responsibility to or for the Board and the Franchise Area customers for any underlying COVB contracts for power generation, electric service, or any other obligations that may exist. Just as granting the Franchise is without any legal consequences to the Board or the Franchise Area customers for any contracts COVB may execute, the termination of the Franchise is equally without any legal consequences to the Board or those customers. The Board requests the PSC's confirmation that the termination of the Franchise is without consequence to the Board or any of the Franchise Area customers with respect to those municipal utility contracts of COVB, OUC, FMPA, or any other contracting party with COVB and that these contracts do not provide COVB with any authority to continue service in the Franchise Area after the Franchise expires.

54. In order to provide a seamless transition to a new electric service provider in the Franchise Area after the Franchise expires, it may be necessary for the Board to grant COVB a temporary extension in the Franchise Area for the limited purpose and for a limited time until the new electric service provider is ready and able to provide electric service. The Board would grant such a temporary extension to help ensure that the transition to the new provider would occur without any interruption in service to customers. The Board believes that if it is necessary to grant a temporary extension, there are no other matters that must be addressed by the Board. However, the Board would appreciate the PSC's opinion whether under such circumstances there are any other matters the Board is required to or otherwise should address within the context of Chapter 366 or the Commission's rules and orders.

55. The Board believes that after the expiration of the Franchise that COVB must either remove its Electric Facilities from the Franchise Area or COVB must sell, lease, or otherwise dispose of them to the successor electric service provider. The Board requests the PSC's statement on whether there are any limitations or other issues under Chapter 366 and the PSC's rules and orders that would preclude or otherwise impact the successor electric utility from seeking to acquire the Electric Facilities through purchase, lease, or other arrangement.

56. As the foregoing should demonstrate, the Board believes that its authority with respect to not granting an extension in the Franchise is not subject to the PSC's jurisdiction and that once the Franchise has expired, COVB's right to lawfully occupy the Franchise Area and provide electric service must terminate (absent any temporary extensions and subject to an uninterrupted transition to a new electric service provider). The Board believes that after the Franchise expires the PSC does not have the authority under Chapter 366 to designate COVB the electric service provider within the Franchise Area. Section 366.04 provides authority to

regulate rates and services, but there is nothing in that section regarding the designation or authorization of a service provider, at best the PSC may only resolve territorial disputes. There is authority in Section 366.05 for the PSC to authorize "improvements, additions, replacements, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto" but this power exists only as to public utilities, such as FPL, and not for municipal electric utilities. Still, as previously discussed, any such requirements by the PSC must, as a matter of constitutional law, remain subject to the utility's lawful right to occupy streets, rights of way, easements, and other property, both public and private. The Board requests that the PSC confirm this understanding or explain otherwise.

VIII. Declaratory Statement

57. The PSC has exclusive jurisdiction with respect to those matters enumerated in Chapter 366, Florida Statutes. Thus, it is appropriate for the Commission to enter a declaratory statement on the various questions posed by the Board with respect to its rights, duties, and responsibilities once the Franchise expires as follows:

a. The Board will not become a "public utility" as that term is defined in Section 366.02(1), Florida Statutes, if the Board assumes ownership of the Electric Facilities and the Board supplies electric service through the Electric Facilities to those customers currently served by the Electric Facilities.
b. The Board will become an "electric utility" as that term is defined in Section 366.02(2), Florida Statutes, if the Board assumes ownership of the Electric Facilities and the Board supplies electric service through the Electric Facilities to those customers currently served by the Electric Facilities
c. The Board will not become a "public utility" as that term is defined in Section 366.02(1), Florida Statutes, or an "electric utility" as that term is defined in Section 366.02(2), Florida Statutes, if the Board assumes

ownership of the Electric Facilities and the Board leases or otherwise conveys the Electric Facilities to FPL or some other provider of electric service (e.g., a public utility, another municipality, or a cooperative) that would supply electric service through the Electric Facilities and/or other necessary equipment to customers within the geographic area of the Franchise.

d. Once the Franchise expires, the COVB-FPL territorial agreements and boundaries approved by the PSC will become invalid as void or voidable at least with respect to the Franchise Area.
e. Once the Franchise expires and the territorial agreements and boundaries approved by the PSC between COVB and FPL become invalid in full or in part (at least with respect to the Franchise Area), if the Board chooses to supply electric service in the geographic area described by the Franchise, there no limitations in Chapter 366 that would preclude or limit the Board's ability to enter into a territorial agreement with FPL regarding their respective service areas within the county.
f. Once the Franchise expires and if the territorial agreements and boundaries approved by the PSC between COVB and FPL become invalid in full or in part (at least with respect to the Franchise Area), under Chapter 366 there any no limitations on the Board's ability to grant FPL or some other successor electric supplier an exclusive franchise to supply electric service within the geographic area described by the Franchise and for that successor electric supplier to serve such customers.
g. Once the Franchise expires and if the territorial agreements and boundaries approved by the PSC between COVB and FPL remain valid, the PSC's orders regarding the territorial agreements and boundaries do not limit or otherwise preclude the Board from supplying electric service within the geographic area described by the Franchise.
h. Once the Franchise expires and if the territorial agreements and boundaries approved by the PSC between COVB and FPL remain valid, the PSC's orders regarding the territorial agreements and boundaries do not limit or otherwise preclude the Board from granting an exclusive franchise to FPL or a successor electric supplier that would authorize the supply electric service to customers within the geographic area of the Franchise and for that supplier to serve customers.
i. Once the Franchise expires, and COVB is no longer legally authorized to utilize the County's rights of way, so long as the Board takes such actions as will facilitate the continued and uninterrupted delivery of electric service to customers in the Franchise Area by the Board, FPL, or some other supplier, there no electric reliability or grid coordination issues that the Board must address with respect to the PSC's jurisdiction under Chapter 366.
j. If the sale of the COVB utility to FPL is completed, or once the Franchise expires and there is a new electric service supplier within the Franchise Area, there are no other matters to be addressed with respect to Section

366.04(7), Florida Statutes. COVB's failure to conduct an election under Section 366.04(7), Florida Statutes, does not have any legal effect on the Franchise or the Board's duties and responsibilities for continued electric service within the Franchise Area.

k. Once the Franchise expires, and customers in the Franchise Area are being served by a successor electric service provider, the Board does not have any legal obligations to COVB or any third parties for any COVB contracts for power generation capacity, electricity supply, or other such matters relating to electric service within the Franchise Area.
l. If the Board grants COVB a temporary extension in the Franchise for the limited purpose and for a limited time in order to seamlessly and transparently transition customers in the Franchise Area to a new electric service provider, there are no issues or matters under Chapter 366 or the PSC's rules and orders that must be addressed by the Board for the transition period.
m. The PSC does not have any jurisdiction with respect to the Electric Facilities once the franchise has expired. There is no limitation or other restriction under Chapter 366 impacting a successor electric service provider from buying, leasing, or otherwise lawfully seeking to acquire the Electric Facilities in the Franchise Area from COVB.
n. The PSC does not have the legal authority to invalidate or otherwise supersede the Board's decision to terminate the Franchise or to designate COVB the electric service provider in the Franchise Area after the Franchise has expired.

58. Based upon the County's particular set of circumstances, the County has a present, actual need for this requested declaratory statement and requests that it be granted as set forth herein.

IX. Conclusions and Relief

59. A petition seeking a declaratory statement is appropriate when there is a need for "resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority." Section 120.565(1), Florida Statutes. Given the foregoing and the significant legal issues and real world consequences associated with the termination of the COVB Franchise and obtaining a successor

electric utility to serve the unincorporated areas of the County currently served by COVB, the Board respectfully requests that the PSC issue an order granting the declaratory statement as set forth herein and to initiate such other proceedings or take such other actions as may be appropriate under the circumstances.

WHEREFORE, the Board of County Commissioners, Indian River County, Florida, respectfully requests that the Florida Public Service Commission grant the declaratory statement requested herein so it may properly plan for and address the continued availability of affordable and reliable electric service to itself and other customers upon the expiration of the City of Vero Beach Franchise, and to grant such other relief as would be in the public interest.

Respectfully submitted,

s/ Floyd R. Self

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E F (12/05/86)

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RESOLUTION 87-12.

RECORD VERIFIED
JEFFREY K. BARTON
CLERK CIRCUIT COURT
INDIAN RIVER CO. FLA

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A RESOLUTION OF INDIAN RIVER COUNTY, FLORIDA, GRANTING TO THE CITY OF VERO BEACH, FLORIDA, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE IN CERTAIN UNINCORPORATED AREAS OF INDIAN RIVER COUNTY, FLORIDA; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED by the Board of Indian River County, Florida, as follows:

Section 1. That there is hereby granted to the City of Vero Beach, Florida (herein called "Grantee"), its successors and assigns, the sole and exclusive right, privilege or franchise to construct, maintain, and operate an electric system in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public places throughout certain unincorporated areas of Indian River County, Florida, (herein called the "Grantor"), as such Franchise limits are or may be defined in the Service Territory Agreement between the City of Vero Beach, Florida and Florida Power and Light Company, and its successors, in accordance with established practices with respect to electric system construction and maintenance, for a period of thirty (30) years from the date of acceptance hereof. Such electric system shall consist of electric facilities (including poles, fixtures, conduits, wires, meters, cable, etc., and, for electric system use, telephone lines) for the purpose of supplying electricity to Grantor, and its successors, the inhabitants thereof, and persons and corporations beyond the limits thereof.

Section 2. Upon acceptance of this franchise, Grantee agrees to provide such areas with electric service.

All of the electric facilities of the Grantee shall be constructed, maintained and operated in accordance with the applicable regulations of the Federal Government and the State of Florida and the quantity and quality of electric service delivered and sold shall at all times be and remain not inferior to the applicable standards for such service and other applicable rules,

OR 0918 PG 0796

regulations and standards now or hereafter adopted by the Federal Government and the State of Florida. The Grantee shall supply all electric power and energy to consumers through meters which shall accurately measure the amount of power and energy supplied in accordance with normally accepted utility standards.

Section 3. That the facilities shall be so located or relocated and so constructed as to interfere as little as practicable with traffic over said streets, alleys, bridges, and public places, and with reasonable egress from and ingress to abutting property. The location or relocation of all facilities shall be made under the supervision and with the approval of such representatives as the governing body of Grantor may designate for the purpose, but not so as unreasonably to interfere with the proper operation of Grantee's facilities and service. That when any portion of a street is excavated by Grantee in the location or relocation of any of its facilities, the portion of the street so excavated shall, within a reasonable time and as early as practicable after such excavation, be replaced by the Grantee at its expense, and in as good condition as it was at the time of such excavation. Provided, however, that nothing herein contained shall be construed to make the Grantor liable to the Grantee for any cost or expense in connection with the construction, reconstruction, repair or relocation of Grantee's facilities in streets, highways and other public places made necessary by the widening, grading, paving or otherwise improving by said Grantor, of any of the present and future streets, avenues, alleys, bridges, highways, easements and other public places used or occupied by the Grantee, except, however, Grantee shall be entitled to reimbursement of its costs as may be provided by law.

Section 4. That Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its facilities hereunder, and the acceptance of this Resolution shall be deemed an agreement on the part of Grantee to indemnify Grantor and hold it harmless against any and all liability, loss, cost, damage, or expense, which may accrue to Grantor by reason of the

neglect, default or misconduct of Grantee in the construction, operation or maintenance of its facilities hereunder.

Section 5. That all rates and rules and regulations established by Grantee from time to time shall be reasonable and Grantee's rates for electric service shall at all times be subject to such regulation as may be provided by State law. The Outside City Limit Surcharge levied by the Grantee on electric rates is as governed by state regulations and may not be changed unless and until such state regulations are changed and even in that event such charges shall not be increased from the present ten (10%) per cent above the prevailing City of Vero Beach base rates without a supporting cost of service study, in order to assure that such an increase is reasonable and not arbitrary and/or capricious.

The right to regulate electric rates, impact fees, service policies or other rules or regulations or the construction, operation and maintenance of the electric system is vested solely in the Grantee except as may be otherwise provided by applicable laws of the Federal Government or the State of Florida.

Section 6. Prior to the imposition of any franchise fee by the Grantor, the Grantor shall give a minimum of sixty (60) days notice to the Grantee of the imposition of such fee. Such fee shall be initiated only upon passage, by the Grantor and acceptance by the Grantee, of an appropriate ordinance in accordance with Florida Statutes. Such fee shall be a percentage of gross revenues from the sale of electric power and energy to customers within the franchise area as defined herein. Said fee, at the option of the Grantee, may be shown as an additional charge on affected utility bills. The franchise fee, if imposed, shall not exceed six (6%) per cent of applicable gross revenues. Should the Grantee refuse to accept an ordinance of the Grantor imposing such a fee, this franchise agreement shall become null and void.

Section 7. Payments of the amount to be paid to Grantor by Grantee under the terms of Section 6 hereof shall be made in monthly installments. Such monthly payments shall be rendered twenty (20) days after the monthly collection period.

The Grantor agrees to hold the Grantee harmless from any damages or suits resulting directly or indirectly as a result of the collection of such fees, pursuant to Sections 6 and 7 hereof and the Grantor shall defend any and all suits filed against the Grantee based on the collection of such moneys.

Section 8. As further consideration of this franchise, the Grantor agrees not to engage in or permit any person other than the Grantee to engage in the business of distributing and selling electric power and energy during the life of this franchise or any extension thereof in competition with the Grantee, its successors and assigns.

Additionally, the Grantee shall have the authority to enter into Developer Agreements with the developers of real estate projects and other consumers within the franchise territory, which agreements may include, but not be limited to provisions relating to;

(1) advance payment of contributions in aid of construction to finance system expansion and/or extension,

(2) revenue guarantees or other such arrangements as may make the expansion/extension self supporting,

(3) capacity reservation fees,

(4) prorata allocations of plant expansion/line extension charges between two or more developers.

Developer Agreements entered into by the Grantee shall be fair, just and non-discriminatory.

Section 9. That failure on the part of Grantee to comply in any substantial respect with any of the provisions of this Resolution, shall be grounds for a forfeiture of this grant, but no such forfeiture shall take effect, if the reasonableness or propriety thereof is protested by Grantee, until a court of competent jurisdiction (with right of appeal in either party) shall have found that Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six (6) months after final determination of the question, to make good the default, before a forfeiture shall result, with the right in Grantor at its

discretion to grant such additional time to Grantee for compliance as necessities in the case require; provided, however, that the provisions of this Section shall not be construed as impairing any alternative right or rights which the Grantor may have with respect to the forfeiture of franchises under the Constitution or the general laws of Florida.

Section 10. That if any Section, paragraph, sentence, clause, term, word or other portion of this Resolution shall be held to be invalid, the remainder of this Resolution shall not be affected.

Section 11. As a condition precedent to the taking effect of this grant, Grantee shall have filed its acceptance hereof with the Grantor's Clerk within sixty (60) days after adoption. This Resolution shall take effect on the date upon which Grantee files its acceptance.

Section 12. The Franchise Territory will be expanded or contracted to include or exclude lands, provided such lands are lawfully annexed into the Grantee's City limits and/or the Service Territory Agreement between the Grantee and Florida Power and Light Company is amended and the Public Service Commission of the State of Florida approves of such change(s) in service boundaries.

Section 13. This franchise is subject to renewal upon the agreement of both parties. In the event the Grantee desires to renew this franchise, then a five year notice of that intention to the Grantor shall be required. Should the Grantor wish to renew this franchise, the same five year notice to the Grantee from the Grantor shall be required and in no event will the franchise be terminated prior to the initial thirty (30) year period, except as provided for in Section 9 hereof.

Section 14. Provisions herein to the contrary notwithstanding, the Grantee shall not be liable for the non-performance or delay in performance of any of its obligations undertaken pursuant to the terms of this franchise, where said failure or delay is due to causes beyond the Grantee's control including, without limitation, "Acts of God", unavoidable casualties, and labor disputes.

DONE and ADOPTED in regular session, this 27th day of January, 1987.

ACCEPTED:

CITY OF VERO BEACH

By: _____
Mayor

Date: 5 March 1987

Attest: _____
City Clerk

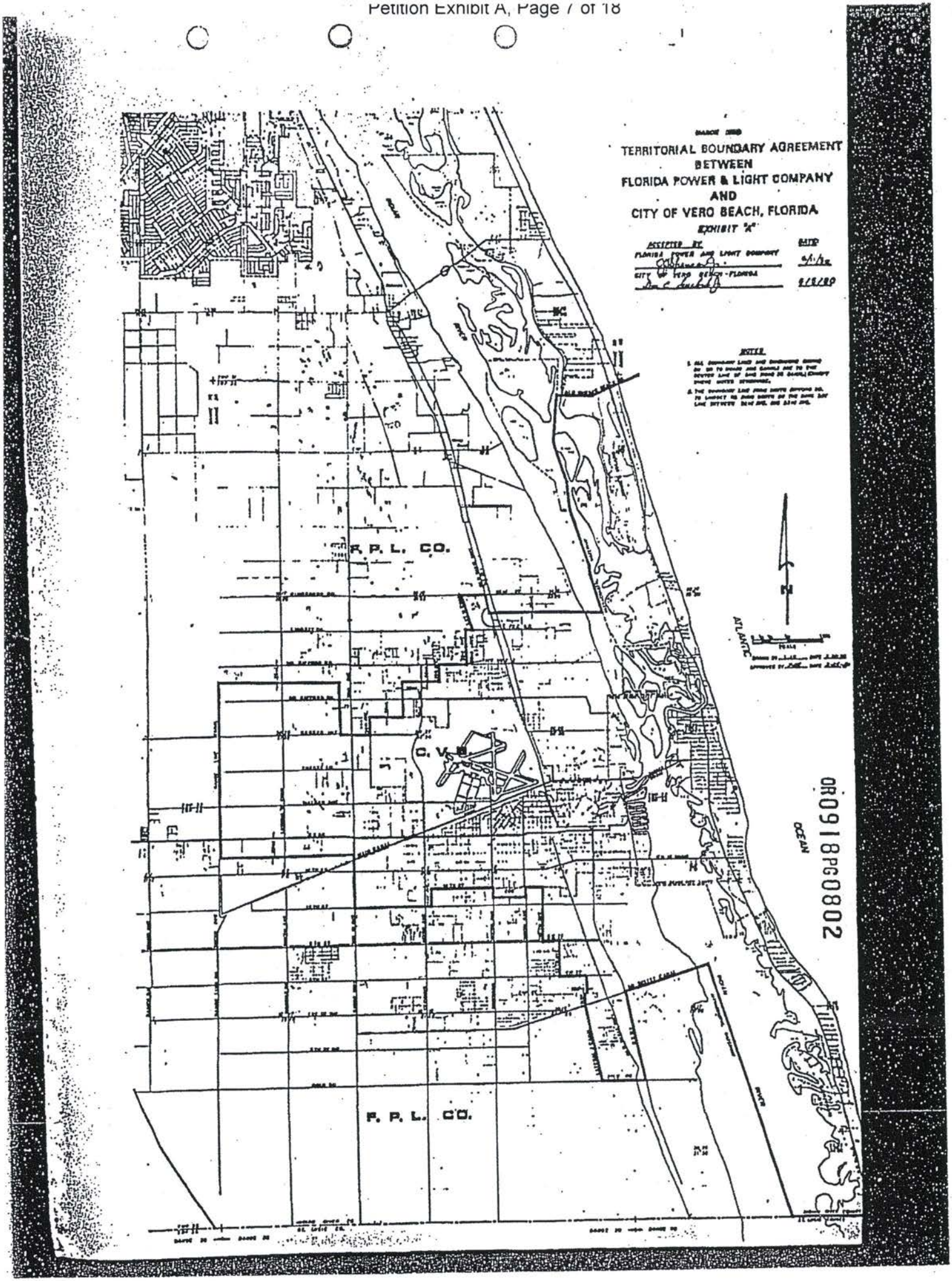
BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY

By: _____
Chairman

Attest: _____

Approved as to form
and legal sufficiency
By _____
Charles P. Vitunac
County Attorney

ORB0918PG0801



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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 ISSUED: 11-03-81

The following Commissioners participated in the dispostion of this matter:

JOSEPH P. CRESSE, Chairman
GERALD L. GUNTER
JOHN R. MARKS, III
KATIE NICHOLS
SUSAN W. LEISNER

NOTICE OF INTENT
TO APPROVE TERRITORIAL AGREEMENT

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission of its intent to approve a territorial agreement between Florida Power and Light Company (FPL) and the City of Vero Beach, Florida (Vero Beach or the City.)

BACKGROUND

On May 4, 1981, FPL and Vero Beach filed an Amended Petition for Approval of Territorial Agreement seeking approval of a territorial agreement defining their respective service territories in certain areas of Indian River County. That agreement establishes as the territorial bounday line between the respective service areas of FPL and Vero Beach the line defined in Appendix A to this notice.

FPL and Vero Beach have since 1972 operated under an agreement to provide interchange service and to observe territorial boundaries for the furnishings of electric service to customers which was approved by the Commission in Docket No. 72045-EU, Order No. 5520, dated August 29, 1972, and modified in Docket No. 73605-EU, Order No. 6010, dated January 18, 1974.

At this point, the Commission finds no compelling reason to set this matter for hearing. There exists no dispute between the parties and there appears to be limited customer objection to the agreement. Moreover, the Commission concludes that it has before it sufficient information to find that the agreement is in the public interest.

Nevertheless, to insure that all persons who would be affected by the agreement have the opportunity to object to the approval of the agreement, the Commission is issuing this Notice of Intent to Approve. The reasons for approving the territorial agreement are listed below.

JUSTIFICATION FOR APPROVAL OF TERRITORIAL AGREEMENT

Under this agreement, the City of Vero Beach will transfer approximately 146 electric service accounts to FPL and FPL will transfer approximately 22 electric service accounts to the City. The value of the distribution facilities to be transferred from FPL to the City is approximately $11,000, while the value of the facilities to be transferred from the City to FPL is approximately $34,200.

The parties were successful in contacting 143 of the 168 accounts affected by the new agreement. Of these, 137 returned a written questionnaire on the agreement; 117 customers were not opposed to the transfer of accounts, while the remainder were.

Approval of this territorial agreement should assist in the avoidance of uneconomic duplication of facilities on the part of the parties, thereby providing economic benefits to the customers of each. Additionally, the new territorial boundary will better conform to natural or permanent landmarks and to present land development. Thus, the proposed territorial agreement should result in higher quality electric service to the customers of both parties.

For these reasons, the Commission finds that there is justification for the approval of the agreement.

PROCEDURE

Any request for a hearing on this matter must be received by the Commission Clerk by December 3, 1981. If no such request is received by that date, this Order will become final.

A copy of this Notice will be provided to all persons listed on this matter's mailing list. Also, a copy of this Notice will be mailed by the parties to those customers whose accounts will be transferred by the new agreement within ten (10) days of the date of this Order.

In view of the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition of Florida Power and Light Company and the City of Vero Beach for approval of a territorial agreement as is hereby defined in Appendix A is approved as delineated above. This Order shall become final unless an appropriate petiton is received (See Rule 28-5.111 and 28-5.201, Florida Administrative Code) within thirty (30) days of the issuance of this notice. It is further

ORDERED that the applicants provide, by U.S. Mail, a copy of this Notice to each customer account which will be transferred pursuant to the territorial agreement within ten (10) days of the date of this Notice. It is further

ORDERED that upon receipt of an appropriate petition regarding this proposed action, the Commission will institute further proceedings in accordance with Rule 28-5.201(3), Florida Administrative Code. It is further

ORDERED that after thirty (30) days from the date of this Notice, this Order shall either become final or the Commission Clerk will issue notice of further proceedings.

By ORDER of the Florida Public Service Commission, this 3rd day of November 1981.

(S E A L)

Steve Tribble
COMMISSION CLERK

MBT

TERRITORIAL BOUNDARY AGREEMENT
BETWEEN
FLORIDA POWER & LIGHT COMPANY
AND
CITY OF VERO BEACH, FLORIDA
DATED JUNE 11, 1980

By virtue of the entitled Agreement, the area bounded by the Atlantic Ocean and the following described boundary line is, with respect to Florida Power & Light Company (FPL), reserved to the City of Vero Beach (City). The area outside of the boundary line with repsect to the City is reserved to FPL.

Beginning where the extension of Old Winter Beach Rd. meets the Atlantic Ocean; then westerly along Old Winter Beach Rd. and its extensions to the Intracoastal Waterway; then southerly along the Intracoastal Waterway to the intersection of a line parallel to and 1/4 mile south of Kingsbury Rd. (53 St.); then west along a line parallel to and 1/4 mile south of Kingsbury Rd. (53 St.) to the Florida East Coast Railroad right-of-way; then northerly along the Florida East Coast Railroad right-of-way to Kingsbury Rd. (53 St.); then west along Kingsbury Rd. (53 St.) to Lateral H Canal; then southerly along Lateral H Canal to Lindsey Rd.; then west along Lindsey Rd. to the rear property line between 32 Ave. and 33 Ave.; then south along the rear property line between 32 Ave. and 33 Ave. to No. Gifford Rd.; then west along No. Gifford Rd. to 39 Ave; then south along 39 Ave. for a distance of 1/4 mile; then west along a line parallel to and 1/4 mile south of No Gifford Rd. to a point 1/4 mile west of 43 Ave; then south along a line parallel to and 1/4 mile west of 43 Ave. to a point 1/4 mile south of So. Gifford Rd.; then west along a line parallel to and 1/4 mile south of So. Gifford Rd. to 56 Ave.; then south along 56 Ave. to Barber Ave.; then west along Barber Ave. to a point 1/4 mile west of 58 Ave.; then north along a line parallel to and 1/4 mile west of 58 Ave. to a point 1/4 mile south of No. Gifford Rd.; then west along a line parallel to and 1/4 mile south of No. Gifford Rd. to Range Line Canal; then south along Range Line Canal to a point 1/4 mile south of SR 60; then east along a line parallel to and 1/4 mile south of SR 60 to 58 Ave.; then south along 58 Ave. to 12 St.; then east along 12 St. to 41 Ave.; then north along 41 Ave. to 14 St.; then east along 14 St. to 27 Ave.; then south along 27 Ave. for a distance of 600 ft.; then east along a line parallel to and 600 ft. south of 14 St. to 20 Ave.; then north along 20 Ave. to 14 St.; then east along 14 St. to 16 Ave.; then south along 16 Ave. to 8 St.; then east along 8 St. to 12 Ave.; then south along 12 Ave. to 4 St.; then east along 4 St. to a point 130 ft. east of extended 9 Dr.; then south along a line parallel to and 130 ft. east of extended 9 Dr. to 2 St.; then west along 2 St. to 9 Dr.; then south along 9 Dr. to So. Relief Canal; then westerly along So. Relief Canal to Lateral J. Canal; then southerly along Lateral J. Canal to Oslo Rd.; then east along Oslo Rd. to US #1; then northerly along US #1 to So. Relief Canal; then easterly along So. Relief Canal to the Intracoastal Waterway; then southerly along the Intracoastal Waterway to the Indian River - St. Lucie County Line, then east along the Indian River - St. Lucie County Line to the Atlantic Ocean.

Note: All references to avenues, drives, highways, streets, railroad R/W, canals and waterways means the centerline of same unless otherwise noted.

APPENDIX A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Florida Power and Light Company and the City of Vero Beach for approval of an agreement relating to service areas.	) DOCKET NO. 800596-EU) ORDER NO. 11580) ISSUED: 2-2-83	

The following Commissioners participated in the disposition of this matter:

CHAIRMAN JOSEPH P. CRESSE
COMMISSIONER GERALD L. GUNTER

CONSUMMATING ORDER APPROVING TERRITORIAL AGREEMENT

BY THE COMMISSION:

On November 3, 1981, the Florida Public Service Commission issued Order No. 10382, which provided that a proposed territorial agreement between the City of Vero Beach (Vero Beach) and Florida Power and Light Company (FPL) would be granted final approval, if no objections were filed within 30 days. A timely petition was filed on behalf of 106 customers served by Vero Beach who apparently did not want to be transferred to FPL. A hearing was properly noticed for May 5, 1982 in Vero Beach and was conducted as scheduled.

During the course of the hearing it became apparent that a majority of the customers wanted to continue receiving service from Vero Beach, which was provided for in the Order, but had somehow miscontrued the Commission's order as requiring that they submit a petition or a request for hearing. After listening to the parties' presentations and an explanation of the Commission's decision, the customers expressed their satisfaction with the agreement as it was originally proposed to be approved.

However, a group of Vero Beach customers residing along State Road 60 outside of Vero Beach voiced strong opposition to being transferred to FPL. The customers expressed a fear that their rates would significantly increase if they were to receive service from FPL. They also expressed their doubts concerning whether FPL would promptly respond to service problems.

Vero Beach presently has a three-phase distribution circuit along State Road 60 with single phase laterals to the north and south providing service to this group of residential customers. The territory north, west and south of the area is now within FPL's service territory. We are not unmindful of the concerns voiced by these customers. However, we find that the corridor should be transferred to FPL because this will provide the most economical means of distributing electrical service to all present and future customers in this area.

The majority of customers approved of the territorial agreement as initially presented in Commission Order No. 10382. The customers residing along the State Road 60 corridor opposed being transferred to FPL, but did not present evidence which would support reversal of the Commission's original decision. We find that Order No. 10382 should be adopted as the Commission's final order.

We believe that our decision is in the best interest of all parties concerned. Our approval of the territorial agreement

serves to eliminate competition in the area; prevent duplicate lines and facilities; prevent the hazardous crossing of lines by competing utilities; and, provides for the most efficient distribution of electrical service to customers within the territory. We find continued support for our approval of the territorial agreement in a Florida Supreme Court decision, Storey v. Mayo, 217 So. 2d 304, (Fla. 1968), cert. den., 395 U.S. 909, 80 Sup. Ct. 1751 23 L. Ed 2d 222, which held that:

> "...Because of this, the power to mandate an efficient and effective utility in the public interest necessitates the correlative power to protect the utility against unnecessary, expensive competitive practices. While in particular locales such practices might appear to benefit a few, the ultimate impact of repetition occurring many times in an extensive system-wide operation could be extremely harmful and expensive to the utility, its stockholders and the great mass of its customers."

In that decision the Supreme Court also held that:

> "An individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself."

We find that the assertions made on behalf of those customers residing within the corridor along State Road 60 do not justify reversing our decision in this case as proposed in Order No. 10382. It is, thefore,

ORDERED by the Florida Public Service Commission that Order No. 10382, issued on November 3, 1981, is hereby adopted as a final Order.

By ORDER of the Florida Public Service Commission, this 2nd of FEBRUARY 1983.

STEVE TRIBBLE
COMMISSION CLERK

(S E A L)

ARS

EXHIBIT 1

TERRITORIAL BOUNDARY AGREEMENT BETWEEN FLORIDA POWER & LIGHT COMPANY AND CITY OF VERO BEACH, FLORIDA

Section 0.1 THIS AGREEMENT, made and entered into this 11th day of June, 1980, by and between FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Florida, herein referred to as the "COMPANY," party of the first part, and CITY OF VERO BEACH, FLORIDA, a body politic and corporate of the State of Florida, herein referred to as the "CITY," party of the second part;

W I T N E S S E T H

Section 0.2 WHEREAS, by contract dated November 1, 1971 the parties hereto agreed to observe a certain territorial boundary and to provide for interchange service between them; and

Section 0.3 WHEREAS, the parties hereto now deem it desirable to reaffirm that the existence of territorial boundaries has been and will continue to be beneficial in eliminating undesirable duplication of facilities and thereby providing economical benefits to the customers of each party; and

Section 0.4 WHEREAS, the parties hereto also deem it desirable to redefine the territorial boundary previously approved by the Florida Public Service Commission, herein referred to as the "FPSC," so that such territorial division will better conform to natural or permanent landmarks and to present land development; and

Section 0.5 WHEREAS, each party desires to describe more clearly the intent of the parties with respect to the administration of a territorial agreement between them; and

Section 0.6 WHEREAS, the execution of this AGREEMENT by the parties hereto is not conditioned upon the acceptance of or agreement to any other contractual arrangements pending or contemplated by or between the parties.

Section 0.7 NOW, THEREFORE, in consideration of the foregoing premises and of the mutual benefits to be obtained from the covenants herein set forth, the parties hereto do hereby agree as follows:

ARTICLE I

TERM OF AGREEMENT

Section 1.1 TERM: After this AGREEMENT becomes effective pursuant to Section 3.4 hereof, it shall continue in effect until termination or until modification shall be mutually agreed upon, or until termination or modification shall be mandated by governmental entities or courts with appropriate jurisdiction. Fifteen (15) years from the date above first written, but not before, either of the parties hereto shall have the right to initiate unilateral action before any governmental entity or court with appropriate jurisdiction, seeking to obtain modification or cancellation of this AGREEMENT.

Section 1.2 The provisions of this AGREEMENT shall supersede any territorial boundary-related provisions of existing or prior contracts and/or agreements between COMPANY and CITY; provided, however, that the remaining provisions of any such existing or prior contracts and/or agreements shall in no way be affected by this AGREEMENT.

ARTICLE II

ESSENCE OF AGREEMENT

Section 2.1 The area inside the boundary line shown on the map attached hereto and labelled Exhibit A is reserved to the CITY (as relates to the COMPANY), and the area outside said boundary line is reserved to the COMPANY (as relates to the CITY), with respect to service to retail customers.

Section 2.2 The parties agree that neither party will provide or offer to provide electric service at retail to future customers within the territory reserved to the other party.

Section 2.3 The parties recognize that, in specific instances, good engineering practices (or economic constraints on either of the parties) may from time-to-time indicate that small service areas and/or future retail electric customers should not be served by the party in whose territory they are located. In such instances, upon written request by the party in whose territory they are located to the other party, the other party may agree in writing to provide service to such small service areas and/or future retail electric customers, and it is understood that no additional regulatory approval will be required for such agreement(s).

Section 2.4 As a result of the revision of the boundary lines effected hereunder, each party shall as soon as possible and not later than two (2) years after the date of approval of this AGREEMENT by the FPSC, surrender to the other party without further action by the other party the right and obligation to serve within the areas being transferred to such other party, as more particularly described on Exhibit B hereto, and shall by that date, have made all necessary modifications to its

facilities to effect that transfer. Each party shall be obligated to sell to the other party on the basis of fair value, those certain distribution facilities providing service to customers which, as a result of this boundary revision, are within an area being transferred to the other party.

Section 2.5 The COMPANY and the CITY may continue to have their existing respective transmission lines and feeders within the service area of the other party. In addition, either party may, from time-to-time, locate substations and transformers and install transmission lines or feeders and other facilities in the service area of the other party, subject to mutual written consent and approval, which consent shall not be unreasonably withheld. No such facilities shall be used by the one party to provide service to customers located in the service area of the other party except as may be necessary to implement the provisions of Section 2.3.

Section 2.6 Annexation or deannexation of territory by the CITY shall not affect this AGREEMENT unless mutually agreed upon by the parties hereto.

ARTICLE III

MISCELLANEOUS PROVISIONS

Section 3.1 The failure of either party to enforce any provision of this AGREEMENT in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

Section 3.2 Neither party shall assign, transfer or sublet any privilege granted to it hereunder without the prior consent in writing of the other party, but otherwise, this AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 3.3 This AGREEMENT shall be governed by the laws of the State of Florida.

Section 3.4 The parties recognize that under the laws of the State of Florida, the FPSC has jurisdiction to approve retail territorial agreements, and therefore they agree to cooperate in petitioning that Commission for its required approval of and authorization to implement all of the terms and conditions of this AGREEMENT.

Section 3.5 This AGREEMENT shall be effective on the date it is approved by the FPSC in accordance with Section 3.4 hereof.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized officers or officials, and copies delivered to each party, as of the day and year first above stated.

ATTEST:

BY: _____
Secretary

FLORIDA POWER & LIGHT COMPANY

BY: _____
Sr. Vice President

ATTEST:

BY: _____
City Clerk

CITY OF VERO BEACH, FLORIDA

BY: _____
Mayor

BY: _____
City Manager

BY: _____
City Attorney
As to form

TERRITORIAL BOUNDARY AGREEMENT BETWEEN FLORIDA POWER & LIGHT COMPANY AND CITY OF VERO BEACH, FLORIDA DATED JUNE 11, 1980

By virtue of the entitled Agreement, the area bounded by the Atlantic Ocean and the following described boundary line is, with respect to Florida Power & Light Company (FPL), reserved to the City of Vero Beach (City). The area outside of the boundary line with repsect to the City is reserved to FPL.

Beginning where the extension of Old Winter Beach Rd. meets the Atlantic Ocean; then westerly along Old Winter Beach Rd. and its extensions to the Intracoastal Waterway; then southerly along the Intracoastal Waterway to the intersection of a line parallel to and 1/4 mile south of Kingsbury Rd. (53 St.); then west along a line parallel to and 1/4 mile south of Kingsbury Rd. (53 St.) to the Florida East Coast Railroad right-of-way; then northerly along the Florida East Coast Railroad right-of-way to Kingsbury Rd. (53 St.); then west along Kingsbury Rd. (53 St.) to Lateral H Canal; then southerly along Lateral H Canal to Lindsey Rd.; then west along Lindsey Rd. to the rear property line between 32 Ave. and 33 Ave.; then south along the rear property line between 32 Ave. and 33 Ave. to No. Gifford Rd.; then west along No. Gifford Rd. to 39 Ave; then south along 39 Ave. for a distance of 1/4 mile; then west along a line parallel to and 1/4 mile south of No Gifford Rd. to a point 1/4 mile west of 43 Ave; then south along a line parallel to and 1/4 mile west of 43 Ave. to a point 1/4 mile south of So. Gifford Rd.; then west along a line parallel to and 1/4 mile south of So. Gifford Rd. to 56 Ave.; then south along 56 Ave. to Barber Ave.; then west along Barber Ave. to a point 1/4 mile west of 58 Ave.; then north along a line parallel to and 1/4 mile west of 58 Ave. to a point 1/4 mile south of No. Gifford Rd.; then west along a line parallel to and 1/4 mile south of No. Gifford Rd. to Range Line Canal; then south along Range Line Canal to a point 1/4 mile south of SR 60; then east along a line parallel to and 1/4 mile south of SR 60 to 58 Ave.; then south along 58 Ave. to 12 St.; then east along 12 St. to 41 Ave.; then north along 41 Ave. to 14 St.; then east along 14 St. to 27 Ave.; then south along 27 Ave. for a distance of 600 ft.; then east along a line parallel to and 600 ft. south of 14 St. to 20 Ave.; then north along 20 Ave. to 14 St.; then east along 14 St. to 16 Ave.; then south along 16 Ave. to 8 St.; then east along 8 St. to 12 Ave.; then south along 12 Ave. to 4 St.; then east along 4 St. to a point 130 ft. east of extended 9 Dr.; then south along a line parallel to and 130 ft. east of extended 9 Dr. to 2 St.; then west along 2 St. to 9 Dr.; then south along 9 Dr. to So. Relief Canal; then westerly along So. Relief Canal to Lateral J. Canal; then southerly along Lateral J. Canal to Oslo Rd.; then east along Oslo Rd. to US #1; then northerly along US #1 to So. Relief Canal; then easterly along So. Relief Canal to the Intracoastal Waterway; then southerly along the Intracoastal Waterway to the Indian River - St. Lucie County Line, then east along the Indian River - St. Lucie County Line to the Atlantic Ocean.

Note: All references to avenues, drives, highways, streets, railroad R/W, canals and waterways means the centerline of same unless otherwise noted.

APPENDIX A

BOARD OF COUNTY COMMISSIONERS

February 22, 2012

Honorable Pilar Turner, Mayor
City of Vero Beach Councilmembers
1053 20th Place
Vero Beach, Florida 32961-1389

RE: Electric Franchise, IRC Resolution 87-12

Dear Mayor Turner and Members of the City Council:

As you know, on March 5, 1987, the County granted a thirty year franchise to the City to provide electric service to certain areas of the County. The franchise provides that "This franchise is subject to renewal upon the agreement of both parties. In the event the [City] desires to renew this franchise, then a five year notice of that intention to the [County] shall be required. Should the [County] wish to renew this franchise, the same five year notice to the [City] from the [County] shall be required … ."

The purpose of this letter is to advise that at its meeting on February 21, 2012, the Board of County Commissioners voted not to renew the franchise, and to provide notice of this fact to the City Council. Thus, the Council should consider this letter to be formal notice that the County will not renew the electric franchise when it expires on March 4, 2017.

Sincerely,

Gary C Wheeler

Gary C. Wheeler, Chairman
Indian River County Board of County Commissioners

cc: Craig Fletcher, Vice Mayor
Tracy Carroll, Councilmember
Jay Kramer, Councilmember
Dick Winger, Councilmember
James O'Connor, City Manager

Building A
1801 27th Street
Vero Beach, FL 32960-3388
Telephone: 772.226.1490 FAX: 772.770.5334

Kathryn Cowdery

From: Julie Phillips
Sent: Tuesday, July 22, 2014 2:34 PM
To: 'plante.ken@leg.state.fl.us'
Cc: Kathryn Cowdery
Subject: Petition for Declaratory Statement Dkt. 140142-EM
Attachments: 140142-EM Notice of Dec.pdf; 140142-EM Cover letter.pdf

Mr. Plante,

On behalf of Kathryn Cowdery, please find an attached Petition for Declaratory Statement and cover letter.

Please verify receipt via return email.

Thank you.

Julie Phillips
413-6084
jphillip@psc.state.fl.us

Julie Phillips

From: Julie Phillips
Sent: Tuesday, July 22, 2014 2:34 PM
To: 'plante.ken@leg.state.fl.us'
Cc: Kathryn Cowdery
Subject: Petition for Declaratory Statement Dkt. 140142-EM
Attachments: 140142-EM Notice of Dec.pdf; 140142-EM Cover letter.pdf

Mr. Plante,

On behalf of Kathryn Cowdery, please find an attached Petition for Declaratory Statement and cover letter.

Please verify receipt via return email.

Thank you.

Julie Phillips
413-6084
jphillip@psc.state.fl.us