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: January 22, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Cowdery) JE/S.M.C.
Division of Economics (Draper) EJD

RE: Docket No. 140244-EM – 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.

AGENDA: 02/03/15 – Regular Agenda – Decision on Declaratory Statement – Participation on Issue 2 is based on Commission's vote on Issue 1.

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: May be deferred – statutory deadline for issuing the final order is March 19, 2015.

SPECIAL INSTRUCTIONS: Please list Docket Nos. 140142-EM and 140244-EM consecutively on the agenda

Case Background

On December 19, 2014, the City of Vero Beach filed a petition for declaratory statement (City's Petition). Pursuant to Rule 28-105.0024, Florida Administrative Code (F.A.C.), a Notice of Declaratory Statement was published in the December 23, 2014, edition of the Florida Administrative Register, informing interested persons of the City's Petition. The City's Petition requests the following two declarations:

a. Neither the existence, non-existence, nor expiration of the Franchise Agreement between Indian River County and the City has any effect on the City's right and

obligation to provide retail electric service in the City's designated electric service territory approved by the Commission through its Territorial Orders.

b. The City can lawfully, and is obligated to, continue to provide retail electric service in the City's designated electric service territory, including those portions of its service territory within unincorporated Indian River County, pursuant to applicable provisions of Florida Statutes and the Commission's Territorial Orders, without regard to the existence or non-existence of a franchise agreement with Indian River County and without regard to any action that the County might take in an effort to prevent the City from continuing to serve in those areas.

On January 13, 2015, the Board of County Commissioners, Indian River County, filed a response in opposition to the City's Petition and requested intervention. On January 20, 2015, Vero Beach filed a reply to the County's response in opposition to the City's Petition. Vero Beach did not object to the County's intervention. On January 22, 2015, intervention was granted to Indian River County. Amicus curiae status was granted to Duke Energy Florida, Inc., Tampa Electric Company, Florida Municipal Electric Association, Inc., and Florida Electric Cooperatives Association, Inc. Duke, TECO, FMEA, and FECA filed comments generally in support of the City's Petition.

This recommendation addresses the City of Vero Beach's Petition for Declaratory Statement. Pursuant to Section 120.565(3), Florida Statutes (F.S.), a final order on a petition for declaratory statement must be issued within 90 days, which is March 19, 2015. The Commission has jurisdiction pursuant to Section 120.565 and Chapter 366, F.S.

Discussion of Issues

Issue 1: Should the Commission grant the motions to address the Commission and allow participation at the Agenda Conference?

Recommendation: Yes, the motions to address the Commission should be granted, and all parties and amici curiae should be allowed to participate at the Agenda Conference. Oral argument for Docket Nos. 140142-EM and 140244-EM should be heard together and the Commission should allow 15 minutes for each side. (Cowdery)

Staff Analysis: Indian River County requested oral argument, and TECO, FECA, and FMEA requested an opportunity to address the Commission. The County requested oral argument of 30 minutes per side.

TECO, FMEA, and Indian River County state that their participation will assist the Commission in its deliberation of the issues raised in the Petitions. TECO states that it has a significant interest as a Commission-regulated, investor-owned public utility, in the legal issues raised by the City's Petition concerning the Commission's jurisdiction in relation to an electric utility franchise agreement. Indian River County asserts that the City's Petition involves complex legal and jurisdictional issues with potentially far-reaching consequences for the County, Vero Beach, and County citizens who receive service from Vero Beach. FMEA states that given its position as representative for all of Florida's municipal electric utility industry, it is uniquely qualified to assist the Commission concerning legal issues that must be resolved in this proceeding. FECA states that given its long-standing representation of the majority of Florida's electric cooperatives in Commission proceedings, its comments will assist the Commission in its deliberations.

Pursuant to Rule 25-22.0021(7), F.A.C., it is within the Commission's discretion to grant the motions to address the Commission on the City's Petition in order to allow informal participation at the Agenda Conference. If participation will assist the Commission in its deliberations, the Commission routinely considers the arguments of parties and amici curiae in declaratory statement proceedings. E.g. Order No. PSC-14-0392-DS-PU, issued July 30, 2014, in Docket No. PSC-14-0392-DS-PU, In re: County's Petition for declaratory statement regarding discovery by Office of Public Counsel; Order No. PSC-13-0652-DS-EQ, issued December 11, 2013, in Docket No. 130235-EQ, In re: County's Petition for declaratory statement by Southeast Renewable Fuels, LLC; and Order No. PSC-08-0374-DS-TP, issued June 4, 2008, in Docket No. 080089-TP, In re: County's Petition for declaratory statement by Intrado Commc'ns, Inc.

Staff believes that participation at the Agenda Conference by the parties and amici curiae may aid the Commission in understanding and evaluating the issues to be decided, thereby facilitating the Commission's deliberation of the issues raised in the City's Petition. Therefore, staff recommends that the motions to address the Commission should be granted, and all parties and amici curiae should be allowed to participate at the Agenda Conference. Staff recommends that oral argument for Docket Nos. 140142-EM and 140244-EM should be heard together and that the Commission should allow 15 minutes for each side.

Issue 2: Should the Commission issue a declaratory statement on the City of Vero Beach's Petition for Declaratory Statement?

Recommendation: Yes. The Commission should declare that Vero Beach has the right and obligation to continue to provide retail electric service in the territory described in the Territorial Orders upon expiration of the Franchise Agreement. The Commission should state that the declaratory statement will be controlling only as to the facts relied upon and not as to other, different or additional facts. (Cowdery)

Staff Analysis:

I. Threshold requirements for issuance of a declaratory statement

Declaratory statements are governed by Section 120.565, F.S., and the Uniform Rules of Procedure in Chapter 28-105, F.A.C. Section 120.565, F.S., states, in pertinent part, that:

> (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.

Rule 28-105.001, F.A.C., Purpose and Use of Declaratory Statement, provides that:

> A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.[1]

Rule 28-105.002, F.A.C., requires a petition for declaratory statement to include a description of how the statutory provisions or rule on which a declaratory statement is sought may substantially affect the petitioner in the petitioner's particular set of circumstances. Since a declaratory statement procedure is intended to resolve controversies or answer questions or

[1] Order No. PSC-08-0374-DS-TP, at p. 15, issued June 4, 2008, in Docket No. 080089-TP, In re: Petition for declaratory statement regarding local exchange telecoms. network emergency 911 service, by Intrado Commc'ns Inc. (petition for declaratory statement denied, in part because it asks to determine the conduct of other entities in addition to petitioner's own interests, which is prohibited by Rule 28-105.001, F.A.C.).

doubts concerning the applicability of statutes, rules, or orders, the validity of the statute, rule, or order is assumed.[2]

A purpose of the declaratory statement procedure is to enable members of the public to definitively resolve ambiguities of law arising in the planning of their future affairs and to enable the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts.[3] The courts and the Commission have repeatedly stated that one of the benefits of a declaratory statement is to enable the petitioner to avoid costly administrative litigation by selecting a proper course of action in reliance on the agency's statement.[4] Further, "the reasoning employed by the agency in support of the declaratory statement may offer useful guidance to others who are likely to interact with the agency in similar circumstances."[5] The Commission has dismissed petitions for declaratory statement that fail to meet the threshold requirements of Section 120.565, F.S.[6]

A petition for declaratory statement must demonstrate a present, ascertained state of facts or present controversy as to a state of facts and may not allege merely a hypothetical situation[7] or the possibility of a dispute in the future.[8] Declaratory statements cannot be rendered when the petitioner provides only speculative allegations of circumstances that may someday occur and that might result in certain actions that might impact the petitioner or unspecified third parties.[9] Because a declaratory statement is intended to address a petitioner's particular factual

[2] Retail Grocers Ass'n of Fla. Self Insurers Fund v. Dep't of Labor & Employment Sec., Div. of Workers' Comp., 474 So. 2d 379, 382 (Fla. 1st DCA 1985)(citing to Waas, Initiating agency action: petition for declaratory statement and rulemaking under the Florida Administrative Procedure Act, 55 Fla. Bar. J. 43 (1981)).

[3] Dep't of Bus. and Prof'l Regulation, Div. of Pari-Mutual Wagering v. Inv. Corp. of Palm Beach, 747 So. 2d 374, 382 (Fla. 1999)(quoting Patricia A. Dore, Access to Florida Administrative Proceedings, 13 Fla. St. U.L. Rev. 965, 1052 (1986)).

[4] Id. at 384; Adventist Health Sys./Sunbelt, Inc. v. Agency for Health Care Admin., 955 So. 2d 1173, 1176 (Fla. 1st DCA 2007); Order No. PSC-02-1459-DS-EC, pp. 3-4, issued October 23, 2002, in Docket No. 020829-EC, In re: Petition for declaratory statement concerning urgent need for electrical substation in North Key Largo by Florida Keys Electric Coop. Ass'n Inc., pursuant to Section 366.04, Florida Statutes.

[5] Inv. Corp. of Palm Beach, 747 So. 2d at 385 (quoting Chiles v. Dep't of State, Div. of Elections, 711 So. 2d 151, 154-55 (Fla. 1st DCA 1998)).

[6] E.g. Order No. PSC-04-0063-FOF-EU, issued Jan. 22, 2004, in Docket No. 031017-EU, In re: Request for Declaratory Statement by Tampa Electric Company Regarding Territorial Dispute with City of Bartow in Polk County, (petition dismissed for lack of an actual, present and practical need, no live controversy, and assertions based on a state of facts which has not arisen); Order No. PSC-0210-FOF-EQ, issued February 15, 1995, in Docket No. 940771-EQ, In re: Petition for determination that implementation of contractual pricing mechanism for energy payments to qualifying facilities complies with Rule 25-17.0832, F.A.C., by Florida Power Corp. (dismissing petition for declaratory statement asking for interpretation of contract term).

[7] See Santa Rosa County, v. Dep't of Admin. Hearings, 661 So. 2d 1190, 1193 (Fla. 1995); Sutton v. Dep't of Envtl. Prot., 654 So. 2d 1047, 1048-49 (Fla. 5th DCA 1995); Order No. PSC-01-1611-FOF-SU, p. 8, issued August 3, 2001, in Docket No. 010704-SU, In re: Petition for declaratory statement by St. Johns County (petition for declaratory statement denied for failure to demonstrate a present, ascertained or ascertainable state of facts or a present controversy as to a state of facts that are not merely a hypothetical situation).

[8] Okaloosa Island Leaseholders Ass'n, Inc. v. Okaloosa Island Auth., 308 So. 2d 120, 122 (Fla. 1st DCA 1975).

[9] Intrado, at 21.

circumstances, an agency does not have authority in a declaratory statement proceeding to give a general legal advisory opinion or to announce general policy of far-reaching applicability. [10]

A declaratory statement is not appropriate where the alleged doubt or uncertainty is not about statutory provisions, rules, or orders and where the statement will not resolve the alleged controversy.[11] Further, where issues raised in a petition for declaratory statement are pending in circuit court litigation, it would be an abuse of the agency's authority to permit the use of the declaratory statement process as a means for the petitioner to attempt to obtain administrative preemption over legal issues properly pending in court and involving the same parties.[12]

The agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts.[13] In ruling on a petition for declaratory statement, an agency may decide to issue a declaratory statement and answer the question or deny the petition and decline to answer the question.[14]

II. The City of Vero Beach's Petition for Declaratory Statement

A. Facts alleged in the City's Petition

The City's Petition summarizes the history of Vero Beach's operation of a municipal electric utility system beginning in 1920. Vero Beach explains that its service area, as approved by the Territorial Orders, includes area within the city limits and in unincorporated Indian River County, and that Vero Beach has been serving outside its municipal limits since at least 1952, and probably since the 1930s. Vero Beach states that it has been providing service pursuant to Commission orders since at least 1972. The City's Petition reviews the five Commission Territorial Orders which approved and modified the territorial agreements between FPL and Vero Beach (Territorial Orders). Vero Beach notes that the County did not participate in any of these proceedings.

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[10] Inv. Corp. of Palm Beach, 747 So. 2d at 385; Askew v. Ocala, 348 So. 2d 308, 310 (Fla. 1977) (declaratory relief properly denied where petitioners sought judicial advice different than an Attorney General's advisory opinion, where there was no present dispute, only a desire by public officials to take certain action in the future and ward off possible consequences); Lennar Homes, Inc. v. Dep't of Bus. & Prof'l Regulation, Div. of Fla. Land Sales, Condos. & Mobile Homes, 888 So. 2d 50, 51 (Fla. 1st DCA 2004)(reversing the agency's declaratory statement which announced a general policy of far-reaching applicability); Fla. Dep't of Ins. v.. Gaur. Trust Life Ins. Co., 812 So. 2d 459, 460-61 (Fla. 1st DCA 2002) (Court held declaratory relief not available to render what amounts to an advisory opinion upon a showing of the mere possibility of legal injury based on hypothetical facts which have not arisen).

[11] Order No. PSC-02-1459-DS-EC, pp. 7-9, issued October 23, 2002, in Docket No. 020829-EC, In re: Petition for declaratory statement concerning urgent need for electrical substation in North Key Largo by Florida Keys Electric Coop. Ass'n Inc., pursuant to Section 366.04, Florida Statutes.

[12] Padilla v. Liberty Mut. Ins. Co., 832 So. 2d 916, 919 (Fla. 1st DCA 2002); Suntide Condo..Ass'n, Inc. v. Div. of Fla. Land Sales, Condos.. and Mobile Homes, 504 So. 2d 1343, 1345 (Fla. 1st DCA 1987); In re: Petition for declaratory statement by Florida Keys Electric Coop. Ass'n, Inc., at pp. 4-6 (noting that even though the legal issue before DOAH was different than the issue presented in the Petition, the subject matter was the same, and therefore not properly decided by the Commission); See also ExxonMobile Oil Corp. v. Dep't of Agric. & Consumer Servs., 50 So. 3d 755 (Fla. 1st DCA 2010)(stating that an administrative agency must decline to provide a declaratory statement when the statement would address issues currently pending in a judicial proceeding); Intrado, at 15.

[13] Rule 28-105.003, F.A.C.

[14] Subsection 120.565(3), F.S., and Rule 28-105.003, F.A.C.

Vero Beach states that in 1987, it entered into a Franchise Agreement with Indian River County (Franchise Agreement). It alleges that currently, pursuant to the Territorial Orders, home rule powers, Chapters 166 and 180, F.S., and other legal authority, Vero Beach operates an electric generating plant, transmission lines and related facilities, and distribution lines and facilities that serve approximately 34,000 meters, of which approximately 12,900 meters are located within the City limits and approximately 21,000 meters are located outside the City limits. The City's Petition estimates that about 20 percent of the City's transmission and distribution lines in the unincorporated areas of the County are located in County road rights-of-way, and the remainder is located in State rights-of-way, on private roads, and in private easements.

The City's Petition alleges that in reliance on the Territorial Orders and other authority, and in order to serve its customers within its approved service area, Vero Beach has invested tens of millions of dollars, borrowed tens of millions of dollars, and entered into long-term power supply projects and related contracts also involving millions of dollars of long-term financial commitments.

B. Statutory provisions and orders to be applied to the facts

Vero Beach asks the Commission to declare the status of its right to continue operating in its Commission-approved service territory under the Commission's statutes and orders regarding the regulation of electric utility service and service territories in Florida. The applicable statutory provisions addressed are Section 366.04(1), F.S., concerning the Commission's jurisdiction, Section 366.04(2)(d) & (e), F.S., giving the Commission the authority to approve territorial agreements and resolve disputes concerning territorial agreements between certain electric utilities, and Section 366.04(5), F.S., concerning the Commission's jurisdiction concerning grid reliability.[15] These statutory provisions of Section 366.04, F.S., state as follows:

> (1) In addition to its existing functions, the [C]ommission 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 [C]ommission 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 [C]ommission shall in each instance prevail.
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> (2) In the exercise of its jurisdiction, the [C]ommission shall have power over electric utilities for the following purposes:
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> * * *

[15] Staff notes that the Grid Bill codified the Commission's authority to approve and review territorial agreements involving investor-owned utilities and expressly granted the Commission jurisdiction over rural electric cooperatives and municipal electric utilities for approving territorial agreements and resolving territorial disputes. See Richard C. Bellak and Martha Carter Brown, Drawing the Lines: Statewide Territorial Boundaries for Public Utilities in Florida, 19 Fla. St. L. Rev. 407, 413 (1991).

> (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.
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> (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.
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> (5) The [C]ommission 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.

The City's Petition identifies the Commission orders approving the electric service areas and territorial boundaries between Vero Beach and FPL (Territorial Orders) as relevant and applicable to issuance of the requested declaratory statements. These orders are as follows:

> Order No. 5520, issued August 29, 1972, in Docket No. 72045-EU, In re: Application of Florida Power and Light Company for approval of a territorial agreement with the City of Vero Beach (approving the original territorial agreement between Vero Beach and FPL).
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> Order No. 6010, issued January 18, 1974, in Docket No. 73605-EU, 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 (approving a slight modification of the territorial agreement with no facilities or customers being affected).
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> Order No. 10382, issued November 3, 1981, in Docket No. 800596-EU, In re: Application of FPL and the City of Vero Beach for approval of an agreement relative to service areas (approving as in the public interest a territorial agreement where each utility transferred a number of electric service accounts to the other) and Order No. 11580, issued February 2, 1983, in that same docket (consummating order).

> Order No. 18834, issued February 9, 1988, in Docket No. 871090-EU, In re: Petition of Florida Power & Light Company and the City of Vero Beach for Approval of Amendment of a Territorial Agreement (approving the amendment to the territorial agreement by establishing a new territorial dividing line).

C. Description of how Vero Beach is substantially affected

Vero Beach alleges that the statutory provisions and orders it identifies substantially affect its interests. The City's Petition states that Vero Beach provides retail electric service within its Commission-approved service area pursuant to the Territorial Orders, and the Commission's declaration will determine whether Vero Beach's right and obligation to provide service to its Commission-approved service areas are subject to abrogation or nullification by the actions threatened by the County. Vero Beach alleges that Indian River County, through the County's Petition for Declaratory Statement in Docket No. 140142-EM, is threatening to evict Vero Beach from providing electric service in its Commission-approved service areas in unincorporated Indian River County upon expiration of the Franchise Agreement. It alleges that declarations by the Commission will have a direct and immediate impact on Vero Beach's ability to make appropriate, efficient planning and investment decisions that include addressing significant impacts arising from substantial stranded costs that would occur if the County were to oust Vero Beach from its Commission-approved service territory.

D. Declaration Requested

The City's Petition requests the following two declarations:

> a. Neither the existence, non-existence, nor expiration of the Franchise Agreement between Indian River County and [Vero Beach] has any effect on [Vero Beach's] right and obligation to provide retail electric service in [Vero Beach's] designated electric service territory approved by the Commission through its Territorial Orders.
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> b. [Vero Beach] can lawfully, and is obligated to, continue to provide retail electric service in [Vero Beach's] designated electric service territory, including those portions of its service territory within unincorporated Indian River County, pursuant to applicable provisions of Florida Statutes and the Commission's Territorial Orders, without regard to the existence or non-existence of a franchise agreement with Indian River County and without regard to any action that the County might take in an effort to prevent [Vero Beach] from continuing to serve in those areas.

E. Vero Beach's Legal Argument

Vero Beach states that because the Commission has exclusive and superior jurisdiction over service territories and has expressly exercised that jurisdiction by approving the Vero Beach-FPL territorial agreements in the Territorial Orders, the Franchise Agreement is of no effect or consequence to Vero Beach's right and obligation to serve or to the Commission's

Territorial Orders. It asserts that the Commission should accordingly grant the declaratory statements requested by Vero Beach.

Vero Beach alleges that because the Commission's jurisdiction over Vero Beach's service area is exclusive and superior with respect to all other entities of Florida state government pursuant to Section 366.04(1), F.S., specifically including counties, Vero Beach's continuing right and obligation to serve in its Commission-approved service area cannot be affected by the expiration of the Franchise Agreement, or by any other action of the County. It argues that the expiration, existence, or non-existence of the Franchise Agreement is of no effect or consequence to the City's right and obligation to provide electric service, to the Commission's jurisdiction, or to the Commission's Territorial Orders approving Vero Beach's service territory. Vero Beach argues that to hold otherwise would result in the Commission effectively ceding its Section 366.04(5), F.S., grid planning jurisdiction to the counties. It alleges that no utility could reasonably plan or make proper investments if any county could evict the incumbent utility upon expiration of a franchise agreement.

Vero Beach argues that the Franchise Agreement is of no effect or consequence relative to the Commission's exclusive and superior jurisdiction over territorial matters and the planning, development and maintenance of a coordinated electric power supply grid in order to prevent the uneconomic duplication of distribution facilities and, therefore, does not affect the validity of the Commission's Territorial Orders. Vero Beach maintains that because of the Commission's exclusive and superior jurisdiction over service territories, the Franchise Agreement was never necessary to Vero Beach's serving the Franchise Area.

Vero Beach argues that the Commission's exclusive jurisdiction over these matters is grounded not only in the Legislature's sound policy of avoiding the uneconomic duplication of facilities; it is also grounded in the need for jurisdiction over service areas to prevent antitrust violations. Order No. PSC-13-0207-PAA-EM, at p. 20, issued May 21, 2013, in Docket No. 120054-EM, In re: Complaint of Robert D. Reynolds and Julianne C. Reynolds Against Utility Board of the City of Key West, Florida d/b/a Keys Energy Services Regarding Extending Commercial Electrical Transmission Lines to Each Property Owner of no Name Key, Florida. Vero Beach alleges that many utilities provide electric service without benefit of franchise agreements and that franchise agreements are not a necessary condition to a utility's right or obligation to serve. It specifies that Vero Beach provided service to customers in unincorporated Indian River County for at least 35 years with the County's acquiescence before execution of the Franchise Agreement.

Vero Beach maintains that it has provided service subject to the Commission's express statutory jurisdiction over service territories and over the planning, development, and maintenance of a coordinated power supply grid for the avoidance of uneconomic duplication of facilities since the enactment of the Grid Bill in 1974 and pursuant to the Commission's "implicit authority" before that. Further, Vero Beach alleges that it provides electric service in the unincorporated areas of the County pursuant to its home rule powers under section 2(b), Article VIII of the Florida Constitution, and pursuant to its powers under Sections 166.021 and 180.02(2), F.S. Vero Beach states that the territorial agreements approved by the Commission

are part of the Commission's Territorial Orders and thus have the full legal effect and authority of those Orders.

Vero Beach alleges that neither the County nor any other officer or agency of the County ever appeared in any of the Commission's proceedings pursuant to which the Commission's Territorial Orders were issued. Vero Beach states that the County acquiesced in Vero Beach's serving in the unincorporated areas of the County allocated to Vero Beach, with FPL's express agreement and support, in at least three separate instances before the Franchise Agreement ever existed, and in one additional territorial amendment since the Franchise Agreement existed. Vero Beach alleges that this acquiescence may well provide additional, separate legal authority for Vero Beach's continuing ability to serve using the County's rights-of-way, but such issues should be addressed by the courts.

III. Indian River County's Response in Opposition to the City's Petition

A. The Facts

The County does not dispute the facts set forth in the City's Petition, but alleges that there are critical omissions, and, therefore, adds additional historical and factual background. The County alleges that what makes this such a significant issue for the citizens of Indian River County is the unique and unprecedented extent to which Vero Beach serves outside its corporate limits: More than 60% of Vero Beach's electric customers do not live in Vero Beach, and Vero Beach is unfairly taking advantage of these non-City electric customers by subsidizing the City's general government operations. The County alleges that non-City customers who receive no City services are contributing two-thirds or more as much revenue to general government as is generated by Vero Beach's property taxes.

The County alleges that the customers who live outside Vero Beach have no voice in the utility's operation and management and no redress to any governmental authority because they reside outside the city limits and have no vote in city elections and are outside the authority of the Public Service Commission. The County states that a Vero Beach residential customer can pay approximately one third more for electricity than an FPL customer living across the street.

The County states that the Legislature enacted Section 366.04(7), F.S., that requires an election regarding the creation of an independent utility authority, but Vero Beach has refused to comply with the requirements of Section 366.04(7), F.S., by failing to conduct an election or to otherwise create an electric utility authority that would include representation of non-city customers. The County alleges that it is Vero Beach's flagrant disregard for the law and its refusal to be accountable to more than 60% of its customers that resulted in the Board of County Commissioners deciding not to renew the Franchise Agreement when it expires on March 4, 2017.

B. Indian River County's legal argument

The County argues that the City's Petition should be denied because it is attempting to affect, control, or limit the Board's authority to issue electric service franchises for the unincorporated areas of the County. The County further states that the City's Petition seeks to improperly invalidate and otherwise render meaningless the expiration of the Franchise Agreement and the Board's franchise authority. The County maintains that on the basis of the Commission's limited but exclusive statutory authority to approve territorial agreements, to resolve territorial disputes, and to prevent uneconomic duplication, there is no authority for the Commission to determine the Board's authority under Chapter 125, to invalidate the Franchise, to continue the Franchise, or stop the Board from determining a successor electric service franchisee.

The County alleges that the City's Petition is requesting a declaration that the County's franchise authority is meaningless and without purpose. The County argues that the absence of a franchise agreement between Indian River County and Vero Beach before 1987 does not mean that there was no authority for a franchise in 1987 or that thereafter a franchise is forever unnecessary and irrelevant. The County notes that until the adoption of the Florida Constitution of 1968, non-charter counties, such as Indian River County, did not have the authority to convey property rights through franchises for utility service. The County alleges that the Franchise Agreement for electric service outside Vero Beach's city limits significantly and materially changed the relationship between the parties and that the Franchise Agreement, as a contract, established and controls the rights, duties, and responsibilities of both parties with respect to electric service within the unincorporated areas of the County.

The County alleges that by accepting the Franchise Agreement, Vero Beach agreed that its right and ability to deliver electric service throughout the unincorporated areas of the County was expressly conditioned upon and subject to the terms of the Franchise Agreement. The County alleges that the Franchise Agreement clearly and unambiguously limited Vero Beach's service to a 30-year term unless mutually extended, and provides a five-year advance notice requirement. The County alleges that its notice of nonrenewal means that Vero Beach's right to serve the unincorporated areas of the County and to use the County's property, rights-of-way, and easements will expire on March 4, 2017.

The County states that it is well settled that a franchise is a privilege and not an absolute or unregulated right and that the Board has broad authority with respect to utilities utilizing its rights of way, including the ability to deny use. It argues that the Franchise Agreement now provides the sole legal authority for Vero Beach 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. The County states that the right to serve does not include the legal right to use another's property to actually provide service.

The County states that regardless of whether only 20 percent of Vero Beach's electric facilities rely upon the use of the County's rights-of-way, the Franchise Agreement conveys both the right to use the County's rights of way and the right to serve within unincorporated Indian River County, and without this authorization or use of property, service within the

unincorporated areas would not be possible. The County asserts that the Commission has no authority to grant either of Vero Beach's requested declarations that seek to assume the Franchise Agreement is invalid and no authority to determine the use of the County's property rights by authorizing the City to continue to serve in perpetuity.

The County agrees that the Commission has exclusive and superior jurisdiction limited to approving territorial agreements, resolving territorial disputes, and avoiding uneconomic duplication of facilities. It further states that the Commission does not have authority in a territorial order to address a utility's ability to secure the necessary property rights, such as easements, leases, licenses, and purchase, in order to place facilities used to provide service. Likewise, the Commission has no jurisdiction to require or compel that a property owner grant a lease, license, easement, sale, or franchise. The County states that a non-charter county's power to require franchise agreements from electric utilities is not inconsistent with the powers granted to the Commission.

The County points to the Winter Park case as "real world, analogous situation and precedent as to how the [Commission] should address the scenario posed by [Vero Beach]." The County argues that because the Court in Florida Power Corp. v. City of Winter Park, 887 So. 2d 1237, 1240 (Fla. 2004), recognized that franchises and their benefits can expire, there is no authority for a utility to "hold over" after a franchise expires. The County states that, similarly, Vero Beach's right to access public property is a bargained for exchange for the County's collection of a franchise fee and that the expiration of the Franchise Agreement is enforceable.

The County states that following the 2004 City of Winter Park decision, the Commission continued to work concurrently to give effect to the consequences of the expired franchise, and formally relieved the utility of its obligations to provide electric service in Winter Park,[16] and that an Attorney General's Opinion, in heavy reliance on Commission staff input, concluded that the actual transfer of the electric facilities to the city did not require Commission approval. The County alleges that the Winter Park situation also demonstrates that a territorial order is not a necessary prerequisite for service, since there was no territorial agreement between Winter Park and Florida Power Corp., although the Commission approved a new territorial agreement between Winter Park and Duke Energy in 2014. The County believes that the Commission's approach to the Winter Park case is relevant because in the face of the expired franchise, the Commission did not tell Winter Park that Florida Power Corp. was the authorized electric service provider that would continue to serve customers, that it would be uneconomic for Winter Park to duplicate Florida Power Corp.'s facilities, that Winter Park could not purchase Florida Power Corp.'s facilities, or that Winter Park could not be the electric utility.

In response to Vero Beach's arguments that termination of the Franchise Agreement could adversely impact the City's ability to plan its system and result in stranded costs, the County asserts that the Franchise Agreement had a term of 30 years, and that, therefore,

[16] Order No. PSC-05-0453, issued April 28, 2005, in Docket No. 050117 (Proposed Agency Action Order Relieving Progress Energy Florida, Inc. of the Obligation to Provide Retail Electric Service to Certain Customers Within Vero Beach of Winter Park), In re: Petition to relieve Progress Energy Florida, Inc. of the statutory obligation to provide electrical service to certain customers within Vero Beach of Winter Park, pursuant to Section 364.03 and 366.04, F.S. and consummating Order No. PSC-05-0568, issued May 23, 2005.

responsible management would have prepared for that contingency and that Vero Beach should not have entered into contracts that exceeded the 30 year contract term. The County notes that Vero Beach's investments in infrastructure can be sold to the successor and that orderly transitions can and do occur.

The County agrees with Vero Beach's argument that an individual does not have an absolute right to service by a particular utility, but states that the present matter is a different, unique, and special situation involving the massive general government subsidization flowing from electric ratepayers to Vero Beach and lack of representation. The County states the public interest standard is a broad mandate that ultimately controls the decision-making process for both the Commission and the County.

The County argues that if Vero Beach believed that it had an unlimited right to serve customers in the unincorporated areas of the County solely on the basis of the territorial agreement with FPL, then it would not have voluntarily entered into the Franchise Agreement. The County states that the expiration of the Franchise Agreement will not change or void the Commission's Territorial Orders because the Franchise Agreement exists independently of the Territorial Orders, that those orders remain effective until changed in a proper proceeding, and that, absent other legal action, the territorial boundaries between Vero Beach and FPL would remain effective for service, but only within the corporate limits of Vero Beach and Indian River Shores. County maintains that when the Franchise Agreement expires, Vero Beach will no longer have the legal right to serve the unincorporated areas of the County or the right to utilize the roads, rights of way, public easement, and other County property within the Franchise.

IV. Amici Curiae Comments

TECO, FECA, FMEA, and Duke support the City's legal position and take essentially the same positions as they argue in Docket No. 140142-EM. Duke, TECO, FECA, and FMEA generally echo or support Vero Beach's arguments that the Commission has exclusive and superior jurisdiction over Vero Beach's service territory and that the Franchise Agreement has no impact on the Commission's jurisdiction or on the Commission's Territorial Orders. FMEA states that the Grid Bill is the heart of the Commission's regulatory authority over electric service territories in Florida and that if each of Florida's 410 municipalities and 67 counties could choose their own retail electric provider, or unilaterally evict an existing electric utility provider at the end of a franchise agreement term, there would be no coordinated electric power grid in Florida. FECA believes that if a local government were allowed to evict a utility from an area it serves and had planned to serve in the future, the Grid Bill's purposes of prevention of further uneconomic duplication of facilities would be undermined.

Duke argues that any provisions in the Franchise Agreement that purport to authorize Vero Beach to provide electric service within the County are void. Duke states that the territorial agreement between FPL and Vero Beach has no expiration date and will continue in effect until the two parties either mutually agree to, or the Commission orders, its termination. Duke argues that an electric utility has an obligation to provide service to customers within its territorial boundaries until it is relieved by the Commission of that obligation. Duke states that the Franchise Agreement exists to provide a mechanism for the County to recoup the costs of providing and maintaining the rights-of-way through the collection of franchise fees.

TECO states that once the territorial agreement and amendments were approved by the Commission, they merged with and became a part of the Commission's Territorial Orders approving them, with any modification or termination of them having to be first made by the Commission. TECO maintains that the Territorial Orders control, not the Franchise Agreement, and local governments have no authority to "trump" the Commission's Territorial Orders with franchise agreements.

FECA states that the issues before the Commission are of great concern to FECA, its 17 electric cooperative members and to the consumer-members that are served by those electric cooperatives. FECA states that one issue of extreme significance is whether a utility can rely on Commission-approved territorial agreements and the territorial provisions in Section 366.04, F.S., to define the service area that it must plan to serve now and in the future, or whether a local government can unilaterally take away a utility's customers and service area whenever a franchise agreement expires or if there is no franchise agreement.

FECA argues that termination of the Franchise Agreement does not affect Vero Beach's rights to continue using the County, state, city, or federally-owned rights-of-way or private easements. FECA states that Section 361.01, F.S., authorizes electric utilities to use eminent domain to obtain easements they require, both on public and private lands, and Vero Beach can obtain the easements it needs to continue to provide service in the Franchise Area. FECA states that Indian River County's reliance on Section 337.401(2), F.S., for the proposition that it can deny use of its rights-of-way for no cause is misplaced because that section authorizes local government to prescribe and enforce reasonable rules or regulations for the placement of utility facilities in rights-of-way, but gives no authority for a local government to require a utility to remove its facilities from a right-of-way or completely prohibit a utility from using its rights-of-way under any circumstances without good cause.

TECO, FECA, and FMEA agree with Vero Beach that failure of the Commission to actively supervise the territorial decisions of utility service territories would be considered per se Federal antitrust violations under the Sherman Act, 15 USC §12. Parker v. Brown, 317 U.S. 341, 350 (1942).

V. Vero Beach's reply to the County's response in opposition to the City's Petition

Vero Beach asserts that the County has incorrectly characterized the degree to which the City serves outside its city limits, ignored applicable Florida law in its assertions that Vero Beach is inappropriately using non-City electric customers to subsidize general government operations, and falsely stated that Vero Beach has ignored the referendum requirement of Section 366.04(7), F.S. Vero Beach asks the Commission to disregard the misleading, incorrect, and incomplete statements in the County's response.

Vero Beach argues that, contrary to the County's assertions, the City's Petition does not argue that the Franchise Agreement is meaningless, without any legal effect, or invalid. Vero Beach states that the Franchise Agreement is valid and binding, but that the County incorrectly interprets the "bargained-for exchange" as terminating the City's right and obligation to serve customers in its Commission-approved service area upon expiration of the Franchise Agreement.

Vero Beach states that pursuant to Public Service Comm'n v. Fuller, 551 So. 2d 1210 (Fla. 1989), and City of Homestead v. Beard, 600 So. 2d 450 (Fla. 1992), it is not obligated to stop providing service within its Commission-approved territory upon expiration of the Franchise Agreement.

Vero Beach argues that when the Franchise Agreement expires, the City and County will be relieved of their contractual obligations under the Franchise Agreement, but that there will be no effect on the City's rights and obligations under the Territorial Agreements. The City asserts that upon expiration of the Franchise Agreement, if the County takes action to replace Vero Beach as service provider, the matter would need to be decided by the Commission as a territorial dispute. The City argues that the existence of a Franchise Agreement is not a prerequisite to any utility's legal ability to provide electric service, that many Florida electric utilities serve in areas without franchise agreements, and that Vero Beach served within Indian River County without a franchise agreement prior to 1987.

Vero Beach asserts that the County's reliance on Florida Power Corp. v. City of Winter Park, 887 So. 2d 1237 (Fla. 2004), and subsequent proceedings, provides no support for its positions. The City states that all City of Winter Park stands for is that a utility can convey to a franchisor municipality, by express terms in a franchise agreement, the right to purchase the utility's facilities at the end of a franchise, and that the utility must continue to collect and remit franchise fees during the arbitrated acquisition process. Vero Beach argues that the franchise agreement in City of Winter Park was critically different from the 1987 Franchise Agreement because it gave Winter Park the right to purchase Florida Power Corporation's facilities upon expiration of the franchise. The City states that Winter Park never had the right to designate a successor utility; rather, it had the right under the terms of the franchise agreement to purchase the utility's facilities. The City further argues that in the Commission proceedings subsequent to the City of Winter Park decision there were no issues before the Commission concerning the franchise agreement, uneconomic duplication, or who could or should provide service, and, for this reason, such issues were not addressed.

The City argues that the County has incorrectly characterized the Commission's jurisdiction as being limited by the County's permissive authority to grant franchises. Further, Vero Beach asserts that, contrary to the County's argument, it is not asking the Commission to invalidate the Franchise Agreement, to determine the County's rights and powers under Chapter 125, F.S., to declare that the City has the right to continue using the County's rights-of-way notwithstanding the expiration of the Franchise, and to stop the County from determining a successor electric utility upon expiration of the Franchise Agreement. The City emphasizes that it is asking the Commission to declare that, pursuant to the Commission's governing statutes and the Territorial Orders, Vero Beach may lawfully continue to serve in its Commission-approved service areas after the Franchise Agreement expires.

Vero Beach argues that that County has no authority to evict Vero Beach from the County's rights-of-way or to force Vero Beach to remove its facilities from the rights-of-way and areas located within unincorporated Indian River County; to designate a successor electric service provider in the City's Commission-approved service areas; and to force the City to sell

its facilities to another electric utility. Moreover, any dispute as to who would provide electric service would need to be resolved by the Commission as a territorial dispute.

Vero Beach claims that the County is incorrectly attempting to usurp the Commission's Chapter 366, F.S., jurisdiction by elevating the County's permissive authority to grant a franchise into the overarching power to determine what utility will provide electric service in Indian River County. The City alleges that its requested declarations do not improperly determine the County's rights but seek the Commission's determinations only as to the City's right and obligation to provide retail electric service in the City's Commission-approved service territory under the Territorial Orders.

VI. Staff's Recommendation

Staff recommends that, in accordance with Rule 28-105.003, F.A.C., the Commission should rely on the facts contained in the City's Petition without taking a position on the validity of those facts. If the Commission issues a declaratory statement, it will be controlling only as to the facts relied upon and not as to other, different or additional facts.[17] As the Commission's conclusion would be limited to the facts described herein, any alteration or modification of those facts could materially affect the conclusions reached in any declaratory statement issued. If the Commission issues a declaratory statement, the Commission should state that the order will be controlling only as to the facts relied upon and not as to other, different or additional facts.

The City of Vero Beach has met the threshold requirements for issuance of a declaratory statement. The City's Petition seeks guidance as to how Grid Bill Sections 366.04(1), (2)(d) & (e), and (5), F.S., and the Territorial Orders apply to Vero Beach's set of circumstances as the electric service provider for the customers located in its territory described in the Territorial Orders. Vero Beach's substantial interests will be directly affected because the Commission's declaration will determine whether its right and obligation to continue serving its customers in its Commission-approved Territorial Order service areas in unincorporated Indian River County are affected by expiration of the Franchise Agreement.

Pursuant to Section 366.04(3), F.S., the Commission has power over electric utilities to approve territorial agreements between and among municipal electric utilities, and other electric utilities under its jurisdiction. Additionally, pursuant to Section 366.04(5), F.S., the Commission has 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. Section 366.04(1), F.S., provides that the jurisdiction conferred upon the Commission shall be exclusive and superior to

[17] On January 13, 2015, the Town of Indian River Shores filed a Notice of Pending Litigation in this docket and in Docket No. 140142-EM that summarized the issues in its pending circuit court litigation against the City of Vero Beach and asked the Commission to refrain from issuing declaratory statements that would address any factual or legal issues related to its pending litigation. Indian River Shores did not seek intervention or amicus curiae status in either docket. Staff believes that the information provided in the Notice of Pending Litigation is not relevant to the City's Petition because it concerns the expiration of a franchise agreement between the Town of Indian River Shores and the City of Vero Beach, which is not addressed in this docket.

that of all other boards, political subdivisions, municipalities, towns, or counties, and, in case of conflict therewith, all lawful orders of the Commission shall in each instance prevail.

Territorial orders are subject to the Commission's power over all electric utilities pursuant to Section 366.04(2)(e), F.S. Roemmele-Putney v. Reynolds, 106 So. 3d 78, 81 (Fla. 3d DCA 2013). Any modification or termination of a Commission-approved territorial order must first be made by the Commission pursuant to its exclusive jurisdiction. See Public Service Com'n v. Fuller, 551 So. 2d 1210, 1212 (Fla. 1989). The Commission has this authority so that it may carry out its express statutory purpose of avoiding the uneconomic duplication of facilities and its duty to consider the impact of such decisions on the planning, development, and maintenance of a coordinated electric power grid in Florida. Id.; Section 366.04(5), F.S. The statutory authority granted to the Commission to approve and enforce territorial agreements is not subject to local regulation. Roemmele-Putney, 106 So. 3d at 81 (where the Court stated that the Commission's statutory authority would be eviscerated if initially subject to local governmental regulation). As pointed out by Vero Beach, TECO, FECA, and FMEA, failure of the Commission to actively supervise the territorial decisions of utility service territories would be considered per se Federal antitrust violations under the Sherman Act, 15 USC §12. Parker v. Brown, 317 U.S. 341, 350 (1942).

Vero Beach provides electric service to the territory described in the Territorial Orders. The Commission has given Vero Beach the right and the obligation to serve customers within the territory described in the Territorial Orders. These orders have not been amended or modified to delete the unincorporated Indian River County area from Vero Beach's service territory. Because the Territorial Orders are valid Commission orders, Vero Beach will retain its right and obligation to provide electric service to customers within the territory described in the Territorial Orders unless and until those orders are modified by the Commission.

Vero Beach is not asking the Commission to interpret or apply the Franchise Agreement to its particular circumstances, and the staff is not recommending that the Commission do so in its declaration. The Franchise Agreement is not a rule, order, or statutory provision of the Commission, and the Commission would have no authority to issue a declaration interpreting that agreement. Section 120.565(1), F.S.; Rule 28-105.001, F.A.C.

The cases cited by Indian River County in its response in opposition to the City's Petition are not on point to the Commission's determination of the City's Petition for Declaratory Statement. These cases are distinguishable because although franchise agreements were either involved, or referred to in the case of City of Indian Harbour Beach, no Commission-approved territorial agreement orders were involved. In Fla. Power Corp. v. City of Casselberry, 793 So. 2d 1174 (Fla. 5th DCA 2001), the City of Casselberry had the option under the franchise agreement to purchase the utility's distribution facilities. The issue before the court was whether the utility had to submit to arbitration on the value of the system, which the court held it did. Id. at 1181. The court noted that the Florida Public Service Commission had not intervened in the case and had not been asked to approve rates, service, or territorial agreements. Id. at 1178. In Lee County Elec. Coop., Inc. v. City of Cape Coral, 2014 Fla. App. LEXIS 8432 (Fla. 2d DCA 2014), the issue was whether the utility could be required to pay the costs to relocate its lines to a different public utility easement when the road was widened, and the court held it had to pay

those costs. City of Indian Harbour Beach v. City of Melbourne, 265 So. 2d 422, 424-25 (Fla. 4th DCA 1972), involved a dispute between two cities concerning the right to regulate water rates where there was no franchise agreement or contract between the two. None of these cases address the question before the Commission.

Likewise Florida Power Corp. v. City of Winter Park, 887 So 2d 1237 (Fla. 2004), is distinguishable from the question raised by the City of Vero Beach's Petition for Declaratory Statement because no territorial agreement was involved. The issue in City of Winter Park was whether the city could continue to receive a franchise fee from the utility under an expired franchise agreement for as long as the utility used the public rights-of-way. Id. at 1238. The Court held that after the franchise agreement expired, the city and utility operated under an implied contract, with the utility being treated like a holdover tenant, and that the utility would have to continue to pay the franchise fee to avoid unjust enrichment. Id. at 1241. City of Winter Park does not support the County's premise that the City of Vero Beach would lose its right and obligation to provide service to the territory approved in the Territorial Orders upon expiration of the Franchise Agreement.

Proceedings between Florida Power Corp.[18] and City of Winter Park subsequent to the court's decision in City of Winter Park are similarly not on point or relevant to the City's Petition because they addressed the transfer of utility facilities from the utility to the city and did not involve a franchise agreement conflict and territorial agreement order. The Attorney General Opinion, 2005 Fla. AG LEXIS 15, Op. Att'y Gen Fla. 2005-14, March 3, 2005, stated that the City of Winter Park was not required to seek the approval of the Commission for the transfer of the utility's electric distribution system assets to the city. Id. at *12. This opinion has no bearing on the City's Petition because no territorial dispute or territorial agreement issues were involved. Id. at *9 – 10. The Commission's 2005 order granting Progress Energy's petition asking the Commission to relieve it of the obligation to provide electric service because Winter Park decided to purchase the utility's facilities and establish a municipal utility did not involve a dispute between the parties and did not involve a territorial agreement. Docket No. 050117-EI, Order No. PSC-05-0453-PAA-EI, issued April 28, 2005, In re: Petition to relieve Progress Energy Florida, Inc. of the statutory obligation to provide electrical service to certain customers within the City of Winter Park, pursuant to Section 366.03 and 366.04, F.S. In Docket No. 130276-EU, Order No. PSC-14-0108-PAA-EU, issued February 24, 2014, In re: Joint petition for approval of territorial agreement in Orange county by the city of Winter park and Duke Energy Florida, Inc., the Commission granted the joint petition of Duke Energy, and the City of Winter Park for approval of a territorial agreement in order to more clearly define the boundaries of each utility's service area. Neither of these Commission decisions give support to the County's position that the rights and obligations granted by the Territorial Orders to Vero Beach would be affected by expiration of the Franchise Agreement.

Conclusion

[18] During the time period covered by these subsequent proceedings, Florida Power Corp. changed its name to Progress Energy Florida, Inc., and subsequently became Duke Energy Florida, Inc.

Based on the analysis set forth above, staff recommends that the Commission should declare that Vero Beach has the right and obligation to continue to provide retail electric service in the territory described in the Territorial Orders upon expiration of the Franchise Agreement. The Commission should state that the declaratory statement will be controlling only as to the facts relied upon and not as to other, different or additional facts.

Issue 3: Should this docket be closed?

Recommendation: Yes, the docket should be closed. (Cowdery)

Staff Analysis: The 90 day statutory deadline for issuing the final order is March 19, 2015. Thus, whether the Commission grants or denies the City's Petition, in whole, or in part, a final order must be issued by March 19, 2015. Upon issuance of the final order, no further action will be necessary, and the docket should be closed.