

>> ALL RISE.

HEAR YE, HEAR YE, HEAR YE,  
FLORIDA SUPREME COURT IS NOW IN  
SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW  
NEAR, YOU SHALL BE HEARD.

GOT SAVE THESE UNITED STATES,  
STATE OF FLORIDA AND THIS  
HONORABLE COURT.

>> LADIES AND GENTLEMEN, THE  
SUPREME COURT OF FLORIDA.

PLEASE BE SEATED.

>> GOOD MORNING.

WELCOME TO THE FLORIDA SUPREME  
COURT.

FIRST CASE ON THE DOCKET IS  
BOARD OF COUNTY COMMISSIONERS OF  
INDIAN RIVER COUNTY VERSUS  
GRAHAM.

WHENEVER YOU'RE READY.

>> THANK YOU AND GOOD MORNING.

MAY IT PLEASE THE COURT, I'M  
FLOYD SELF OF THE BERGER  
SINGERMAN LAW FIRM HERE TODAY  
REPRESENTING THE BOARD OF COUNTY  
COMMISSIONERS.

JOINING ME AT COUNSEL TABLE IS  
MR. DYLAN REINGOLD.

I WOULD LIKE TO RESERVE FIVE  
MINUTES FOR REBUTTAL.

THE MOST IMPORTANT THING YOU  
NEED TO UNDERSTAND REGARDING  
THIS CONSOLIDATED APPEAL IS THAT  
INDIAN RIVER COUNTY HAS THE  
FUNDAMENTAL, EXCLUSIVE AND  
PRIMARY AUTHORITY TO SELECT THE  
ELECTRIC SERVICE PROVIDER FOR  
THE UNINCORPORATED AREAS OF  
INDIAN RIVER COUNTY.

THE COUNTY'S AUTHORITY DERIVES  
FROM TWO SOURCES.

FIRST, THE PUBLIC SERVICE  
COMMISSION DOES NOT HAVE THE  
AUTHORITY TO PICK ELECTRIC  
SERVICE PROVIDERS.

AS THE FIRST DCA SAID IN THE  
SANTA ROSA COUNTY V GULF CASE,  
THE PUBLIC SERVICE COMMISSION  
HAS NOT PREEMPTED THE COUNTY'S  
RIGHT TO CONVEY FRANCHISES TO

ELECTRIC UTILITIES BECAUSE THE PSC DOES NOT HAVE UNCONDITIONAL AUTHORITY TO ISSUE CERTIFICATES. THE COURT DISTINGUISHED THE LACK OF AUTHORITY OVER ELECTRIC UTILITIES BY FINDING THAT SANTA ROSA COUNTY COULD NOT ISSUE A FRANCHISE FOR TELEPHONE SERVICE BECAUSE AT THAT TIME UNDER CHAPTER 364 THE PSC HAD THE EXCLUSIVE AND EXPRESS AUTHORITY TO GRANT TERRITORIAL CERTIFICATES TO TELEPHONE COMPANIES.

CHAPTER 366, THE ELECTRIC STATUTE, IS VERY DIFFERENT FROM CHAPTER 364, THE TELEPHONE STATUTE IN THAT CHAPTER 366 DOES NOT CONVEY ANY AUTHORITY FOR THE PUBLIC SERVICE COMMISSION TO GRANT CERTIFICATE OR GRANT SERVICE TERRITORIES.

AND AS I WILL DISCUSS IN A MOMENT, APPROVEMENT OF A TERRITORIAL AGREEMENT IN A TERRITORIAL ORDER IS NOT APPROVAL OF A SERVICE TERRITORY. SECOND, THE COUNTY HAS BEEN GRANTED THE AUTHORITY BOTH IN THE FLORIDA CONSTITUTION AND IN CHAPTER 125 AND CHAPTER 336 TO MAKE THE PUBLIC INTEREST DETERMINATION REGARDING ELECTRIC SERVICE AND WHO MAY USE THE COUNTY'S PROPERTY.

THE COUNTY -- THIS COURT AND THE COURT IN SANTA ROSA MADE IT CLEAR THAT COUNTIES HAVE BROAD HOME RULE AUTHORITY UNDER CHAPTER 125.

FURTHER, SECTION 337.402(2) SAYS, "NO UTILITY SHALL BE INSTALLED OR LOCATED OR RELOCATED UNLESS AUTHORIZED BY A WRITTEN PERMIT ISSUED BY THE AUTHORITY."

>> SO ARE YOU SAYING THAT VERO BEACH, WHO WAS GIVEN THE -- BY THE COUNTY THE ORIGINAL AUTHORITY TO PROVIDE ELECTRICAL

SERVICE IN THOSE UNINCORPORATED PORTIONS OF THE COUNTY?

>> YES.

THE FRANCHISE --

>> BUT I GUESS I THOUGHT IN THE RECORD IT INDICATED THAT THE PSC HAD GIVEN THEM THAT PRIOR TO EVEN THE ENTRY INTO THE FRANCHISE AGREEMENT.

>> THERE'S AN IMPORTANT DISTINCTION BETWEEN THE TERRITORIAL ORDERS THAT THE PSC ENTERED WHICH APPROVED A TERRITORIAL AGREEMENT BETWEEN FLORIDA POWER & LIGHT AND THE CITY, WHICH PREDATES THE FRANCHISE AGREEMENT THAT THE COUNTY ISSUED, BUT WHAT HAPPENED WAS IS BY THE TIME THE COUNTY AND THE CITY ENTERED INTO THE FRANCHISE AGREEMENT, THAT SUPERSEDES AND TAKES CONTROL OVER THE PRIOR TERRITORIAL ORDERS IN TERMS OF SERVICE.

>> SO THE FRANCHISE AGREEMENT INCLUDED NOT ONLY THE USE OF THE COUNTY PROPERTY TO BUILD WHATEVER FACILITY TO TRANSPORT THE ELECTRICITY, BUT ALSO GAVE THEM THE RIGHT TO PROVIDE ELECTRICITY FOR THOSE AREAS?

>> YES.

THAT'S CORRECT.

THE FRANCHISE AGREEMENT PROVIDED SEVERAL IMPORTANT COMPONENTS.

FIRST, THAT THE CITY WAS AUTHORIZED TO PROVIDE ELECTRIC SERVICE.

SECOND, THAT THE COUNTY WAS GIVING UP ITS RIGHT TO PROVIDE ELECTRIC SERVICE IN THE UNINCORPORATED AREAS.

AND THAT THE COUNTY WOULD NOT ISSUE A FRANCHISE TO ANY OTHER ELECTRIC SERVICE PROVIDER, AND THE CITY AGREED TO SERVE ONLY FOR 30 YEARS.

>> SO WHAT -- WHO WAS PROVIDING THE ELECTRICAL SERVICE AND UNDER WHAT AUTHORITY PRIOR TO THE

FRANCHISE AGREEMENT?

>> PRIOR TO THE FRANCHISE AGREEMENT, THE CITY WAS PROVIDING ELECTRIC SERVICE, AND WHETHER IT WAS FROM THE '20s, '30s OR '40s, IT DOESN'T MATTER.

THE CITY HAD BEEN PROVIDING ELECTRIC SERVICE WITHIN PARTS OF THE UNINCORPORATED AREAS OF THE COUNTY FOR A NUMBER OF YEARS, QUITE FRANKLY, PURSUANT TO NO ONE'S EXPRESS AUTHORITY.

IT WAS ONLY IN I BELIEVE 1974 THAT FPL AND THE CITY ENTERED INTO A TERRITORIAL AGREEMENT TO DIVIDE THE COUNTY, OR AT LEAST PARTS OF THE COUNTY, BETWEEN THEM.

BUT THAT'S JUST AN AGREEMENT AS BETWEEN THOSE TWO UTILITIES AS TO WHICH IS GOING TO SERVE THERE.

IT DRAWS A LINE --

>> IT WASN'T UNDER THE AUTHORITY OF THE PSC?

>> THE TERRITORIAL AGREEMENT WAS APPROVED BY THE PSC, YES.

>> HOW WOULD YOU DESCRIBE THE RELATIONSHIP?

BECAUSE THERE APPEARS TO BE AS THESE FRANCHISE AGREEMENTS COME TO THEIR TERMINATION, WE'RE GOING TO HAVE AN UNDERLYING TERRITORIAL AGREEMENT FOR SERVICE TO FLORIDA CITIZENS THAT ARE GOING TO EXIST.

HOW WOULD YOU DESCRIBE THE RELATIONSHIP BETWEEN THESE AND HOW THAT IS THEN DISSOLVED, I GUESS WOULD BE THE CORRECT WORD, BECAUSE WE WANT A CONSOLIDATED APPROACH SO FLORIDA CITIZENS RECEIVE THE UTILITY, AND THEN WE HAVE THIS UNDERLYING AGREEMENT THAT MAKES MONEY FOR LOCAL AREAS AND THAT KIND OF THING.

HOW DO WE UNRAVEL THAT?

AND DOES THIS REALLY CONFLICT WITH THAT?

DOES THIS REALLY PROHIBIT  
FRANCHISE AGREEMENTS AT THE END  
OF -- I KNOW YOU'RE PREPARING  
FOR IT NOW, FOR IT TO TERMINATE,  
SO DOES THIS REALLY PROHIBIT THE  
RENEGOTIATION, SOME OTHER  
APPROACH WHEN THIS THING  
ACTUALLY TERMINATES?

>> WELL, A COUPLE OF VERY GOOD  
POINTS THERE.

FIRST, A TERRITORIAL AGREEMENT  
IS A BARGAIN FOR EXCHANGE.

EXCUSE ME.

A FRANCHISE AGREEMENT IS A  
BARGAIN FOR EXCHANGE BETWEEN THE  
GOVERNMENT ENTITY, COULD BE A  
MUNICIPALITY OR A COUNTY, AND  
THE UTILITY.

AND IT SETS FORTH THE TERMS AND  
CONDITIONS BY WHICH THE UTILITY  
HAS BEEN GRANTED THE AUTHORITY  
TO PROVIDE SERVICE.

AND WE SEE IT IN GARBAGE AND  
WATER, SEWER, GAS, A BUNCH OF  
UTILITIES.

>> RIGHT.

>> SO THERE'S THAT PIECE.  
THE TERRITORIAL AGREEMENT  
BETWEEN UTILITIES JUST OPERATES  
AS BETWEEN THEM.

IT DRAWS A LINE BETWEEN THEM.  
IT DOESN'T APPLY TO ANYBODY ELSE  
UNDER CHAPTER 120 BECAUSE THE  
PSC ORDER APPROVING THAT APPLIES  
JUST TO THEM.

>> WELL, IT APPLIES TO THE AREAS  
THAT THEY'RE GOING TO SERVE.

I MEAN, ON THE GROUND, THERE'S  
SOMETHING ON THE GROUND THAT HAS  
BEEN DELINEATED THAT -- WHO  
PROVIDES SERVICE TO THAT  
PARTICULAR AREA.

>> WELL, I WOULD PUT A SLIGHTLY  
FINER POINT ON IT --

>> OKAY.

>> -- BY SAYING THAT THE  
TERRITORIAL AGREEMENT EMBODIED  
IN A PSC TERRITORIAL ORDER  
SIMPLY DEFINES WHICH UTILITY  
SERVES WHERE.

IT DOESN'T DO ANYTHING MORE THAN THAT, BECAUSE THE COUNTY IN THIS CASE FOR THE UNINCORPORATED AREAS HAS THE FUNDAMENTAL PUBLIC POLICY INTEREST IN ORDER TO ACTUALLY DECIDE WHO SERVES WHERE.

AND SO THESE GOVERNMENTS HAVE TO WORK TOGETHER, THE PSC, THE COUNTY, THE CITY.

THERE ARE USUALLY OTHER GOVERNMENT AGENCIES THAT MAY BE IMPACTED BY THESE.

>> SO GETTING BACK TO WHAT'S THE RELATIONSHIP BETWEEN THE TWO, DOES THIS ORDER NECESSARILY PROHIBIT THE GOVERNMENTAL UNITS FROM ENGAGING IN NEW NEGOTIATIONS WHEN THIS FRANCHISE EXPIRES AND THEN IS IT -- DO YOU THEN GO BACK TO THE PUBLIC SERVICE COMMISSION TO ALTER THE TERRITORIAL AGREEMENTS?

WHICH COMES FIRST IN THIS PROCESS?

I MEAN, BECAUSE WE'RE GOING TO HAVE A LOT OF THESE COMING UP, APPARENTLY.

>> THAT'S A GREAT QUESTION. THE ANSWER IS CONDITIONS ON THE GROUND CONTROL FIRST OVER THE TERRITORIAL ORDERS.

AND AS WE SAW IN THE REEDY CREEK CASE THAT THE PSC DECIDED A COUPLE YEARS AGO, WHAT HAPPENED WAS THE UTILITY LOST THE RIGHTS TO SERVE A PARTICULAR AREA. IT COULD ONLY PROVIDE UTILITY SERVICE WITHIN THE DESIGNATED AREA.

SOME OF THAT AREA WAS DEANNEXED. THERE WAS ALREADY IN PLACE A TERRITORIAL ORDER BETWEEN REEDY CREEK AND I FORGET WHICH THE OTHER UTILITY WAS THAT CLEARLY BY ITS TERMS ALLOWED REEDY CREEK TO CONTINUE TO SERVE THE AREAS THAT HAD BEEN DEANNEXED.

WHEN REEDY CREEK FILED TO AMEND ITS TERRITORIAL ORDER TO REMOVE

THAT TERRITORY, THE PSC DID NOT SAY, NO, NO, NO, YOU CAN'T DO THAT BECAUSE WE HAVE A TERRITORIAL ORDER IN PLACE THAT SAYS YOU CAN SERVE THERE. WHAT HAPPENED WAS THE COMMISSION APPROVED THE AMENDMENT TO REMOVE THAT TERRITORY.

AND SO THE FIRST PRIORITY HERE IS DO YOU HAVE THE RIGHT TO ACTUALLY SERVE THAT AREA, AND WHICH IS THE GOVERNMENT ENTITY THAT DOES THAT.

>> BUT YOUR POSITION IS THAT ONCE THE FRANCHISE AGREEMENT EXPIRES, THAT THE TERRITORIAL AGREEMENTS DON'T EXIST.

AND I THINK THAT'S WHAT THESE QUESTIONS ARE GOING TO.

IT'S NOT THAT -- SO IT'S -- BUT YOUR ANSWER WAS THE TERRITORIAL AGREEMENTS HAD PREDATED.

NOW, THE COUNTY WASN'T A PARTY TO IT, BUT THE COUNTY -- I MEAN, AGAIN, IT WENT ON -- THEY OBVIOUSLY RATIFIED -- IF THEY HAD THE POWER TO RATIFY OR THEY DIDN'T INTERVENE.

I MEAN, THEY COULDN'T HAVE TAKEN THE --

>> THAT'S QUESTIONABLE.

>> WE DON'T KNOW HOW THINGS WENT, BUT THAT'S THE QUESTION, WHICH IS THAT YOU'RE SAYING THE TERRITORIAL AGREEMENTS ARE INVALID ONCE THE FRANCHISE AGREEMENT ENDS.

ISN'T THAT THE POSITION THAT THE COUNTY HAS TAKEN THAT THE PSC DISAGREES WITH?

>> I WOULD PUT A SLIGHTLY FINER POINT ON THAT.

>> ISN'T THAT THAT THE BOUNDARIES WILL NO LONGER EXIST? THAT'S WHAT YOUR PSC PETITION STATES.

>> THE GOVERNMENTAL AUTHORITY THAT SAYS WHETHER YOU CAN ACTUALLY PROVIDE SERVICE IN AN AREA IS CONTROLLED BY THE

COUNTY.

THE TERRITORIAL AGREEMENT EMBODIED IN A TERRITORIAL ORDER FOLLOWS WHAT HAPPENS ON THE GROUND.

AND SO BECAUSE THE COUNTY HAS THE PREEMINENT AUTHORITY TO ACTUALLY DECIDE WHO'S GOING TO SERVE, IT'S NOT THAT THE TERRITORIAL ORDER BECOMES INVALID BY VIRTUE OF THE FRANCHISE.

AND THERE WAS SOME CONFUSION EARLY ON, AND I APOLOGIZE TO THE EXTENT THAT WAS THE CASE.

>> IT'S THE COUNTY'S WORDS, SO WHATEVER DRAFTED IT.

>> YES.

WE SUBSEQUENTLY QUALIFIED OUR STATEMENT TO SAY THAT BY OPERATION OF THE EXPIRATION OF THE FRANCHISE, NOTHING HAPPENS TO THE TERRITORIAL ORDERS, BUT RATHER YOU'VE GOT --

>> WELL, DOES THAT -- SO DOES THAT MEAN THAT THE CITY THAT IS A PART OF THE TERRITORIAL ORDER STILL HAS THAT TERRITORY IT CAN SERVE, BUT THE COUNTY IS NOW SAYING BUT WE'RE NOT GOING TO LET YOU SERVE?

>> NO.

I WOULD SAY IT THIS WAY.

AS BETWEEN THE CITY AND FPL, THE TERRITORIAL ORDER ONLY DEFINES AS BETWEEN THEM WHO CAN SERVE.

LIKE IN REEDY CREEK, THE FUNDAMENTAL AUTHORITY TO ACTUALLY PROVIDE SERVICE, THE GOVERNMENTAL AUTHORIZATION TO PROVIDE SERVICE IN THAT AREA, IS CONTROLLED BY THE COUNTY.

THE TERRITORIAL AGREEMENT AND ORDER IS JUST BETWEEN TWO PARTIES.

IT DOESN'T HAVE ANY APPLICATION TO ANYBODY ELSE.

>> SO WHAT HAPPENS THEN, MR. SELF, AT THE CONCLUSION OF THE FRANCHISE AGREEMENT IN 2017?



THE COUNTY SAYS TO VERO, WHAT HAPPENS?

>> WHAT HAPPENS IS THERE'S AN ORDERLY TRANSITION.

IT'S NOT GOING TO BE ON MARCH 5, 2017 THE LIGHTS GO OFF IN THE UNINCORPORATED AREAS OF THE COUNTY.

THE COUNTY, THE CITY ELECTRIC UTILITY, WHOEVER THE SUCCESSOR ELECTRIC UTILITY IS GOING TO BE WILL HAVE TO WORK TOWARD THE TRANSITION.

>> ARE YOU SAYING THE COUNTY HAS THE SOLE RIGHT TO CONTROL WHO THAT SUBSEQUENT PROVIDER WILL BE?

>> YES.

>> IS THAT THE LEGAL ISSUE THAT -- AS TO THE FIRST ISSUE, THAT THE PSC DECIDED AGAINST YOU?

>> YES.

THAT'S CORRECT.

>> SO YOU WOULD HAVE A NEW FRANCHISE AGREEMENT, RIGHT?

>> WE WOULD GRANT A NEW FRANCHISE TO WHOEVER THAT SUCCESSOR WAS.

>> LET'S ASSUME IT'S FLORIDA POWER & LIGHT.

THEY DO BUSINESS IN UNINCORPORATED AREAS IN SOME RESPECTS, RIGHT?

>> YES, THEY DO.

>> SO FLORIDA POWER & LIGHT. YOU HAVE A NEW FRANCHISE AGREEMENT WITH THEM, HYPOTHETICALLY.

SO THEN YOU HAVE -- THAT'S IN CONFLICT WITH THE TERRITORIAL AGREEMENT, RIGHT?

>> THAT'S CORRECT.

>> SO WOULD THAT NOT CREATE A CONFLICT OF TERRITORY THEN THAT THE PSC WOULD THEN HAVE TO RESOLVE IN SOME WAY?

>> YES.

AND JUST LIKE IN REEDY CREEK, FPL WOULD PETITION TO SAY WE NOW HAVE A FRANCHISE TO SERVE THIS

AREA.

WE NEED TO AMEND THE TERRITORIAL AGREEMENT TO BASICALLY REMOVE THE CITY FROM THIS AREA AND PUT US INTO THIS AREA.

>> AND ALL THAT GETS RESOLVED STATUTORILY AT THE END OF 2017 WHEN THAT HAPPENS.

>> WHENEVER THAT HAPPENS, YES.

>> SO WHAT ARE WE DOING HERE NOW?

>> WELL, WE ARE HERE NOW -- THIS GOT STARTED WITH THE COUNTY'S POSITION AND LOOKING AT THE WINTER PARK EXPERIENCE, WHICH PLAYED OUT OVER A PERIOD OF ABOUT TEN YEARS.

SO YOU DON'T JUST FLASH CUT THIS ON THE DATE THE FRANCHISE AGREEMENT EXPIRES.

YOU HAVE A PREPARE.

AND THERE'S A LOT OF QUESTIONS THAT NEED TO BE ANSWERED.

>> BUT THE QUESTION, I MEAN, VERO'S UTILITY COULD BE SOLD, RIGHT?

THAT COULD HAPPEN.

THAT COULD HAPPEN.

YOU COULD HAVE A NEW FRANCHISE AGREEMENT WITH VERO, POSSIBLY.

I MEAN, THERE'S A NUMBER OF THINGS THAT COULD HAPPEN.

SO IT SEEMS THERE ARE SO MANY SPECULATIVE, HYPOTHETICAL THINGS THAT COULD POTENTIALLY OCCUR, WHAT REALLY ARE YOU SEEKING FROM THE COURT THAT'S GOING TO HELP THE COUNTY IN SOME WAY WITHOUT WAITING UNTIL SOMETHING REALLY MATERIALIZES AROUND 2017?

>> WELL, FIRST, IN THE CITY ORDER CASE, 15-504 ORDER ON APPEAL, THE PSC HAS INSTRUCTED THE CITY, NOTWITHSTANDING THE EXPIRATION OF THE FRANCHISE, YOU CONTINUE TO PROVIDE SERVICE IRRESPECTIVE OF THE FRANCHISE AGREEMENT.

IN THE COUNTY PETITION, WHICH IS THE OTHER CONSOLIDATED ORDER

HERE ON APPEAL, 15-505, WE TRIED TO ASK A NUMBER OF QUESTIONS, WE, THE COUNTY, IN ORDER TO SET OURSELVES UP TO ADDRESS SOME ISSUES SO WE WOULD KNOW HOW TO PLAN AND IMPLEMENT AND DO THAT SMOOTH TRANSITION, JUST AS WE SAW IN WINTER PARK, JUST AS WE SAW IN REEDY CREEK SO THAT WE AREN'T AT THE LAST MINUTE TRYING TO RUN AROUND AND BE CRAZY. BECAUSE THE WINTER PARK SITUATION DID TAKE FIVE, SIX, SEVEN, EIGHT YEARS IN ORDER TO EFFECTUATE THE TRANSFER IN AN ORDERLY MANNER SO NO ONE LOST POWER SERVICE DURING THE TRANSITION.

>> YOU'RE IN YOUR REBUTTAL, BUT THE PSC DECIDED EVEN THOUGH IT'S 2017, THEY DECIDED THIS WAS NOT PREMATURE AND THEY HAVE GONE AHEAD AND INSTRUCTED THE CITY WILL CONTINUE.

BUT IS IT UNTIL SOMETHING ELSE HAPPENS SO THAT --

>> THERE'S NO CAVEATS IN THEIR ORDER.

>> SO THEY MADE A DECISION. DID FPL INTERVENE TO SAY WE CAN PROVIDE THIS SERVICE LESS EXPENSIVE?

DID THE COUNTY SAY WE HAVE AN ALTERNATIVE PLAN?

ULTIMATELY WE'RE LOOKING FOR WHAT'S THE BENEFIT TO THE CITIZENS OF THOSE UNINCORPORATED AREAS.

WAS THAT LITIGATED?

DOES FPL CARE?

BECAUSE APPARENTLY THE ELECTRICITY IS BEING PROVIDED AT A HIGHER RATE THAN FPL WOULD PROVIDE IT.

>> AND THAT'S A PART OF THE ISSUE.

>> IT SEEMS LIKE IF I'M THE CITIZEN THERE, IT WOULD SEEM LIKE THAT WOULD BE ALL I CARE ABOUT.

>> THERE'S THAT BECAUSE THE HIGHER RATES THE CITY CHARGES IS BEING USED TO SUBSIDIZE THE GENERAL GOVERNMENT OF THE CITY. THEY'RE SEEKING MORE MONEY THAN PROPERTY TAXES.

THOSE ARE THE DRIVERS --

>> BUT THE PSC KNOWS THAT, AND THEY MAKE A DECISION.

SO FPL DID NOT TRY TO INTERVENE.

>> THERE WERE A NUMBER OF INTERVENORS ON THESE CASES, YES.

>> ON BEHALF OF THE CITY?

I THOUGHT FPL AND THERE WERE A COUPLE OTHERS, DUKE MAYBE --

>> YES.

>> -- THAT INTERVENED, BUT THEY INTERVENED ON BEHALF OF THE CITY.

>> WELL, ON THE SAME SIDE, IN THE COUNTY PETITION CASE, I BELIEVE FPL DID NOT INTERVENE IN THE CITY PETITION CASE.

>> WELL, IT'S JUST TRYING TO GET THE BIG PICTURE HERE.

>> I UNDERSTAND.

THANK YOU.

I'LL RESERVE THE REST FOR REBUTTAL.

>> MAY IT PLEASE THE COURT, I'M KATHRYN COWDERY REPRESENTING THE FLORIDA PUBLIC SERVICE.

THE ORDER SHOULD BE AFFIRMED.

THE CITY ORDER IS CONSISTENT WITH THE FLORIDA STATUTES THAT GRANTS THE COMMISSION THE EXCLUSIVE AND SUPERIOR JURISDICTION OVER ALL OTHER GOVERNMENTAL ENTITIES, INCLUDING THE COUNTY, TO ENFORCE, REGULATE AND RESOLVE ISSUES CONCERNING TERRITORIAL AGREEMENTS.

>> WAS THERE ANY -- WAS THE ONLY ISSUE WHETHER THEY WOULD CONTINUE TO SERVE?

WAS THERE ANY -- WAS THERE ANY LITIGATION OVER WHETHER ANOTHER UTILITY COULD BETTER SERVE THIS AREA?

BECAUSE, AGAIN, ON THE SURFACE

IT SEEMS THAT, YOU KNOW, HERE YOU HAVE A 30-YEAR-OLD AGREEMENT, WHERE THE CITY IS USING THE COUNTY PROPERTY TO MAKE THEMSELVES FUND THEIR GOVERNMENT TO PROVIDING ELECTRICITY TO AN UNINCORPORATED AREA AND OTHERS COULD DO IT LESS EXPENSIVELY.

DID THE PSC LOOK AT THAT OR JUST LOOK AT WHETHER THE FRANCHISE AGREEMENT WAS SUPERIOR TO THE TERRITORIAL AGREEMENT OR BOTH?

>> THE ISSUE WAS ANSWERING THE QUESTION AS TO UPON EXPIRATION OF THE FRANCHISE AGREEMENT, WHETHER THE CITY COULD CONTINUE TO PROVIDE SERVICE.

>> THEY DID NOT LOOK AT --

>> IT WAS NOT A TERRITORIAL DISPUTE.

IF THERE WAS GOING TO BE A DETERMINATION AS TO WHO COULD PROVIDE SERVICE BETTER, WHICH WAS NOT AT ISSUE HERE --

>> SO THAT COULD STILL OCCUR?

>> ABSOLUTELY.

>> SOMEBODY CAN COME BACK IN BEFORE 2017 AND SAY WE'RE BEING CHARGED TOO MUCH --

>> WELL, WHAT WOULD HAVE TO HAPPEN, IN ORDER TO MODIFY THE TERRITORIAL ORDER THAT IS CURRENTLY IN PLACE BETWEEN FPL AND THE CITY OF VERO BEACH IS IT WOULD HAVE TO COME TO THE COMMISSION EITHER AS A TERRITORIAL AGREEMENT TO HAVE A BOUNDARY CHANGE OR AS A TERRITORIAL DISPUTE, WHERE ANOTHER UTILITY SAYS I CAN PROVIDE SERVICE BETTER.

AND WE DID NOT HAVE THAT. FPL INTERVENED ON BEHALF OF THE CITY IN OPPOSITION TO THE COUNTY'S POSITION WHEN THE COUNTY FILED ITS POSITION --

>> THAT THE -- FPL AGREED THAT THE TERRITORIAL AGREEMENT --

>> CORRECT.

>> -- IS SUPERIOR TO THE  
FRANCHISE AGREEMENT.  
>> RIGHT.  
THAT THE COMMISSION HAS SUPERIOR  
JURISDICTION UNDER 366.04 AND  
THE DECISIONS AND THIS COURT IN  
DETERMINING WHO PROVIDES  
SERVICE.  
>> AND THAT IS SUPERIOR TO THE  
RIGHT OF LOCAL GOVERNMENT TO  
ENTER FRANCHISE AGREEMENTS?  
>> NO.  
NO, YOUR HONOR.  
>> OKAY.  
WELL, THAT'S WHAT THIS THING --  
SO COULD YOU ANSWER MY QUESTION  
I POSED?  
HOW WOULD YOU ANSWER THE  
QUESTION I POSED TO YOUR  
OPPOSITION?  
HOW DO THESE WORK TOGETHER?  
IT SEEMS TO ME THAT UNDER THE  
ORDERS THAT WE'RE WORKING ON NOW  
IS THAT THE UNINCORPORATED AREAS  
COULD BE -- THE COUNTY COULD  
ENTER INTO A FRANCHISE AGREEMENT  
WITH A DIFFERENT COMPANY THAN  
THE CITY AND THEN THERE WOULD BE  
A PROBLEM WITH THE TERRITORIAL  
AGREEMENT, BUT THE TERRITORIAL  
AGREEMENT DOES NOT PROHIBIT THE  
COUNTY FROM ENTERING INTO A  
DIFFERENT FRANCHISE AT THE END  
OF THE TERM OF THIS.  
IS THAT CORRECT?  
>> PARTIALLY.  
MOSTLY.  
>> OKAY.  
TELL ME HOW THIS WORKS.  
>> ABSOLUTELY.  
>> PLEASE TELL ME HOW THIS  
WORKS.  
>> ABSOLUTELY.  
FRANCHISE AGREEMENTS AND  
TERRITORIAL ORDERS APPROVING  
TERRITORIAL AGREEMENTS ARE TWO  
DIFFERENT THINGS.  
>> RIGHT.  
>> OKAY?  
THE FRANCHISE AGREEMENT DOES NOT

ESTABLISH A RIGHT TO WHO PROVIDES SERVICE, OKAY?  
NOW, SOME FRANCHISE AGREEMENTS, LIKE THE WINTER PARK CASE -- I TAKE ISSUE WITH HOW COUNSEL HAS REPRESENTED THAT.  
THE WINTER PARK CASE, YOU CAN HAVE A FRANCHISE AGREEMENT WHERE THE MUNICIPALITY WHOSE GRANTING THE FRANCHISE ESSENTIALLY HAS A NON-COMPETE.  
I WILL NOT PROVIDE SERVICE. I'M GOING TO GRANT YOU AN EXCLUSIVE FRANCHISE AND I WILL NOT COMPETE WITH YOU.  
IN THE CITY OF WINTER PARK WHAT HAPPENED WAS THE CITY BUILT UTILITY FACILITIES.  
IT WAS NOT A UTILITY.  
IT SOLD THEM TO FPL.  
A GRANTED A FRANCHISE, 30-YEAR TIME PERIOD, SAID THAT WE WILL -- YOU CAN PROVIDE SERVICE.  
THERE WAS A BUY-BACK PROVISION. AT THE END OF THE 30 YEARS, THE CITY BOUGHT BACK THE FACILITIES. THERE WAS AN ARBITRATION DISPUTE, AND THERE WAS A COURT CASE ON IT.  
AND THEN WHEN THAT WAS ALL RESOLVED, FPL CAME VOLUNTARILY TO THE COMMISSION, EVEN THOUGH THERE WAS NO TERRITORIAL AGREEMENT INVOLVED, BECAUSE THERE WAS NO DIVIDING LINE, AND SAID, COMMISSION, WE WANT TO GET YOUR PERMISSION THAT WE'RE NOT GOING TO SERVE THIS AREA ANYMORE, AND THE COMMISSION SAID, YES, THAT'S IN THE PUBLIC INTEREST.  
MAKE SURE YOU TWO COME BACK TO US WHEN YOU HAVE A TERRITORIAL AGREEMENT.  
BECAUSE AT THAT POINT THE CITY WOULD BE PROVIDING SERVICE. AND THEY CAME BACK ULTIMATELY WITH A TERRITORIAL AGREEMENT. BUT THE FRANCHISE AGREEMENTS, THERE IS NO AUTHORITY FOR THE

COUNTY OR THE MUNICIPALITY TO DETERMINE WHO PROVIDES SERVICE. THAT'S UNDER 366.04.

IT'S UNDER YOUR DECISIONS IN HOMESTEAD V. BEARD, MAYO V. STORY, GOING IN REVERSE ORDER. TERRITORIAL ORDERS ARE MADE BECAUSE THE COMMISSION HAS THE EXCLUSIVE JURISDICTION TO DETERMINE WHAT'S IN THE BEST PUBLIC INTEREST FOR SERVICE PROVISION TO THE CITIZENS OF THE STATE OF FLORIDA.

WE HAVE --

>> SO THERE WOULD BE -- THEY ENTER INTO A NEW FRANCHISE AGREEMENT.

>> ABSOLUTELY.

>> THEY WOULD THEN HAVE TO HAVE BASIC APPROVAL FROM THE PUBLIC SERVICE COMMISSION THROUGH A TERRITORIAL ORDER FOR A NEW UTILITY TO PROVIDE SERVICE THEN.

>> RIGHT.

>> THAT'S HOW THIS WORKS?

>> RIGHT.

YOU DON'T HAVE ON THE GROUND FIRST AND THEN SERVICE. IT DOESN'T WORK THAT WAY. THEY'RE TWO SEPARATE THINGS. FRANCHISE AGREEMENT IS FOR THE PURPOSE OF ALLOWING THE MUNICIPALITY OR COUNTY TO RECOUP THE COST OF MAINTENANCE AND REGULATION OF THE COUNTY RIGHTS-OF-WAY, THE PUBLIC PROPERTY.

THAT IS THE PURPOSE, OKAY?

>> SO WITHOUT A TERRITORIAL AGREEMENT, THERE IS NO POINT TO THE FRANCHISE AGREEMENT.

>> NO, I WOULD NOT SAY THAT, BECAUSE THE ONLY TIME YOU ACTUALLY HAVE A TERRITORIAL AGREEMENT -- WELL, TWO THINGS, IS IF YOU ACTUALLY HAVE TWO UTILITIES.

>> MAYBE I TERMED IT WRONG. WITHOUT THE AUTHORITY FROM THE PUBLIC SERVICE COMMISSION TO



SERVE A PARTICULAR AREA, THERE WOULD BE NO REASON FOR THE FRANCHISE AGREEMENT WITH -- YOU KNOW, TO USE THE LAND TO --

>> NO.

YOU WOULD STILL HAVE THE TRANSFER AGREEMENT.

>> WELL, WHAT WOULD BE THE POINT?

>> TO GET MONEY, TO GET 6% OF FRANCHISE FEE IN ORDER TO RECOUP THE COSTS THAT THE COUNTY HAS FOR MAINTAINING THAT PUBLIC RIGHT-OF-WAY AND FOR THE USE OF THE RIGHT-OF-WAY.

>> YOU JUST SAID THAT THE PUBLIC SERVICE COMMISSION, EVEN -- WHY WOULD YOU HAVE A FRANCHISE AGREEMENT, AS SHE'S ASKED, IF A TERRITORIAL AGREEMENT DOESN'T EXIST TO ALLOW THAT COMPANY TO SERVE?

THAT'S WHAT SHE'S ASKING.

>> RIGHT.

THE TERRITORIAL AGREEMENT -- YOU DON'T HAVE TO HAVE A TERRITORIAL AGREEMENT IF THERE'S NOT -- THE TERRITORIAL AGREEMENT ONLY COMES INTO PLAY IF YOU'VE GOT TWO UTILITIES THAT HAVE AGREED TO A DIVIDING LINE.

IN MANY CASES THERE ARE ELECTRIC COOPERATIVES, MUNICIPALITIES, INVESTOR-OWNED UTILITIES THAT PROVIDE SERVICE WHERE THEY'RE THE ONLY ONE THERE.

THERE'S NO TERRITORIAL --

>> SO YOU HAVE TWO UTILITIES. IN THIS CASE IT WAS VERO BEACH AND THE FLORIDA POWER & LIGHT, CORRECT?

>> CORRECT.

>> WHO GAVE THOSE TWO ENTITIES THE ORIGINAL AUTHORITY TO PROVIDE THE SERVICE?

>> OKAY.

ORIGINALLY, WAY BACK WHEN, THEY GOT AUTHORITY I THINK BACK BEFORE 1950 WHEN THE AUTHORITY WAS GIVEN TO THE PUBLIC SERVICE

COMMISSION.  
BEFORE 1950, THE RECORD SHOWS  
THAT --  
>> COUNTIES DID.  
>> YEAH.  
EVERYBODY COULD SET THEIR OWN  
RATES.  
THERE'S NOT THAT MUCH POPULATION  
IN THE STATE OF FLORIDA IN 1950.  
FLORIDA RAILROAD COMMISSION GOT  
THE AUTHORITY FOR RATES.  
THEN IN 1974 IS WHEN THE GRID  
BILL PASSED.  
AND THAT'S WHEN THE COMMISSION  
GOT THE AUTHORITY OVER  
TERRITORIAL AGREEMENTS, OVER  
MAKING SURE THAT WE ESTABLISH,  
PLAN, DEVELOP A COORDINATED GRID  
IN THE STATE OF FLORIDA.  
SO ORIGINALLY I'M NOT QUITE  
SURE, BUT IT MAY HAVE BEEN  
THROUGH THE MUNICIPALITIES.  
>> LET ME PUT IT THIS WAY.  
IF AT THIS POINT THERE WAS NO  
ONE PROVIDING THESE SERVICES AND  
TWO COMPANIES WANTED TO PROVIDE  
SERVICE, WOULD THEY GO TO THE  
PSC TO SAY I WANT TO PROVIDE  
SERVICE IN THIS AREA, OR WOULD  
THEY GO TO THE COUNTY AND SAY I  
WANT TO PROVIDE SERVICE IN THIS  
AREA?  
>> IF TWO UTILITIES CAME IN, AND  
THEY BOTH AGREED ON A DIVIDING  
LINE FOR THEIR TERRITORY, THEY  
WOULD COME TO THE PSC AND SAY WE  
HAVE A TERRITORIAL AGREEMENT,  
JUST LIKE HAPPENED IN THE CITY  
OF WINTER PARK ULTIMATELY.  
WE HAVE THIS AGREEMENT THAT WE  
HAVE UNDER OUR RULES.  
WE HAVE THE INFORMATION THEY  
HAVE TO SUBMIT.  
WE REVIEW IT FOR PUBLIC  
INTEREST, LOOKING AT EVERYTHING  
THEY'VE GOT.  
IF WE APPROVE IT, THEN IT IS UP  
TO THE UTILITIES TO GET ANY KIND  
OF PERMITS THEY NEED.  
THEN THEY WILL NEED TO FIND --

THEY HAVE TO GO OUT AND THEY  
HAVE TO LAY THEIR LINES.

>> SO IF THIS WAS STARTING FROM  
SCRATCH, THE IDEA THAT YOU TAKE  
THE CITY TO HAVE TO DO IT, THEY  
NEED TO GET THE COUNTY'S  
APPROVAL.

>> RIGHT.

>> SO IT REALLY WOULD BE A  
NON-ISSUE UNTIL SOMETHING ELSE  
HAPPENS.

>> RIGHT.

>> I MEAN, THE COUNTY'S GOT TO  
BE INVOLVED IF YOU'RE GOING TO  
BE USING THEIR PROPERTY TO LAY  
LINES.

>> RIGHT.

BUT WE GIVE -- IF THERE'S A  
SITUATION WHERE A TERRITORIAL  
AGREEMENT IS APPROVED, WE  
APPROVE IT AND IT'S UP TO THE  
UTILITY.

THEY NOW HAVE THE OBLIGATION TO  
PROVIDE SERVICE.

THEY HAVE TO GET WHATEVER  
PERMITS THEY NEED.

THEY MIGHT FIND ALL PRIVATE  
EASEMENTS AND THEY DON'T HAVE TO  
GO TO THE COUNTY.

>> THAT'S BEEN DONE HERE BY VERO  
AND IS WORKING, BUT THEN THE  
COUNTY COMING UP ON 2017,  
THEY'RE SAYING WE DON'T LIKE  
THIS ANYMORE.

WE WANT TO USE SOMEBODY ELSE.  
ARE THEY THEN FREE TO CONTRACT A  
FRANCHISE AGREEMENT WITH SOMEONE  
ELSE, FLORIDA POWER & LIGHT,  
WITHOUT FIRST SEEKING APPROVAL  
FROM THE PSC?

>> THEY ARE NOT -- THEY MAY NOT  
-- THEY MAY NOT PICK A NEW  
SERVICE PROVIDER.

SOME OF THIS MIGHT BE  
TERMINOLOGY.

THEY CAN'T SAY WE'RE NOW GOING  
TO HAVE A NEW FRANCHISE  
AGREEMENT THAT ALLOWS A  
DIFFERENT PROVIDER TO PROVIDE IN  
THE AREAS THAT YOU ARE

PROVIDING.

NO.

THEY DO NOT HAVE THAT.

>> THEY COULD NEGOTIATE SUCH A FRANCHISE AGREEMENT, BUT ULTIMATELY THAT PROVIDER HAS TO SEEK APPROVAL FROM THE PSC BEFORE THEY EFFECTIVELY PURSUE THAT?

IS THAT THE WAY IT WORKS?

>> I THINK WE HAVE A LITTLE BIT OF A DIFFERENCE AS FAR AS THE FRANCHISE AGREEMENT.

>> COULD YOU ANSWER THAT QUESTION?

I FIND THAT TO BE A REALLY IMPORTANT ISSUE.

>> OKAY.

OKAY.

IF I UNDERSTAND IT, THEY DO NOT HAVE THE AUTHORITY TO CHOOSE AN ELECTRIC SERVICE PROVIDER.

THEY DO NOT HAVE THAT AUTHORITY.

>> SO IN 2017 THEY ARE NOT FREE TO CONTRACT SEPARATELY, A VALID CONTRACT, WITH FPL.

>> NO.

>> BUT I THOUGHT WHAT YOU SAID EARLIER, THAT IF THEY COME BACK, IF THEY HAVE SEEN -- TALKED TO -- I MEAN NEGOTIATED WITH FPL, FPL WANTS TO SERVICE THIS AREA AND CHARGE A LESSER RATE.

>> SURE.

>> THEY COME AND THERE'S A DISPUTE THEN WITH THE VERO BEACH.

>> YES.

>> THERE'S A PROCEEDING WHERE THERE'S A NEGOTIATION AND A TERRITORIAL AGREEMENT.

I MEAN, THE PSC ISN'T GOING TO SAY, NO, THE CITY IS CHARGING MORE, YOU'RE ON COUNTY PROPERTY, AND SOMEONE'S GOING TO PROVIDE IT FOR LESS.

>> NO.

WHAT HAPPENS IS --

>> SPEAK INTO THE MIC.

>> I'M SORRY.

IF FPL SAYS NOW WE WANT TO  
PROVIDE SERVICE, CITY OF VERO  
BEACH SAYS NO.

WE WANT TO CONTINUE TO PROVIDE  
SERVICE.

YOU HAVE A TERRITORIAL DISPUTE.  
AND THAT TERRITORIAL DISPUTE IS  
FILED BY ONE OF THE PARTIES.

WE HAVE OUR RULE ON WHAT HAS TO  
BE PROVIDED.

THE COMMISSION REVIEWS THE  
INFORMATION.

THE COST OF NEW LINES, YOU KNOW,  
ALL OF THE TERMS AND THINGS THAT  
WE CONSIDER.

OUR STAFF DOES ALL OF THEIR  
ECONOMIC ANALYSES.

AND THEN IT IS A DECISION MADE  
BY THE COMMISSION.

AND THEN IF SOMEBODY DISAGREES  
WITH OUR DECISION, IT GETS  
APPEALED AND THEN YOU HAVE A  
TERRITORIAL DISPUTE.

>> FLORIDA POWER & LIGHT COULD  
IN FACT BRING IT TO THE  
COMMISSION AND SAY I WANT THIS  
TERRITORY, IN ESSENCE.

>> ABSOLUTELY.

THAT'S THE TERRITORIAL DISPUTE  
THAT WE HAVE OUR JURISDICTION  
OVER BECAUSE WE HAVE TO MAKE  
SURE THAT WE ARE HAVING A --  
MAINTAINING A COORDINATED GRID  
IN THE STATE OF FLORIDA.

WE LOOK TO MAKE SURE THAT THE  
CUSTOMERS ARE PROTECTED, YOU  
DON'T HAVE OVERLAPPING LINES,  
YOU DON'T HAVE --

>> EXCUSE ME.

YOU'RE OUT OF TIME.

>> OKAY.

THANK YOU.

>> WAY OVER.

THANK YOU.

>> ALL RIGHT.

>> MAY IT PLEASE THE COURT, I AM  
ROBERT SHEFFEL WRIGHT FROM  
TALLAHASSEE AND I HAVE THE HONOR  
OF REPRESENTING THE CITY OF VERO  
BEACH BEFORE YOU TODAY.

I WILL SUMMARIZE BRIEFLY AND THEN I'D LIKE TO ADDRESS QUESTIONS POSED BY JUSTICE QUINCE, LEWIS AND PARIENTE. IN SUMMARY, YOUR HONOR, THE PUBLIC SERVICE COMMISSION GOT BOTH OF ITS ORDERS RIGHT. CONTRARY TO THE COUNTY'S ASSERTIONS IN ITS APPEAL, THE CITY ADEQUATELY HAS STANDING. THE PSC'S ORDER HAS NO EFFECT ON THE FRANCHISE AGREEMENT. IT DOESN'T INVALIDATE, IMPAIR OR AFFECT IT.

IT DOES NOT AFFECT THE COUNTY'S ABILITY TO NEGOTIATE A NEW FRANCHISE NOR THE COUNTY'S ABILITY TO COLLECT A REASONABLE FEE FOR THE USE OF ITS RIGHTS-OF-WAY TO THE EXTENT THE CITY USING THEM PURSUANT TO YOUR OPINIONS IN WINTER PARK AND ALACHUA COUNTY.

>> SPEAKING OF THAT, THE COUNTY DOES HAVE AUTHORITY TO SAY YOU CAN NO LONGER USE MY RIGHT-OF-WAY?

AT THE EXPIRATION OF THE FRANCHISE AGREEMENT, THE COUNTY CAN SAY TO VERO BEACH, YOU CAN'T USE OUR RIGHT-OF-WAY ANYMORE.

>> YOUR HONOR, THAT ISSUE IS NOT HERE, BUT I BELIEVE THE ANSWER TO THAT IS VERY COMPLEX.

IT INVOLVES QUESTIONS OF REAL PROPERTY LAW AND IT INVOLVES EQUITABLE ARGUMENTS AS TO AFFIRMATIVE DEFENSES, LATCHES, WAIVER, INVITATION.

THE CITY OF VERO WAS INCORPORATED IN 1919.

WE BOUGHT THE ELECTRIC COMPANY IN 1920.

WE REINCORPORATED IN 1925.

>> IF THAT'S NOT IMPORTANT TO THE RESOLUTION OF THIS, THEN YOU CAN CONTINUE ON WITH YOUR ARGUMENT.

>> IT'S NOT.

CONTRARY TO THE COUNTY'S

ASSERTIONS, THE PSC ORDER DOESN'T AFFECT THAT AT ALL. WHERE WE LOCATE OUR FACILITIES IS A MATTER THAT MAY BE GOVERNED BY A PERMIT FROM THE COUNTY DEPENDING ON THE RESOLUTION OF THESE OTHER ISSUES, BUT IT'S NOT THE SAME AS THE QUESTION WHO PROVIDES SERVICE.

THAT IS GOVERNED BY THE FLORIDA PUBLIC SERVICE COMMISSION PURSUANT TO CHAPTER 366.

THE PSC ORDER SIMILARLY DID NOT IN ANY WAY VIOLATE SECTION 366.134 FLORIDA STATUTES.

NOW --

>> I JUST WANT TO MAKE SURE. THE COUNTY NEVER SAID -- AGAIN, BECAUSE WE'RE NOW TALKING ABOUT TWO YEARS OUT -- WE ARE IN THE PROCESS OF NEGOTIATING A NEW AGREEMENT.

WE DO NOT WANT THE CITY TO BE PROVIDING SERVICE.

AND THIS IS -- AND IT'S EITHER FPL OR IT'S ANOTHER UTILITY. THAT WAS NEVER THE SUBJECT OF WHAT THE PSC WAS DECIDING.

>> WHAT THEY ASKED THE PSC TO DECLARE WAS THAT THERE IS NOTHING UNDER THE PSC'S TERRITORIAL ORDERS THAT WOULD PREVENT THEM FROM SELECTING A SUCCESSOR SUPPLIER DIFFERENT FROM THE CITY.

>> BUT THEY KNOW THEY COULD SELECT ONE, BUT THE PSC HAS TO APPROVE IT.

THAT CAN'T HAPPEN -- COUNTY CAN'T DO IT WITHOUT THE PSC'S APPROVAL.

>> IN THIS CONTEXT, THAT'S EXACTLY RIGHT, YOUR HONOR. VERO BEACH SERVES IN THE AREAS DEFINED IN TERRITORIAL AGREEMENT AS MERGED INTO THE TERRITORIAL ORDERS AS THEY EXIST --

>> BUT IF THEY COME BACK AND SAY WE HAVE NEGOTIATED A NEW FRANCHISE AGREEMENT WITH --

AGAIN, I SAY FPL, ALTHOUGH YOU SAID --  
>> YES.  
>> AND SERVICE WILL BE PROVIDED. THIS IS HOW WE'RE DOING IT. AND WE NOW WANT TO GET APPROVAL. AND THAT NEW PROVIDER, FPL, COMES IN.  
THAT'S THE TERRITORIAL DISPUTE IF VERO BEACH STILL WANTS TO PROVIDE IT.  
>> RIGHT.  
THAT WOULD CREATE A TERRITORIAL DISPUTE.  
>> BASED ON PUBLIC INTEREST, WHAT THE RATES ARE AND WHAT'S GOING TO BE BEST FOR THE CITIZENS.  
>> THAT'S EXACTLY RIGHT, YOUR HONOR, PURSUANT TO YOUR HOLDING EARLIER.  
TO ADDRESS JUSTICE LEWIS'S QUESTION, YOUR QUESTION GOES DIRECTLY TO THE HEART OF THE ESTABLISHED REGULATORY SYSTEM FOR SERVICE AREAS.  
YOU ASKED THE QUESTION WHAT HAPPENS WHEN THE FRANCHISE EXPIRES?  
WE HAVE A LOT OF THESE FRANCHISES COMING UP FOR EXPIRATION.  
HERE'S WHAT COULD HAPPEN. FLORIDA POWER & LIGHT HAS THE LOWEST RATES IN THE STATE. THEY RUN A WONDERFUL COMPANY. BUT WHAT COULD HAPPEN IS ANY FRANCHISING AUTHORITY THAT HAS AN AREA THAT ABUTS FPL COULD SAY WE DON'T WANT YOU VERO BEACH, DUKE, TAMPA ELECTRIC, WE DON'T WANT YOU TO SERVICE ANYMORE. WE WANT FPL.  
IN THE MEANTIME ALL THESE UTILITIES HAVE MADE LONG-TERM INVESTMENT DISTRIBUTIONS, AND IT WOULD CREATE TRULY CHAOS. THEN THAT'S THE WHOLE PURPOSE OF THE LEGISLATIVELY-ESTABLISHED REGULATORY SYSTEM UNDER 366.04.



366.04(5) GIVES THE PSC JURISDICTION OVER THE POWER SUPPLY GRID FOR EMERGENCY AND RELIABILITY PURPOSES THROUGHOUT THE STATE.

THAT'S WHY IT'S HERE.

>> ISN'T THAT THE ECONOMIC IMPACT OF THAT, THOUGH, SO FAR AS PUTTING IMPROVEMENTS INTO THE UNINCORPORATED AREAS BY THE CITY?

AREN'T YOU AT RISK FROM THE CITY'S PERSPECTIVE IF YOU DON'T RENEGOTIATE THAT FRANCHISE AGREEMENT TO MAKE IT LONGER TERM TO BE ABLE TO RECOVER THE ECONOMIC BENEFITS OF THOSE IMPROVEMENTS, JUST THE SAME AS LIKE A TENANT PUTTING IN IMPROVEMENTS ON RENTAL PROPERTY?

>> YOUR HONOR, RESPECTFULLY WE DON'T AGREE.

WE BELIEVE THAT WE ARE -- AS THE PSC HAS HELD, THE CITY OF VERO BEACH HAS THE RIGHT AND OBLIGATION TO CONTINUE SERVING UNDER THE TERRITORIAL ORDERS WITHOUT REGARD TO THE EXPIRATION OF THE FRANCHISE.

>> RIGHT.

I UNDERSTAND THAT.

>> ORDERS CONTINUE IN EFFECT UNTIL MODIFIED BY THE PSC.

>> RIGHT.

BUT THAT DOESN'T AFFECT, DOES IT-- JUST AS YOU TOLD JUSTICE QUINCE, WE'RE TALKING HERE ABOUT REAL PROPERTY LAW.

DOES THE COUNTY HAVE THE ABILITY TO TELL THE CITY, STAY OFF OUR PROPERTY.

DO YOU LOSE THE VALUE OF THOSE IMPROVEMENTS.

ALL THOSE ARE SEPARATE ISSUES, AREN'T THEY?

>> THOSE ARE SEPARATE ISSUES.

THE PROPERTY ISSUE, IF THEY HYPOTHETICALLY COULD FORCE US TO REMOVE THEIR FACILITIES FROM THEIR RIGHTS-OF-WAY WE COULD GET

PRIVATE EASEMENTS.

THERE ARE MORE SENSIBLE WAYS TO GO ABOUT THAT, FOR US TO BE ABLE TO PAY THEM FAIR COMPENSATION FOR THEIR RIGHTS-OF-WAY.

>> ALL THOSE CONSIDERATIONS WOULD GO ALSO, IT WOULD SEEM TO ME, INTO THE DETERMINATION BY THE PSC IN SOME TERRITORIAL DISPUTE, RIGHT?

OR WOULD IT?

>> OH, EXACTLY.

YEAH.

THE REAL CORNERSTONE OF THE PSC'S ANALYSES IN TERRITORIAL DISPUTE CASES IS TO PREVENT THE UNECONOMIC DUPLICATION OF FACILITIES TO PREVENT ECONOMICALLY DAMAGING COMPETITIVE PRACTICES AS FORMER COMMISSIONER CALLED THEM, GALLOPING DISTRIBUTION LINES WHERE UTILITIES ARE RUNNING LINES DOWN TWO SIDES OF THE SAME STREET.

BUT WHAT WOULD HAPPEN IN THE END, YOUR HONOR, IS YOU WOULD WIND UP WITH TERRITORIALITY DISPUTES WHEREVER THERE WAS ANY CHALLENGE.

THE PUBLIC SERVICE COMMISSION HAS EXCLUSIVE AND SUPERIOR JURISDICTION, EXCLUSIVE SPECIFICALLY AS TO COUNTIES AND ALL OTHER STATE AGENCIES, OVER ANY TERRITORIAL DISPUTES.

>> I GUESS WHAT SEEMS ODD IS THAT THIS IS A PROCESS THAT JUST BEGS FOR A FIGHT.

AND THERE'S NO PROCESS THAT'S AVAILABLE TO GET THIS DONE AHEAD OF TIME.

I MEAN, SOMETHING LIKE PROVIDING SERVICE TO FLORIDA CITIZENS -- AND WE'RE NOT TALKING ABOUT PENNIES.

WE'RE TALKING ABOUT LOTS OF BUCKS AND LOTS OF IMPORTANT THINGS TO A LOT OF PEOPLE. BUT WE JUST DON'T HAVE A PROCESS

THAT YOU CAN GET A  
PREDETERMINATION BEFORE YOU HAVE  
A FRANCHISE AGREEMENT.

YOU HAVE TO WAIT UNTIL SOMEBODY  
COMES IN AND THEY SWEEP YOU OFF  
YOUR FEET AND THE COUNTY SIGNS A  
FRANCHISE AGREEMENT SUBJECT TO  
THE TERRITORIAL DECISIONS OF  
PUBLIC SERVICE COMMISSION AND  
ALL HECK BREAKS LOOSE.

>> AND IT MAY IN THIS CONTEXT,  
ON THESE FACTS, THE CITY OF VERO  
BEACH HAS A WELL-DEVELOPED  
ELECTRIC SYSTEM.

IF AN UNDEVELOPED AREA IT MIGHT  
NOT GET ON ANYBODY'S RADAR  
SCREEN.

DUKE MIGHT COME IN THERE.  
FPL MIGHT LET THAT GO OR SAY,  
NO, WE WANT TO SERVE THERE,  
WE'RE GOING TO INITIATE A  
TERRITORIAL DISPUTE.

THERE ARE MANY AREAS IN FLORIDA  
THAT ARE NOT COVERED BY  
TERRITORIAL AGREEMENTS.

THERE ARE MANY AREAS WHERE  
SERVICE IS PROVIDED WITHOUT A  
FRANCHISE AGREEMENT.

BUT THE POINT IS THAT THE  
LEGISLATURE WANTED TO MAKE SURE  
THAT THE DEVELOPMENT OF THE  
SYSTEM, THE GRID, UNDER THE GRID  
BILL, IT WAS ORDERLY AND  
ECONOMIC.

>> THANK YOU, SIR.  
YOUR TIME IS UP.

>> THANK YOU VERY MUCH, YOUR  
HONOR.

>> COULD I ASK YOU TO CLARIFY  
SOMETHING FOR ME?

>> YES, SIR.

>> IS IT YOUR POSITION THAT THE  
LOCAL GOVERNMENT'S FRANCHISE  
AUTHORITY DETERMINES WHAT  
UTILITY CAN PROVIDE SERVICE IN A  
PARTICULAR AREA?

>> YES.

>> IF THAT'S THE CASE, WHY DOES  
THE PUBLIC SERVICE COMMISSION  
HAVE THE AUTHORITY TO SETTLE

TERRITORIAL DISPUTES?  
BECAUSE IF YOUR PREMISE -- THE  
PREMISE FOR YOUR ARGUMENT IS  
ACCURATE, IT SEEMS TO ME THAT  
THE LOCAL GOVERNMENT WOULD BE  
WHERE THEY WOULD HAVE TO GO AND  
WHATEVER THE LOCAL GOVERNMENT  
HAD DECIDED IN TERMS OF GRANTING  
A FRANCHISE WOULD SETTLE THE  
MATTER AND THAT WOULD BE IT.  
YOU WOULDN'T NEED THE PSC.  
BECAUSE WE KNOW THIS.  
WE'VE GOT LOCAL GOVERNMENT  
EVERYWHERE, RIGHT?

>> YES.

>> EVERYWHERE THERE'S A LOCAL  
GOVERNMENT, IT'S EITHER GOING TO  
BE A COUNTY OR A CITY.  
AND IF YOUR PREMISE IS TRUE, IT  
SEEMS TO RENDER THIS WHOLE,  
ELABORATE STATUTORY SCHEME  
UNNECESSARY.

WHAT AM I MISSING?

>> TWO THINGS.

FIRST, THE PSC DOES NOT REGULATE  
ALL ELECTRIC UTILITIES.  
THEY REGULATE BIG UTILITIES.  
THEY DO NOT REGULATE  
SUBSTANTIVELY MUNICIPALITIES OR  
COOPERATIVES.  
THEY HAVE VERY, VERY LIMITED  
JURISDICTION.

>> BUT THE TERRITORIAL --  
SETTLING TERRITORIAL DISPUTES IS  
AN IMPORTANT PART OF THEIR  
JURISDICTION, IS IT NOT?

>> THAT'S CORRECT.

AND THAT GOES TO MY SECOND  
POINT.

THE PSC'S JURISDICTION, IF YOU  
LOOK AT THE STATUTE IN  
CONNECTION WITH THE ELECTRIC  
UTILITY, ONLY APPLIES TO THREE  
THINGS: APPROVAL OF TERRITORIAL  
AGREEMENTS, RESOLUTION OF  
TERRITORIAL DISPUTES AND AS A  
PART OF THE OVERALL COORDINATION  
OF A COORDINATED GRID, WHICH IS  
HOW ELECTRIC UTILITIES OPERATE  
TOGETHER, HOW THEY WORK TO MAKE

SURE COLLECTIVELY THE PSC TO  
MAKE SURE THERE'S ENOUGH  
ELECTRICITY IN THE ENTIRE STATE  
OF FLORIDA AND THERE'S ENOUGH  
CABLES AND WIRES TO DELIVER  
THAT.

>> I'M FAILING TO SEE WHAT THIS  
HAS TO DO WITH MY QUESTION.

>> YOUR QUESTION -- THE ANSWER  
-- I GUESS YOU'D HAVE TO ASK THE  
LEGISLATURE AS TO WHY THEY  
DEvised THIS SCHEME THE WAY IT  
IS.

>> BUT WE'RE TALKING ABOUT  
TERRITORIAL DISPUTES.

>> YES.

>> ULTIMATELY WHAT WE HAVE HERE  
IS A TERRITORIAL DISPUTE.  
THE QUESTION ABOUT WHO IS GOING  
TO SERVE THIS AREA IS A DISPUTE  
-- IS A TERRITORIAL DISPUTE IN  
THE MAKING, IS IT NOT?

>> POTENTIALLY IT IS, YES, SIR.

>> OKAY.

SO I GO BACK TO MY PREMISE.  
IF IT IS -- WHO SERVES THE  
TERRITORY IS DETERMINED BY A  
GRANT OF FRANCHISE AUTHORITY,  
WHY DOES THE PUBLIC SERVICE HAVE  
THIS AUTHORITY TO SETTLE  
TERRITORIAL DISPUTES TO BEGIN  
WITH?

I CAN'T SEE HOW YOU CAN  
RECONCILE THOSE TWO THINGS.

>> I THINK YOU RECONCILE THEM BY  
THE FACT THAT THE PSC REGULATES  
THE LARGE STATEWIDE UTILITIES.

>> THAT SEEMS TO ME TO BE A NON  
SEQUITUR TO THE QUESTION.

THERE COULD BE A TERRITORIAL  
DISPUTE BETWEEN A -- ONE CITY  
AND ANOTHER, POTENTIALLY.

>> IN THE SAME COUNTY.

>> IN THE SAME COUNTY.

THERE COULD BE A TERRITORIAL  
DISPUTE BETWEEN AN ELECTRIC  
CO-OP AND A CITY AND THEY WOULD  
RESOLVE THAT.

SO I'M JUST STRUGGLING TO  
UNDERSTAND WHAT THAT REGULATORY

AUTHORITY WITH RESPECT TO RATES,  
WITH RESPECT TO THE  
INVESTOR-OWNED UTILITIES, HAS TO  
DO WITH THIS PARTICULAR ISSUE.

>> THE ONLY EXPLANATION I WOULD  
OFFER IS THE PSC HAS THE  
EXPERTISE TO EVALUATE WHICH  
UTILITY -- TO ENSURE THAT THERE  
IS NO UNECONOMIC DUPLICATION,  
THOSE KINDS OF THINGS.

LOCAL GOVERNMENT MAY NOT HAVE  
THE SAME KINDS OF RESOURCES IN  
ORDER TO MAKE THAT SORT OF  
EVALUATION.

>> WHERE WE ARE TODAY -- COULD I  
ASK ONE QUESTION?

>> SURE.

>> WHERE WE ARE TODAY, AS YOU  
WALK OUT OF HERE, IF NOTHING  
HAPPENS, JUST AS THOUGH THIS  
ARGUMENT NEVER OCCURRED, THE  
COUNTY COULD STILL ENTER INTO  
NEGOTIATIONS AND DO WHATEVER TO  
NEGOTIATE A NEW FRANCHISE  
AGREEMENT WITH A DIFFERENT  
PROVIDER.

>> CONCEPTUALLY, YES, BUT --

>> AND THEN -- AND THEN, AS I'VE  
HEARD IT DESCRIBED THIS MORNING,  
THEN WHOEVER THAT PROVIDER IS,  
THERE WOULD HAVE TO BE SOME  
PROCEEDING BEFORE THE PUBLIC  
SERVICE COMMISSION ON THE  
TERRITORIAL DISPUTE THAT WOULD  
ARISE AND THAT'S HOW THIS THING  
IS LAID OUT.

YOU'VE ATTEMPTED TO DO IT IN A  
RATIONAL WAY, DECLARATORY  
STATEMENT TYPE APPROACH THAT  
WE'D LIKE TO PLAN AHEAD, BUT, I  
MEAN, SO WHY CAN'T YOU STILL DO  
WHAT YOU PLAN OR WANT TO DO AND  
THEN JUST LEAVE THIS FIGHT FOR  
ANOTHER DAY, IS WHAT IT APPEARS  
TO ME?

>> WE CAN'T BECAUSE THERE'S NO  
ONE TO NEGOTIATE WITH.

FPL PARTICIPATED BELOW AND TOOK  
THE SIDE THAT THE CITY AND  
PUBLIC SERVICE COMMISSION

ESPOUSE HERE.

>> HERE IS OUR ALTERNATIVE.  
OUR PROPOSAL IS WE'RE GOING TO  
DO THIS.

YOU WERE SAYING TO THE PSC WE  
GOT THE RIGHT TO DO THIS UNDER  
THE FRANCHISE AGREEMENT.

THEY DISAGREE.

I THINK SEVERAL OF US DISAGREE.  
BUT THERE'S NOTHING TO PRECLUDE  
YOU FROM ATTEMPTING TO GET  
ANOTHER UTILITY PROVIDER TO  
THOSE CITIZENS.

EVERYONE'S AGREEING WITH THAT.

>> WELL, BUT IF THE UTILITIES  
BELIEVE THAT THE TERRITORIAL  
ORDERS TRUMP FRANCHISE  
AGREEMENTS AND TRUMP THE  
OPPORTUNITY OF INDIAN RIVER  
COUNTY TO NEGOTIATE, THEY'RE NOT  
GOING TO NEGOTIATE WITH YOU.

THE PSC ORDERS TAKE AWAY ALL OF  
THE BARGAINING, THAT BARGAIN FOR  
EXCHANGE, ALL OF OUR ABILITY TO  
NEGOTIATE WITH A SUCCESSOR  
ELECTRIC UTILITY.

>> WITH THAT, THANK YOU FOR YOUR  
ARGUMENTS.

>> THANK YOU FOR YOUR TIME.