

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

PETITION BY **THE CIVIC ASSOCIATION OF INDIAN RIVER COUNTY, INC.**, ASSERTING THE EXISTENCE OF DISPUTED ISSUES OF MATERIAL FACTS IN THE **ORDER NO. PSC-2018-0336-PAA-EU**, ISSUED JULY 2, 2018;
AND REQUESTING A HEARING THEREON.

The Civic Association of Indian River County, Inc., by and through its undersigned counsel and pursuant to Rules 25-22.029, & 28-106.201, F.A.C., respectfully petitions the Florida Public Service Commission [PSC], to consider the disputed issues of material fact presented herein. We are a civic group formed in 1970, representing approximately 900 members in the cities and county at issue and all share a **substantial interest** in the outcome of this case. Our members and our Board are all subject to the changes in service, rates, and those in the City of Vero Beach will be forever affected by the immediate loss in revenues as well as additional taxes of unknown amounts. Our very lifestyles are, across the board, going to be substantially affected by the decision at issue here. After careful review of the written Order above-noted, Petitioner submits the following, and would state in support of this Petition:

1. PETITIONER CIVIC ASSOCIATION OF INDIAN RIVER COUNTY, INC., [hereafter "Civic Association"] **received notice** of the issuance of the Final Order of the PSC on July 12, 2018, through an article in a local Vero Beach publication "32963" which is mailed weekly to beach side residents. This mailing was sent to many

members of the Civic Association. The Order relies on several contentions which we find unsupported by actual facts.

2. ISSUES OF DISPUTED MATERIAL FACT:

a) The PSC bases its findings of “**exceptional circumstances**” on alleged but unproven facts, such as:

- That “(t)he customers who live outside the City . . . have no ability to vote for the members of the COVB City Council and thus have no voice concerning the operation or management of the City’s electric utility and no redress to any governmental authority.” Both residents of Indian River County [“the County”] and of the Town of Indian River Shores [“the Shores”] have full **voting representation on the City’s Utility Commission** and actually constitute a majority of members on that Commission. County and Shores residents may also address the City Council in any manner that is open to residents of the City. Even city residents who can vote for members of the City Council have no control over how those representatives actually vote. However, as has been shown in recent elections, the County and Town may donate heavily toward candidates which represent their views. Indeed, the present council has a majority of members who are financially supported almost exclusively by both the County and Shores residents, as well as by campaign funds totaling hundreds of thousands of dollars from FPL via election and PAC donations. As has been proven many times, money not only “talks,” it “votes.”
- Similarly in regard to the claims of **outside residents having “no voice”** in city issues, all of the City Council members elected who did not receive campaign money from County and Shores residents were those opposed to a sale for very

strong, fact-based reasons. This indicates clearly which candidates were supported by non-city voters. Once the FPL money rolled into campaigns, enabling many biased and false claims about alleged benefits of a sale to enter the public consciousness via mailings and television ads, those supporting a sale were elected to a majority of seats. The outside customers most clearly have great influence and control over who sits on the City Council. These ads and media placements regarding the sale have been ubiquitous, thereby spreading the misinformation so key to this sale while ignoring any actual debate about same. During the hearing, State Senator Mayfield helpfully pointed out the fact that the City has voted in many directions when electing councilmembers, but that “we have finally got a city council that agreed with the city residents on what to do.” [Transcript of Hearing at p. 96] As stated, there are only assumptions about what the citizens might want, and only FPL propaganda repeated to voters about all the money they will save. No details included.

- b) The PSC states in many paragraphs, on several issues, that the FPL requests cannot receive approvals based merely on **rate differentials**. As they write, “It is important to note that a disparity in rates alone does not constitute an extraordinary circumstance that can support a positive acquisition adjustment. Electric utility customers cannot choose between electricity providers based on which provider has the lower rates. A significant price differential in electric rates between two electricity providers does not give a customer a substantial interest in the outcome of a proceeding on a proposed territorial agreement. *AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 477 (Fla 1997). It is established law that “[a]n individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself.” *Story v. Mayo*, 217 So. 2d 304, 307 (Fla.

1968), *cert. denied*, 395 U.S. 909 (1969).” Yet the only criteria left available, after discounting the sham of having no say in City elections, in order to give the PSC a basis to allow “**exceptional circumstances**” is just that, the oft repeated examples of the differences in rates peppered generously throughout the PSC Order. Rates which, we all well know, can fluctuate considerably. There is no basis of an exceptional nature when all that is being vaguely promised is undefined “lower rates” for an indeterminate length of time. As PSC Staff pointed out, a situation where there are differences in rates in and of itself is not sufficient, and in this case the exceptional circumstances found barely crossed the finish line owing to the claims on non-representation, as discussed above. Again as noted at the June hearing, it is not unusual to have customers outside of the government boundaries where a utility is located. Would this mean that no utility could take on new customers outside of a city without risking a takeover from a publicly-owned mega-utility? That is what is being argued, no matter if the PSC declares they don’t mean to set a precedent.

- c) FPL falsely claims, and the PSC appears to accept, that the public has been given **adequate notice** of this change in service providers. This is a key discrepancy. To the contrary, no informed vote of the City residents has ever occurred allowing them a decision in what might directly and adversely affect all residents via higher taxes and other detriments as a result of this sale. While FPL and others insist there were two prior referenda on this subject, a review of the wording of each clearly shows no such vote was ever taken. This point should not be lightly passed over. One referendum was about the ability of the City to rent the COVB utility property to FPL, without giving any terms or financial account therefor. The other referendum was even more vague, setting out no plus or minus outcomes, nor

giving voters information on what a supposed “contract” for sale actually stated. The question asked was simply whether or not negotiations should continue. This is egregiously inadequate, at best. It is likely, nay certain, that the vast majority of ratepayers have no idea the extra charges with which they will be saddled after allowing FPL to “recover the energy portion of charges through Florida Power & Light Company’s Fuel and Purchase Power Cost Recovery Clause and the capacity charges component through the Capacity Cost Recovery Clause.”

- d) If the claim is being accepted that there is something inappropriate or illegal about any municipality using **utility funds transferred to the general fund**, even though some of that income is derived from non-city residents, we find no basis or evidence in any of the filings that this is true. Rather, to the related point being posited that neither the County nor Shores residents in any way use City services or assets, this is patently false. The City beaches and parks, roads and infrastructure, etc., are used by everyone in this area for which only City residents pay. Additionally, City residents pay County taxes, while County residents pay no taxes to the City for using City assets.
- e) While affirmatively asserting that the Sebring case has no precedential weight, it is nevertheless cited and used to support the findings regarding the accounting of a **positive acquisition adjustment**. The factual issues could not be more different - a city facing bankruptcy in Sebring and, in this case, a city that is only facing financial ruin if this sale goes through - but the *reasoning* used on the positive acquisition adjustment is key, as PSC Staff indicated. The continued evaluations of the very questionable assumptions used by FPL can be, and should be, addressed by expert witnesses. The assumptions accepted by the PSC violate the standards normally used by the PSC to determine a positive acquisition adjustment.

Additionally, the basis used to find “exceptional circumstances” seems to rely on “territorial issues” alone, which is questionable at best when those issues are merely the fact that outside forces have been pressuring the City for many years to take actions against the interest of its citizens. This also means rewarding the County and Shores for having taken to the courts to obtain lower rates they believe they deserve, all claims which are unfounded and have been rejected by the courts and by the PSC itself. While they continue to lose at every turn, since the Shores’ arguments have not held legal water, it seems their efforts to harass the City via the judicial system has paid off in another way if indeed the PSC finds that such sham lawsuits are the basis to strip the City voters of having an informed legal say in their future.

- f) The statements concerning current and future **lower rates** themselves are suspect, to the point of being false. The public cannot in any way be guaranteed that their rates will be better with FPL, as the PSC asserts as a reason to allow FPL’s requests. Yet the sole argument made by City representatives [who’ve been elected with FPL funds] is getting lower rates. As indicated in Footnote 13 of the Order, the differential between City and FPL rates can vary greatly within only a few months time. Certainly indications are from all of the varied and complex contracts involved in this transaction, it has not been made clear to voters what expenses will be laid at their doors. This is an open question. The recouping of costs likely will be a dire burden on the City taxpayers, something that, again, has not been made clear to public. To the extent that the PSC has relied on the fact of a supposed benefit to the public, this should be reconsidered. Also of import to the issue of a public benefit, any review of the past 30 years comparing **service quality** and response time [especially following hurricane events] will belie any claim that our citizens

will benefit from a change to FPL. Reams of evidence exist on that score but nothing is mentioned about considering this fact.

- 3) The foregoing paragraphs, a through f, detail the facts petitioner contends **warrant reversal or modification** of the agency's proposed action.
- 4) The foregoing sets out under Rule 28-106.201 the basis for our Petition.

WHEREFORE, owing to the tremendously weighty decisions being made regarding Vero Beach residents without full disclosure from an unbiased party, we respectfully request that; the conflicts in the facts noted above serve as a basis to reverse the approvals given in the subject Order; that we be allowed to bring additional evidence to a Administrative Hearing Officer's attention regarding the above; and that the PSC remain open to understanding why the general populace has been confused and misled regarding what such an action by the PSC will mean to them in full. Submitted this 18th day of July, 2018.

/s/ Lynne A. Larkin
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LIST OF CONCERNED AGENCIES
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic and US mail, on this 20th day of July, 2018:

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