

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  
ORDER NO. PSC-2018-0473-PCO-EU  
September 25, 2018

CIVIC ASSOCIATION OF INDIAN RIVER COUNTY, INC.[CAIRC]  
MOTION FOR RECONSIDERATION OF ORDER GRANTING  
REQUEST FOR PROTECTIVE ORDER BY  
CITY OF VERO BEACH

CAIRC, pursuant to Rule 25-22.0376, Florida Administrative Code and Rules 1.280 & 1.310, Florida Rules of Civil Procedure, hereby files this Motion for Partial Reconsideration of Order NO. PSC-2018-0473-PCO-EU, and in support thereof states as follows:

1. CAIRC had set for deposition on Thursday, September 27, 2018, a witness who has unique information on several issues relevant to CAIRC in this action, Mr. Harry Howle. CAIRC did not give a stated purpose for requesting the testimony of that witness, other than stating in emails that CAIRC found the refusal to agree to such deposition odd since Mr. Howle is and has been speaking out about the proceedings at hand in all manner of media outlets.

2. Counsel for the City of Vero Beach ["COVB" or "City"] did not inquire as to the bases for requesting a deposition of Mr. Howle, but counsel instead extrapolated a fictional reason for the deposition, which was incorrect, based upon CAIRC counsel's use of the title "Mayor." CAIRC did not indicate that Mr. Howle was to be speaking

on behalf of the City, but the City nonetheless produced a lengthy argument about a municipal corporation being able to select its own representatives for questioning.

3. CAIRC attempted, perhaps too inadequately, in its response to the City's Motion to clarify that this was not a request for a COVB spokesperson, rather our interest in Mr. Howle's testimony lay within his own actions and words.

4. To elaborate upon the CAIRC need for Mr. Howle's testimony, we will be specific as to the issues on which it would touch. First, CAIRC has been challenged by FPL, and now in discovery by Indian River County, as to its standing to even speak to this matter on behalf of the citizens of our area. This challenge is one that CAIRC would have been able to address, hopefully successfully, without hesitation in normal circumstances. These are not, however, normal circumstances, in large part because of the actions and words of Harry Howle. His attempts to silence the public, and in particular CAIRC, regarding any aspect of this sale including the details and issues herein being considered, is extraordinary. The testimony of Ken Daige, Tom White and Herb Whittall touches on this point. It goes to the heart of the public interest, and it goes to whether or not this Commission has been given all necessary information and data on which to base its decision on rates and territorial changes.

5. Mr. Howle's words, his actions, his thoughts all become a matter of extreme importance to CAIRC, especially in light of, yes, his position as Mayor. Having the general public become so incensed about the CAIRC role in finding the truth about all the issues now before the Commission that our own Board members fear to be named, that has indeed impacted our ability to respond to the standing issue. Even beyond the attempts to silence CAIRC, though, is the overriding matter of what such a position mean to the public interest and overall well-being of the city and county residents who may well be grossly un- or mis-informed about rates and partial sales.

6. CAIRC is also greatly concerned regarding the issue of extraordinary circumstances and the alleged facts being used to support same by elected officials. The elected official who has been most open, most vocal, about the alleged unfairness of what his own City has been doing since it began serving customers outside the city borders, is again Mr. Howle. He testified here in June about the Staff findings, about the history of “negotiations” with various parties, about their “patient partner FPL” both of which bear questioning in light of our statements by CAIRC witnesses. More remarkable yet is his concern that his constituents were “not being protected by a regulatory body” [June 2, 2018, transcript of proceedings at Page 33, starting at line 2] even as he himself sits in a position to protect those constituents, all of this CAIRC does indeed find extraordinary, but not in the sense necessary to meet the legal standards for the petitioners requests to the PSC.

7. CAIRC feels that without Mr. Howle’s testimony on the basis for his positions and statements, we will be irreparably harmed in this proceeding. We do not take the challenge to our standing lightly. Indeed we attempted to contact FPL early on in this proceeding in order to come to some understanding or agreement on at least some portions of this issue, but FPL refused any such move. CAIRC also has much to challenge and present on the issues of public interest and the matters underlying the claims of extraordinary circumstances. CAIRC would therefore need every opportunity it can get to prove our case.

8. In the situation where a city official or mayor of a city has information specific to his or her own actions in a legal proceeding, even if that proceeding involves the city itself as a party and not the mayor, courts have ruled that the denial of a protective order is proper. *See e.g. City of Miami Mayor Tomas Regalado, et al., v. Vila*, 225 So.3d 874 (Fla. 3d Dist. 2017) (in negligence case against the City of

Miami, mayor and city manager compelled to appear for depositions where evidence indicates they can give information that no other person would have). As here, Mr. Howle's own actions and words have set him apart from any other person in the City.

WHEREFORE, for the foregoing reasons, CAIRC respectfully requests that the Commission reconsider its decision to allow the City to protect Mr. Howle from being deposed and issue an order allowing such deposition to go forward.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been filed and forwarded via email this 25<sup>th</sup> day of September, 2018, to: PARTIES listed below.

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