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November 3, 2017

VIA ELECTRONIC FILING

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

RE: **Joint Petition of Florida Power & Light Company and City of Vero Beach to Terminate Territorial Agreement**

Dear Ms. Stauffer:

I enclose for electronic filing in the above docket the Joint Petition of Florida Power & Light Company and City of Vero Beach to Terminate Territorial Agreement, with attached exhibits.

If there are any questions regarding this transmittal, please contact me at (561) 304-5253.

Sincerely,

s/ Bryan S. Anderson

BRYAN S. ANDERSON
Florida Authorized House Counsel No. 219511
Admitted in IL, not admitted in FL

Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of Florida Power & Light
Company and City of Vero Beach to Terminate
Territorial Agreement

Docket No. _____

Filed: November 3, 2017

JOINT PETITION TO TERMINATE TERRITORIAL AGREEMENT

Florida Power & Light Company (“FPL”) and the City of Vero Beach (“COVB” or “the City”) hereby jointly petition the Florida Public Service Commission (“FPSC” or the “Commission”) to terminate the parties’ existing territorial agreement, and in support thereof state as follows:

I. Introduction and Background

1. FPL is a corporation with headquarters at 700 Universe Boulevard, Juno Beach, Florida 33408. FPL is an investor-owned utility operating under the jurisdiction of this Commission pursuant to the provisions of Chapter 366, Florida Statutes. FPL is a wholly-owned subsidiary of NextEra Energy, Inc., a registered holding company under the Federal Public Utility Holding Company Act and related regulations. FPL provides generation, transmission, and distribution service to nearly 5 million retail customer accounts or an estimated 10 million people.

2. Any pleading, motion, notice, order or other document required to be served upon FPL or filed by any party to this proceeding should be served upon the following individuals:

Kenneth A. Hoffman
Vice President Regulatory Affairs
ken.hoffman@fpl.com
Florida Power & Light Company
215 S. Monroe Street, Ste 810
Tallahassee, FL 32301
850-521-3919
850-521-3939 (fax)

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3. COVB's electric utility is a municipally-owned electric provider to customers in the City of Vero Beach, portions of unincorporated Indian River County and portions of the Town of Indian River Shores. COVB serves approximately 34,000 customers, most of whom are residential. Approximately 12,000 of the COVB customers are located within the corporate limits of the City of Vero Beach. The remaining approximately 22,000 customers are located in portions of unincorporated Indian River County and portions of the Town of Indian River Shores. FPL currently serves customers in all contiguous areas, including customers in unincorporated Indian River County and customers in the Town of Indian River Shores not served by COVB.

4. Any pleading, motion, notice, order or other document required to be served upon the City of Vero Beach or filed by any party to this proceeding should be served upon the following individuals:

J. Michael Walls
Attorney at Law
Carlton Fields PA
4221 Boy Scout Blvd., Ste. 1000
Tampa, FL 33607-5780
813-229-4257
813-229-4133 (fax)

5. This Petition is being filed consistent with Rule 28-106.201, Florida Administrative Code. The agency affected is the Florida Public Service Commission, located at 2540 Shumard Oak Blvd, Tallahassee, FL 32399. This case does not involve reversal or modification of an agency decision or an agency's proposed action. Therefore, subparagraph (c) and portions of subparagraphs (b), (e), (f) and (g) of subsection (2) of such rule are not applicable to this Petition. In compliance with subparagraph (d), FPL states that it is not known

which, if any, of the issues of material fact set forth in the body of this Petition may be disputed by others planning to participate in this proceeding.

6. This Petition does not seek modification of any territorial agreement, nor is there any territorial dispute. Instead, this Petition seeks termination of the parties' existing territorial agreement in connection with FPL's acquisition of the COVB electric utility and request (filed concurrently with this Petition) for authority pursuant to Rule 25-9.044, Florida Administrative Code, to charge approved FPL rates to former customers of the City and for approval of certain accounting treatment.

7. By Order No. 5520 dated August 29, 1972 issued in Docket No. 72045-EU, the Commission granted the application of FPL for approval of a territorial agreement with COVB. That agreement was modified in 1974 (Docket No. 73605-EU, Order No. 6010) and again in 1983 (FPSC Docket No. 800596-EU, Order No. 11580, adopting Order No. 10382 issued November 3, 1981 in that same docket). On February 9, 1988, the Commission last approved a further modification to that agreement. See *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. Collectively, these agreements are referred to in this Petition as the "Territorial Agreement."

8. FPL and COVB currently operate pursuant to the Territorial Agreement. A copy of the 1988 Territorial Agreement is attached hereto as Exhibit A. A copy of a map showing the territorial boundaries between the contiguous service territories of FPL and COVB is attached hereto as Exhibit B.

II. Request to Terminate Territorial Agreement

9. Rule 25-6.0440, Florida Administrative Code, requires any modifications to existing territorial agreements to be approved by this Commission. Although this Petition does not seek modification but instead requests Commission approval for termination of an existing territorial agreement, FPL addresses in this Petition the “Standards for Approval” identified in Rule 25-6.0440(2), F.A.C. For the reasons set forth herein, FPL and COVB petition the Commission to terminate the Territorial Agreement in connection with the Asset Purchase and Sale Agreement (“PSA”) addressed in FPL’s Petition for Authority to Charge FPL Rates to Former City of Vero Beach Customers and for Approval of FPL’s Accounting Treatment for City of Vero Beach Transaction filed on this date.

10. On May 16, 2017, FPL presented a letter of intent to COVB for the potential purchase of the City’s electric utility system. The COVB City Council then approved and countersigned the letter of intent. Following negotiations to determine the terms for a formal purchase and sale agreement, on October 24, 2017 the COVB City Council approved the PSA for FPL’s acquisition of the City’s electric utility system, and both COVB and FPL executed the PSA on that same date.

11. Pursuant to the PSA, FPL will purchase substantially all of the City’s electrical system assets at a price that is reasonable and was mutually agreed upon, and will provide electric service to the City’s customers at FPL’s retail rates once the transaction is closed. The purchase price is designed to compensate the City fairly while also ensuring that FPL’s existing customers do not subsidize the acquisition.

12. The transaction will close only if certain conditions precedent are met. If any of the mandatory conditions precedent are not satisfied, the City will retain its electric utility system and will continue to serve its customers, and the territorial boundaries in the 1988 Territorial Agreement will remain in effect.

13. This transaction is projected to result in more economic service to both COVB customers and FPL's current customers. Accordingly, termination of the Territorial Agreement is in the public interest. As noted herein, contemporaneous with the filing of this petition, FPL is also seeking, through a separate petition, authorization to commence charging the FPL retail rates to former COVB customers upon closing of the PSA, which is anticipated in the second half of 2018. As a result, former COVB customers will benefit from FPL's lower rates. Similarly, existing FPL customers are projected to realize a beneficial rate impact in the amount of \$105 million in Cumulative Present Value Revenue Requirements (net present value over 30-year analysis period).

14. Termination of the Territorial Agreement will also result in excellent service reliability for the City's customers. FPL's Distribution reliability, as measured by the best overall indicator of reliability, the System Average Interruption Duration Index ("SAIDI"), has been extremely favorable, as FPL's Distribution SAIDI has been the best among the Florida investor-owned utilities for the last five years. Additionally, in 2016, FPL achieved its best-ever SAIDI performance.

15. Additionally, FPL has a strong track record of delivering service in a highly efficient manner. The existing COVB service territory is essentially an island surrounded by FPL's service territory. This geographic configuration will allow FPL to make efficient use of available resources in providing service to COVB customers. As such, termination of the Territorial Agreement will eliminate existing or potential uneconomic duplication of facilities through the integration of the COVB electric utility into the FPL system.

16. FPL and COVB jointly represent to the Commission that, for the foregoing reasons, termination of the Territorial Agreement: (a) is in the public interest and, (b) will result in the delivery of efficient and reliable electrical service to the existing and future customers of the parties to the PSA. Accordingly, FPL and COVB respectfully request the Commission approve the termination of the Territorial Agreement between FPL and the City, which termination would be effective only if all conditions precedent are satisfied and the transaction closes.

WHEREFORE, FPL and the City jointly request that the Commission enter an order approving the termination of the parties' Territorial Agreement, conditional and effective upon the closing of the transaction.

Respectfully submitted,

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813-229-4257
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s/ J. Michael Walls
J. Michael Walls
Attorney for City of Vero Beach

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s/ Bryan S. Anderson
Bryan S. Anderson
Florida Auth. House Counsel No. 219511
Admitted in IL, not admitted in FL

EXHIBIT

A



2 of 2 DOCUMENTS

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

Florida Public Service Commission

1988 Fla. PUC LEXIS 111

88 FPSC 110

February 9, 1988

PANEL: [*1]

The following Commissioners participated in the disposition of this matter: KATIE NICHOLS, CHAIRMAN; THOMAS M. BEARD; GERALD L. GUNTER; JOHN T. HERNDON; MICHAEL McK. WILSON

OPINION: NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING AMENDMENT TO TERRITORIAL AGREEMENT BETWEEN FLORIDA POWER & LIGHT COMPANY AND THE CITY OF VERO BEACH

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, *Florida Administrative Code*.

By a joint petition filed on October 16, 1987, Florida Power & Light Company (FPL) and the City of Vero Beach (City) requested approval of an amendment to their previously approved territorial agreement. (See Orders Nos. 5520, 10382, and 11580). The original agreement and subsequent amendments delineate the service territories of the two utilities in Indian River County, Florida.

According to the proposed amendment, a new subdivision, known as Grand Harbor, is presently under construction, which [*2] straddles the territorial dividing line, previously approved by the Commission. To avoid any customer confusion which may result from this situation and to ensure no disputes or duplication of facilities will occur, the City and FPL have agreed to amend the existing agreement by establishing a new territorial dividing line. The results of this amendment will be the transfer of the area, shown in Attachment 1, from FPL to the City. There are currently no customers or facilities existing in the area.

The amended agreement is consistent with the Commission's philosophy that duplication of facilities is uneconomic and that agreements eliminating duplication should be approved. Having reviewed all the documents filed in the

docket, we find that it is in the best interest of the public and the utilities to approve, on a proposed agency action basis, the amendment to the territorial agreement. It is, therefore,

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's and the City of Vero Beach's joint petition for approval of an amendment to a territorial agreement is granted. It is further

ORDERED that Attachment 1, is hereby made a part of this order. [*3] It is further

ORDERED that the provisions of this order, issued as proposed agency action, shall become final unless a petition in the form provided by Rule 25-22.036, *Florida Administrative Code* is received by the office of the Director of the Division of Records and Reporting at 101 East Gaines Street, Tallahassee, Florida 32301 by the close of business on March 1, 1988.

By ORDER of the Florida Public Service Commission, this 9th day of FEBRUARY, 1988.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (1985), as amended by Chapter 87-345, Section 6, Laws of Florida (1987), to notify parties of any administrative hearing or judicial review of Commission orders that is available under *Sections 120.57 or 120.68, Florida Statutes*, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is [*4] preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, *Florida Administrative Code*. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), *Florida Administrative Code*, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 1, 1988. In the absence of such a petition, this order shall become effective March 2, 1988 as provided by Rule 25-22.029(6), *Florida Administrative Code*, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on March 2, 1988, any [*5] party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to *Rule 9.110, Florida Rules of Appellate Procedure*. The notice of appeal must be in the form specified in *Rule 9.900(a), Florida Rules of Appellate Procedure*.

ATTACHMENT 1

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

This Amendment to a Territorial Boundary Agreement dated June 11, 1980, by and between Florida Power & Light Company (FPL) and the City of Vero Beach, Florida (City), is made this 18TH day of SEPTEMBER, 1987.

WHEREAS, the parties hereto have observed certain territorial boundaries to eliminate undesirable duplication of [*6] facilities and to promote economic and efficient electric service to their respective customers; and

WHEREAS, the parties deem it desirable to redefine the territorial boundaries previously approved by the Florida Public Service Commission so that such territorial division will better conform to present land development and will avoid uneconomic duplication of facilities in a development known as Grand Harbor.

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

1. The map attached hereto and labelled Exhibit A shows the existing territorial boundaries and the areas in which the City and FPL provide electric service to retail customers.

2. The map attached hereto and labelled Exhibit B shows the existing territorial boundary line and the areas in which the City and FPL provide electric service in and around the Grand Harbor development project. The map also shows the new boundary line agreed upon by the parties and further described in this Amendment, adjusting the existing boundary to the north.

3. The parties agree that the existing boundary line [*7] shown on Exhibit B shall be redefined as follows:

Commencing at the juncture of the existing boundary and the west property line of Grand Harbor (approximately 700 feet east of U.S. Highway 1), the new boundary line shall be established on said Grand Harbor property line, then extending north on said property line (approximately 650 feet) to the Grand Harbor/River Club property line, then east to a point where the Grand Harbor property line turns north, continuing easterly following the proposed drainage and waterways to the channel of the Indian River and the point of intersection with the existing territorial boundary.

4. The provisions of this Amendment shall supersede the territorial boundary-related provisions of the Territorial Boundary Agreement between the parties dated June 11, 1980 for that certain boundary described herein. However, the remaining provisions of said Agreement shall in no way be affected by this Amendment.

5. This Amendment shall not be effective until the date it is approved by the Florida Public Service Commission. The parties agree to cooperate in petitioning the Commission for approval of the Amendment under *Section 366.04(2)(d), Florida Statutes* [*8] (1986 Supp.)

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized representatives, and copies delivered to each party, as of the day and year first above written.

Legal Topics:

For related research and practice materials, see the following legal topics:
 Administrative LawJudicial ReviewGeneral OverviewEnergy & Utilities LawAdministrative ProceedingsJudicial ReviewGeneral OverviewEnergy & Utilities LawAdministrative ProceedingsPublic Utility CommissionsGeneral Overview

EXHIBIT

B

