

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

Filed: August 14, 2014

ORLANDO UTILITIES COMMISSION MOTION TO INTERVENE AND MOTION FOR
LEAVE TO FILE SUPPLEMENTAL PLEADINGS

The Orlando Utilities Commission (OUC), pursuant to Chapters 120 and 366, Florida Statutes, and Rules 28-105.0027 and 28-106.201, Florida Administrative Code (F.A.C.) hereby files this motion to intervene and motion to file supplemental pleadings (Motion to Intervene) in the above-styled docket.

On July 21, 2014, the Board of County Commissioners, Indian River County, Florida (County) 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.¹ As the provider with the contractual duty to provide the majority of the City's power supply, act as the City's agent for fuel scheduling and a municipal electric utility supplier, OUC's substantial interests will be directly affected by some or all of the declaratory statements sought by the County. Accordingly, OUC 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, OUC states as follows:

PROCEDURAL BACKGROUND

1. The name and address of the Movant is:

Orlando Utilities Commission
100 W. Anderson Street
Orlando, Florida 32801
T: (407) 423-9100
F: (407) 434-2220

¹ Docket No. 140142-EM, Order Granting Motion to Intervene, August 12, 2014.

2. Copies of all pleadings, notices, and orders in this docket should be provided to:

W. Christopher Browder
Vice President and General Counsel
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3. 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 intervener 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 intervener 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 intervener to limit prejudice to other parties.
4. Motions for leave to intervene under this docket must be filed by August 14, 2014 ("Filing Deadline"). Accordingly, pursuant to Rule 28-105.0027(1), F.A.C., this Motion to Intervene is timely filed.

STATEMENT OF AFFECTED INTERESTS

5. OUC is a statutory municipal electric utility provider and an "electric utility" pursuant to Section 366.02(2), F.S.

6. OUC provides wholesale electric service to several municipal utilities inside and outside of Orange and Osceola Counties² through interlocal agreements and other long-term contractual arrangements.
7. OUC provides service to retail electric customers within the City of Orlando and parts of Orange and Osceola Counties. As such, OUC has a territorial agreement with Duke Energy (f.k.a. Progress Energy Florida and Florida Power Corporation)³
8. OUC relies on the enforceability of its interlocal agreements and service contracts in its system resource planning, capital investment and fuel procurement and transportation.
9. OUC entered into a 20 year Agreement for Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services with the City of Vero Beach on April 21, 2008, pursuant to which OUC is entitled to (among other things) supply all of the power supply needed by the City, over and above what the City provides to itself through its own existing resources, to serve its load both within the City and outside the City's boundaries, including that lying within its franchised area located in Indian River County.
10. OUC has made long-term investments, resource planning decisions and contractual commitments based on its 20-year commitment to serve the City's load, both inside and outside of the City's boundaries.
11. In its Petition, the County has (among other things) asked the Commission to confirm that "...the termination of the Franchise is without consequence to the Board or any of the Franchise Area customers with respect to those municipal utility contracts of COVB, OUC [Orlando Utilities Commission], FMPA, or any other contracting party with the COVB and that these contracts do not do not provide COVB with any authority to continue service in the Franchise Area after the Franchise expires." Petition at 28.
12. Any decision by the Commission under this Docket that will materially impact the enforceability of Territorial Agreements, generally, or OUC's agreements with the City, specifically, will directly affect OUC's substantial interests, and accordingly, OUC is entitled to intervene in this docket.

²City of St. Cloud, Florida; City of Lake Worth, Florida; City of Bartow, Florida; City of Vero Beach, Florida; and, City of Winter Park, Florida.

³ Territorial Agreement Between Orlando Utilities Commission and Florida Power Corporation Orange County, dated February 9, 1995.

STATEMENT OF DISPUTED ISSUES OF MATERIAL FACT

13. OUC does not allege any disputed issues of material fact in the Petition.

STATEMENT OF ULTIMATE FACTS ALLEGED

14. OUC has demonstrated that its substantial interests will be affected by some or all of the Commission's decision in this Docket and, therefore, OUC is entitled to intervene in this Docket.
15. OUC believes that the questions raised in the Petition assert legal positions that are not supported by law or Public Service Commission precedent, both as to the impact of the County's termination of its franchise arrangement with the City on standing agreements between OUC and the City, as well as the enforceability of territorial agreements generally.

PETITION FOR LEAVE TO FILE SUPPLEMENTAL PLEADINGS

16. Pursuant to Rule 28-105.0027(1), F.A.C., persons other than the original parties to this docket whose substantial interests will be affected by the disposition of the declaratory statement must file motions for leave to intervene by the Filing Deadline.
17. Rule 28-105.0027(1), F.A.C., provides that the motion to intervene must include allegations sufficient to demonstrate that the intervener is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, but is silent on whether supporting memoranda or other pleadings must be filed by the Filing Deadline.
18. While OUC does not believe it is barred from filing supporting memoranda or other pleadings in support of its Motion to Intervene after the Filing Deadline, in an abundance of caution, OUC hereby requests leave of the Commission to file memoranda and other documents supporting its Motion to Intervene within three weeks after the Filing Deadline.
19. Where a reasonable time period is set for filing any such subsequent pleadings, OUC does not believe any party in this Docket will be prejudiced.

WHEREFORE, the Orlando Utilities Commission respectfully requests that

- 1) the Commission grant its motion to intervene in this docket; and,
- 2) the Commission grant its motion for leave to file memoranda and other documents in support of this Motion to Intervene within three weeks or such other reasonable time as the Commission may determine.

Respectfully submitted this 14th day of August, 2014.

/s/ W. Christopher Browder

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**Attorney for Orlando Utilities
Commission**

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Motion to Intervene and Motion for Leave to File Supplemental Pleadings has been furnished by electronic mail and U.S. Mail this 14th day of August, 2014 to the following:

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