

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by the Town of Indian)
River Shores for Modification of) DOCKET NO. 160049-EU
Territorial Order Based on Changed)
Legal Circumstances Emanating from)
Article VIII, Section 2(c) of) FILED: March 24, 2016
the Florida Constitution.)
_____)

MOTION TO INTERVENE OF THE CITY OF VERO BEACH,
OR IN THE ALTERNATIVE,
VERO BEACH’S REQUEST TO BE NAMED A PARTY

The City of Vero Beach (“Vero Beach” or the “City”), pursuant to Chapters 120 and 366, Florida Statutes (“F.S.”),¹ and Rules 25-6.0441, 25-22.036, 25-22.039, 28-106.201, and 28-106.205, Florida Administrative Code (“F.A.C.”), hereby respectfully files this motion to intervene, or in the alternative, request to be named a party (the “Motion to Intervene”) in the above-styled docket.

In summary, on March 4, 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 Modification of Territorial Order Based on Changed Legal Circumstances Emanating from Article VIII, Section 2(C) of the Florida Constitution” (the “Petition”).

The Petition is seriously flawed and should be dismissed. Vero Beach is requesting intervenor status so that it may file responsive pleadings and otherwise fully participate in this docket.

¹ All references herein to the Florida Statutes are to the 2014 edition thereof.

Vero Beach 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, Vero Beach’s substantial interests will be directly affected by the issues raised in this docket. Accordingly, Vero Beach respectfully seeks the Commission’s authorization to intervene in this docket so that it can file pleadings in response to the Petition, and otherwise fully participate in the docket.

In the Petition, the Town alternatively requests that “the Commission treat this petition as a Complaint against the City.” Petition at 1.² If the Commission treats the Petition as a “Complaint” against Vero Beach, the City requests that the Commission identify Vero Beach as a party to this docket.

In further support of its Motion to Intervene, Vero Beach 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 20th Place
Vero Beach, FL 32960

2. All pleadings, orders and correspondence should be directed to Vero Beach’s representatives as follows:

Robert Scheffel Wright (schef@gbwlegal.com)
John T. LaVia, III (jlavia@gbwlegal.com)
Gardner, Bist, Bowden, Bush, Dee,
LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, Florida 32308
Telephone: (850) 385-0070
Facsimile: (850) 385-5416

with a courtesy copy to:

Wayne R. Coment, City Attorney (wcoment@covb.org)
City of Vero Beach

² Interestingly, even though the Town specifically named Vero Beach as a party against whom the “Complaint” is filed, the Town did not name Vero Beach as a party in the case style or formally serve Vero Beach with its Petition or alternative Complaint. Instead, the Town e-mailed undersigned counsel a “courtesy copy” of the Petition.

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 March 4, 2016. Accordingly, pursuant to Rule 25-22.039, F.A.C., this Motion to Intervene is timely filed.

STATEMENT OF AFFECTED INTERESTS

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

6. Vero Beach has operated a municipal electric utility system since 1920, when it purchased a small power plant, poles, and lines from the Vero Utilities Company. Vero Beach 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, Vero Beach states that Vero Beach provided service to the Town before any of the Commission's Territorial Orders were issued, and also before any franchise agreement existed between Vero Beach and the Town. To provide service to its customers, Vero Beach operates transmission lines and related facilities, and distribution lines and facilities (collectively the "City Electric System"). In addition, Vero Beach 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. In the Petition, the Town apparently is attempting to invoke the Commission's jurisdiction to approve territorial agreements and/or resolve territorial disputes pursuant to Sections 366.04(2)(d)-(e), F.S., even though the Petition does not specifically cite the relevant statutory provisions. The Petition is fatally flawed and should be dismissed; accordingly, concurrently with the filing of this Motion to Intervene, Vero Beach will file a motion to dismiss (the "Motion to Dismiss") and answer to the Petition. However, the issues raised by the Petition and the relief sought by the Petition (modification of the Commission's Territorial Orders pursuant to which Vero Beach provides electric service in the Town) directly affects Vero Beach's substantial interests. In addition, the Town's assertion that "the City has no inherent authority to exercise extra-territorial powers" within the Town, see Petition ¶ 38, also directly affects Vero Beach's substantial interests. Accordingly, Vero Beach should be allowed to intervene in this docket.

8. The Petition also purports to be a "Complaint against the City." Petition at 1. For the reasons set forth in Vero Beach's Motion to Dismiss, the Petition is not a valid complaint and should be dismissed. However, if the Commission treats the Town's Petition as a "Complaint" against Vero Beach, Vero Beach should not be required to intervene in that proceeding. Instead, the Commission should identify Vero Beach as a necessary and full party to the docket.

STATEMENT OF DISPUTED ISSUES OF MATERIAL FACT

9. With regard to this Motion to Intervene, Vero Beach does not believe that there are any disputed issues of material fact under the Commission's statutes applicable to territorial agreements and under the Territorial Orders. Vero Beach's substantial interests will clearly be determined by the Commission's actions in this docket.

10. With regard to the Town's Petition, it is unclear from the face of the Petition what the Town believes are the disputed issues of material fact. To the extent that the Commission determines to entertain the Town's putative request to modify the Territorial Orders, Vero Beach believes that the appropriate issues are set forth in Section 366.04(2)(e), Florida Statutes, and Rule 25-6.0441, F.A.C.

STATEMENT OF ULTIMATE FACTS ALLEGED

11. With regard to the Motion to Intervene, Vero Beach has demonstrated that its substantial interests will be affected by the issues raised by the Petition and the relief sought by the Town in the Petition, and accordingly, Vero Beach is entitled to intervene in this docket.

12. With regard to the Town's Petition, Vero Beach believes that the Commission should dismiss the Petition for the reasons set forth in Vero Beach's Motion to Dismiss which was filed concurrently with this Motion to Intervene.

STATUTES AND RULES THAT ENTITLE VERO BEACH TO RELIEF

13. The applicable statutes and rules that entitle Vero Beach to intervene in this docket include, but are not limited to, Sections 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 are entitled to intervene. The cited sections of Chapter 120 provide that persons whose substantial interests will be affected are entitled to participate in this type of proceeding. In addition, the Commission's statutes and rules governing territorial agreements and territorial disputes, Sections 366.04(2)(d)-(e), F.S., and Rule 26-6.0441, F.A.C., also provide authority for Vero Beach to be a party to this docket.

TOWN'S POSITION ON MOTION

14. 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 has no objection to Vero Beach's intervention, but reserves the right to object and respond to any arguments made in 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. Alternatively, if the Commission treats the Town's Petition as a Complaint, the City of Vero Beach respectfully requests that the Commission GRANT the City's request to be designated as a named party in the docket and that all parties to this proceeding serve copies of all pleadings, notices, and other documents to Vero Beach's representatives indicated in paragraph 2, above.

Respectfully submitted this 24th day of March, 2016.



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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 24th day of March, 2016.

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