

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company (FPL) 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.

DOCKET NO. 20170235-EI

In re: Joint petition to terminate territorial agreement, by Florida Power & Light and the City of Vero Beach.

DOCKET NO. 20170236-EU
ORDER NO. PSC-2018-0499-PCO-EU
ISSUED: October 16, 2018

ORDER DENYING
CIVIC ASSOCIATION OF INDIAN RIVER COUNTY, INC.'S
MOTION FOR RELIEF FROM RESCHEDULING OF PROCEEDING
AND
APPROVING EXCUSAL OF SPECIFIED WITNESSES

A hearing before the Florida Public Service Commission (Commission) in the dockets referenced above was scheduled to commence at 9:00 am on October 9, 2018. On the afternoon of October 7, 2018, by Executive Order Number 18-276, Governor Rick Scott declared a state of emergency in Leon County, Florida in anticipation of Michael, which was then a tropical storm. In response to this declared emergency, by Order No. PSC-2018-0496-PCO-EU, issued on October 8, 2018 (Order), I continued the controlling dates of this proceeding to move the hearing from October 9-10, to October 18-19. On October 8, 2018, the Civic Association of Indian River County, Inc.'s (CAIRC) had filed a Motion for Stay of Proceedings in Light of Hurricane Michael Emergency which was rendered moot by my Order.

On October 12, 2018, CAIRC served its Motion for Relief from Rescheduling of Proceedings in Light of Conflicts with Hearing Dates (Motion). CAIRC asserts that its attorney must file an emergency request for a temporary restraining order/injunctive relief related to a separate unrelated arbitration proceeding, that there are problems with CAIRC witness availability on the rescheduled dates, and that CAIRC "cannot be effective without their witnesses, experts, and support personnel." CAIRC proposes conducting additional discovery in this proceeding and argues that it is entitled to all rights and relief accorded to any party in a PSC matter, including the full evidentiary hearing it requested, with a reasonable opportunity for discovery and to be heard. CAIRC asserts that due process requires reasonable notice and argues that, in accordance with Section 120.569, Florida Statutes, it is entitled to not less than 14 days notice before a hearing. CAIRC references Section 120.57(1)(b), Florida Statutes, in asserting its rights to have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to recommended orders, and to be represented by counsel. CAIRC contends that there has been an abbreviated timeline in this matter with which it

has attempted to comply, complains that the hearing has been reset to a time that 1) makes it impossible for CAIRC's participants to attend, 2) is "oppressively inconvenient for CAIRC's counsel" and 3) will deny CAIRC due process of law. CAIRC asks that we grant relief from the re-setting of the hearing and order a rescheduling as soon as everyone can get their witnesses and schedules rearranged.

On October 15, 2018, Florida Power & Light Company (FPL) filed its Response in Opposition to CAIRC's Motion. FPL argues that the petitions being considered by the Commission were filed on November 3, 2017 and that CAIRC did not intervene or participate until July 20, 2018. FPL notes that the Commission's July 25, 2018, Order Establishing Procedure set dates for an evidentiary hearing on October 10 and 11, 2018 and that these dates were rescheduled to begin on October 9, 2018 at CAIRC's request. FPL contends that no party has questions for CAIRC's witnesses and that, pending approval by the Commission, all CAIRC witnesses can be stipulated so that their attendance at the hearing is not required. FPL argues that CAIRC's October 8, 2018 motion to reschedule the hearing was made moot by a Commission Order issued that day and that CAIRC's instant motion is its third request to reschedule hearing dates in these dockets. FPL argues that due process requires reasonable notice and an opportunity to be heard and that CAIRC has had an extra week to prepare, that CAIRC's testimony can be stipulated and that only counsel for CAIRC need attend the hearing at which time its counsel can cross examine witnesses. FPL argues that the Order Establishing Procedure in these dockets reflected a discovery cut off of October 2, 2018, and that during the ten weeks available for discovery "CAIRC did not propound a single interrogatory or request a single document from any party." FPL avers that the only discovery action CAIRC took was to notice the deposition of a person who had not filed testimony in the docket. FPL concludes that the presiding officer in this case has discretion in procedural matters of this sort and asks that the Commission deny the CAIRC motion.

Upon review, I note that CAIRC asked that the hearing be stayed because of Hurricane Michael and that the hearing was continued due to the state of emergency in the Florida Panhandle created by Hurricane Michael. Our offices were closed on October 9, 2018 and reopened on October 15, 2018. All parties, including CAIRC, had 14 days notice of the original October 9, 2018 hearing date; because of the continuance, all parties had an additional 9 days to prepare for the October 18, 2018 hearing. CAIRC argues that its attorney is inconvenienced by the new hearing dates, not that the attorney cannot attend. Moreover, this hearing has prefiled testimony and exhibits and all parties have agreed to stipulate to the inclusion in the record of the CAIRC witnesses' testimony and exhibits without the need for cross examination or attendance at the hearing. Because testimony has been prefiled, there has been, and continues to be, ample time for CAIRC's counsel to review testimony with any needed experts in order to formulate cross examination questions in preparation for hearing. Based upon the foregoing, I shall deny CAIRC's Motion.

By agreement of the parties, the following witnesses are excused from the hearing and their respective testimony shall be inserted into the record as though read and any exhibits attached to the testimony shall similarly be included in the record:

CAIRC: White, Whittall, Kramer, Tripson, and Daige
OPC: Kollen
FPL: Cohen, Bores, and Herr

Therefore, based on the foregoing, it is

ORDERED by Chairman Art Graham, as Presiding Officer, that the Civic Association of Indian River County, Inc.'s Motion for Relief from Rescheduling of Proceedings in Light of Conflicts with Hearing Dates is denied. It is further

ORDERED that the witnesses named in the body of this Order are excused from the hearing with their prefiled testimony to be inserted into the record as though read and exhibits attached thereto similarly included in the record.

By ORDER of Chairman Art Graham, as Prehearing Officer, this 16th day of October,



ART GRAHAM
Chairman and Prehearing Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

CWM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.