

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

Date: September 14, 2018

TOWN OF INDIAN RIVER SHORES' RESPONSE IN OPPOSITION TO CIVIC ASSOCIATION OF INDIAN RIVER COUNTY'S OBJECTION TO TOWN'S NOTICE OF APPEARANCE TO PARTICIPATE AS A PARTY

The Town of Indian River Shores (the "Town"), respectfully responds in opposition to the objection filed by the Civic Association of Indian River County, Inc. ("CAIRC") on September 13, 2018, to the Town's Notice of Appearance to Participate as a Party pursuant to Rule 28-106.205(3), Florida Administrative Code. CAIRC's objection to the Town's Notice of Appearance is baseless as a matter of law, and should be denied for the following reasons.

CAIRC does not dispute that the Town's Notice of Appearance meets the pleading requirements of Rule 28-106.205(3). Nor does CAIRC dispute that the Town is a "person" under Section 120.52(14), Florida Statutes, or that the Town is specifically-named in the proceeding. Moreover, CAIRC does not dispute that the Town's substantial interests will be determined in this proceeding. Instead, the crux of CAIRC's objection is that Town's substantial interests are not "unique" to the Town, but rather are "indistinguishable" from the interests of Indian River County (the "County") and are already being represented by the County in the proceeding. However, there is no requirement whatsoever in Rule 28-106.205(3) that the Town's substantial interests must be "unique" to the Town. For CAIRC to imply otherwise is disingenuous.

Furthermore, while the interests of the Town and the County are aligned in many respects, the Town (as an incorporated municipality) and the County are legally distinct entities with different powers and protections, especially when another municipality seeks to disenfranchise non-residents by exercising unregulated monopoly powers outside its corporate limits. *See e.g.*, § 180.02(2), Fla. Stat. (“Any municipality may extend and execute all of its corporate powers applicable for the accomplishment of the purposes of this chapter outside of its corporate limits ... provided, however, that said corporate powers shall not extend or apply within the corporate limits of another municipality.”) (Emphasis added.)

CAIRC has not shown, nor can it show, that the Town is foreclosed from participating as a party in this proceeding under Rule 28-106.205(3). CAIRC’s fabricated objection is a classic example of why the Commission repealed its prior intervention rule and adopted Rule 28-106.205(3) in the first place.¹

Conclusion

For these reasons, and for the reasons set forth in the Town’s Notice of Appearance, the Commission should deny CAIRC’s objection and acknowledge the Town’s appearance as a party in Docket Nos. 20170235-EU and 20170236-EU pursuant to Rule 28-106.205(3), Florida Administrative Code. As a party, the Town is mindful of the procedures set forth by the Prehearing Officer in Order No. PS-2018-0370-PCO-EU, including his instructions to avoid duplicative or repetitious cross-examination.

¹ The Commission staff recommended that the Commission adopt Rule 28-106.205(3) “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.

Respectfully submitted on September 14, 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 14th day of September, 2018, to the following:

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