



Sovereign Immunity, GRU, and the PPA

Item #160470

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Question Presented

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- ▶ Can GRU breach the Power Purchase Agreement with GREC and avoid liability using the doctrine of Sovereign Immunity?

Short Answer

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- ▶ No, sovereign immunity will not protect GRU from liability for breach of contract. The doctrine does not apply to contract disputes in Florida because of provisions of the Florida Constitution and Florida statute § 163.01.

SI in Florida

- ▶ Codified in Fla. Stat. § 11.066
 - ▶ “Neither the state nor any of its agencies shall pay or be required to pay monetary damages under the judgment of any court except pursuant to an appropriation made by law.”
- ▶ Pursuant to Article X, Section 13 of the Florida Constitution, the legislature waived sovereign immunity in certain circumstances and set a limit to recoveries in court in Fla. Stat. § 768.28.

Why SI does not apply here

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- ▶ Article VIII, Section 2(b) Florida Constitution:
 - ▶ municipalities possess “governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services.”
- ▶ Amer. Home Assurance Co. v Nat’l RR Passenger Corp. (2005)
 - ▶ Florida Supreme Court: “[i]n executing contracts municipalities are presumed to be acting within the broad scope of their authority. Therefore... municipalities already [are] authorized to execute contracts and [are] liable for their breach.”

► In addition, Fla. Stat. § 163.01(k):

“The limitations on waiver in the provisions of § 768.28 or any other law to the contrary notwithstanding... any such legal entity or any public agency of this state that participates in any electric project waives its sovereign immunity to:

...

2. Any person in any manner contracting with a legal entity of which any such public agency is a member, with relation to:

...

b. The supplying or purchasing of services, output, capacity, energy, or any combination thereof.”

Conclusion

- ▶ Municipalities and their agencies, such as utilities, are empowered by Florida's Constitution and existing statutes to exercise broad powers at the local level. This includes corporate powers such as executing contracts. However, those powers come with obligations and municipalities in Florida are obligated by law to honor the contracts they sign. As a result, the doctrine of sovereign immunity will not protect GRU in a suit based on a breach of contract.