

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-EI

FILED: September 11, 2018

**TOWN OF INDIAN RIVER SHORES' NOTICE OF APPEARANCE
TO PARTICIPATE AS A PARTY PURSUANT TO RULE 28-106.205(3),
FLORIDA ADMINISTRATIVE CODE**

Pursuant to Rule 28-106.205(3), Florida Administrative Code, the Town of Indian River Shores (the "Town") files this notice of appearance to participate as a party in this proceeding and states:

Overview of Proceeding

1. This proceeding involves a carefully balanced Asset Purchase and Sale Agreement (the "PSA") dated October 24, 2017, by which the City of Vero Beach ("COVB") has agreed to sell, and FPL has agreed to purchase, the COVB electric utility system. This proceeding will determine whether the PSA will close because the transaction is expressly conditioned on the Commission entering an order (i) authorizing FPL to charge former COVB customers FPL rates; (ii) approving FPL's accounting treatment for the transaction; and (iii) approving the termination of the existing Territorial Agreement between COVB and FPL (collectively, the "Required Regulatory Approvals").

2. On July 2, 2018, the Commission issued Order No. PSC-2018-0336-PAA-EU (the “PAA Order”) granting the Required Regulatory Approvals thus clearing the way for the PSA to close.

3. On July 18, 2018, the Civic Association of Indian River County, Inc. filed a petition seeking to “reverse the approvals given” in the PAA Order (“Civic Association Petition”). On July 23, 2018: Mr. Brian Heady filed a motion to “reverse prior approvals” set forth in the PAA Order (“Heady Motion”); the Florida Industrial Power Users Group (“FIPUG”) filed a petition protesting and objecting to the PAA Order ; and, Mr. Michael Moran filed a petition disputing the PAA Order (“Moran Petition”). On August 30, 2018, FIPUG dismissed its petition.

The Rule

4. Section (3) of Rule 28-106.205, Florida Administrative Code, states that “[s]pecifically-named persons whose substantial interests are being determined in the proceeding, may become a party by entering an appearance and need not request leave to intervene.”¹

The Town is a Specifically-Named Person

5. The Town is an incorporated Florida municipality in Indian River County, Florida, and a “person” under Section 120.52(14), Florida Statutes.

6. The Town is specifically-named on 28 separate occasions on pages 2, 3, 5, and 13 of the PAA Order in this proceeding. The Town also is specifically-named in the Civic Association Petition on pages 2, 5, and 6, in the Heady Motion on page 5, and in the Moran Petition on pages

¹ The Commission staff has formally advised the Commission that section (3) of the rule “is beneficial to parties and the Commission because it saves resources by allowing specifically-named persons whose substantial interests are being determined to become a party by filing a fairly simple notice of appearance instead of a much more involved petition to intervene.” See Staff Recommendation in Docket No. 20170163-OT dated Sept. 21, 2017, p. 9.

1, 2 and 3. Furthermore, the Town is specifically named on page 4 of FPL's petition requesting the Required Regulatory Approvals, and on page 2 of FPL's and COVB's joint petition to terminate the Territorial Agreement.

The Town's Substantial Interests Will Be Determined In The Proceeding

7. The Town's substantial interests will be determined in this proceeding because the Town is a retail electric customer of COVB and is to become a retail electric customer of FPL when the PSA closes, which closing is expressly conditioned on the Commission granting the Required Regulatory Approvals in this proceeding. In addition, granting the Required Regulatory Approvals and allowing the PSA to close would resolve a unique and complex problem that has adversely affected the Town for decades. Under the Territorial Agreement, the boundary line dividing the electric service territories of FPL and COVB literally splits the Town in two. FPL serves Town residents living north of the boundary line, while COVB serves Town residents living south of the boundary line. This unusual boundary configuration fragments electric service in the Town causing residents to be served by two different electric utilities, with vastly different rates and levels of service. It also results in vastly different regulatory protections: Town residents served by FPL are afforded extensive regulatory protection by the Commission, while Town residents served by COVB are left unguarded by the Commission and have no vote in how COVB sets its rates or offers its services.

8. The disenfranchisement resulting from the Territorial Agreement has been extremely divisive and spawned numerous lawsuits, the most recent of which was filed by the Town in PSC Docket No. 20160049-EU. In that case, which remains pending, the Town has petitioned the Commission to modify the Territorial Agreement to allow FPL to serve all retail electric customers in the Town on grounds that COVB's unilateral exercise of unregulated monopoly

powers within the Town violate the extra-territorial powers clause in Article VIII, Section 2(c) of the Florida Constitution. Granting the Requested Regulatory Approvals and allowing the PSA to close would settle this long-standing litigation once and for all by (i) unifying electric service in the Town under one provider, (ii) allowing the Town and all its residents to receive FPL electric service at that utility's low rates, and (iii) affording all Town residents the regulatory protection of the Commission. The Commission has already recognized that this pending administrative litigation would be resolved by the sale of COVB's electric system to FPL, and has issued an order abating the proceeding so the Town and COVB could focus "their efforts on consummating the sale, which would resolve the issues in dispute in this docket." See Order No. PSC-16-0554-PCO-EU issued in Docket No. 201600438-EU on January 11, 2018.

9. On the other hand, if the Required Regulatory Approvals in the PAA Order are rescinded – as has been requested by the Civic Association Petition, the Heady Motion, and the Moran Petition – the PSA will not close and the Town and its residents currently served by COVB will be deprived of unified electric service, lower electric rates, and the Commission's regulatory protection. Moreover, rescission of the Required Regulatory Approvals in the PAA would reignite the pending lawsuit in Docket No. 20160049-EU, and thrust the Town, COVB and the Commission back into protracted litigation. There can be doubt that the Town's substantial interests will be determined in this proceeding.

WHEREFORE, pursuant to Rule 28-106.205(3), Florida Administrative Code, the Town files this notice of appearance as a party in Docket Nos. 20170235-EU and 20170236-EU in support of the Required Regulatory Approvals set forth in the PAA Order.

Respectfully submitted this 11th day of September, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 11th day of September, 2018, to the following:

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