BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the City of Vero Beach, Florida, for a Declaratory Statement Regarding Effect of the Commission's Orders Approving Territorial Agreements in Indian River County.	)	DOCKET NO. 140244-EM
	)	FILED: January 20, 2015

CONSOLIDATED RESPONSE AND OBJECTIONS BY THE CITY OF VERO BEACH TO INDIAN RIVER COUNTY'S MOTION TO INTERVENE AND RESPONSE IN OPPOSITION TO THE CITY OF VERO BEACH'S PETITION FOR DECLARATORY STATEMENT

The City of Vero Beach, Florida ("City," "Vero Beach," or "Petitioner"), pursuant to Rule 28-105.0027 and Rule 28-106.204, Florida Administrative Code ("F.A.C."), hereby files this Consolidated Response to Indian River County's Motion to Intervene and Response in Opposition to the City of Vero Beach's Petition for Declaratory Statement ("City's Response" or "Response") in which the City respectfully responds to Indian River County's ("County") "Notice of Intervention by Appearance and Alternative Motion to Intervene" ("Motion to Intervene") and the County's arguments set forth in its separate "Response in Opposition to City of Vero Beach Petition for Declaratory Statement," ("County's Response") both of which were filed herein on January 13, 2015.

Regarding the County's Motion to Intervene, while the City does not believe that the County is entitled to any substantive relief under applicable Commission statutes or orders, the City does not object to the County's intervention in this proceeding, at this time, for the purpose of presenting its positions regarding the Commission's declaration of the City's rights under the Commission's statutes and orders. (The City believes that the County's attempt to intervene by appearance is not valid.)

Substantively, the County's arguments set forth in the County's Response are defective, legally flawed, illogical, internally inconsistent, and irrelevant for many reasons explained in the City's Response, including:

1. A number of the County's "factual" assertions are irrelevant, false, wrong, misplaced, or incorrect; some are legal conclusions that the County wishes were facts.

2. The County either misunderstands or has misrepresented the City's requests for the Commission's declarations and the City's positions regarding many issues, including the validity and effectiveness of the City-County Franchise Agreement.

3. The County misunderstands or mischaracterizes the bargained-for exchange embodied in the City-County Franchise Agreement in its efforts to usurp the Commission's statutory role in determining what utilities serve in what service areas when there is a dispute regarding such service.

4. As a result of its misunderstanding or mischaracterization of the bargained-for exchange in the City-County Franchise Agreement and the legal effect of the existence of that Agreement, the County has also misunderstood, mischaracterized, and misrepresented what will happen when the City-County Franchise Agreement expires.

5. The County incorrectly claims to have powers that, as a matter of law, it simply does not have under Florida Statutes, the Florida Constitution, or under the Franchise Agreement.

6. The County's assertions regarding the PSC's jurisdiction are irrelevant to the declaratory statements requested by the City. Specifically, the City has not asked the PSC to determine the County's property rights; any legal issues regarding such property rights, to the extent that they are to be determined by legal process, will be decided in the courts of Florida.

7. The County's characterizations of the holdings in the Winter Park case, and the Commission's actions and non-actions relative to the change-over of service from Florida Power Corporation/Progress Energy Florida to Winter Park, are specious and misleading.

Accordingly, the City respectfully asks the Commission to issue its order granting the two declaratory statements requested in the City's Petition, pursuant to applicable Commission statutes and orders.

PRELIMINARY STATEMENT – DEFINED TERMS

As used in this response, the following capitalized terms have the meanings given below.

"City" means the City of Vero Beach, Florida.

"City-County Franchise Agreement," "Franchise Agreement," and "Franchise" all mean the franchise agreement between Indian River County and the City of Vero Beach embodied in County Resolution No. 87-12.

"City's Petition" refers to the petition for declaratory statement filed in this docket by the City of Vero Beach on December 19, 2015.

"City's Response" means this pleading, filed herein on January 20, 2015.

"Commission" or "PSC" means the Florida Public Service Commission.

"Commission's Territorial Orders" or "Territorial Orders" means the following:

In re: Application of Florida Power and Light Company for approval of a territorial agreement with the City of Vero Beach, Docket No. 72045-EU, Order No. 5520 (August 29, 1972);

In re: Application of Florida Power & Light Company for approval of a modification of territorial agreement and contract for interchange service with the City of Vero Beach, Florida, Docket No. 73605-EU, Order No. 6010 (January 18, 1974);

In re: Application of FPL and the City of Vero Beach for approval of an agreement relative to service areas, Docket No. 800596-EU, Order No. 10382 (November 3, 1981);

In re: Application of FPL and the City of Vero Beach for approval of an agreement relative to service areas, Docket No. 800596-EU, Order No. 11580 (February 2, 1983); and

In re: Petition of Florida Power & Light Company and the City of Vero Beach for Approval of Amendment of a Territorial Agreement, Docket No. 871090-EU, Order No. 18834 (February 9, 1988).

"County" means Indian River County, Florida.

"County's Petition" means the petition for a declaratory statement filed by the County on July 21, 2014, PSC Docket No. 140142-EM, In re: Petition for declaratory statement or other relief regarding the expiration of the Vero Beach electric service franchise agreement, by the Board of County Commissioners, Indian River County, Florida.

"County's Response" means the "Response in Opposition to City of Vero Beach Petition for Declaratory Statement," filed herein on January 13, 2015.

"Florida Power" or "FPC" means Florida Power Corporation, a Florida investor-owned utility that was subsequently known as Progress Energy Florida and that is now known as Duke Energy Florida.

"FPL" means Florida Power & Light Company.

"Territorial Agreements" means those territorial agreements between the City and FPL approved in the Commission's Territorial Orders cited above.

"Winter Park" refers to the decision of the Florida Supreme Court in Florida Power Corp. v. City of Winter Park, 887 So. 2d 1237 (Fla. 2004). "Winter Park," not underlined, refers to the City of Winter Park itself.

BACKGROUND

The City of Vero Beach has provided electric service in Indian River County since 1920. The City has served customers outside its corporate limits since at least as early as 1952, and the City believes that it has served outside its city limits since the 1930s, and quite possibly earlier. Since 1972, the City has served pursuant to the Commission's Territorial Orders, including orders issued both before and after the Florida Legislature enacted the "Grid Bill" in 1974, by which the Commission approved and confirmed the City's right and obligation to serve in the service territory reserved to the City by territorial agreements between the City and FPL.

Through the County's Petition, filed with the Commission on July 21, 2014, Indian River County now threatens to attempt to evict the City from serving in the City's Commission-approved service areas in unincorporated Indian River County upon the expiration of the Franchise Agreement in 2017. While the City firmly and unequivocally believes that the expiration of that Franchise Agreement has no legal effect on the City's right and obligation to serve in its Commission-approved service areas, pursuant to the Territorial Orders and the Territorial Agreements that are legally parts thereof, the City needs the Commission's affirmative declarations as to the City's continuing right and obligation to serve in its Commission-approved service territory, in order to continue planning and providing electric service in the most efficient and cost-effective way possible. Consistent with applicable precedents of the Commission, the City believes and is respectfully seeking through its Petition the Commission's declarations that:

a. Neither the existence, non-existence, nor expiration of the Franchise Agreement between Indian River County and the City has any effect on the City's right and obligation to provide retail electric service in the City's designated electric service territory approved by the Commission through its Territorial Orders.

b. The City can lawfully, and is obligated to, continue to provide retail electric service in the City's designated electric service territory, including those portions of its service territory within unincorporated Indian River County, pursuant to applicable provisions of Florida Statutes and the Commission's Territorial Orders, without regard to the existence or non-existence of a franchise agreement with Indian River County and without regard to any action that the County might take in an effort to prevent the City from continuing to serve in those areas.

RESPONSE TO COUNTY'S NOTICE AND MOTION REGARDING INTERVENTION

The County's attempt to participate in this proceeding by way of a "Notice of Intervention by Appearance" is contrary to the applicable Uniform Rules of Procedure and should be rejected. Chapter 26-105, F.A.C., governs declaratory statement proceedings before Florida agencies. Rule 28-105.0027 (1), F.A.C., provides that persons whose substantial interests will be affected by a declaratory statement "may move the presiding officer for leave to intervene." This is the sole mechanism for intervening in a declaratory statement proceeding. Rule 28-105-0027, F.A.C., does not provide "intervention by appearance."[1] Accordingly, the Commission should reject the County's invitation to create a new and unauthorized mechanism for intervention in declaratory statement proceedings before the Commission.

In addition, the County has moved to intervene pursuant to Rule 28-105.0027, F.A.C., and, while the City does not believe that the County is entitled to any substantive relief under applicable Commission statutes or orders, the City does not object to the County's intervention in this proceeding, at this time, for the purpose of presenting its positions regarding the Commission's declaration of the City's rights under the Commission's statutes and orders.

THE CITY'S RESPONSE AND OBJECTIONS TO THE COUNTY'S CLAIMS AND ARGUMENTS IN THE COUNTY'S RESPONSE OPPOSING THE CITY'S REQUESTED DECLARATORY STATEMENTS

In the remainder of this Response, the City addresses many of the errors, mischaracterizations, and false claims made by the County. Notably, those errors and false

[1] Rule 28-106.205, F.A.C., provides for intervention by appearance. However, Rule 28-106.205, F.A.C. does not apply to this or any other declaratory statement proceedings.

claims include incorrect assertions as to the declaratory statements requested by the City, claims of powers that have no basis in law, reliance on case law, particularly Winter Park, that is wholly inapplicable and inapposite to the facts of the disputes between the County and the City, mischaracterizations of the Franchise Agreement involved here, and the County's attempt to usurp the Commission's jurisdiction over territorial disputes. The Commission should reject the County's misplaced and fallacious arguments and grant the declaratory statements requested by the City.

I. Many of the County's Assertions in Its "Factual and Historical Background" Section Are Misplaced, Misleading, and Incorrect.

As described below, many of the County's assertions in the section of its Response titled "Factual and Historical Background" are misplaced, misleading, and incorrect.

Service Outside City Limits. First, the County has incorrectly characterized the degree to which the City serves outside its city limits relative to other Florida municipal electric utilities, referring to the City's outside-the-city-limits services as being to a "unique and unprecedented degree." County's Response at 4. In fact, all but four Florida municipal electric utilities serve customers outside their city limits, and while the City serves the largest percentage of customers outside its limits, at 61 percent, four other Florida municipal utilities serve at least 50 percent of their customers outside their city limits, including Jacksonville Beach (58 percent), Lakeland (55 percent), Kissimmee (55 percent), and Leesburg (50 percent). Several others serve between 30 and 46 percent of their customers outside their city limits. (A copy of a listing of Florida's municipal electric utilities and their outside-the-city-limits customer percentages is attached as Exhibit A.) The City is hardly unique or unprecedented in this regard.

The City's Electric Rates. Next the County asserts that "the City is unfairly taking advantage of these non-City electric customers by subsidizing the City's general government operations" with funds collected through electric rates and then transferred to the City's General

Fund. County's Response at 4. The County's argument plainly ignores directly applicable Florida law.

Before continuing, the City states for the record that the issue of its rates is not applicable to the issues posed in the City's Petition (or in the County's Petition). However, because the County attempts to make much of the issue, the City is compelled to respond to clarify the facts and the applicable law. Try as it might to characterize the issues here as matters of the "County's rights" and the "County's property rights," this entire dispute is about the fact that the City's rates are higher than FPL's. This is amply demonstrated in the County's discussion of the City's rates vs. FPL's rates at pages 5-6 of its Response. Surely no one believes that these proceedings would even exist but for the difference between the City's current rates and those of FPL.

Under Florida law as well as general principles of utility regulation, for the City to be "unfairly taking advantage" of any of its customers based on its retail electric service rates, the City's rates would have to be shown to be unreasonable. The issue of the reasonableness of the City's retail rates is indeed one for the courts of Florida. Storey v. Mayo, 217 So. 2d 304, 308 (Fla. 1968). Regarding what does or does not constitute "unreasonable" rates, in Rosalind Holding Co. v. Orlando Utilities Commission, 402 So. 2d 1209 (Fla. 5th DCA, 1981), the Fifth District Court of Appeal ("DCA") articulated the standard for complaints regarding the alleged unreasonableness of rates charged by municipal electric utilities as follows:

> A person seeking to attack in the courts the rates charged by a utility has the burden of showing that the rates are outside or beyond the "zone of reasonableness," as established by the evidence, and not necessarily by the PSC, so as to be confiscatory or discriminatory. Absent a controlling statute, a municipal utility, like any other utility, is entitled to earn a reasonable rate of return on its capital and its rates may be set so that it earns a rate of return on its equity comparable to other similar businesses.

Id. at 1210-11.

In Rosalind, the Fifth DCA ultimately affirmed a circuit court's decision that OUC was entitled to earn a return in the range of 13.5 percent to 16 percent; the actual percentage value was disputed by the parties' expert witnesses, but the court held that even the higher value did not violate the applicable standard.

As applied to Vero Beach, per the holding of the Fifth DCA in Rosalind, the City's rates are reasonable. The City further believes that its underlying costs – while higher than the City wishes they were – are reasonable and prudent, as well as based upon decisions made by previous City Councils that were reasonable and prudent based on all facts known to the City at the time the decisions to incur those costs were made. Objectively, as of October 2014, the City's current rates (using the standard benchmark of the cost for 1,000 kilowatt-hours of residential service) are slightly above the average of Florida's municipal utilities; relative to the rates of Florida's investor-owned utilities, whose rates are regulated by the PSC, the City's rates are less than those of Gulf Power Company and Florida Public Utilities Company, within 1.5 percent of Duke Energy Florida's rates, and greater than those of FPL and Tampa Electric Company. These relationships do not demonstrate that the City's rates are unreasonable; rather, on their face, they show that the City's rates are within an obvious range of reasonableness that includes Commission-approved rates for Florida investor-owned utilities that are, in fact, higher than the City's. (While not relevant to the issues at hand, the City has also evaluated its returns and avers to the Commission that those returns are well within any objective range of reasonableness as contemplated by the Rosalind court.)

The County also fails to mention the ongoing efforts of the City to reduce its rates, including current efforts to amend its major power purchase agreement so as to reduce its wholesale rates, the evaluation of financing alternatives as part of an ongoing Rate Study, and a recently-commissioned study of ways to optimize the efficiency and cost-effectiveness of the City's electric operations.

Referendum Under Section 366.04(7), Florida Statutes. In 2008, the Florida Legislature enacted a general law that was codified as Section 366.04(7), Florida Statutes. Although this

was a general law that did not name or even mention the City of Vero Beach, the County further accuses the City of having "simply ignored the Legislature" and having acted with "flagrant disregard of the law" (County's Response at 6) with respect to the referendum requirement of Section 366.04(7), Florida Statutes. This is simply false: the City duly examined and evaluated the applicability criteria in the subject statute, which did not name Vero Beach, and considered the applicability question at City Council meetings in the summer and fall of 2008, shortly after the statute became law. The City concluded that, based on two specific applicability criteria in the statute, it did not apply to the City. Specifically, the number of "named retail electric customer[s]" served by Vero Beach on September 30, 2007 was less than the minimum applicability threshold of 30,000 customers set forth in the statute. Additionally, the City also served customers outside its home county, another statutory criterion that took the City out of the statute's scope. (The relief section of the statute, former Section 366.07(4)(e), Florida Statutes, was repealed by the Legislature in 2014, leaving uncertain the question of what should be done with any referendum results under the statute.)

Nonetheless, as a gesture of good faith to address the concerns of its customers, and as the County is fully aware, the City has undertaken to work toward a referendum as close as possible to that required by the statute. In fact, On December 2, 2014, the Vero Beach City Council adopted its Resolution No. 2014-41 (copy attached as Exhibit B), by which it authorized City Staff to work cooperatively with representatives of the Town and the County, with other interested customers, and with the Indian River County Supervisor of Elections toward such referendum.

Further, notwithstanding the Florida Supreme Court's holding (frequently cited and adopted by the Commission) that "An individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself,"[2] on

[2] Lee County Elec. Co-op. v. Marks, 501 So. 2d 585, 587 (Fla. 1987) (quoting Storey v. Mayo, 217 So. 2d 304 (Fla. 1968), cert. denied, 395 U.S. 909).

December 2, 2014, the Vero Beach City Council also adopted its Resolution No. 2014-40 (copy attached as Exhibit C), by which it authorized City Staff to work in consultation and collaboration with representatives of City electric customers, including the Town and the County, to develop a "proposed ordinance that would provide for establishment, structure, powers, operational matters, and other necessary attributes of a separate utility authority to operate the business of the City's electric utility system."

In sum, the facts relevant to this proceeding, and which must be accepted as true, are the facts set forth in the City's Petition. The Commission should ignore the misleading, incorrect, and incomplete statements in the County's Response.

II. Contrary to the County's Assertions, the City's Requested Declaratory Statements Are Not Based on the Idea That the Franchise Agreement Is "Meaningless," "Without Any Legal Effect," or "Invalid."

The County incorrectly asserts that the City believes that the Franchise Agreement is meaningless, or no legal effect, and invalid. See, e.g., County's Response at 7. These assertions are facially untrue; in fact, the City fully respects the Franchise Agreement for exactly what it is, and for what it does, and the City has faithfully complied with its duties thereunder. In its efforts to find some peg upon which to hang the hat of its baseless conclusions, the County also mischaracterizes the "bargained-for exchange" to which the County and City agreed in the Franchise, and fails to comprehend what will happen when the Franchise Agreement expires. The County further attempts to extend and expand its permissive authority to grant franchises into the notion that a franchise agreement is required for any utility to serve (an assertion that is belied by the County's behavior over the past half-century) and into the legal conclusion that the expiration of a franchise (or the absence of a franchise altogether) would leave the County with the power to install the electricity supplier of its choosing in those areas where the City presently serves pursuant to the Commission's Territorial Orders.

The County further spends one-sixth of its Response arguing that the Supreme Court's holdings in Winter Park somehow demonstrate that a franchise agreement is superior to the

Commission's orders, completely ignoring the fact that the facts in that case were critically different because the utility in that case, Florida Power Corporation, had given the franchising city (Winter Park) the right to purchase its electric facilities upon expiration of the Winter Park-FPC franchise. The facts are completely different here, and the County's arguments are inapplicable and provide no support for its positions.

A. The County Incorrectly Asserts That the City Believes That the Franchise Agreement Is "Meaningless" and "Invalid."

The County incorrectly asserts that "the City states that the Franchise Agreement with the Board is meaningless and without any legal effect . . ." See, e.g., County's Response at 3, 7. Similarly, the County asserts that the City is attempting to "invalidate the Board's Franchise Agreement." See, e.g., County's Response at 4. These assertions are patently false. Indeed, the City recognizes and respects the Franchise Agreement as the valid and binding obligation of the City and the County as to those matters, duties, and obligations set forth therein, and the City has faithfully fulfilled its duties under the Franchise for the past 28 years. This is demonstrated rather obviously by the fact that the County is not suing the City for any breach of the Franchise; rather, the County simply wishes that the Franchise gave it certain powers that the Franchise simply does not provide, and thus the County objects to the City's correct interpretation of the Franchise.

B. The County Misunderstands or Misrepresents the Bargained-For Exchange in the City-County Franchise Agreement.

The County asserts that the "bargained-for exchange" embodied in the Franchise Agreement somehow terminates the City's right and obligation to serve customers in its Commission-approved service area upon expiration of the Franchise. Again, this assertion is simply false. The bargained-for exchange in the Franchise Agreement addresses certain obligations and duties of the City and the County, to each other as matters of contract. The bargained-for exchange does not affect the City's rights and obligations under the Commission's

Territorial Orders, because the Franchise Agreement contains no provisions addressing such rights and obligations.

A brief examination of the City-County Franchise Agreement shows that the City's obligations to the County are as follows:

1. To provide – as a matter of contract between the City and the County – electric service to customers within the City's service area as defined by the City-FPL Territorial Agreements (Franchise Section 2);

2. To construct, maintain, and operate its electric system in accordance with applicable federal and state regulations, and to provide service that is "not inferior to the applicable standards for such service" (Franchise Section 2);

3. To locate and relocate its facilities so as to interfere as little as practicable with traffic in the County's rights-of-way, and in compliance with the reasonable requirements of the County (Franchise Section 3);

4. To restore any excavations within a reasonable time and as early as practicable (Franchise Section 3);

5. To indemnify the County against liability for damage or accident that occurs in connection with the City's construction, operation, or maintenance of its facilities (Franchise Section 4);

6. To charge rates that are reasonable and "subject to such regulation as may be provided by State law" (Franchise Section 5); and

7. To collect and remit Franchise Fees to the County as provided in Franchise Sections 6 & 7.

Similarly, the County's obligations to the City are as follows:

1. To refrain from engaging in, or permitting any entity other than the City to engage in, the business of providing retail electric service in competition with the City.

It is obvious that the County now wishes that the Franchise Agreement contained a "buyout clause" such as the provisions that controlled the Winter Park case (discussed below) or other provisions by which the County might have obtained – but did not obtain – the power to designate a successor electric service provider upon expiration of the Franchise. However, the Franchise contains no such provisions. The Franchise simply does not address in any way what happens upon expiration of the Franchise, and it certainly does not contain any provisions that would give the County any rights – as a matter of contract between it and the City – to override

the Commission's Territorial Orders or to otherwise control anything that the City might do after the Franchise expires.

Accordingly, the County's attempt to assert that the City's right to serve is extinguished by the expiration of the Franchise is simply incorrect as a matter of law. The City's right and obligation to serve are expressly recognized in the Territorial Agreements and in the Commission's Territorial Orders, into which the Territorial Agreements merged. See Public Service Comm'n v. Fuller, 551 So. 2d 1210, 1212 (Fla. 1989). Moreover, as the County acknowledges, the Commission's orders can only be modified by appropriate proceedings held by the Commission. Thus, territorial agreements and the orders approving them remain in effect indefinitely, until and unless the orders of which the agreements are part are modified by the Commission. Id. As the Florida Supreme Court held in City of Homestead v. Beard, "the law surrounding the modification or termination of a PSC order is applicable to the instant territorial settlement agreement. Therefore, the instant agreement is not terminable at will by the parties and may only be modified or terminated by the PSC in a proper proceeding as set forth in Peoples Gas." City of Homestead v. Beard, 600 So. 2d 450, 455 (Fla. 1992)

The City is not obligated by the Franchise or by any other provision of Florida law to cease serving when the Franchise expires. The legal effect of that expiration is addressed in the following section.

C. The County Fails to Apprehend What Will Really Happen When the City-County Franchise Agreement Expires.

All that will happen when the Franchise Agreement expires is that the City and the County will be relieved of their contractual obligations to each other under the Franchise Agreement. There will be no effect on the Commission's Territorial Orders, which include the City's right and obligation under those Orders to serve within its service areas as described in those Orders.

Thus, to the extent such obligations arose pursuant to the Franchise Agreement, as a matter of contract between the City and the County, the City will be contractually relieved of its obligations to: collect and remit Franchise Fees to the County, indemnify the County against liability for damages caused by the City's operations, to locate its facilities so as not to interfere with traffic in the County's rights-of-way and in compliance with the reasonable requirements of the County, and to restore excavations as required under the Franchise. The City's obligations to charge reasonable rates subject to Florida law, and to maintain and operate its system in compliance with all applicable federal, state, and local regulations will remain in effect pursuant to that applicable state and federal law, but no longer as a matter of contract. The City's obligation to serve all customers located in its Commission-approved service area will remain intact pursuant to the Commission's Territorial Orders.

Correspondingly, the County will be relieved of its contractual obligations to the City under the Franchise. Of most relevance to the present dispute, although not of any help to the County's positions, the County will be relieved of its covenants (a) not to attempt to compete with the City in the provision of electric service and (b) not to attempt to grant a franchise to another potential supplier. To see why this is of no help to the County's positions here, the Commission will readily recognize exactly what would happen if the County were to attempt to either provide retail electric service itself or to grant a franchise to another utility.

As a preliminary matter, for the County to even attempt to get into the electric utility business, the County would first have to demonstrate that it has the legal authority to operate an electric system and to provide retail electric service. The City believes that the County has no such authority or power under applicable statutes.

Assuming, however, for the sake of argument, that the County were to have such power, here is what would happen: The County would do something to indicate its intentions, e.g., filing a tariff with the Commission (as is required of all electric utilities) or applying for permits to construct electric distribution facilities. Any such action would bring the question of who – as between the City and the County in this hypothetical scenario – should serve the disputed areas

squarely within the Commission's territorial jurisdiction. Any such action would also elicit the filing, by the City, of a complaint initiating a territorial dispute as between the City and the County. It is reasonable to expect that the City would allege, among other things, that the County's efforts were precluded by the Commission's Territorial Orders, and that the City should be adjudged to be the utility to serve any disputed areas because any service by the County would be uneconomically duplicative of the City's existing facilities. That is, the Commission, following the criteria in its territorial dispute resolution statutes as well as its statutory obligations under the Grid Bill to avoid uneconomic duplication of facilities, should find that the City should continue to serve.

Next addressing the other hypothetical scenario, in which the County would attempt to grant a franchise to another potential retail-serving utility, here is what would happen. Assuming, for the sake of argument, that a utility would accept such a franchise, the same things would happen as set forth above: Upon execution of the hypothesized new franchise, or upon some other action by the new utility indicating that it intended to serve in the City's Commission-approved service area, e.g., a tariff amendment to add the City's service area, the question of who – as between the City and the hypothetical new utility in this hypothetical scenario – should serve the disputed areas would again be squarely within the Commission's territorial jurisdiction. Any such action would also elicit the filing, by the City, of a complaint initiating a territorial dispute as between the City and the hypothesized new utility. It is reasonable to expect that the City would allege, among other things, that the new utility's intentions or efforts were precluded by the Commission's Territorial Orders, and that the City should be adjudged to be the utility to serve any disputed areas because any service by the other utility would be uneconomically duplicative of the City's existing facilities. That is, the Commission, following the criteria in its territorial dispute resolution statutes as well as its statutory obligations under the Grid Bill to avoid uneconomic duplication of facilities, should find that the City should continue to serve.

D. The Existence of a Franchise Agreement Is Not a Prerequisite to Any Utility's Legal Ability to Provide Electric Service.

The County claims that a utility must have a franchise agreement in order to provide service. See County's Response at 4. This notion is both absurd and clearly disproven by abundant, readily observable facts on the ground in Florida.[3]

Many Florida electric utilities serve in areas without franchise agreements. For example, many of Florida's electric cooperatives operate in municipalities and counties without franchise agreements. While FPL has approximately 177 franchise agreements, the NextEra Energy annual report states that FPL has franchises that cover only about 85 percent of its retail customers. NextEra Energy/FPL Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the year ended December 31, 2013, at 5. Clearly, the existence of a franchise agreement is not a prerequisite to a utility's right or obligation to serve.

The fallacy of the County's argument is further, and amply, demonstrated by the fact that the City never had a franchise agreement with the County before 1987. Even assuming that the County could not have entered into such an agreement before 1968, the City still operated without such a franchise for ***nineteen years*** before the County got around to requesting and negotiating one. Further, the County now acknowledges that it only entered into its first franchise with City Gas Company in 2013; while the County does not say how long City Gas served without a franchise, it was at least some number of decades and could have been ***up to 45 years*** after the County obtained the authority to grant utility franchises. The County's suggestion that it just took this long to get around to "catching up" with franchises for the utilities that serve within its jurisdiction is false on its face, and verges on being absurd. Surely, if the County ever truly believed that a franchise was a legal necessity for a utility to serve, it could have managed

[3] In fact, the County repeatedly contradicts this claim in its Response. See County's Response at 7 (acknowledging that the City had no franchise prior to 1987); County's Response at 12 (acknowledging that "most utilities do not serve 100 percent of their entire service areas pursuant to a franchise.")

to "catch up" with its now-claimed legal requirements – especially where doing so enables it to raise money for its general government functions – in less than 19 years.

E. The County's Reliance on the Winter Park Case Provides No Support for Its Positions.

The County spends eight paragraphs and nearly four pages of its Response attempting – incorrectly and mistakenly – to make the Florida Supreme Court's ruling in the Winter Park case into authority for the propositions that a franchise can control what utility serves in what areas despite a prior Commission order approving a territorial agreement, and that the Commission's jurisdiction over service territories does not impair what the County asserts is a property right to designate a successor electric utility upon expiration of a franchise agreement. To the contrary, all Winter Park stands for is that a utility can convey to a franchisor municipality, by express terms in a franchise agreement, the right to purchase the utility's facilities at the end of a franchise, and that the utility must continue to collect and remit franchise fees while the acquisition process (through arbitration in the case of Winter Park and Florida Power Corporation) runs its course. Winter Park does not even mention any notion of a right to designate a successor utility.

The County's arguments are plainly misplaced, for the simple and obvious reason that the franchise agreement in Winter Park was critically different from the City-County Franchise Agreement, as follows. In Winter Park, the subject franchise agreement included a "buyout clause" that gave Winter Park the right to purchase Florida Power Corporation's facilities upon the expiration of that franchise, pursuant to arbitration as provided by law. Winter Park, 887 So. 2d at 1238. However, the City-County Franchise Agreement upon which the County attempts to rely here contains no such provision, nor does it contain any other provisions addressing what will happen when that Franchise Agreement expires.

As a matter of contract between the City of Winter Park and Florida Power, the parties agreed (subject to a statute that was repealed in 1973) that Winter Park could purchase Florida

Power's facilities within that city at and after the expiration of that franchise. Thus, when the franchise expired, Winter Park sought to enforce its rights to buy FPC's system in the city, in response to which FPC objected and brought legal actions to prevent Winter Park from exercising its rights. The Court simply concluded that, under that franchise agreement wherein FPC had given Winter Park the right, as part of its bargain, to buy FPC's system, Winter Park was entitled to do so.

Indian River County, however, has no such right in the Franchise Agreement at issue here. The County may wish that it had done so, but it did not negotiate such a provision, nor did it negotiate any provision that might authorize it to designate a successor utility. Now, 28 years later, where the County never even appeared in any of the Commission proceedings in which the Territorial Agreements between the City and FPL were approved, the County has buyer's remorse and wishes that it could change history; it cannot, and terminating the Franchise simply does not terminate the effectiveness of the Commission's Territorial Orders, which incorporate the provisions of the Territorial Agreements giving the City the right and obligation to serve in the areas approved by the Commission.

Moreover, the County's assertions regarding the Commission's actions and non-actions relative to the Winter Park takeover of Florida Power's system, while true, are specious and misleading. At page 19 of its Response, the County attempts to make much of the fact that the Commission did not do a number of things relative to the Winter Park-FPC takeover situation and transactions when the franchise expired. Specifically, the County goes on at length to point out that the Commission "did not tell Winter Park" that: (a) its franchise was without effect; (b) FPC was the authorized electric service provider; (c) that FPC would continue to serve customers; (d) it would be uneconomic for Winter Park to duplicate FPC's facilities; (e) it (Winter Park) could not purchase FPC's facilities; or (f) Winter Park could not be the electric utility.

The County's arguments do not support its positions here. Of course, the Commission did not tell Winter Park any of the things that the County lists because none of those issues were

presented to the Commission for decision. Pursuant to decisions of Florida's courts, in fact, the Winter Park-FPC franchise remained in effect while the purchase and takeover were arbitrated and consummated, at least to the degree that FPL had to continue to collect and remit franchise fees. Winter Park, 887 So. 2d at 1240-41. Naturally enough, FPC continued to serve during the arbitration process, so customers were being served, albeit under an expired franchise agreement, so that the Commission's duty to ensure service was never in jeopardy. Since, pursuant to the decisions of Florida's courts, Winter Park was in the process of buying FPC's facilities, there would obviously have been no uneconomic duplication of facilities to concern the Commission, nor any complaint of a territorial dispute. And finally, the courts had already ruled that Winter Park could in fact buy FPC's facilities and thus that Winter Park could thereafter be the electric utility serving its customers.

The County then attempts to translate this Commission inaction – on issues that were not presented to it for decision – into the notion that Winter Park – and, the County wishes, by extension and analogy, the County – retained "the fundamental authority . . . to designate a successor electric utility." This is as fallacious as the rest of the County's allegations: Winter Park never had the right to designate a successor utility; rather, it had the right to purchase FPC's facilities, which right existed solely by virtue of FPC having granted that right to Winter Park in their franchise agreement. The Commission should reject the County's misplaced arguments on this point.

III. The County Has Incorrectly Characterized the Commission's Jurisdiction As Being Limited by the County's Permissive Authority to Grant Franchises, and by Non-Existent Powers That the County Claims But Lacks.

Throughout its Response, the County argues that the Commission should deny the City's requested declaratory statements because "the PSC does not have the authority to declare that the City has the right to use and continue to use the County's rights of way and property notwithstanding the expiration of the Franchise Agreement." County's Response at 22. Although the County recognizes that the expiration of the Franchise does not change the PSC's

Territorial Orders (Response at 22), the County would have the Commission believe that the County may, upon expiration of the Franchise, designate what utility may thereafter provide electric service in the City's Commission-approved service areas. This suggestion is incorrect as a matter of law.

Moreover, the County is really attempting to usurp the Commission's exclusive and superior jurisdiction over territorial disputes by claiming a power that it does not have: to designate a successor electric supplier upon expiration of the Franchise (which would be the same as the ability to designate an electric supplier in the absence of any franchise). Both results are plainly unlawful under Section 366.04, Florida Statutes.

The Commission has full authority and jurisdiction to grant the City's requested declaratory statements, and, in the face of the County's attempts to usurp the Commission's jurisdiction based on false and fabricated legal theories, the Commission should exercise its jurisdiction by granting the City's requested declaratory statements.

A. The County Has Incorrectly Characterized the City's Petition and Requested Declaratory Statements.

In its section titled Conclusions and Relief, the County again suggests that the City has asked the Commission for relief that the City has simply not sought, e.g., that the City is asking the Commission to invalidate the Franchise, to determine the County's rights and powers under Chapter 125, Florida Statutes, to declare that the City has the right to continue using the County's rights-of-way notwithstanding the expiration of the Franchise, and to stop the Board from determining a successor electric utility upon expiration of the Franchise. County's Response at 23. These allegations are simply false. (The County lacks the power to designate a successor electric utility, but that is a necessary result of the Commission's exclusive and superior jurisdiction over territorial disputes, not a declaration sought by the City in this proceeding.)

In the first instance, the City did not even ask the Commission to declare anything with respect to the City's use of the County's rights-of-way: the City simply asked the Commission to declare that, pursuant to the Commission's governing statutes and the Commission's Territorial Orders, the City may lawfully continue to serve in its Commission-approved service areas after the Franchise expires. As discussed elsewhere herein, whether the City may continue to use the County's rights-of-way is a question that involves issues of real property law that will be resolved, if ever, by the courts of Florida. (The City believes that it will prevail in any such litigation, but that issue is not before the Commission.)

B. The City Has Only Asked the Commission for Declaratory Statements As To the City's Right and Obligation to Continue Serving Pursuant to the Commission's Territorial Orders When the Franchise Expires.

The City is not asking the Commission to invalidate the Franchise; rather, the City clearly recognizes that the Franchise, as a contract between the City and County, controls the mutual duties and obligations of the City and County to each other, as far as they go, and the City has faithfully fulfilled its duties thereunder. The Commission should note well that the County is not suing the City for breach of the Franchise, and that the County has itself given notice of its intent not to renew the Franchise.

Nor is the City seeking to have the Commission determine the County's authority under Chapter 125; rather the City has asked the Commission to determine the City's rights and obligations under the Commission's Territorial Orders upon expiration of the Franchise. Such requests are perfectly appropriate for declaratory statements.

The City has asked the Commission to declare that the County cannot do anything that would override the effectiveness of the Commission's Orders, and this would include the County's misplaced notion that it can somehow designate what utility serves in the areas presently served by the City pursuant to the Territorial Orders. The County has no such power under Florida Statutes or in the Florida Constitution, and the County has no such rights under the Franchise Agreement.

However, the City did not ask for this declaration in its Petition. Rather, this would be the legal result of the Commission's exclusive and superior jurisdiction over territorial disputes. If the County were to attempt to designate a successor electric utility to serve in the City's Commission-approved service areas, e.g., by granting a franchise to another utility, all that would happen is that the hypothetical new utility's efforts would create a territorial dispute, clearly subject to the Commission's jurisdiction under Section 366.04(2)(e), Florida Statutes. The Commission's exclusive and superior jurisdiction controls all such disputes. The County's arguments are wrong and must be rejected accordingly, and in the face of the County's attempts to usurp the Commission's jurisdiction, the Commission should grant the declaratory statements requested by the City.

C. The County Incorrectly Asserts the Existence of Powers That It Does Not Have.

Like any other agency of the State, the County has whatever powers the Legislature has given it, but only those powers.[4] Any reasonable doubt as to the existence of a particular power must be resolved against the exercise of such power. Here, the County has claimed numerous powers for which it has no basis in statutory or constitutional law, and for which it has no contractual basis, either. In the County's Response, the County has attempted to convince the Commission – without any citation to statutory or other legal authority – that it has a number of powers, including:

1. the power to evict the City from the County's rights-of-way, or to force the City to remove its electric facilities from the County's rights-of-way;

2. the power to designate a successor supplier of electric service in the City's Commission-approved service areas;

[4] Although not present or applicable here, a county may also acquire additional rights through contracts, as the City of Winter Park acquired the right to purchase Florida Power's electric facilities within that city through in its franchise agreement with FPC.

3. the power to force the City to remove all of its facilities from those parts of the City's Commission-approved service areas that are located within unincorporated Indian River County; and

4. the power to force the City to sell its facilities to another electric utility.

The Florida Supreme Court has held, and the PSC has itself held and argued to the Supreme Court,

> that this Commission's powers and duties are only those conferred expressly or impliedly by statute, and any reasonable doubt as to the existence of a particular power compels us to resolve that doubt against the exercise of such jurisdiction.[5]

The same legal principle applies to the County. Here, there is no basis in the statutes or in the Constitution for the County's claimed powers, and the Commission must reject the County's attempts to usurp the Commission's jurisdiction.

None of the powers listed above have been granted to the County under either Section 125.01(1) or 125.42, Florida Statutes. (Copies of those sections are attached as Exhibit D and Exhibit E, respectively.)

Further, whatever property rights the County may have only extend to the County's property, and not to other property, and at least generally, whatever property rights the County may have will have to derive from fee simple ownership of the property involved or some other legal authority granting specific property rights to the County. The City doubts that the County can, in fact, establish any property rights sufficient to allow it to evict the City from the County's rights-of-way. Even assuming that the County were eventually determined to have property

[5] Complaint and Petition of Lee County Electric Cooperative vs. Seminole Electric Cooperative, Inc., Order Dismissing Complaint and Petition for Lack of Subject Matter Jurisdiction, Order No. PSC-01-0217-FOF-EI at 9 (Fla. Pub. Serv. Comm'n, January 23, 2001), *affirmed sub nom.* Lee County Elec. Coop., Inc. v. Jacobs, 820 So. 2d 297, 300 (Fla. 2001).

rights sufficient to enable it to evict the City from its rights-of-way, which the City believes contain only about 20 percent of the City's electric facilities in unincorporated Indian River County, the County's hypothesized power to evict cannot extend to the City's facilities located in state rights-of-way or in private easements.

Moreover, even if the County had the hypothesized power to evict the City from its rights-of-way, that power is not equivalent to the power to say what utility would provide electric service within the County, i.e., to designate a successor electric utility as the County wishes it could do. Any such dispute as to who would serve would lie squarely within the scope of the Commission's jurisdiction under Section 366.04(2)(e), Florida Statutes, to resolve territorial disputes. And of course, that jurisdiction, specifically articulated by the Florida Legislature and specifically vested in the Commission, is exclusive and superior to any power that the County might have to choose its electricity supplier. If pressed to its irrational limit, the notion that the County might be able to cause the City to move its facilities out of the County's rights-of-way would at best be contrary to the Legislature's declared policy of avoiding uneconomic duplication of facilities and contrary to good public policy.[6] It would leave the City no choice – in order to comply with its obligation to serve pursuant to the Commission's Territorial Orders – but to obtain private easements through negotiations or eminent domain proceedings. Such a result is obviously absurd, but it is where the County's arguments lead.

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[6] See City of Homestead v. Beard, 600 So. 2d 450 at 454 (Fla. 1992) (citations omitted), where the Court stated the following:

> The benefit of territorial agreements is the elimination of competition and the unnecessary duplication of facilities and services. [citation omitted] If a party could terminate the agreement as soon as it was favorable to do so, the benefit to the public interest, as well as to the parties, would be impaired.

The County never objected to the Territorial Agreements when they were considered and approved by the Commission. Now, the County seeks to undo the Vero Beach-FPL Territorial Agreements simply because it wants lower rates, i.e., because today, in 2015, it would be "favorable" for the County.

Moreover, no such power is given to counties under Chapter 337, Florida Statutes, which is part of the Florida Transportation Code. Section 337.401(1)(a), Florida Statutes, does indeed give counties that "have jurisdiction and control of public roads and publicly owned rail corridors" the authority "to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining . . . any electric transmission . . . lines [and] pole lines."[7] Under any interpretation or scenario, these statutory provisions only extend to regulation of the "placing and maintaining" of whatever facilities are subject to such regulation, and these provisions do not confer on any governmental authority the power to evict an incumbent utility, or to force the incumbent utility to sell its facilities, or to vacate the rights-of-way, or any of the other powers that the County wishes it had.

D. The County Is Incorrectly Attempting to Usurp the Commission's Jurisdiction By Elevating the County's Permissive Authority to Grant a Franchise Into the Over-arching Power to Determine What Utility Will Provide Electric Service In the County.

The County asserts that it has the right to designate a "successor electric utility" (County's Response at 19) to provide service in what is now the City's Commission-approved service area pursuant to the Commission's Territorial Orders. This fabricated theory is based on the false notion that the permissive authority to grant a franchise[8] somehow conveys to a county

[7] It is not clear whether the regulatory authority thus granted extends to distribution lines or facilities, although a broad interpretation of "pole lines" could include such. However, it seems clear that the regulatory authority granted by this section does not extend to underground facilities located in the authority's rights-of-way. Further, it is clear that such regulatory authority only extends to the regulation of facilities that are located in public roads or publicly owned rail corridors.

[8] Pursuant to Section 125.42(1), Florida Statutes, the County is authorized to "grant a license" to any person or corporation to construct, maintain, and operate power lines along county roads. This permissive authority, on its face, is not the power to require that any utility, let alone an incumbent utility, have a franchise from the County. There is no mandate that requires franchises to be issued by local governments, nor any provision indicating that a franchise is required for any utility to serve. Following dicta in Winter Park, 887 So. 2d at 1241, the City understands that the correct interpretation of Alachua County v. State, 737 So. 2d 1065, 1066-67 (Fla. 1999), is that a county may by ordinance require a franchise and the payment of franchise

the sweeping power to designate what utility will serve. This assertion is obviously false, unlawful, and plainly contradicted by the unequivocal provisions of Section 366.04, Florida Statutes. The County's claim is no more than an attempt to usurp the Commission's jurisdiction and must be rejected.

Although failing to identify any provision of Florida law, or any provision in the Franchise Agreement, that might give it such power, the County claims that it has the power to designate a successor electricity provider to serve in the City's Commission-approved service area in unincorporated Indian River County. Its claim is apparently based on the erroneous notions that a franchise agreement is a prerequisite to providing service (see discussion in Section II.D above) and that its permissive authority to grant franchises is somehow equivalent to the power to determine what utility would serve. The legal truth is that the Commission has the exclusive and superior jurisdiction over what utilities serve in what areas, at a minimum in the event of a territorial dispute.[9]

In the instant situation, if the County were to attempt to grant a franchise to another electric utility to serve in the City's Commission-approved service area, or otherwise attempt to install another utility in the City's service area, such effort would immediately result in the City invoking the Commission's jurisdiction over territorial disputes, which jurisdiction is "exclusive

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fees, but that any fees required must be reasonably related to some or all of the following: the extent of use by an electric utility of the County's rights-of-way; the reasonable rental value of the land occupied by the electric utility; the County's costs of regulating the utility's use of the rights-of-way; or the cost of maintaining the portion of County rights-of-way occupied by the electric utility. Of course, as the Court observed in Alachua County, a franchise agreement may always be bargained for as between a franchising county and an electric utility, in which case the foregoing criteria would not apply.

[9] Although not presented here, if the issue were ever raised outside the context of a territorial dispute, it is at least arguable that the Commission has separate jurisdiction over what utilities would serve in what areas pursuant to its general Grid Bill "jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities." Fla. Stat. § 366.04(5).

and superior" to any power that the County might claim. The Commission must reject the County's attempt to usurp the Commission's exclusive jurisdiction.

IV. The City's Requested Declarations Do Not Improperly Determine the County's Rights.

The County claims that the City's requested declarations "seek to determine the [County's] rights . . . ." County's Response at 23. This claim is misplaced and the Commission should reject it.

Rule 28-105.001, F.A.C., provides that "[a] declaratory statement is not the appropriate means for determining the conduct of another person." (Emphasis supplied.) However, a declaratory statement is not improper "merely because it addresses a matter of interest to more than one person." Chiles v. Dep't of State, 711 So. 2d 151, 154 (Fla. 1st DCA 1998).

The City was keenly aware of the requirements of Rule 28-105.001, F.A.C., in drafting the two requested declarations at issue in this proceeding. Accordingly, the requested declarations seek the Commission's determinations only as to the City's right and obligation to provide retail electric service in the City's Commission-approved service territory under the Commission's Territorial Orders. The requested declarations do not seek to determine the "conduct" of the County in any way – the County is not even a party to the Territorial Orders, and clearly the County has no obligations or duties under those Orders. The fact that the County is interested in the Commission's declarations does not mean that the requested declarations are legally improper. See Chiles, 711 So. 2d at 154.

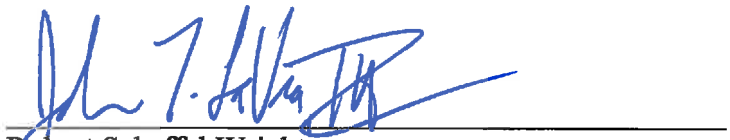
CONCLUSION

As explained above, the County's arguments are without merit. Among its many fallacious assertions, the County has either misunderstood or misrepresented the City's positions on key issues as well as mischaracterized the City's requested declaratory statements. The County has mischaracterized the bargained-for exchange in the City-County Franchise Agreement as well as what will happen – under governing law – upon expiration of that

Franchise. The County has attempted to usurp the Commission's jurisdiction by fabricating baseless legal theories based on claimed rights and powers that it simply does not have. The Commission should reject the County's arguments and grant the City's requested declaratory statements.

WHEREFORE, the City of Vero Beach, Florida, respectfully requests that the Florida Public Service Commission enter its order granting the declaratory statements requested in the City's Petition filed herein on December 19, 2014.

Respectfully submitted this 20th day of January, 2015.



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Attorneys for the City of Vero Beach, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic delivery, on this 20th day of January, 2015.

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EXHIBIT A

Municipal Electric Utilities Customer Base - 2012

City	% Customers Inside & Outside City Limits			
	Inside	Outside	Total Customers	# Customers Outside
Alachua	100	0	4,193	4
Bartow	70	30	11,079	3,324
Bushnell	95	5	1,162	58
Blountstown	88	12	1,359	163
Clewiston	77	23	3,982	916
Chattahoochee	98	2	1,228	25
Fort Meade	91	9	2,770	249
Fort Pierce	83	17	27,752	4,718
Gainesville	66	34	92,272	31,372
Green Cove Springs	83	17	3,801	646
Havana	77	23	1,373	316
Homestead	75	25	22,570	5,643
Jacksonville	94	6	419,703	25,182
Jacksonville Beach	42	58	34,096	19,776
Key West	54	46	30,111	13,851
Kissimmee	45	55	62,886	34,587
Lake Worth	70	30	24,808	7,442
Lakeland	45	55	120,000	66,000
Leesburg	50	50	22,000	11,000
Moore Haven	88	12	955	115
Mount Dora	91	9	5,691	512
New Smyrna Beach	73	27	25,327	6,838
Newberry	100	0	1,476	0
Ocala	59	41	50,397	20,663
Orlando	71	29	185,004	53,651
Quincy	76	24	4,797	1,151
Starke	100	0	2,699	0
Tallahassee	84	16	114,093	18,255
Vero Beach	39	61	33,000	20,130
Wauchula	78	22	2,700	594
Williston	100	0	1,462	0
Winter Park	100	0	13,728	14
Total	74%	26%	1,328,474	347,195

EXHIBIT B

RESOLUTION NO. 2014- 41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, AUTHORIZING THE CITY'S STAFF TO DEVELOP A DETAILED PROCESS TO HOLD A REFERENDUM OF THE CITY'S NAMED RETAIL ELECTRIC CUSTOMERS REGARDING THE ESTABLISHMENT OF A UTILITY AUTHORITY TO OPERATE THE BUSINESS OF THE CITY ELECTRIC UTILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Vero Beach operates an electric utility system that serves customers inside the city limits of the City and also serves customers located in unincorporated Indian River County and in the Town of Indian River Shores; and

WHEREAS, customers have expressed a desire that the City establish a utility authority to operate the business of the City's electric utility system; and

WHEREAS, in 2008, the Florida Legislature enacted Section 366.04(7), Florida Statutes (also referred to herein as the "2008 Statute"), which required municipal electric utilities meeting certain criteria to conduct a referendum of their named retail electric customers regarding those customers' desire to have the municipal electric utility establish a utility authority to operate the business of the electric utility; and

WHEREAS, the City of Vero Beach duly evaluated whether the City was subject to Section 366.04(7), Florida Statutes, in accordance with the criteria set forth therein, and determined that it was not subject to that section, because the City had fewer than 30,000 named retail electric customers as of September 30, 2007, and also because the City electric utility served customers outside Indian River County as of September 30, 2007; and

WHEREAS, customers of the City electric system have continued to request that the City consider establishing a utility authority to operate the business of the City electric utility; and

WHEREAS, the Town of Indian River Shores has initiated a civil lawsuit against the City, in which the Town effectively demands, among other things, that the Circuit Court order the City to comply with the requirements of the 2008 Statute; and

WHEREAS, although the City is not subject to the 2008 Statute, the City desires, as a matter of good faith and responsiveness to the concerns expressed by its customers, to conduct a referendum of its retail electric customers that complies, to the extent reasonably possible, with the 2008 Statute; and

WHEREAS, the Indian River County Supervisor of Elections has advised the City that she cannot conduct the subject referendum because those who are to vote in the referendum are not registered voters, but rather the City's named retail electric customers, and has also advised

the City that her Office can assist the City with programming voting machines, printing ballots, tabulating ballots, and with other administrative aspects of the referendum;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

Section 1. The foregoing "WHEREAS" clauses are hereby found true and correct and are adopted as findings of the City Council of the City of Vero Beach, Florida.

Section 2. The City Council of the City of Vero Beach, Florida, hereby authorizes the City's administrative Staff to develop, in consultation and cooperation with the Indian River County Supervisor of Elections, a proposed ordinance setting forth a definitive, detailed proposal for conducting a referendum of the City's named retail electric customers, with the ballot question being whether each customer desires the City to establish a utility authority to operate the business of the City's electric utility system. The City Council further authorizes Staff to bring such definitive, detailed ordinance before the City Council no later than the first Council meeting in March 2015.

Section 3. The City Council further authorizes the Staff to include in the proposed ordinance the requirement that the referendum is to be held no later than the date of the next City general election, which is November 3, 2015, and to work cooperatively with representatives of the Town of Indian River Shores and Indian River County, and with other interested customers, to determine whether those customers would desire that the referendum be held at a special election earlier than November 3, 2015.

Section 4. The City Clerk is directed to provide a certified copy of this Resolution to Florida State Senators Thad Altman and Joe Negron; Florida State Representatives Debbie Mayfield and Gayle B. Harrell; the Mayor and Town Council of the Town of Indian River Shores; and the Chairman and Commissioners of the Indian River County Board of County Commissioners.

Section 5. This Resolution shall become effective upon adoption by the City Council.

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This Resolution was heard on the 2nd day of December 2014, at which time it was moved for adoption by Councilmember Graves, seconded by Councilmember Kramer, and adopted by the following vote of the City Council:

Mayor Richard G. Winger	Yes
Vice Mayor Jay Kramer	Yes
Councilmember Pilar E. Turner	Yes
Councilmember Amelia Graves	Yes
Councilmember Randolph B. Old	Yes

ATTEST:

Tammy K. Vock
City Clerk

CITY COUNCIL
CITY OF VERO BEACH, FLORIDA

Richard G. Winger
Mayor

[SEAL]

Approved as to form and legal sufficiency:

Wayne R. Coment
City Attorney

Approved as conforming to municipal policy:

James R. O'Connor
City Manager

EXHIBIT C

RESOLUTION NO. 2014-40

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, AUTHORIZING THE CITY'S STAFF TO DEVELOP A PROPOSED ORDINANCE, IN COLLABORATION WITH CITY ELECTRIC CUSTOMERS, INCLUDING INDIAN RIVER COUNTY AND THE TOWN OF INDIAN RIVER SHORES, FOR THE ESTABLISHMENT OF A UTILITY AUTHORITY TO OPERATE THE BUSINESS OF THE CITY ELECTRIC UTILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Vero Beach operates an electric utility system that serves customers inside the city limits of the City and also serves customers located in unincorporated Indian River County and in the Town of Indian River Shores; and

WHEREAS, customers have expressed a desire that the City establish a utility authority to operate the business of the City's electric utility system; and

WHEREAS, in 2008, the Florida Legislature enacted Section 366.04(7), Florida Statutes (also referred to herein as the "2008 Statute"), which required municipal electric utilities meeting certain criteria to conduct a referendum of their named retail electric customers regarding those customers' desire to have the municipal electric utility establish a utility authority to operate the business of the electric utility; and

WHEREAS, the City of Vero Beach duly evaluated whether the City was subject to Section 366.04(7), Florida Statutes, in accordance with the criteria set forth therein, and determined that it was not subject to that section, because the City had fewer than 30,000 named retail electric customers as of September 30, 2007, and also because the City electric utility served customers outside Indian River County as of September 30, 2007; and

WHEREAS, customers of the City electric system have continued to request that the City consider establishing a utility authority to operate the business of the City electric utility; and

WHEREAS, the Town of Indian River Shores has initiated a civil lawsuit against the City, in which the Town effectively demands, among other things, that the Circuit Court order the City to comply with the requirements of the 2008 Statute; and

WHEREAS, although the City is not subject to the 2008 Statute, the City desires as a matter of good faith and responsiveness to the concerns expressed by its customers, to move forward toward developing an ordinance that would provide for a separate utility authority to operate the business of the City's electric utility system;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

Section 1. The foregoing "WHEREAS" clauses are hereby found true and correct and are adopted as findings of the City Council of the City of Vero Beach, Indian River County, Florida.

Section 2. The City Council of the City of Vero Beach, Florida, hereby authorizes the City's administrative Staff to develop, in consultation and collaboration with appropriate representatives of City electric customers, including Indian River County and the Town of Indian River Shores, a proposed ordinance that would provide for establishment, structure, powers, operational matters, and other necessary attributes of a separate utility authority to operate the business of the City's electric utility system. The City Council further authorizes Staff to bring such definitive, detailed ordinance before the City Council as soon as possible, but in no case any later than the first Council meeting in July 2015.

Section 3. The City Clerk is directed to provide a certified copy of this Resolution to Florida State Senators Thad Altman and Joe Negron; Florida State Representatives Debbie Mayfield and Gayle B. Harrell; the Mayor and Town Council of the Town of Indian River Shores; and the Chairman and Commissioners of the Indian River County Board of County Commissioners.

Section 4. This Resolution shall become effective upon adoption by the City Council.

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This Resolution was heard on the 2nd day of December 2014, at which time it was moved for adoption by Councilmember Kramer, seconded by Councilmember Graves, and adopted by the following vote of the City Council:

Mayor Richard G. Winger	yes
Vice Mayor Jay Kramer	yes
Councilmember Pilar E. Turner	no
Councilmember Amelia Graves	yes
Councilmember Randolph B. Old	yes

ATTEST:

Tammy K. Vock
City Clerk

CITY COUNCIL
CITY OF VERO BEACH, FLORIDA

Richard G. Winger
Mayor

[SEAL]

Approved as to form and legal sufficiency:

Wayne R. Coment
City Attorney

Approved as conforming to municipal policy:

James R. O'Connor
City Manager

EXHIBIT D

The 2014 Florida Statutes

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

(a) Adopt its own rules of procedure, select its officers, and set the time and place of its official meetings.

(b) Provide for the prosecution and defense of legal causes in behalf of the county or state and retain counsel and set their compensation.

(c) Provide and maintain county buildings.

(d) Provide fire protection, including the enforcement of the Florida Fire Prevention Code, as provided in ss. 633.206 and 633.208, and adopt and enforce local technical amendments to the Florida Fire Prevention Code as provided in those sections and pursuant to s. 633.202.

(e) Provide hospitals, ambulance service, and health and welfare programs.

(f) Provide parks, preserves, playgrounds, recreation areas, libraries, museums, historical commissions, and other recreation and cultural facilities and programs.

(g) Prepare and enforce comprehensive plans for the development of the county.

(h) Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.

(i) Adopt, by reference or in full, and enforce housing and related technical codes and regulations.

(j) Establish and administer programs of housing, slum clearance, community redevelopment, conservation, flood and beach erosion control, air pollution control, and navigation and drainage and cooperate with governmental agencies and private enterprises in the development and operation of such programs.

(k)1. Provide and regulate waste and sewage collection and disposal, water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems, and conservation programs.

2. The governing body of a county may require that any person within the county demonstrate the existence of some arrangement or contract by which such person will dispose of solid waste in a manner consistent with county ordinance or state or federal law. For any person who will produce special wastes or biomedical waste, as the same may be defined by state or federal law or county ordinance, the county may require satisfactory proof of a contract or similar arrangement by which such special or biomedical wastes will be collected by a qualified and duly licensed collector and disposed of in accordance with the laws of Florida or the Federal Government.

(l) Provide and operate air, water, rail, and bus terminals; port facilities; and public transportation systems.

(m) Provide and regulate arterial, toll, and other roads, bridges, tunnels, and related facilities; eliminate grade crossings; regulate the placement of signs, lights, and other structures within the right-of-way limits of the county road system; provide and regulate parking facilities; and develop and enforce plans for the control of traffic and parking. Revenues derived from the operation of toll

roads, bridges, tunnels, and related facilities may, after provision has been made for the payment of operation and maintenance expenses of such toll facilities and any debt service on indebtedness incurred with respect thereto, be utilized for the payment of costs related to any other transportation facilities within the county, including the purchase of rights-of-way; the construction, reconstruction, operation, maintenance, and repair of such transportation facilities; and the payment of indebtedness incurred with respect to such transportation facilities.

(n) License and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county; except that any constitutional charter county as defined in s. 125.011(1) shall on July 1, 1988, have been authorized to have issued a number of permits to operate taxis which is no less than the ratio of one permit for each 1,000 residents of said county, and any such new permits issued after June 4, 1988, shall be issued by lottery among individuals with such experience as a taxi driver as the county may determine.

(o) Establish and enforce regulations for the sale of alcoholic beverages in the unincorporated areas of the county pursuant to general law.

(p) Enter into agreements with other governmental agencies within or outside the boundaries of the county for joint performance, or performance by one unit in behalf of the other, of any of either agency's authorized functions.

(q) Establish, and subsequently merge or abolish those created hereunder, municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided fire protection; law enforcement; beach erosion control; recreation service and facilities; water; alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems; streets; sidewalks; street lighting; garbage and trash collection and disposal; waste and sewage collection and disposal; drainage; transportation; indigent health care services; mental health care services; and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only. Subject to the consent by ordinance of the governing body of the affected municipality given either annually or for a term of years, the boundaries of a municipal service taxing or benefit unit may include all or part of the boundaries of a municipality. If ad valorem taxes are levied to provide essential facilities and municipal services within the unit, the millage levied on any parcel of property for municipal purposes by all municipal service taxing units and the municipality may not exceed 10 mills. This paragraph authorizes all counties to levy additional taxes, within the limits fixed for municipal purposes, within such municipal service taxing units under the authority of the second sentence of s. 9(b), Art. VII of the State Constitution.

(r) Levy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit, and special assessments; borrow and expend money; and issue bonds, revenue certificates, and other obligations of indebtedness, which power shall be exercised in such manner, and subject to such limitations, as may be provided by general law. There shall be no referendum required for the levy by a county of ad valorem taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit.

(s) Make investigations of county affairs; inquire into accounts, records, and transactions of any county department, office, or officer; and, for these purposes, require reports from any county officer or employee and the production of official records.

(t) Adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law.

(u) Create civil service systems and boards.

(v) Require every county official to submit to it annually, at such time as it may specify, a copy of the official's operating budget for the succeeding fiscal year.

(w) Perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.

(x) Employ an independent certified public accounting firm to audit any funds, accounts, and financial records of the county and its agencies and governmental subdivisions. Entities that are funded wholly or in part by the county, at the discretion of the county, may be required by the county to conduct a performance audit paid for by the county. An entity shall not be considered as funded by the county by virtue of the fact that such entity utilizes the county to collect taxes, assessments, fees, or other revenue. If an independent special district receives county funds pursuant to a contract or interlocal agreement for the purposes of funding, in whole or in part, a discrete program of the district, only that program may be required by the county to undergo a performance audit. Not fewer than five copies of each complete audit report, with accompanying documents, shall be filed with the clerk of the circuit court and maintained there for public inspection. The clerk shall thereupon forward one complete copy of the audit report with accompanying documents to the Auditor General.

(y) Place questions or propositions on the ballot at any primary election, general election, or otherwise called special election, when agreed to by a majority vote of the total membership of the legislative and governing body, so as to obtain an expression of elector sentiment with respect to matters of substantial concern within the county. No special election may be called for the purpose of conducting a straw ballot. Any election costs, as defined in s. 97.021, associated with any ballot question or election called specifically at the request of a district or for the creation of a district shall be paid by the district either in whole or in part as the case may warrant.

(z) Approve or disapprove the issuance of industrial development bonds authorized by law for entities within its geographic jurisdiction.

(aa) Use ad valorem tax revenues to purchase any or all interests in land for the protection of natural floodplains, marshes, or estuaries; for use as wilderness or wildlife management areas; for restoration of altered ecosystems; or for preservation of significant archaeological or historic sites.

(bb) Enforce the Florida Building Code, as provided in s. 553.80, and adopt and enforce local technical amendments to the Florida Building Code, pursuant to s. 553.73(4)(b) and (c).

(cc) Prohibit a business entity, other than a county tourism promotion agency, from using names as specified in s. 125.0104(9)(e) when representing itself to the public as an entity representing tourism interests of the county levying the local option tourist development tax under s. 125.0104.

(2) The board of county commissioners shall be the governing body of any municipal service taxing or benefit unit created pursuant to paragraph (1)(q).

(3)(a) The enumeration of powers herein may not be deemed exclusive or restrictive, but is deemed to incorporate all implied powers necessary or incident to carrying out such powers enumerated, including, specifically, authority to employ personnel, expend funds, enter into contractual obligations, and purchase or lease and sell or exchange real or personal property. The authority to employ personnel includes, but is not limited to, the authority to determine benefits available to different types of personnel. Such benefits may include, but are not limited to, insurance coverage and paid leave. The provisions of chapter 121 govern the participation of county employees in the Florida Retirement System.

(b) The provisions of this section shall be liberally construed in order to effectively carry out the

purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution.

(4) The legislative and governing body of a county shall not have the power to regulate the taking or possession of saltwater fish, as defined in s. 379.101, with respect to the method of taking, size, number, season, or species. However, this subsection does not prohibit a county from prohibiting, for reasons of protecting the public health, safety, or welfare, saltwater fishing from real property owned by that county, nor does it prohibit the imposition of excise taxes by county ordinance.

(5)(a) To an extent not inconsistent with general or special law, the governing body of a county shall have the power to establish, and subsequently merge or abolish those created hereunder, special districts to include both incorporated and unincorporated areas subject to the approval of the governing body of the incorporated area affected, within which may be provided municipal services and facilities from funds derived from service charges, special assessments, or taxes within such district only. Such ordinance may be subsequently amended by the same procedure as the original enactment.

(b) The governing body of such special district shall be composed of county commissioners and may include elected officials of the governing body of an incorporated area included in the boundaries of the special district, with the basis of apportionment being set forth in the ordinance creating the special district.

(c) It is declared to be the intent of the Legislature that this subsection is the authorization for the levy by a special district of any millage designated in the ordinance creating such a special district or amendment thereto and approved by vote of the electors under the authority of the first sentence of s. 9(b), Art. VII of the State Constitution. It is the further intent of the Legislature that a special district created under this subsection include both unincorporated and incorporated areas of a county and that such special district may not be used to provide services in the unincorporated area only.

(6)(a) The governing body of a municipality or municipalities by resolution, or the citizens of a municipality or county by petition of 10 percent of the qualified electors of such unit, may identify a service or program rendered specially for the benefit of the property or residents in unincorporated areas and financed from countywide revenues and petition the board of county commissioners to develop an appropriate mechanism to finance such activity for the ensuing fiscal year, which may be by taxes, special assessments, or service charges levied or imposed solely upon residents or property in the unincorporated area, by the establishment of a municipal service taxing or benefit unit pursuant to paragraph (1)(q), or by remitting the identified cost of service paid from revenues required to be expended on a countywide basis to the municipality or municipalities, within 6 months of the adoption of the county budget, in the proportion that the amount of county ad valorem taxes collected within such municipality or municipalities bears to the total amount of countywide ad valorem taxes collected by the county, or by any other method prescribed by state law.

(b) The board of county commissioners shall, within 90 days, file a response to such petition, which response shall either reflect action to develop appropriate mechanisms or shall reject such petition and state findings of fact demonstrating that the service does not specially benefit the property or residents of the unincorporated areas.

(7) No county revenues, except those derived specifically from or on behalf of a municipal service taxing unit, special district, unincorporated area, service area, or program area, shall be used to fund any service or project provided by the county when no real and substantial benefit

accrues to the property or residents within a municipality or municipalities.

History.—s. 1, ch. 1882, 1872; s. 1, ch. 3039, 1877; RS 578; GS 769; s. 1, ch. 6842, 1915; RGS 1475; CGL 2153; s. 1, ch. 59-436; s. 1, ch. 69-265; ss. 1, 2, 6, ch. 71-14; s. 2, ch. 73-208; s. 1, ch. 73-272; s. 1, ch. 74-150; ss. 1, 2, 4, ch. 74-191; s. 1, ch. 75-63; s. 1, ch. 77-33; s. 1, ch. 79-87; s. 1, ch. 80-407; s. 1, ch. 83-1; s. 17, ch. 83-271; s. 12, ch. 84-330; s. 2, ch. 87-92; s. 1, ch. 87-263; s. 9, ch. 87-363; s. 2, ch. 88-163; s. 18, ch. 88-286; s. 2, ch. 89-273; s. 1, ch. 90-175; s. 1, ch. 90-332; s. 1, ch. 91-238; s. 1, ch. 92-90; s. 1, ch. 93-207; s. 41, ch. 94-224; s. 31, ch. 94-237; s. 1, ch. 94-332; s. 1433, ch. 95-147; s. 1, ch. 95-323; s. 41, ch. 96-397; s. 42, ch. 97-13; s. 2, ch. 2000-141; s. 34, ch. 2001-186; s. 36, ch. 2001-266; s. 3, ch. 2001-372; s. 20, ch. 2002-281; s. 1, ch. 2003-78; ss. 27, 28, ch. 2003-415; s. 184, ch. 2008-247; s. 2, ch. 2011-143; s. 122, ch. 2013-183; s. 1, ch. 2014-7.

EXHIBIT E

Select Year: 2014 Go

The 2014 Florida Statutes

Title XI
COUNTY ORGANIZATION AND INTERGOVERNMENTAL RELATIONS

Chapter 125
COUNTY GOVERNMENT

View Entire Chapter

125.42 Water, sewage, gas, power, telephone, other utility, and television lines along county roads and highways.—

(1) The board of county commissioners, with respect to property located without the corporate limits of any municipality, is authorized to grant a license to any person or private corporation to construct, maintain, repair, operate, and remove lines for the transmission of water, sewage, gas, power, telephone, other public utilities, and television under, on, over, across and along any county highway or any public road or highway acquired by the county or public by purchase, gift, devise, dedication, or prescription. However, the board of county commissioners shall include in any instrument granting such license adequate provisions:

(a) To prevent the creation of any obstructions or conditions which are or may become dangerous to the traveling public;

(b) To require the licensee to repair any damage or injury to the road or highway by reason of the exercise of the privileges granted in any instrument creating such license and to repair the road or highway promptly, restoring it to a condition at least equal to that which existed immediately prior to the infliction of such damage or injury;

(c) Whereby the licensee shall hold the board of county commissioners and members thereof harmless from the payment of any compensation or damages resulting from the exercise of the privileges granted in any instrument creating the license; and

(d) As may be reasonably necessary, for the protection of the county and the public.

(2) A license may be granted in perpetuity or for a term of years, subject, however, to termination by the licensor, in the event the road or highway is closed, abandoned, vacated, discontinued, or reconstructed.

(3) The board of county commissioners is authorized to grant exclusive or nonexclusive licenses for the purposes stated herein for television.

(4) This law is intended to provide an additional method for the granting of licenses and shall not be construed to repeal any law now in effect relating to the same subject.

(5) In the event of widening, repair, or reconstruction of any such road, the licensee shall move or remove such water, sewage, gas, power, telephone, and other utility lines and television lines at no cost to the county should they be found by the county to be unreasonably interfering, except as provided in s. 337.403(1)(d)-(i).

History.—ss. 1-3, ch. 23850, 1947; s. 1, ch. 57-777; s. 1, ch. 80-138; s. 2, ch. 2009-85; s. 1, ch. 2014-169.