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January 13, 2015

VIA: ELECTRONIC FILING

Ms. Carlotta S. Stauffer
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

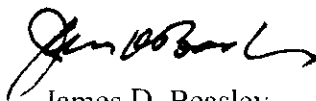
Re: Petition for Declaratory Statement
Docket No. 140244-EM

Dear Ms. Stauffer:

Attached for filing in the above docket is Tampa Electric Company's Motion for Leave to File Amicus Curiae Comments with attached Amicus Curiae Comments on the Petition of the City of Vero Beach, Florida for a Declaratory Statement Regarding Effect of the Commission's Orders Approving Territorial Agreement in Indian River County.

Thank you for your assistance in connection with this matter.

Sincerely,



James D. Beasley

JDB/pp
Attachment

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement)
regarding the effect of the Commission's)
orders approving territorial agreements)
in Indian River County, by the City of)
Vero Beach.)
_____)

DOCKET NO. 140244-EM

FILED: January 13, 2015

**TAMPA ELECTRIC COMPANY'S
MOTION FOR LEAVE TO FILE AMICUS CURIAE COMMENTS**

Tampa Electric Company ("Tampa Electric" or "the company"), pursuant to Rule 28-106.204, Florida Administrative Code, submits this its motion for leave to file the attached amicus curiae comments addressing the Petition for Declaratory Statement ("the Petition") filed on behalf of the City of Vero Beach, Florida on December 19, 2014, and says:

1. Tampa Electric is an investor-owned electric public utility regulated by this Commission pursuant to Chapter 366, Florida Statutes. As such, Tampa Electric has a significant interest in the manner in which Chapter 366, Florida Statutes, is construed and implemented and the precedent which may be established through the disposition of petitions like the one presented in this case.

2. The Petition is related to the Petition for Declaratory Statement filed on August 14, 2014 on behalf of the Board of County Commissioners, Indian River County, Florida in Docket No. 140142-EM. Both Petitions involve legal issues concerning the effect of Commission orders approving electric utility territorial agreements and the extent to which, if any, they are impacted by the existence, non-existence or expiration of privately negotiated electric utility franchise agreements. In Docket No. 140142-EM the Commission granted Tampa Electric Company's motion for leave to appear as amicus curiae and to file comments. Tampa

Electric has the same interests and concerns regarding the disposition of the instant Petition as it did with regard to the Petition filed in Docket No. 140142-EM.

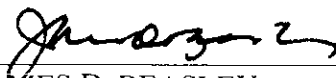
3. Given the above interest, Tampa Electric desires to be heard regarding the legal interpretations addressed in the Petition. Tampa Electric believes that its input may assist the Commission in disposing of the Petition. Tampa Electric also requests the opportunity to address the Commission at such time as the Petition may be brought before the Commission for argument and discussion.

4. Counsel for Tampa Electric has conferred with counsel for the City of Vero Beach who advises that the City supports this Motion.

WHEREFORE, Tampa Electric moves the Commission for leave to file the attached amicus curiae comments addressing the Petition in this proceeding and requests an opportunity to orally address the Commission at such time as it takes up consideration and argument regarding the Petition.

DATED this 13th day of January 2015.

Respectfully submitted,



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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

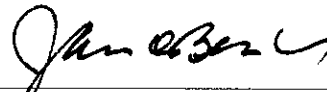
I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Leave to File Amicus Curiae Comments, filed on behalf of Tampa Electric Company, has been furnished by electronic mail on this 13th day of January 2015 to the following:

Ms. Kathryn Cowdery
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ATTORNEY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement)
regarding the effect of the Commission's)
orders approving territorial agreements)
in Indian River County, by the City of)
Vero Beach.)
_____)

DOCKET NO. 140244-EM

FILED: January 13, 2015

**TAMPA ELECTRIC COMPANY'S AMICUS CURIAE COMMENTS
ON THE PETITION OF THE CITY OF VERO BEACH, FLORIDA
FOR A DECLARATORY STATEMENT REGARDING EFFECT
OF THE COMMISSION'S ORDERS APPROVING
TERRITORIAL AGREEMENT IN INDIAN RIVER COUNTY**

Tampa Electric Company ("Tampa Electric" or "the company") offers the following amicus curiae comments regarding the Petition for a Declaratory Statement ("the Petition") filed on behalf of the City of Vero Beach, Florida on December 19, 2014:

Tampa Electric has reviewed and agrees with the City's legal position set forth in the Petition that the Commission's exercise of its broad and exclusive statewide authority under Chapter 366, Florida Statutes, including its approval of electric territorial agreements, is not impacted by the existence, non-existence or expiration of electric utility franchise agreements. Tampa Electric takes no position on the factual representations in the City's Petition or on the merits regarding who should serve the customers at issue.

Tampa Electric adheres to the legal positions stated in its August 14, 2014 Amicus Curiae Comments filed in Docket No. 140142-EM¹ (the pending petition for declaratory statement by the Board of County Commissioners, Indian River County, Florida). For convenience and brevity those comments are attached hereto as Exhibit "A".

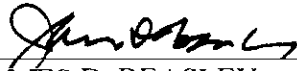
¹¹ Petition for declaratory statement or other relief regarding the expiration of the Vero Beach electric service franchise agreement by the Board of County Commissioners, Indian River County, Florida.

In Docket No. 140142-EM Tampa Electric asserted that any effort to place a non-Commission approved privately negotiated franchise agreement above the Commission's broad statewide authority under Chapter 366, Florida Statutes, including Commission orders approving territorial agreements between and among electric utilities, is completely contrary to law and should be soundly rejected. The same legal considerations support a Commission determination that the right and obligation of an electric utility to provide retail electric service pursuant to a Commission approved territorial agreement are not affected in any way by the existence, non-existence or expiration of electric utility franchise agreements.

WHEREFORE, Tampa Electric submits the foregoing Amicus Curiae Comments regarding the legal effect of the Commission's orders approving territorial agreements.

DATED this 13th day of January 2015.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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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. 140142
FILED: August 14, 2014

**TAMPA ELECTRIC COMPANY'S AMICUS CURIAE
COMMENTS ON THE PETITION FOR
DECLARATORY STATEMENTS AND SUCH
OTHER RELIEF AS MAY BE REQUIRED**

Tampa Electric Company (“Tampa Electric” or “the company”) offers the following amicus curiae comments regarding the Petition for Declaratory Statement and Such Other Relief as May Be Required (“the Petition”), filed on July 21, 2014 in this proceeding on behalf of the Board of County Commissioners, Indian River County, Florida (the “County”):

Tampa Electric has reviewed the legal grounds stated in the City of Vero Beach’s (the “City’s”) motion to dismiss and believes them to be meritorious. Tampa Electric takes no position on the factual representations in the City’s motion nor on the merits regarding who should serve the customers at issue.

Tampa Electric has reviewed and supports the City’s response on the legal merits to the County’s Petition. The County’s attempted means for accomplishing its goal – placing a non-Commission approved privately negotiated franchise agreement above the Commission’s broad statewide authority under Chapter 366, Florida Statutes – is completely contrary to law and should be soundly rejected.

As the Petition acknowledges, Section 366.04, Florida Statutes vests the Commission with broad authority over electric utilities in Florida. Section 366.04, Florida Statutes states:

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.

It is clear from the County’s Petition that its goal is to enable electric customers in the unincorporated portions of the County to switch electric service providers (from the City to FPL). The County’s strategy for achieving this result is to elevate a privately negotiated, non-Commission approved franchise agreement above the long-standing Commission approved territorial boundaries dividing the service territories of the City and FPL. The County’s efforts in this regard completely ignore the Commission’s plenary jurisdiction to approve territorial

agreements and resolve disputes between and among electric utilities in this state and should be emphatically rejected.

The County's own Petition acknowledges, at pages 7-8, the Commission's authority to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities and other electric utilities under its jurisdiction, and to resolve, upon petition of a utility or on its own motion, any territorial dispute that may arise between and among them.

The Petition goes on to acknowledge, at page 9, the Commission's authority under Section 366.05, Florida Statutes, to cure inadequacies in the statewide grid by requiring electric utilities to install or repair necessary facilities, including generating plant and transmission facilities and to take all necessary steps to insure compliance.

Noticeably absent in the Petition is the Commission's further jurisdiction, under Section 366.04(5), Florida Statutes, as follows:

The commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

As the County's Petition states, at page 14, prior to the 1987 Franchise Agreement at issue here, the City served electric customers in the unincorporated areas of the County 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. The City also served those customers pursuant to the Commission approved territorial agreement and amendments thereto listed on pages 10 and 11 of the Petition. Once those territorial agreement and amendments were approved they merged with and became a part of the Commission's orders approving them, with any modification or termination of them having to be first made by the Commission. Public Service Commission v. Fuller, 551 So2d 1210 (Fla. 1989). Those orders control which utility has the right and the obligation to serve the unincorporated portions of the County – not a subsequently negotiated private agreement between the County and the City addressing the franchise fees the City collects and remits to the County. Contrary to the County's contention, it lacks the authority to unilaterally dictate the continuation (or termination) of Commission orders defining territorial boundaries of electric utilities.

The County desires that residents in the unincorporated areas of the County be provided the right to switch their electric service from the City to FPL. However, as the Supreme Court observed many years ago in Storey v. Mayo, 217 So.2d 304, 307-308 (Fla. 1968):

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

If an individual has no such right, neither does the County have the right on behalf of the individuals residing within the County.

Tampa Electric urges the Commission to also recognize that its exclusive jurisdiction to approve electric utility territorial agreements and resolve territorial disputes serves a purpose beyond avoiding uneconomic duplication of generation, transmission and distribution facilities. It also enables the Commission to actively supervise the horizontal divisions of utility service territories which, in the absence of such active supervision, would be considered per se Federal antitrust violations under the Sherman Act, 15 U.S.C. §1. Parker v. Brown, 317 U.S. 341, 350 (1942). The County's theory that local governments can choose, by virtue of granting franchises, which electric service provider can serve within the franchise areas would give counties a role in determining utility service boundaries that is at odds with the requirement of active supervision by the state through the Commission.

The declarations sought by the County, if granted, could have a monumental negative impact on the Commission's ability to carry out its duties under the grid law and to exercise its jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to insure adequate and reliable electric service and the avoidance of further uneconomic duplication of generation, transmission and distribution facilities. Local governmental bodies in the state could simply require a franchise agreement, then let it expire, in order to "trump" the Commission's prior decisions approving the most appropriate, economic and reliable territorial divisions between electric utilities in Florida. Clearly, this result was not intended by the Legislature and the County's efforts to produce such a change to Florida law and precedent through declaratory statements should be rejected out of hand.

WHEREFORE, Insofar as the County seeks declarations that are in conflict with the Commission's exclusive authority to approve and regulate territorial agreements between and among electric utilities, Tampa Electric supports the City's Motion to Dismiss and Response in Opposition to Indian River County's Petition for Declaratory Statement and Other Relief, and offers the foregoing comments in support of dismissal of the Petition, or alternatively, denial of the declaratory statements sought by the County.