

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement
regarding the effect of the Commission's orders
approving territorial agreements in Indian
River County, by the City of Vero Beach.

DOCKET NO. 140244-EM
ORDER NO. PSC-15-0058-PCO-EM
ISSUED: January 22, 2015

ORDER GRANTING MOTION TO INTERVENE

On December 19, 2014, the City of Vero Beach (Vero Beach) filed a Petition for Declaratory Statement (Petition) requesting that the Florida Public Service Commission (Commission) issue a declaratory statement concerning the status of the City's rights to continue operating in its Commission-approved service territory under the Commission's statutes and orders regarding the regulation of electric utility service and service territories in Florida.

Indian River County's Motion to Intervene

On January 13, 2015, the Board of County Commissioners, Indian River County, Florida (Board or County), filed a Notice of Intervention by Appearance and Alternative Motion to Intervene pursuant to Rules 25-22.039 and 28-106.205(1) and (3), F.A.C. The County alleges that the City's Petition is proposing through its declarations to have the Commission affect and determine the substantial interests of the Board by determining that the Franchise Agreement between the Board and the Vero Beach is without meaning, purpose, or effect and by invalidating the Board's exclusive authority to issue electric service franchises for the unincorporated areas of the County. The County states that the direct attack by Vero Beach on the authority of the Board requires the Board's direct involvement in order to protect its substantial interests. The County states that it has its own pending Petition for Declaratory Statement in Docket No. 140142-EM, and that the subject of that docket is the same Franchise Agreement that motivates Vero Beach to file its Petition for Declaratory Statement.

On January 20, 2015, Vero Beach filed a response to the County's motion to intervene that stated that it does not object to the County's intervention in this docket for the purpose of presenting its positions regarding the Commission's declaration of the City's rights under the Commission's statutes and orders.

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. 2nd 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. 3rd 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 County’s motion to intervene, it appears that the County 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 County’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 County 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 the Florida Public Service Commission that the Motion to Intervene of the Board of County Commissioners of Indian River County, Florida, is hereby granted as set forth in the body of this Order. It is further

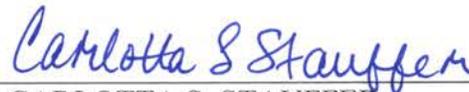
ORDER NO. PSC-15-0058-PCO-EM
DOCKET NO. 140244-EM
PAGE 3

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

Dylan Reingold
County Attorney
County Attorney's Office
1801 27th Street
Vero Beach 32960-3388
Telephone: (772) 226-1427
Email: dreingold@ircgov.com

Floyd R. Self, B.C.S.
Gonzalez Saggio & Harlan LLP
3411 Capital Medical Blvd.
Tallahassee, Florida 32308
Telephone: (850) 702-0090
Email: floyd_self@ghllp.com

By ORDER of the Florida Public Service Commission this 22nd day of January, 2015.



CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

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

KC

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.