

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement or other relief regarding the expiration of the Vero Beach electric service franchise agreement, by the Board of County Commissioners, Indian River County, Florida.

DOCKET NO. 140142-EM
ORDER NO. PSC-14-0409-PCO-EM
ISSUED: August 12, 2014

ORDER GRANTING MOTION TO INTERVENE

On July 21, 2014, the Board of County Commissioners, Indian River County, Florida (Board) filed a Petition for Declaratory Statement (Petition) requesting that the Florida Public Service Commission (Commission) issue a declaratory statement order addressing 14 specifically enumerated questions involving the provision of electric service to certain unincorporated areas of Indian River County currently served by the City of Vero Beach (City) pursuant to a territorial agreement with Florida Power & Light Company approved by the Commission.

The City of Vero Beach's Motion to Intervene

On July 29, 2014, the City filed its motion to intervene in this proceeding. The City states that as the incumbent utility providing service pursuant to the Commission-approved territorial agreements, the City's substantial interests will be directly affected by many, if not all of the declaratory statements sought by the Board. The City states that it is referenced by name in 11 of the 14 requests for declaratory statements in the Petition, and that the gravamen of the Board's Petition is its assertion that the franchise agreement between the County and the City, as distinct from the territorial agreement orders, is the only source of the City's authority to operate in unincorporated Indian River County. No responses to the City's motion to intervene were filed.

Standard for Intervention

Pursuant to Rule 28-105.0027(1), F.A.C., persons other than the original parties to a pending proceeding whose substantial interests will be affected by the disposition of the declaratory statement and who desire to become parties may move the presiding officer for leave to intervene. Petitions for leave to intervene must be filed within 21 days after publication of the Notice of the Petition for Declaratory Statement in the Florida Administrative Register. The motion to intervene must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the declaratory statement. Rule 28-105.0027(1), F.A.C., states that the presiding officer shall allow for intervention of persons meeting the requirements for intervention of the rule, and that the presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

To have standing, the intervenor must meet the two-prong standing test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The intervenor must show that (1) it will suffer injury in fact which is of sufficient immediacy to entitle it to a Section 120.57, F.S., hearing, and (2) this substantial injury is of a type or nature that the proceeding is designed to protect. The first prong of the test addresses the degree of injury. The second addresses the nature of the injury. The “injury in fact” must be both real and immediate and not speculative or conjectural. International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990). See also, Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

Analysis & Ruling

Based upon a review of the City’s motion to intervene, it appears that the City has complied with the requirements of Rule 28-105.0027, F.A.C., and meets the two-prong standing test in Agrico. The motion to intervene demonstrates how the City’s substantial interests will be affected by the declaratory statements and that this substantial injury is of a type or nature that the proceeding is designed to protect. Therefore, the City meets the requirements of Rule 28-105.0027, F.A.C., and the two-prong standing test of Agrico.

Section 28-105.0027(1), F.A.C., requires the presiding officer to allow intervention of persons meeting the requirements for intervention of Rule 28-105.0027, F.A.C. The City’s motion to intervene meets the requirements of Rule 28-105.0027, F.A.C., and, therefore, intervention shall be allowed.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo Balbis, as Prehearing Officer, that the Motion to Intervene of the City of Vero Beach is hereby granted as set forth in the body of this Order. It is further

ORDERED that all parties to this proceeding shall furnish copies of all documents which may hereinafter be filed in this proceeding to:

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By ORDER of Commissioner Eduardo Balbis, as Prehearing Officer, this 12th day of
August, 2014.



Eduardo Balbis
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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.

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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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.