

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for declaratory )  
statement regarding the Florida ) DOCKET NO. 160013-EM  
Public Service Commission's )  
jurisdiction to adjudicate the )  
Town of Indian River Shores' ) FILED: January 27, 2016  
constitutional rights. )  
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**MOTION TO INTERVENE OF THE CITY OF VERO BEACH**

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

In summary, on January 5, 2016, the Town of Indian River Shores, Florida (the "Town") initiated this docket by filing with the Florida Public Service Commission (the "Commission") a "Petition for Declaratory Statement Before the Public Service Commission" (the "Petition"). In the Petition, the Town seeks the following declaratory statement from the Commission:

The PSC lacks the jurisdiction under Chapter 366, Florida Statutes, or any other applicable law, to interpret Article VIII, Section 2(c) of the Florida Constitution, and Section 166.021, Florida Statutes, for purposes of adjudicating whether the Town has a constitutional right, codified in the statutes, to be protected from unconsented

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<sup>1</sup> All references herein to the Florida Statutes are to the 2014 edition thereof.

exercises of extra-territorial powers by Vero Beach within the Town's corporate limits.

In the Petition, the Town specifically questions whether the City has statutory authority to serve within the Town. Petition at ¶ 25.

The City currently provides electric service to portions of the Town pursuant to territorial agreements with Florida Power & Light Company ("FPL") approved by the following Commission orders: In re: Application of Florida Power and Light Company for approval of a territorial agreement with the City of Vero Beach, Docket No. 72045-EU, Order No. 5520 (August 29, 1972); In re: Application of Florida Power & Light Company for approval of a modification of territorial agreement and contract for interchange service with the City of Vero Beach, Florida, Docket No. 73605-EU, Order No. 6010 (January 18, 1974); In re: Application of FPL and the City of Vero Beach for approval of an agreement relative to service areas, Docket No. 800596-EU, Order No. 10382 (November 3, 1981); In re: Application of FPL and the City of Vero Beach for approval of an agreement relative to service areas, Docket No. 800596-EU, Order No. 11580 (February 2, 1983); and In re: Petition of Florida Power & Light Company and the City of Vero Beach for Approval of Amendment of a Territorial Agreement, Docket No. 871090-EU, Order No. 18834 (February 9, 1988) (collectively referred to as the "Commission's Territorial

Orders"). As the incumbent utility providing service pursuant to the Commission's Territorial Orders, the City's substantial interests will be directly affected by the declaratory statement sought by the Town. Accordingly, the City respectfully seeks the Commission's authorization to intervene in this docket so that it can file pleadings, memoranda, or briefs in response to the Petition.

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

**PROCEDURAL BACKGROUND**

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

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

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

Robert Scheffel Wright ([schef@gbwlegal.com](mailto:schef@gbwlegal.com))  
John T. LaVia, III ([jlavia@gbwlegal.com](mailto:jlavia@gbwlegal.com))  
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with a courtesy copy to:

Wayne R. Coment, City Attorney ([wcoment@covb.org](mailto:wcoment@covb.org))  
City of Vero Beach  
P.O. Box 1389

1053 20th Place  
Vero Beach, Florida 32961-1389  
Telephone: (772) 978-4730  
Facsimile: (772) 978-4733

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

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

4. This docket was initiated by the Town's filing of its Petition on January 5, 2016. A Notice of Declaratory Statement was published in the Florida Administrative Register on January 7, 2016. Accordingly, pursuant to Rules 25-22.039 and 28-105.0027, F.A.C., this Motion to Intervene is timely filed.

**STATEMENT OF AFFECTED INTERESTS**

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

6. The City has operated a municipal electric utility system since 1920, when it purchased a small power plant, poles, and lines from the Vero Utilities Company. The City provides retail electric service to customers inside the City limits and outside the City limits within the Town pursuant to territorial agreements with FPL, which agreements have been approved by the Commission's Territorial Orders. On information and belief, the City states that the City provided service to the Town before any of the Commission's Territorial Orders were issued, and also

before any franchise agreement existed between the City and the Town. To provide service to its customers, the City operates transmission lines and related facilities, and distribution lines and facilities (collectively the "City Electric System"). In addition, the City has entered into long-term agreements by which it acquired, and continues to acquire, bulk electricity from other power plants and providers in order to serve its retail customers, including the Town.

7. The City's substantial interests will be directly affected by the declaratory statement sought by the Town in its Petition. Despite the Town's protestations to the contrary, the Commission's response to the Town's Petition will directly impact the City's status under - and the validity and effectiveness of - the Commission's Territorial Orders pursuant to which the City provides electrical service in the subject areas of the Town. Moreover, the City is specifically referenced in the requested declaratory statement in the Petition. In addition, the underlying gravamen of the Town's Petition is its assertion that the City "has no inherent statutory authority to exert extra-territorial powers within the corporate limits of the Town . . . ." Petition at ¶ 25. Any declaration addressing those issues will directly affect the City's substantial interests, and accordingly, the City is entitled to intervene in this docket.

**STATEMENT OF DISPUTED ISSUES OF MATERIAL FACT**

8. With regard to this Motion to Intervene, the City does not believe that there are any disputed issues of material fact. The City is expressly named in the Town's requested declaratory statement and the City's substantial interests will be determined by the Commission's declaration.

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

**STATEMENT OF ULTIMATE FACTS ALLEGED**

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

11. With regard to the Town's Petition, the City believes that the Commission should deny the Petition because the Town's constitutional claim has already been decided by the Circuit Court of the Nineteenth Judicial Circuit in and for Indian River County, and thus the Commission should not and need not issue the declaratory statement requested by the Town. The Town's Petition

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

is also improper because it addresses an issue that is the subject of still-pending litigation, i.e., Town of Indian River Shores v. City of Vero Beach, Case No. 312014CA000748 (Fla. 19<sup>th</sup> Circuit), and the Town's proper venue for addressing its jurisdictional question is an appeal of the Circuit Court's Order on Dismissal. Finally, the Town's Petition is unnecessary because there is no basis for any doubt as to the PSC's jurisdiction, and improper because it is not a request that the Commission declare the Town's position, rights, or status under the PSC's statutes, rules, or orders.

**STATUTES AND RULES THAT ENTITLE THE CITY TO RELIEF**

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

**TOWN'S POSITION ON MOTION**

13. Pursuant to Rule 28-106.204, F.A.C., undersigned counsel has consulted with counsel for the Town and is authorized to state that the Town takes no position on the motion to intervene at this juncture, but reserves the right to respond to the motion once it is filed and the Town has had an opportunity to review it.

**CONCLUSION AND RELIEF REQUESTED**

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



Respectfully submitted this 27th day of January, 2016.



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1053 20th Place  
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Attorneys for the City of Vero Beach

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic delivery, on this 27th day of January, 2016.

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