IN THE SUPREME COURT
STATE OF FLORIDA

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA,

Petitioner,

CASE NUMBERs:
SC-2015-504 & SC-2015-505
Lower Case No. 140244-EM

v.

ART GRAHAM, ET AL

Respondents.
_____/

AMICUS BRIEF OF ESCAMBIA COUNTY, FLORIDA; FLORIDA ASSOCIATION OF COUNTIES, INC. AND FLORIDA ASSOCIATION OF COUNTY ATTORNEYS, INC. IN SUPPORT OF BOARD OF COUNTY COMMISSIONERS INDIAN RIVER COUNTY, FLORIDA

MEREDITH D. CRAWFORD
Florida Bar No. 0048086
Assistant County Attorney
Escambia County, Florida
221 Palafox PL, St. 430
Pensacola, Fl 32502
(850) 595-4970
(850) 595-4979 (Facsimile)
mdcrawford@co.escambia.fl.us

COUNSEL FOR ESCAMBIA COUNTY, FLORIDA

VIRGINIA SAUNDERS DELEGAL
Florida Bar No. 989932
General Counsel
Florida Association of Counties, Inc.
100 South Monroe Street
Tallahassee, Florida 32301
(850) 922-4300
(850) 488-7192 (Facsimile)
gdelegal@fl-counties.com

COUNSEL FOR FLORIDA ASSOCIATION OF COUNTIES, INC. AND FLORIDA ASSOCIATION OF COUNTY ATTORNEYS, INC.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Other Authorities

STATEMENT OF INTEREST AND IDENTITY OF AMICI CURIAE

Escambia County, Florida ("Escambia") is a political subdivision of the State of Florida, operating as a non-charter county under Article VIII, section 1(f), Florida Constitution and Chapter 125, Florida Statutes. Escambia is interested in this case because of its long history with county-issued public service and utility franchises. Currently, Escambia has electric, natural gas and water franchises and collects over $10,000,000 per year in franchise fees under those agreements.[1]

The Florida Association of Counties ("FAC") is a statewide association of Florida counties organized as a not-for-profit corporation for the purpose of representing county government in the State. Among the express purposes for which FAC was organized is to defend the "rights . . . of county government under any constitutional provision (and) statute. . . ." Each of Florida's 67 counties is a member of FAC. FAC believes that its participation will assist the Court in resolving the issues on appeal, which will affect many of FAC's member counties. At least 13 of Florida's 67 counties have current electric utility franchises; two have water franchises; two have natural gas franchises; one has a wastewater

[1] *See, Office of Demographic Economic Research, "County Revenue, Franchise Fees, Spreadsheet for 2013, at* http://edr.state.fl.us/Content/local-government/data/data-a-to-z/a-f.cfm*,based on annual, required county reported data to the Florida Department of Financial Services.*

franchise; and 26 have solid waste franchises.[2] The fees that are charged in exchange for the franchise rights amount to over $155,000,000 on a state-wide basis.[3] The decision in this case could have far reaching impacts.

The Florida Association of County Attorneys ("FACA") is a Florida not-for-profit corporation organized to protect, promote and improve the mutual interest of those attorneys who represent the board of county commissioners across the State of Florida and to act as a forum for research, advice, and discussion in developing local government law as it relates to counties. All but four of Florida counties have one of its attorneys as a member of FACA. The county attorneys are those charged with interpreting the property and contractual rights of Florida's counties and with providing sound legal advice on the extent of those rights. The statewide impacts of this case will directly affect that counsel.

[2] *See Id.*
[3] *See Id.*

SUMMARY OF THE ARGUMENT

This case has far reaching implications on county electric utility franchise agreements and their efficacy and dignity as contracts embodying bargained for exchanges, including permission to use public property for private enterprise purposes. The citizens have invested in the public rights-of-way, streets, alleys, bridges and other thoroughfares and entrusted the care and use of them to the local government. In turn, the county holds that property, on behalf of its citizens and their investment. Not just anyone can use that property at any time to operate private enterprises. The public, acting through its government, is entitled to require specific permission to use those properties only when to do so is in the best interest of the public. Because the permission to use public property for private enterprise, like the operation of electric utilities, is not given as a matter of right, the public, through the county, can negotiate payment in exchange for that privileged use.

This purpose of a franchise agreement does not operate in the same sphere as the regulatory authority, exclusive though it may be, of the Florida Public Service Commission to, among other things, regulate rates and service; grant exclusive rights to serve in defined geographic areas; and resolve territorial disputes among providers. This exclusive jurisdiction operates in a sphere that is completely exclusive from the issue of where the electric utilities then choose to locate their

facilities. Nothing in any of these powers preempts county authority to regulate the use of its own public rights of way. Nothing in any of these powers mandates that the counties allow electric utilities – regardless of ownership, investor-owned, rural co-op, or municipal) – to use their rights of way carte blanche to conduct their business. These utilities, after receiving the benefits of the PSC's exercise of power, can choose to negotiate with the local government for the use of public rights of way in which to place their facilities or purchase private property into which their facilities will be housed.

Many counties in Florida, along with the PSC, currently operate in these two spheres, without mutually excluding each other. The spheres of influence, authority and power are, by nature, vastly different from each other. Escambia County, Amicus Curiae here, provides a practical example of a long history of working with each type of electric utility – investor owned, municipal and rural co-op – with county franchise agreements. This dual-tracked authority, state regulatory and local government franchise, is nothing new in Florida.

ARGUMENT

A LOCAL GOVERNMENT UTILITY FRANCHISE AND PSC REGULATION OPERATE IN DIFFERENT SPHERES OF AUTHORITY AND ARE NOT MUTUALLY EXCLUSIVE.

Counties across and throughout the State of Florida have, for over a century, entered into franchise agreements with a host of public service providers within their geographic jurisdiction. Historically, these franchises included wharfs,[4] telegraph companies,[5] telephone providers[6], and railroads[7], along with today's franchises primarily including electric[8], water[9], natural gas[10], wastewater[11], and solid waste ones.[12] While each of these public services may be regulated on a statewide basis differently, the main purpose of the local government franchises is the same, regardless of the statewide regulatory scheme. The primary purpose of

---

[4] *See Leonard v. Baylen Street Wharf Co.*, 52 So. 718, 718 (Fla. 1910)*(in determining the efficacy of a city franchise to operate a wharf on public property and charge a fee for access to the wharf, the Supreme Court noted that "[a] franchise is a special privilege conferred upon individuals or corporations by governmental authority to do something that cannot be done of common right. All franchises belong to the government in trust for its people.")*.

[5] *See City of St. Louis v. Western Union Telegraph Co.*, 148 U.S. 92 (1893).

[6] *See City of Pensacola v. Southern Bell Telephone Co.*, 37 So. 820 (Fla. 1905).

[7] *See Florida Cent. & P.R. Co. v. Ocala St. & S. R. Co.*, 22 So. 692 (Fla. 1897).

[8] *See Santa Rosa County v. Gulf Power*, 635 So.2d 96 (Fla. 1st DCA 1994), *rev. den.*, 645 So.2d 452 (1994).

[9] *See Lee County v. Lehigh Utilities, Inc.*, 307 So.2d 496 (Fla. 2d DCA 1975).

[10] *See St. Joe Natural Gas Co. v. City of Ward Ridge*, 265 So.2d 714 (Fla. 1st DCA 1972).

[11] *See City of Oviedo v. Alafaya Utilities, Inc.*, 704 So.2d 206 (Fla. 5th DCA 1998).

[12] *See West Coast Disposal Service, Inc. v. Smith*, 143 So.2d 352 (Fla. 2d DCA 1962), *cert denied*, 148 So.2d 279 (Fla. 1962).

local government franchises is to grant to the private enterprise (even if it is a publicly owned utility)[13] the use of the public's investment in the form of roads, streets, bridges, ditches, alleys, avenues, rights-of-way, public easements, and other public property to operate their private enterprises. That grant of a property use is vastly different from any sort of exclusive jurisdiction a state regulatory entity, like the Florida Public Service Commission has to resolve territorial service area disputes among providers or to regulate rates or to create obligations to serve. None of those preemptive and exclusive spheres of authority enable the state entity to compel the local government to allow private enterprise to operate its private interests by using public rights-of-way, streets, roads, and other public places for the placement of facilities within, upon, under, or along that public property, with or without compensation, with or without contracts, and with or without permission.

A. The Coexistence Of Local Government Utility Rights-of-Way Franchises And PSC Authority Is Nothing New.

Florida's jurisprudence contains a long history of local government franchise law. Florida case law can be traced back to the late 1870s in the area of local government franchises. *See, e.g. State of Florida ex rel. Attorney General v. Simon Jones*, 16 Fla. 306 (Fla. 1878) (harbor pilot franchise). And, in 1910, the Supreme

[13] *See, e.g., Escambia County Ordinance 2013-23* (App. 115-122) *(City of Gulf Breeze); Escambia County Ordinance 2013-24* (App. 123-128) *(City of Pensacola)*.

Court defined the nature of a local government franchise as "a special privilege conferred upon individuals or corporations by governmental authority to do something that cannot be done of common right ….[and]… is an incorporeal hereditament." *See Leonard v. Baylen Street Wharf Co.*, 52 So. 718, 718 (Fla. 1910).

Throughout Florida's history in this area, the definition of franchise has evolved. For example, in 1940, the Supreme Court introduced the idea of franchise as contract. The Court noted that a franchise is "a special privilege conferred by the government upon individuals which does not belong to citizens of the country as a common right, and when a franchise is accepted, it becomes a contract irrevocable unless the right to invoke is expressly reserved and is entitled to the same protection under constitutional guarantees as other property." *See, Winter v. Mack*, 194 So. 225, 229 (Fla. 1940).

The Supreme Court of Florida, in 1999, built on these concepts in *Alachua County v. State*, 737 So. 2d 1065 (Fla. 1999), distinguishing a unilaterally imposed electric utility privilege fee from a bargained for franchise fee. The Supreme Court noted that "'unlike other governmental levies, the charges here [meaning franchise fees] are bargained for in exchange for specific property rights relinquished by the cities.'" *Id.* at 1068 *(quoting City of Plant City v. Mayo*, 337 So. 2d 966, 973 (Fla. 1976). This Court in *Alachua County v. State* went on to add that "it is clear that

the Privilege Fee is not a franchise fee because the utilities did not bargain for imposition of the Fee." *Id.* The privilege fee at issue there did "not represent a bargained-for agreement between Alachua County and any electric utility, but was unilaterally imposed upon the electric utilities by the county." *Id.* Recently the Second District Court of Appeal's decided in *Lee County Electric Cooperative, Inc. v. City of Cape Coral*, 159 So.3d 126 (Fla. 2d DCA 2014), that the electric utility franchise agreement between the City and the electric co-op was the "source of the [co-op]'s right to continue using the public utility easements." *Id.* at 128, 129. *(noting the distinction between placing utility lines in a private easement "rather than pursuant to a franchise agreement that allows the utility to use public property.")*

Local government franchises today generally embody three concepts:[14] contract rights (bargained for exchanges: counties forego the right to compete with the utility; "rental" of public rights of way for private enterprise); property rights (forbearance of opportunity to compete and use of public rights of way); and regulation (managing the rights of way; cataloging use of rights of way). Many franchises contain a fee for payment to the local government in exchange for these rights and services. While the Florida jurisprudence has evolved over the time,

[14] Some, like Indian River's in the instant case have additional purposes as well. Franchises are contracts and the provisions can vary from county to county.

these concepts have remained steady in some form throughout the legal history of local government utility franchises.

In addition, throughout this history, the Florida Public Service Commission and other statewide regulatory authorities have been created and empowered by, primarily, the Florida Legislature. In many instances, the PSC is even given excusive authority. *See, e.g., Section 366.04(1), Fla. Stat.("the [PSC] shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service[.]"); Section 366.04(3), Fla. Stat. (the PSC "shall have the authority over natural gas utilities … to…(a) …approve territorial agreements …; (b) …. resolve, … territorial dispute[s] involving service areas…").* And, with many of these provisions dating back decades,[15] the relationship between the PSC's broad and exclusive jurisdiction and local government utility franchises is not new.

Likewise, on the county franchise side of this history, long term franchises are currently in effect in 13 counties, at least eight electric utility franchises of which date back to 20 years ago:

Baker	1996 (three franchises; two rural co-ops, one investor owned)[16]
Santa Rosa	1995 (two franchises; one rural co-op, one investor owned)[17]
Escambia	1994 (one investor owned; one rural co-op)[18]

[15] *See e.g.,* Chapter 26545, Laws of Fla, Section 4 (1951).
[16] *See Baker County Ordinance No. 96-11* (App.1-9)*; No. 96-12* (App.10-18)*; No. 96-13* (App.19-27).
[17] *See Santa Rosa Ordinance No. 95-10* (App.138-143), *No. 95-11* (App. 144-149).

St Lucie 1997 (two franchises; one investor owned, one municipal).[19]

Many of these franchise agreements were successive franchises to ones entered into going back 37 years.[20] Each of the current illustrative franchise agreements contains, as its main purpose, a provision related to the grant of the use of the public rights-of-way to the electric utilities, with language similar to the following:

> There is hereby granted to…Grantee…, for the period of 30 years…the non-exclusive right, privilege and franchise to construct, operate and maintain in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, rights-of-way and other public places (herein called "public rights-of-way) throughout all of the unincorporated areas…, in accordance with the Grantee's customary practice with respect to construction and maintenance, electric light and power facilities, including, without limitation, conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations (herein called "facilities"), for the purpose of providing electricity and other electric utility-related services[.][21]

---

[18] *See Escambia Ordinance No. 94-28* (App.74-84).

[19] *See St. Lucie County Ordinance No. 97-29* (App.173-183), *No. 97-19* (App.163-172).

[20] *See Sarasota County Ord No. 2007-42* (App.150-162)*; Brevard County Ord No. 04-42* (App.28-39)*; Palm Beach County Ord No. 2009-16* (App.129-137)*; Escambia County Ord No. 89-37* (App.52-58)*;* and *Santa Rosa County Ord Nos. 95-10* (App.138-143), *95-11*(App.144-149).

[21] *See Sarasota County Ordinance No. 2007-42, Section 1 (2007)* (App.150-162).

In fact, Amici have identified at least two other counties that have franchise agreements with electric utilities that operate under PSC-approved territorial agreements.[22]

Escambia County's current electric, natural gas and water franchises reflect a long history with local government franchises. These current franchises are with investor-owned utilities (Gulf Power), municipal utilities (City of Pensacola, City of Gulf Breeze), and a rural electric co-op (Escambia River Electric Co-op).

City of Pensacola. This natural gas franchise was established in 1960 by agreement between the City of Pensacola and Escambia County, granting the city the exclusive right to provide natural gas service in the unincorporated areas of the county. The initial franchise was for a term of 50 years, and has been extended to 2045.[23] The current franchise agreement imposes a franchise fee equal to five percent of the City of Pensacola's gross revenues collected monthly from gas sold to its customers located within the franchise area.

City of Gulf Breeze. This natural gas franchise was entered into in 2012[24] for a non-exclusive right to provide natural gas service on the portion of Santa

[22] See, *In re: Joint Petition for approval of amendment to territorial agreement in Charlotte, Lee, and Coller Counties by Florida Power & Light Company and Lee County Electric Cooperative*, Docket No. 14210-EU, Order No. PSC-15-0021-PAA-EU, Issued: January 5, 2015.
[23] *See Escambia County Ordinance No. 95-7* (App.96-105).
[24] *See Escambia County Ordinance No. 2012-7* (App.107-114).

Rosa Island located in the county. The initial franchise agreement was for a term of 10 years. The franchise agreement established a franchise fee equal to five percent of the City's gross revenues. The franchise agreement was then amended in 2013[25] to grant the City of Gulf Breeze the exclusive right to provide natural gas service on the portion of Santa Rosa Island located in Escambia County.

Gulf Power, Inc. Gulf Power is an investor owned electric utility. This electric franchise was established in 1989,[26] providing Gulf Power the non-exclusive right to operate an electric utility throughout the unincorporated areas of the county for a period of 30 years. The franchise originally established a franchise fee, at varying rates for varying customer classifications. The franchise was amended in 1989[27] to establish a franchise fee equal to five percent of Gulf Power's gross revenues collected monthly from electric service provided within the franchise area. The current franchise between Gulf Power and the county was entered into in 1994[28] containing a 30 year term, expiring in 2025.

Escambia River Electric Cooperative, Inc. EREC is a member-owned electric distribution cooperative. The initial franchise provided EREC the non-exclusive right to operate an electric utility throughout the unincorporated areas of

[25] *Escambia County Ordinance No. 2013-23* (App. 115-122).
[26] *Escambia County Ordinance No. 89-30* (App. 47-51).
[27] *Escambia County Ordinance No. 89-37* (App. 52-58).
[28] *Escambia County Ordinance No. 94-28* (App. 74-84).

Escambia County, Florida for a period of 30 years.[29] The franchise contained a franchise fee at varying rates for varying classifications of customers. In 1989,[30] the parties established a franchise fee equal to five percent of EREC's revenues within the franchise area. The current franchise between EREC and the county was established in 1994[31] with a 30 year term, expiring in 2025.

The franchises and PSC orders can co-exist because the counties' franchise agreements do not establish service areas for the electric utilities; they do not resolve territorial disputes among electric utility providers; they do not regulate the rates of the utilities; and they do not regulate service delivery by the electric utilities. The counties' electric utility franchises grant the utilities the special privilege, not extended to the public in general, to use county rights-of-way for their private enterprises. The franchise agreement is the contract that grants the electric utility provider access to this property to operate its utility. Without this franchise right, a utility would need to seek permission or purchase and sale to obtain private easement access for their facilities. *See*, *Lee County Electric Cooperative,, Inc. v. City of Cape Coral,* 159 So. 3d 126, 129 (Fla. 2d DCA 2014)*("This rule [requiring electric utility relocation without compensation]may not obtain when the utility's equipment is placed in a <u>private</u> easement that the*

[29] *Escambia County Ordinance No. 89-37* (App. 52-58).
[30] *Escambia County Ordinance No. 89-39* (App. 59-65).
[31] *Escambia County Ordinance No. 94-29* (App. 85-95).

utility purchased from a property owner, rather than pursuant to a franchise agreement that allows the utility to use public property")(emphasis in original)(cits. omitted). Clearly, local government franchise agreements provide special privileges to electric utilities that have nothing to do with interfering, determining, amending, altering, or regulating service areas that are resolved by Florida PSC order.

B. The Purpose of a Local Government Franchise Is To Protect The Public Investment.

The right to use the public property for proprietary purposes or for private enterprise and gain is a right that is granted

> by a government to particular individuals or companies to be exploited for private profit as such franchisees seek permission to use public streets or rights-of-way in order to do business with a [county's] residents, and are willing to pay a fee for this privilege.

See McQuillan Municipal Corporations, 34:2 at 15.

> The rule is settled that no person can acquire the right to make a special or exceptional use of the public highway, not common to all citizens of the state, except by grant from the sovereign power. Franchises, licenses, or permits are required. The right to a franchise is not to be presumed.

See McQuillan Municipal Corporations, 34:2 at 51

> Furthermore, under a statute authorizing the state public service commission to regulate "services and rates," [like Florida's] … [a] public utilities act may not be held to give the state commission power or authority to regulate

> or control city streets, nor to suspend the city's power to license or prohibit the occupancy [of] those streets by a public utility.

See McQuillan Municipal Corporations, 34:2 at 50.

Furthermore, this Court in *Jarrell v. Orlando Transit Co.*, 167 So. 664 (Fla. 1936), defined the privileged use of public rights-of-way as the following:

> There is…no such thing as a natural right to use the public highways for commercial purposes. Such limited right as the public may grant to use them for private business is merely a privilege that may be restricted or withdrawn at the discretion of the granting power. Whether the grant is by license, permit, or franchise is immaterial; the power to do so is plenary and may extend to absolute prohibition.

Id. at 666.

The electric utilities, even municipally owned ones, are not required to use county property to operate their businesses or proprietary activities. As stated by the Supreme Court of the United States, "If, instead of occupying the streets and public places with its telegraph poles, the company [c]ould do what it may rightfully do, purchase ground in the various blocks from private individuals, and to such ground remove its poles, the section [imposing the fee] would no longer have any application to it." *St. Louis v. Western Union Telegraph Co.*, 148 U.S. 92, 97 (1893); *see also Jacksonville Port Authority v. Alamo Rent-a-Car*, 600 So.2d 11589, 1162 (Fla. 1st DCA 1992) ("*If Alamo wished to avoid the fee, it could*

obtain its customers from another source. The subject charge is tied exclusively to Alamo's use of the airport facilities to conduct its business.").

In other words, the Florida Public Service Commission and other statewide utility regulatory agencies around the country may have exclusive and broad authority over the authorized-rates of utility providers and over the territory for service for the providers, and they may even be empowered to ensure reliability and efficiency of service, but that power, broad though it may be, does NOT and never has included the power to unilaterally mandate that the local government, on behalf of its citizens, allow unfettered access to public property.[32]

For example, the First District Court of Appeal in *Santa Rosa County v. Gulf Power Co.*, 635 So. 2d 96 (Fla. 1st DCA 1994), *rev. denied*, 645 So. 2d 452 (Fla. 1994), in upholding the lower court's decision, quite clearly argued, "The Public Service Commission (PSC) has not preempted the counties' right to convey franchises to electric utilities because the PSC does not have unconditional authority to issue certificates of convenience and necessity to electric utilities." *Id.* at *98.* The First DCA went on to address Chapter 366, Florida Statutes specifically, and noted that "we find no statute clearly inconsistent with the

---

[32] *See, City of Plant City v. Mayo*, 337 So. 2d 966 (Fla. 1976) *(holding that the PSC's exclusive jurisdiction over electric utility rates did NOT include a prohibition on local government franchise fees charged to a utility in exchange for the rights contained in the franchise agreement and in fact, prohibited the electric utility from treating the fee as a general operating expense, rather requiring it to be a specific expense for a specific purpose – the franchise).*

counties' power to require franchise agreements from electric utilities for such use [of the counties' rights-of-way]." *Id.* at *100.* Finally, distinguishing the PSC's authority with respect to electric utilities as opposed to telephone carriers and their respective relationship to local government franchises, the First DCA stated "the only statutes which we find inconsistent with the authority of the counties to grant franchises and to impose fees thereon are those pertaining to the PSC's regulation of telephone utilities[.]" *Id.*

The power to enter into a contract to use public property for private enterprise inherently includes the power to enforce the franchise contract's provisions. In fact, the Florida courts have recognized that this enforcement right includes the right to compel the payment of a franchise fee when the electric utility continues to receive all the benefits of an expired franchise. For example, in *Florida Power Corp. v. City of Winter Park*, 887 So. 2d 1237 (Fla. 2004), the city's franchise expired by its terms but the electric utility refused to renegotiate an extended franchise, proclaiming it had the right to continue to use the public property to operate its utility without a contract and without paying for the right to so use the rights-of-way. The parties continued to perform as if the contract were in effect (city continued to maintain the rights-of-way for the utility and the utility continued to be the exclusive provider of electric service and occupy the rights-of-way), except that the utility refused to pay for its occupation of the rights-of-way.

This Court found an implied contract in existence, requiring the electric utility to pay the franchise fee. Furthermore, this Court went on to alternatively comment that "[i]n the absence of an implied contract…FPC would be unjustly enriched." *Id.* at 1241.

> To the extent FPC discontinues its payments to Winter Park, it would receive a windfall in the form of a corresponding increase in revenue. It would be wholly inequitable to allow FPC to profit in this manner while the city's maintenance and public safety responsibilities continue unabated.

Id. at 1241-42 *(citations omitted).*

Recently, the Second District Court of Appeal commented on the city's franchise agreement in a dispute over which entity should bear the cost of relocating utility facilities as required for roadwork by the city, in the following way:

> In short, when the instant dispute arose, LCEC's [electric co-op] use of a particular public utilities easement was governed by its franchise agreement with the governing body that has jurisdiction over the local public lands, ways and easements, i.e., the City of Cape Coral. As such, that use was subject to the exercise of the City's police power in the interest of public safety.

See, Lee County Elec. Co-op, Inc. v. City of Cape Coral, 159 So. 3d 126, 130 (Fla. 2d DCA 2014).

CONCLUSION

WHEREFORE, Amici Curiae, in support of Board of County Commissioners for Indian River County, respectfully asks this Court to reverse both the City Order and the County Order. The reversal of the City Order, Case No. SC15-504, should be a denial on the merits of the two declarations. In reversing the County Order, Case No. SC15-505, the Court should remand the case back to the PSC with directions to address the merits of the County Petition's fourteen declaratory statement questions.

Respectfully submitted, this 12th day of June, 2015.

s/Meredith D. Crawford
MEREDITH D. CRAWFORD
Florida Bar No. 0048086
Assistant County Attorney
Escambia County, Florida
221 Palafox PL, St. 430
Pensacola, Fl 32502
(850) 595-4970
(850) 595-4979 (Facsimile)
mdcrawford@co.escambia.fl.us

COUNSEL FOR ESCAMBIA COUNTY, FLORIDA

s/Virgina Saunders Delegal
VIRGINIA SAUNDERS DELEGAL
Florida Bar No. 989932
General Counsel
Florida Association of Counties, Inc.
100 South Monroe Street
Tallahassee, Florida 32301
(850) 922-4300
(850) 488-7192 (Facsimile)
gdelegal@fl-counties.com

COUNSEL FOR FLORIDA ASSOCIATION OF COUNTIES, INC. AND FLORIDA ASSOCIATION OF COUNTY ATTORNEYS, INC.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on June 12, 2015, a true and correct copy of the foregoing was electronically filed with the Florida Courts E-Filing Portal with notices furnished to all registered users, as indicated below:

Kathryn Cowdery, Esquire
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
kcowdery@psc.state.fl.us

Dylan Reingold, Esquire,
County Attorney
Office of the County Attorney
Indian River County
1801 27th Street
Vero Beach, FL 32960-3388
dreingold@ircgov.com

Wayne R. Coment
City Attorney
City of Vero Beach
1053 20th Place
Vero Beach, Florida 32960
WComent@covb.org

Robert Scheffel Wright
John T. LaVia, III
Gardner, Bist, Wiener, Wadsworth,
Bowden, Bush, Dee, La Via & Wright, P .A.
1300 Thomaswood Drive
Tallahassee, Florida 32308
schef@gbwlegal.com
jlavia@gbwlegal.com

Kenneth Hoffman, Esquire
Florida Power & Light Company
215 S. Monroe Street, Suite 810
Tallahassee, FL 32301
Ken.Hoffman@fpl.com

Patrick Bryan, Esquire
Jessica A. Cano, Esquire
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Patrick.Bryan@fpl.com
Jessica.Cano@fpl.com

W. Christopher Browder
Orlando Utilities Commission
P. O. Box 3193
Orlando, FL 32801
cbrowder@ouc.com

Barry J. Moline, Executive Director
Florida Municipal Electric Association
P.O. Box 10114
Tallahassee, FL 32302-2114
bmoline@publicpower.com

Arthur J. "Grant" Lacerte, Jr.
Vice President and General Counsel
Kissimmee Utility Authority
P.O. Box 423219
Kissimmee, FL 34742-3219
glacerte@kua.com

Dianne M. Triplett, Esquire
Matthew Bernier, Esquire
Duke Energy Florida, Inc.
299 1st Avenue North
St. Petersburg, FL 33733
Dianne.triplett@duke-energy.com
Matthew.bernier@duke-energy.com

William Willingham
Michelle Hershel
Florida Electric Co-op Association
2916 Apalachee Parkway
Tallahassee, FL 32301
fecabill@embarqmail.com
mhershel@feca.com

James D. Beasley
J. Jeffry Wahlen
Ausley & McMullen
P.O. Box 391
Tallahassee, FL 32302
jbeasley@ausley.com
jwahlen@ausley.com

Tampa Electric Company
Regulatory Affairs
P.O. Box 111
Tampa, FL 33602
regdept@tecoenergy.com

Floyd R. Self
Floyd R. Self, B.C.S.
Berger Singerman LLP
125 South Gadsden St., Suite 300
Tallahassee, Florida 32301
fself@bergersingerman.com

s/Virginia Saunders Delegal
VIRGINIA SAUNDERS DELEGAL
Florida Bar No. 989932

COUNSEL FOR FLORIDA ASSOCIATION OF COUNTIES, INC. AND FLORIDA ASSOCIATION OF COUNTY ATTORNEYS, INC.

CERTIFICATE OF COMPLIANCE

Counsel for Amici Curiae hereby certified that this Amicus Brief is typed in 14 point Times New Roman, in compliance with Fla.R.App.P. 9.100(1).

s/Meredith D. Crawford
MEREDITH D. CRAWFORD
Florida Bar No. 0048086
Assistant County Attorney
Escambia County, Florida
221 Palafox PL, St. 430
Pensacola, Fl 32502
(850) 595-4970
(850) 595-4979 (Facsimile)
mdcrawford@co.escambia.fl.us

COUNSEL FOR ESCAMBIA COUNTY, FLORIDA

s/Virginia Saunders Delegal
VIRGINIA SAUNDERS DELEGAL
Florida Bar No. 989932
General Counsel
Florida Association of Counties, Inc.
100 South Monroe Street
Tallahassee, Florida 32301
(850) 922-4300
(850) 488-7192 (Facsimile)
gdelegal@fl-counties.com

COUNSEL FOR FLORIDA ASSOCIATION OF COUNTIES, INC. AND FLORIDA ASSOCIATION OF COUNTY ATTORNEYS, INC.