

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-14-0423-PCO-EM
ISSUED: August 19, 2014

ORDER GRANTING ORLANDO UTILITIES COMMISSION'S MOTION TO INTERVENE
AND MOTION FOR LEAVE TO FILE SUPPLEMENTAL PLEADINGS

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 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.

Orlando Utilities Commission's Motion to Intervene

On August 14, 2014, the Orlando Utilities Commission (OUC) filed a Motion to Intervene and Motion for Leave to File Supplemental Pleadings. OUC alleges that it is 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 is a municipal electric utility supplier. OUC states that as a retail electric service provider, it has territorial agreements with Duke Energy and relies on the enforceability of its interlocal agreements and service contracts in its system resource planning, capital investment and fuel procurement and transportation. OUC further alleges that on April 21, 2008, the City and OUC entered into a 20 year Agreement for Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services. Pursuant to this contract, OUC is entitled to supply all of the power supply needed by the City, over and above what the City provides itself, to serve the City's load both within and outside the City boundaries, including territory within the City's franchised area in Indian River County. OUC states that it has made long-term investments, resource planning decisions, and contractual commitments based on its 20-year commitment to service the City's load. OUC stated that any decision by the Commission in 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. Because of the foregoing, OUC states that its substantial interests will be directly affected by some or all of the declaratory statements sought by the Board.

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.

Pursuant to Section 120.565, F.S., a person seeking to intervene in a proceeding in which a party is seeking a declaratory statement must establish that: (1) its substantial interest will be affected by the proceeding, and (2) it desires to become a party to the proceeding. AmeriLoss Pub. Adjusting Corp. v. In re Lightbourn, 46 So. 3d 107, 111 (Fla 3d DCA 2010). In order to show substantial interest in the outcome of a proceeding, a person must show that: (1) it will suffer injury in fact which is of sufficient immediacy to entitle it to the relief requested, 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. See Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981), rev. den., 415 So. 2d 1359 (Fla. 1982) and 415 So. 2d 1361 (Fla. 1982). The second addresses the nature of the injury. Id.; see also Nuvox Communs., Inc. v. Edgar, 958 So. 2d 920 (Fla. 2007) (where the Court affirmed the Commission's determination of Joint CLEC's lack of standing to challenge a PAA Order based on failure to meet Agrico standing requirements). The "injury in fact" must be both real and immediate and not speculative or conjectural. See Ameristeel Corp v. Clark, 691 So. 2d 473, 477-78 (Fla. 1997).

Analysis & Ruling

OUC alleges that disposition of the Petition could directly affect OUC's contracts with the City of Vero Beach and with other parties based on OUC's 20-year commitment to provide wholesale electric service to the City, including territory lying within the City's franchised area in Indian River County. These allegations in the motion to intervene demonstrate that OUC's substantial interests will be directly affected by the declaratory statements and that this substantial injury is of a type or nature that the proceeding is designed to protect. Therefore, it appears that OUC meets the requirements of Rule 28-105.0027, F.A.C., and the two-prong standing test of Agrico. Rule 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. OUC's Motion to Intervene meets the requirements of Rule 28-105.0027, F.A.C., and, therefore, intervention shall be allowed.

Pursuant to Rule 25-22.039, F.A.C., intervenors take the case as they find it. Intervenors are directed to comply with all standards, rules, statutes, and procedures that apply to and are expected of all other parties to the proceeding, and shall be required to stay within the scope of this proceeding as it has been and will be established.

OUC's Motion for Leave to File Supplemental Pleadings is hereby granted. The date by which OUC's substantive response to the Petition is due is addressed by separate Order.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo Balbis, as Prehearing Officer, that the Orlando Utilities Commission's Motion to Intervene and Motion for Leave to File Legal Memoranda 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 E. Balbis, as Prehearing Officer, this 19th day of August, 2014.



EDUARDO E. 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.

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.

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.