BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.	DOCKET NO. 140142-EM ORDER NO. PSC-15-0101-DS-EM ISSUED: February 12, 2015

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
JULIE I. BROWN
JIMMY PATRONIS

ORDER DENYING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

I. Background

On July 21, 2014, pursuant to Section 120.565, Florida Statutes (F.S.), and Rule 28-105.002, Florida Administrative Code (F.A.C.), the Board of County Commissioners of Indian River County, Florida filed a Petition for Declaratory Statement. Indian River County requests declaratory statements on fourteen separate questions with subparts, as follows:

a. Will the Board become a "public utility" as that term is defined in Section 366.02(1), Florida Statutes, if the Board assumes ownership of the Electric Facilities and the Board supplies electric service through the Electric Facilities to those customers currently served by the Electric Facilities?

b. Will the Board become an "electric utility" as that term is defined in Section 366.02(2), Florida Statutes, if the Board assumes ownership of the Electric Facilities and the Board supplies electric service through the Electric Facilities to those customers currently served by the Electric Facilities?

c. Will the Board become a "public utility" as that term is defined in Section 366.02(1), Florida Statutes, or an "electric utility" as that term is defined in Section 366.02(2), Florida Statutes, if the Board assumes ownership of the Electric Facilities and the Board leases or otherwise conveys the Electric Facilities to FPL or some other provider of electric service (e.g., a public utility, another municipality, or a cooperative) that would supply electric service through

the Electric Facilities and other necessary equipment to customers within the geographic area of the Franchise?

d. Once the Franchise expires, what will be the legal status of the [Vero Beach]-FPL territorial agreements and boundaries approved by the PSC? Will the territorial agreements and boundaries approved by the PSC between [Vero Beach] and FPL become invalid in full or in part (at least with respect to the Franchise Area)?

e. Once the Franchise expires and if the territorial agreements and boundaries approved by the PSC between [Vero Beach] and FPL become invalid in full or in part (at least with respect to the Franchise Area), with respect to the PSC's jurisdiction under Chapter 366, Florida Statutes, if the Board chooses to supply electric service in the geographic area described by the Franchise, are there any limitations on the Board's ability to enter into a territorial agreement with FPL regarding their respective service areas within the county?

f. Once the Franchise expires and if the territorial agreements and boundaries approved by the PSC between [Vero Beach] and FPL become invalid in full or in part (at least with respect to the Franchise Area), with respect to the PSC's jurisdiction under Chapter 366, Florida Statutes, are there any limitations on the Board's ability to grant FPL an exclusive franchise to supply electric service within the geographic area described by the Franchise and for FPL to serve such customers?

g. Once the Franchise expires and if the territorial agreements and boundaries approved by the PSC between [Vero Beach] and FPL remain valid, do the PSC's orders regarding the territorial agreements and boundaries in any manner limit or otherwise preclude the Board from supplying electric service within the geographic area described by the Franchise?

h. Once the Franchise expires and if the territorial agreements and boundaries approved by the PSC between [Vero Beach] and FPL remain valid, do the PSC's orders regarding the territorial agreements and boundaries in any manner limit or otherwise preclude the Board from granting an exclusive franchise to FPL that would authorize FPL to supply electric service to customers within the geographic area of the Franchise and for FPL to serve such customers?

i. Once the Franchise expires, and [Vero Beach] is no longer legally authorized to utilize the County's rights of way, to the extent the Board takes such actions as to ensure the continued and uninterrupted delivery of electric service to customers in the Franchise Area, by the Board, FPL, or some other supplier, are there any electric reliability or grid coordination issues that the Board must address with respect to the PSC's jurisdiction under Chapter 366?

j. What is the PSC's jurisdiction with respect to Section 366.04(7), Florida Statutes? Does [Vero Beach's] failure to conduct an election under Section 366.04(7), Florida Statutes, have any legal effect on the Franchise or the Board's duties and responsibilities for continued electric service within the Franchise area?

k. Once the Franchise expires, and customers in the Franchise Area are being served by a successor electric service provider, does the Board have any legal obligations to [Vero Beach] or any third parties for any [Vero Beach] contracts for power generation capacity, electricity supply, or other such matters relating to electric service within the Franchise Area?

l. If the Board grants [Vero Beach] a temporary extension in the Franchise for the limited purpose and for a limited time in order to seamlessly and transparently transition customers in the Franchise Area to a new electric service provider, are there issues or matters under Chapter 366 or the PSC's rules and orders that must be addressed by the Board for the transition period?

m. What is the PSC's jurisdiction, if any, with respect to the Electric Facilities once the franchise has expired? Is there any limitation or other authority under Chapter 366 impacting a successor electric service provider from buying, leasing, or otherwise lawfully acquiring the Electric Facilities in the Franchise Area from [Vero Beach]?

n. Does the PSC have the legal authority to invalidate or otherwise supersede the Board's decision to terminate the Franchise and to designate [Vero Beach] the electric service provider in the Franchise Area?

Pursuant to Rule 28-105.0024, F.A.C., a Notice of Declaratory Statement was published in the July 24, 2014, edition of the Florida Administrative Register, informing interested persons of the Petition. On July 29, 2014, the City of Vero Beach filed a motion to intervene. On August 12, 2014, the Prehearing Officer granted Vero Beach intervention.[1]

On August 14, 2014, the following motions were filed: Vero Beach's motion to dismiss and response in opposition to the Petition and a request for oral argument; Florida Power & Light Company's motion to intervene; Duke Energy Florida, Inc.'s motion to file amicus curiae brief and for oral argument, together with its brief in support of City of Vero Beach; Tampa Electric Company's motion to file amicus curiae comments including a request to orally address the Commission, together with its comments on the Petition; Orlando Utilities Commission's motion to intervene and motion to file supplemental pleadings; the Florida Electric Cooperatives Association, Inc.'s motion to file amicus curiae memorandum of law, together with its

[1] Order No. PSC-14-0409-PCO-EM.

memorandum of law and motion to address the Commission; and the Florida Municipal Electric Association, Inc.'s motion to file amicus curiae memorandum of law.

On August 18, 2014, Indian River County filed an unopposed motion to set filing dates for responses to the Petition and for the County to file a single response to those filings. The County requested that an order granting its motion be issued as soon as possible in order to remove any confusion as to proper filing times. On August 19, 2014, the Prehearing Officer granted the motion[2] and set August 22, 2014, as the due date for FMEA, FPL, and OUC to file their substantive responses to the Petition, and set August 29, 2014, as the due date for the County to file its single reply to all substantive responses, including Vero Beach's motion to dismiss. Also on August 19, 2014, the Prehearing Officer issued orders granting FMEA's motion to appear as amicus curiae and to file a memorandum of law;[3] TECO's motion to appear amicus curiae and to file comments;[4] Duke's motion to appear as amicus curiae and to file a brief;[5] FECA's motion to appear as amicus curiae and to file a memorandum of law;[6] OUC's motion to intervene and to file supplemental pleadings;[7] and FPL's motion to intervene.[8]

On August 22, 2014, FMEA filed its amicus curiae memorandum of law and motion to address the Commission, FPL filed its response to the Petition, and OUC filed its motion to dismiss the Petition. On August 29, 2014, Indian River County filed its consolidated response and objections to the motions to dismiss and other substantive responses in opposition to the Petition for Declaratory Statement. In addition, the County requested reconsideration of the portion of Prehearing Order No. PSC-14-0423-PCO-EM granting OUC's motion to intervene. The County requested oral argument on its consolidated response and on its request for reconsideration.

Pursuant to Section 120.565(3), F.S., a final order on a petition for declaratory statement must be issued within 90 days. By letter filed on September 2, 2014, Indian River County waived the 90-day deadline until December 15, 2014, explaining that waiver would be appropriate in order for the County "to participate in good faith in the Chapter 164 conflict resolution process currently underway involving the Town of Indian River Shores, the City of Vero Beach, and Indian River County."[9] The November 13, 2014 staff memorandum was deferred at the County's request from the November 25, 2014 Agenda Conference. By letter dated December 10, 2014, the County waived the 90-day deadline until February 23, 2015. The parties and amici curiae were allowed to present oral arguments on Indian River County's Petition at the February 3, 2015 Agenda Conference; however, oral argument on the Motion for Reconsideration was denied.

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[2] Order No. PSC-14-0425-PCO-EM.
[3] Order No. PSC-14-0419-PCO-EM.
[4] Order No. PSC-14-0420-PCO-EM.
[5] Order No. PSC-14-0421-PCO-EM.
[6] Order No. PSC-14-0422-PCO-EM.
[7] Order No. PSC-14-0423-PCO-EM.
[8] Order No. PSC-14-0424-PCO-EM.
[9] This resolution process is being held as part of the pending Circuit Court case, Town of Indian River Shores v. City of Vero Beach, Case No. 312014 CA 000748 (Fla. 19th Cir. in and for Indian River County, Complaint filed July 18, 2014) (Attachment A hereto).

We have jurisdiction pursuant to Section 120.565 and Chapter 366, F.S.

II. The County's Motion for Reconsideration of the Order Granting Orlando Utility Commission's Motion to Intervene

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order. Diamond Cab Company v. King, 146 So. 2d 889, 891 (Fla. 1962). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Id. The alleged overlooked fact or law must be such that if it was considered, we would reach a different decision than the decision in the order. See Order No. PSC-14-0261-FOF-EI, Order Denying Motions for Reconsideration, issued May 23, 2014, in Docket No. 130223-EI, In re: Petition for approval of optional non-standard meter rider, by FPL. It is not necessary to respond to every argument and fact raised in the motion for reconsideration because "[a]n opinion should never be prepared merely to refute the arguments advanced by the unsuccessful litigant." See id. at p. 7.

A. Indian River County's Argument

Indian River County asserts that we should reconsider the order granting OUC's motion to intervene because the order was issued five days after OUC filed its motion, and the County was planning on filing its objection to OUC's motion to intervene pursuant to Rule 28-105.0027(3), F.A.C., which allows parties seven days to file a response in opposition to a motion to intervene. Indian River County states that we should treat its request for reconsideration as if it were an original response to OUC's motion to intervene, and not as a motion for reconsideration of the order granting intervention.

Indian River County states that OUC's motion to intervene does not demonstrate how OUC's substantial interest will be affected by the disposition of the Petition for Declaratory Statement because it does not meet either of the two requirements of Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982) and 415 So. 2d 1361 (Fla. 1982). The County alleges that OUC's motion to intervene does not state what OUC's injuries would be if we granted the declaratory statement. The County rejects OUC's argument that our decision on the Petition will materially impact the enforceability of OUC's contracts with Vero Beach and will directly affect OUC's substantial interests, and states that the fact that OUC may have a business relationship with Vero Beach does not demonstrate injury. The County argues that the mere reference to OUC in Question k of its Petition[10] does not by itself convey standing, and that Question k does not seek to limit the contractual obligations between Vero Beach and OUC. Further, the County states that this proceeding is not designed to protect Vero Beach's future performance under its

[10] Question k states: "Once the Franchise expires, and customers in the Franchise Area are being served by a successor electric service provider, does the Board have any legal obligations to [Vero Beach] or any third parties for any [Vero Beach] contracts for power generation capacity, electricity supply, or such other matters relating to electric service within the Franchise Area?"

contracts with OUC or OUC's interest in its territorial agreements. Indian River County states that if OUC is complaining that the County's nonrenewal of its 1987 franchise agreement with Vero Beach (Franchise Agreement) could threaten OUC's contracts with Vero Beach, then that is a failure of OUC to conduct its due diligence regarding the term of the Franchise Agreement, which is a risk and a problem OUC created and that cannot be solved in this docket. The County states that it has no objection to allowing OUC to participate as amicus curiae and to treat its response to the Declaratory Statement Petition as an amicus brief.

B. Findings and Conclusion

On August 14, 2014, the seven respondents/ amici curiae timely filed motions in response to the Petition for Declaratory Statement, which included motions to intervene or to appear as amicus curiae. Indian River County's response in opposition to OUC's motion to intervene and its response to Vero Beach's motion to dismiss were due by August 21, 2014.[11] On August 18, the County filed a motion to set filing dates in which it asked for an order setting August 22, 2014, as the deadline for intervenors and amici curiae to file responses to the Petition for Declaratory Statement and setting August 29 as the deadline for the County to file a single response to all substantive filings, including its response to Vero Beach's motion to dismiss.

Indian River County's motion to set filing dates specifically states that OUC filed a motion to intervene. However, the County did not state that it objected to OUC's motion to intervene or ask to include a response in opposition to OUC's motion to intervene in its single response to be filed August 29, 2014. In direct recognition of Indian River County's request to issue the order as "as soon as possible in order to remove any confusion as to the proper time to file," the Prehearing Officer on August 19, 2014, granted the motion to set filing dates and the motions to intervene or participate as amicus curiae. If at the time the County filed its motion to set filing dates it intended to file a response in opposition to OUC's motion to intervene, it should have addressed that issue in its motion. Contrary to the County's argument, the OUC intervention order addressing all filing dates was not issued prematurely, but was issued in direct response to the County's motion to set filing dates.

Indian River County's motion for reconsideration raises no points that were overlooked or not considered by the Prehearing Officer in granting OUC's motion to intervene. The only ground for reconsideration raised by the County is its allegation that the Order granting OUC intervention was prematurely issued, which as explained above, is not the case. The County does not meet the standard of review for a request for reconsideration.

Moreover, even if Indian River County's reconsideration arguments are treated as a response in opposition to OUC's motion to intervene, they do not raise any point of fact or law which would result in OUC's motion to intervene being denied. As alleged in OUC's motion to intervene and as explained in Order No. PSC-14-0423-PCO-EM, disposition of the Petition for Declaratory Statement could directly affect OUC's contracts with Vero Beach and other parties

[11] Rule 28-105.0027(3), F.A.C., allows a party to file a response in opposition to a motion to intervene within seven days of service of the motion.

and OUC's 20-year commitment to provide wholesale electric service to Vero Beach. As discussed in the Order, OUC meets the Agrico standing requirements. The Petition asks us to declare that termination of the Franchise Agreement will "completely sever" Vero Beach's right to serve the Franchise Area and is without any legal consequences to Indian River County as to OUC's contracts with Vero Beach or third parties. If we were to issue the County's requested declaration, the decision would directly and materially impact OUC's contract rights. Such a direct impact warrants intervention in this docket. For the reasons set forth above, we deny Indian River County's request for reconsideration.

III. Statutes and Rules Governing Declaratory Statements

Declaratory statements are governed by Section 120.565, F.S., and the Uniform Rules of Procedure in Chapter 28-105, F.A.C. Section 120.565, F.S., states, in pertinent part, that:

> (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
>
> (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule or order that the petitioner believes may apply to the set of circumstances.

Rule 28-105.001, F.A.C., Purpose and Use of Declaratory Statement, provides that:

> [a] declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.[12]

Rule 28-105.002, F.A.C., requires a petition for declaratory statement to include a description of how the statutory provisions or rule on which a declaratory statement is sought may substantially affect the petitioner in the petitioner's particular set of circumstances. Since a declaratory statement procedure is intended to resolve controversies or answer questions or doubts concerning the applicability of statutes, rules, or orders, the validity of the statute, rule, or order is assumed.[13]

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[12] Order No. PSC-08-0374-DS-TP, at p. 15, issued June 4, 2008, in Docket No. 080089-TP, In re: Petition for declaratory statement regarding local exchange telecoms. network emergency 911 service, by Intrado Commc'ns Inc. (petition for declaratory statement denied, in part because it asks to determine the conduct of other entities in addition to petitioner's own interests, which is prohibited by Rule 28-105.001, F.A.C.).

[13] Retail Grocers Ass'n of Fla. Self Insurers Fund v. Dep't of Labor & Employment Sec., Div. of Workers' Comp., 474 So. 2d 379, 382 (Fla. 1st DCA 1985)(citing to Waas, Initiating agency action: petition for declaratory statement and rulemaking under the Florida Administrative Procedure Act, 55 Fla. Bar. J. 43 (1981)).

A purpose of the declaratory statement procedure is to enable members of the public to definitively resolve ambiguities of law arising in the planning of their future affairs and to enable the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts.[14] The courts and this Commission have repeatedly stated that one of the benefits of a declaratory statement is to enable the petitioner to avoid costly administrative litigation by selecting a proper course of action in reliance on the agency's statement.[15] Further, "the reasoning employed by the agency in support of the declaratory statement may offer useful guidance to others who are likely to interact with the agency in similar circumstances."[16] We have dismissed petitions for declaratory statement that fail to meet the threshold requirements of Section 120.565, F.S.[17]

A petition for declaratory statement must demonstrate a present, ascertained state of facts or present controversy as to a state of facts and may not allege merely a hypothetical situation[18] or the possibility of a dispute in the future.[19] Declaratory statements cannot be rendered when the petitioner provides only speculative allegations of circumstances that may someday occur and that might result in certain actions that might impact the petitioner or unspecified third parties.[20] Because a declaratory statement is intended to address a petitioner's particular factual circumstances, an agency does not have authority in a declaratory statement proceeding to give a general legal advisory opinion or to announce general policy of far-reaching applicability.[21]

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[14] Dep't of Bus. and Prof'l Regulation, Div. of Pari-Mutual Wagering v. Inv. Corp. of Palm Beach, 747 So. 2d 374, 382 (Fla. 1999)(quoting Patricia A. Dore, Access to Florida Administrative Proceedings, 13 Fla. St. U.L. Rev. 965, 1052 (1986)).

[15] Id. at 384; Adventist Health Sys./Sunbelt, Inc. v. Agency for Health Care Admin., 955 So. 2d 1173, 1176 (Fla. 1st DCA 2007); Order No. PSC-02-1459-DS-EC, pp. 3-4, issued October 23, 2002, in Docket No. 020829-EC, In re: Petition for declaratory statement concerning urgent need for electrical substation in North Key Largo by Florida Keys Electric Coop. Ass'n Inc., pursuant to Section 366.04, Florida Statutes.

[16] Inv. Corp. of Palm Beach, 747 So. 2d at 385 (quoting Chiles v. Dep't of State, Div. of Elections, 711 So. 2d 151, 154-55 (Fla. 1st DCA 1998)).

[17] E.g. Order No. PSC-04-0063-FOF-EU, issued Jan. 22, 2004, in Docket No. 031017-EU, In re: Request for Declaratory Statement by Tampa Electric Company Regarding Territorial Dispute with City of Bartow in Polk County, (petition dismissed for lack of an actual, present and practical need, no live controversy, and assertions based on a state of facts which has not arisen); Order No. PSC-0210-FOF-EQ, issued February 15, 1995, in Docket No. 940771-EQ, In re: Petition for determination that implementation of contractual pricing mechanism for energy payments to qualifying facilities complies with Rule 25-17.0832, F.A.C., by Florida Power Corp. (dismissing petition for declaratory statement asking for interpretation of contract term).

[18] See Santa Rosa County, v. Dep't of Admin. Hearings, 661 So. 2d 1190, 1193 (Fla. 1995); Sutton v. Dep't of Envtl. Prot., 654 So. 2d 1047, 1048-49 (Fla. 5th DCA 1995); Order No. PSC-01-1611-FOF-SU, p. 8, issued August 3, 2001, in Docket No. 010704-SU, In re: Petition for declaratory statement by St. Johns County (petition for declaratory statement denied for failure to demonstrate a present, ascertained or ascertainable state of facts or a present controversy as to a state of facts that are not merely a hypothetical situation).

[19] Okaloosa Island Leaseholders Ass'n, Inc. v. Okaloosa Island Auth., 308 So. 2d 120, 122 (Fla. 1st DCA 1975).

[20] Intrado, at 21.

[21] Inv. Corp. of Palm Beach, 747 So. 2d at 385; Askew v. Ocala, 348 So. 2d 308, 310 (Fla. 1977) (declaratory relief properly denied where petitioners sought judicial advice different than an Attorney General's advisory opinion, where there was no present dispute, only a desire by public officials to take certain action in the future and ward off possible consequences); Lennar Homes, Inc. v. Dep't of Bus. & Prof'l Regulation, Div. of Fla. Land Sales, Condos. & Mobile Homes, 888 So. 2d 50, 51 (Fla. 1st DCA 2004)(reversing the agency's declaratory statement which announced a general policy of far-reaching applicability); Fla. Dep't of Ins. v.. Gaur. Trust Life Ins. Co., 812 So. 2d

A declaratory statement is not appropriate where the alleged doubt or uncertainty is not about statutory provisions, rules, or orders and where the statement will not resolve the alleged controversy.[22] Further, where issues raised in a petition for declaratory statement are pending in circuit court litigation, it would be an abuse of the agency's authority to permit the use of the declaratory statement process as a means for the petitioner to attempt to obtain administrative preemption over legal issues properly pending in court and involving the same parties.[23]

The agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts.[24] In ruling on a petition for declaratory statement, an agency may decide to issue a declaratory statement and answer the question or deny the petition and decline to answer the question.[25]

IV. Indian River County's Petition for Declaratory Statement

A. Statutory Provisions, Rules and Orders to be Applied to the Facts

The Petition states that the statutory provisions listed below are relevant and applicable and support the issuance of the requested declaratory statement. Section 366.02, F.S., gives the following definitions of "public utility" and "electric utility:"

> (1) "Public utility" means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term "public utility" does not include either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; ….
>
> (2) "Electric utility" means any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.

The Petition identifies Section 366.04(1), F.S., and Sections 366.04(2)(c)-(e) and

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459, 460-61 (Fla. 1st DCA 2002) (Court held declaratory relief not available to render what amounts to an advisory opinion upon a showing of the mere possibility of legal injury based on hypothetical facts which have not arisen).

[22] Order No. PSC-02-1459-DS-EC, pp. 7-9, issued October 23, 2002, in Docket No. 020829-EC, In re: Petition for declaratory statement concerning urgent need for electrical substation in North Key Largo by Florida Keys Electric Coop. Ass'n Inc., pursuant to Section 366.04, Florida Statutes.

[23] Padilla v. Liberty Mut. Ins. Co., 832 So. 2d 916, 919 (Fla. 1st DCA 2002); Suntide Condo..Ass'n, Inc. v. Div. of Fla. Land Sales, Condos.. and Mobile Homes, 504 So. 2d 1343, 1345 (Fla. 1st DCA 1987); In re: Petition for declaratory statement by Florida Keys Electric Coop. Ass'n, Inc., at pp. 4-6 (noting that even though the legal issue before DOAH was different than the issue presented in the Petition, the subject matter was the same, and therefore not properly decided by this Commission); See also ExxonMobile Oil Corp. v. Dep't of Agric. & Consumer Servs., 50 So. 3d 755 (Fla. 1st DCA 2010)(stating that an administrative agency must decline to provide a declaratory statement when the statement would address issues currently pending in a judicial proceeding); Intrado, at 15.

[24] Rule 28-105.003, F.A.C.

[25] Subsection 120.565(3), Florida Statutes, and Rule 28-105.003, F.A.C.

366.05(7) and (8), F.S., of the Grid Bill, as supporting the request for declaratory statement.[26] Section 366.04 (1) and (2)(c)-(e), F.S., states as follows:

> (1) In addition to its existing functions, the commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service; assumption by it of liabilities or obligations as guarantor, endorser, or surety; and the issuance and sale of its securities. . . . The jurisdiction conferred upon the commission shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and, in case of conflict therewith, all lawful acts, orders, rules, and regulations of the commission shall in each instance prevail.
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> (2) In the exercise of its jurisdiction, the Commission shall have power over electric utilities for the following purposes:
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> * * *
>
> (c) To require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes.
>
> (d) To approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. However, nothing in this chapter shall be construed to alter existing territorial agreements as between the parties to such agreements.
>
> (e) To resolve, upon petition of a utility or on its own motion, any territorial dispute involving service areas between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. In resolving territorial disputes, the commission may consider, but not be limited to consideration of, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population, the degree of urbanization of the area, its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services.

Section 366.05(7) and (8), F.S., state:

> (7) The [C]ommission shall have the power to require reports from all electric utilities to assure the development of adequate and reliable energy grids.

[26] The Grid Bill codified our authority to approve and review territorial agreements involving investor-owned utilities and expressly granted us jurisdiction over rural electric cooperatives and municipal electric utilities for approving territorial agreements and resolving territorial disputes. See Richard C. Bellak and Martha Carter Brown, Drawing the Lines: Statewide Territorial Boundaries for Public Utilities in Florida, 19 Fla. St. L. Rev. 407, 413 (1991).

> (8) If the [C]ommission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, including inadequacies in fuel diversity or fuel supply reliability, it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will accrue to the electric utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission facilities, with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to ensure compliance. The electric utilities involved in any action taken or orders issued pursuant to this subsection shall have full power and authority, notwithstanding any general or special laws to the contrary, to jointly plan, finance, build, operate, or lease generating and transmission facilities and shall be further authorized to exercise the powers granted to corporations in chapter 361. This subsection shall not supersede or control any provision of the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518.

Section 366.04(7)(a)-(e), F.S., which relate to requirements for affected municipal electric utilities to conduct a referendum election, state as follows:

> (a) As used in this subsection, the term "affected municipal electric utility" means a municipality that operates an electric utility that:
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> 1. Serves two cities in the same county;
> 2. Is located in a noncharter county;
> 3. Has between 30,000 and 35,000 retail electric customers as of September 30, 2007; and
> 4. Does not have a service territory that extends beyond its home county as of September 30, 2007.
>
> (b) Each affected municipal electric utility shall conduct a referendum election of all of its retail electric customers, with each named retail electric customer having one vote, concurrent with the next regularly scheduled general election following the effective date of this act.
>
> (c) The ballot for the referendum election required under paragraph (b) shall contain the following question: "Should a separate electric utility authority be created to operate the business of the electric utility in the affected municipal electric utility?" The statement shall be followed by the word "yes" and the word "no."
>
> (d) The provisions of the Election Code relating to notice and conduct of the election shall be followed to the extent practicable. Costs of the

> referendum election shall be borne by the affected municipal electric utility.
>
> (e) If a majority of the affected municipal electric utility's retail electric customers vote in favor of creating a separate electric utility authority, the affected municipal electric utility shall, no later than January 15, 2009, provide to each member of the Legislature whose district includes any portion of the electric service territory of the affected municipal electric utility a proposed charter that transfers operations of its electric, water, and sewer utility businesses to a duly-created authority, the governing board of which shall proportionally represent the number of county and city ratepayers of the electric utility.

We note that paragraph (e) was repealed as of July 1, 2014, by s. 66, ch. 2014-17.

The Petition states that Rules 25-6.0439(1) and (2), and 25-6.0441(1), F.A.C., are relevant, applicable, and support the issuance of the requested declaratory statement. In defining "territorial agreement" and "territorial dispute," Rule 25-6.0439, F.A.C., states as follows:

> For the purpose of Rules 25-6.0440, 25-6.0441 and 25-6.0442, F.A.C., the following terms shall have the following meaning:
>
> (1) "Territorial agreement" means a written agreement between two or more electric utilities which identifies the geographical areas to be served by each electric utility party to the agreement, the terms and conditions pertaining to implementation of the agreement, and any other terms and conditions pertinent to the agreement;
>
> (2) "Territorial dispute" means a disagreement as to which utility has the right and the obligation to serve a particular geographical area.

Rule 25-6.0441, F.A.C., states the circumstances under which a territorial dispute may be initiated, as follows:

> (1) A territorial dispute proceeding may be initiated by a petition from an electric utility requesting the Commission to resolve the dispute. Additionally the Commission may, on its own motion, identify the existence of a dispute and order the affected parties to participate in a proceeding to resolve it. . . .

The Petition states that our orders approving the electric service areas and territorial boundaries between Vero Beach and FPL (Territorial Orders) are relevant, applicable, and support the issuance of the requested declaratory statement, as follows:

> Order No. 5520, issued August 29, 1972, in Docket No. 72045-EU, In re: Application of Florida Power and Light Company for approval of a territorial

agreement with the City of Vero Beach (approving the original territorial agreement between Vero Beach and FPL).

Order No. 6010, issued January 18, 1974, in Docket No. 73605-EU, 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 (approving a slight modification of the territorial agreement with no facilities or customers being affected).

Order No. 10382, issued November 3, 1981, in Docket No. 800596-EU, In re: Application of FPL and the City of Vero Beach for approval of an agreement relative to service areas (approving as in the public interest a territorial agreement where each utility transferred a number of electric service accounts to the other) and Order No. 11580, issued February 2, 1983, in that same docket (consummating order).

Order No. 18834, issued February 9, 1988, in Docket No. 871090-EU, In re: Petition of Florida Power & Light Company and the City of Vero Beach for Approval of Amendment of a Territorial Agreement (approving amendment to the territorial agreement by establishing a new territorial dividing line).

B. Indian River County's Statement of Facts

Indian River County states that it does not operate under a county charter and that it has such power of self-government as is provided by general or special law, citing to Florida Constitution Article VIII § 1(f)-(g), and Sections 125.01 and 125.42, F.S. The Petition alleges that in 1987, Indian River County, by Resolution, granted, and Vero Beach accepted, an exclusive electric service Franchise Agreement for certain unincorporated geographic areas of the County (Franchise Area). The Petition alleges that the Franchise Agreement grants Vero Beach (1) the exclusive right to supply electric service to certain parts of the unincorporated areas of the County, and (2) the right to utilize the streets, bridges, alleys, easements, and public places for the placement of its facilities for a period of 30 years. The County states that pursuant to the Franchise Agreement, Vero Beach has erected poles, fixtures, conduits, wires, meters, cables, and other such electric transmission and distribution facilities for the purpose of supplying electricity within the Franchise (Electric Facilities). The County alleges that it is not going to renew the Franchise Agreement when it expires on March 4, 2017.

The Petition states that as a Vero Beach electric customer and as the elected representative of all Indian River County citizens, the County is especially mindful of its role in ensuring that its citizens in the Franchise Area have access to high quality, cost-effective electric service. The County alleges that the health, safety, and welfare of its citizens depend upon this indispensable service, and reliable and affordable electricity is vital to the economic development and well-being of the entire County. The Petition states that in light of the Franchise Agreement termination, it is the County's duty and intent to make those necessary arrangements as will ensure the seamless and uninterrupted provision of high quality, reliable, electric service to customers within the Franchise Area.

Indian River County alleges that Vero Beach's electric service within the Franchise Area has become increasingly more contentious and controversial. The Petition alleges that the customers in the Franchise Area have no voice in the utility's operation and management and no redress to any governmental authority because they reside outside the city limits and have no vote in city elections. The Petition further states the utility customers have no regulatory recourse regarding their electric service provider because most municipal utility actions are outside our authority.

Indian River County states that Vero Beach has refused to comply with the requirements of Section 366.04(7), F.S., by failing to conduct an election or to otherwise create an electric utility authority that would include representation of non-city customers. The Petition alleges that there is substantial subsidization of Vero Beach's general government operating budget from non-city Franchise Area customers who receive no city services. The Petition states that a Vero Beach residential customer can pay approximately a third more for electricity than an FPL customer living across the street.

The Petition alleges that in 2013, Vero Beach and FPL agreed to the sale of Vero Beach's electric utility system to FPL, which contemplates FPL serving the Franchise Area and the territories within Vero Beach and the Town of Indian Shores. The County states that it supports this sale and is prepared to negotiate the necessary franchise agreement and any other required documentation within its authority that would enable FPL to serve customers within the Franchise Area. At this time, that sale is still pending with several outstanding issues, and there have been some reports suggesting that the transfer may not be completed. The Petition states that if the proposed transfer from Vero Beach to FPL occurs, the questions asked in the Petition will be unnecessary and Indian River County shall take all actions necessary to facilitate the seamless and uninterrupted transfer of customers to FPL.

C. Description of How the Statutory Provisions, Orders, or Rules Identified May Substantially Affect Indian River County in its Particular Set of Circumstances

The Petition states that it is requesting a declaration "regarding the effect of the expiration of the Franchise on a number of critical matters affecting the substantial interest of the Board," as to its rights, duties, and responsibilities on its own behalf and on behalf of its citizens in the Franchise Area, for the following reasons:

- In order to properly assess the impact of the Franchise Agreement expiration on "its particular circumstances as a [Vero Beach] electric customer and as the sole authority to grant a franchise to a successor electric supplier."

- To obtain a declaration on "the Board's responsibilities regarding the electric reliability and electric grid within the County in view of the Franchise termination."

- "[T]o comprehensively understand its role and the associated legal rights, duties, and responsibilities with respect to the provisioning of electric service within the Franchise Area and the potential issues that may be associated with granting a franchise to a successor provider."

- To understand what jurisdiction Section 366.04(7), F.S., gives to this Commission and what consequences Vero Beach's alleged failure to comply with the statute has on Indian River County as a customer, Vero Beach's "present supplying of electricity," the effect of the Franchise Agreement expiration, and Indian River County's planning for a successor electric service provider in the Franchise Area.

Indian River County states that it has an actual need to understand the applicability of Chapter 366 and our rules and orders to the facts and issues presented so that the County will be able to properly plan, prepare, and designate a successor electric service provider in the Franchise Area and take such other actions necessary to ensure the availability of safe, reliable, and cost effective electric service in the Franchise Area after the Franchise expires.

D. Indian River County's Legal Argument

Indian River County argues that before the Franchise Agreement was executed in 1987, any electric service provided by Vero Beach within the unincorporated areas of the County was ancillary to Vero Beach's service within its city limits and was subject to general law and common law principles regarding its occupation of public property within the unincorporated areas of the County. The Petition alleges that the Franchise Agreement for electric service outside Vero Beach's city limits significantly and materially changed the relationship between the parties and that the Franchise Agreement, as a contract, established and controls the rights, duties, and responsibilities of Vero Beach with respect to its electric service within the unincorporated areas of the County and any contracts relating to that service.

The County argues that even though we have specific jurisdiction to approve territorial agreements that determine the service areas of each utility, Vero Beach's fundamental legal authority to provide electric service within the unincorporated areas of the County is expressly granted by the Franchise Agreement. The County alleges that once the Franchise Agreement expires in 2017, Vero Beach will not have any right to construct, maintain, and operate its electric system on the easements and other public places described in the Franchise Agreement. The County alleges that without this authority, Vero Beach will be required to remove its Electric

Facilities unless it can negotiate a transfer to the successor electric service provider. Further, the Petition alleges that Vero Beach would have no legal authority to use its Electric Facilities to deliver and provide electric service to customers in the Franchise Area in the unincorporated areas of the County. The County states that once Vero Beach's Franchise Agreement expires and it has no legal right to serve the Franchise Area, there are no legal consequences to Indian River County or the Franchise Area customers for any contracts Vero Beach may have, including the municipal utility contracts with OUC and Florida Municipal Power Agency, and that these contracts do not provide Vero Beach with any authority to continue service in the Franchise Area after the Franchise Agreement expires.

Indian River County states that after the Franchise Agreement expires, the territorial agreements and boundaries between Vero Beach and FPL become invalid with respect to the Franchise Area, and our Territorial Orders are "called into question." The Petition states that after the Franchise Agreement expires, we will not have any authority under Chapter 366, F.S., to designate Vero Beach the electric service provider within the Franchise Area. The County states that our authority under Section 366.05, F.S., to authorize certain improvements as to plant and equipment of any public utility remains subject to the utility's lawful right to occupy streets, rights-of-way, easements, and other property, both public and private.

The Petition states that after the Franchise Agreement expires, there would be no limitation on the County's authority to acquire Vero Beach's Electric Facilities and resell service, or to grant a franchise to FPL or any other successor electric provider within the Franchise Area. Indian River County points out that it possesses those powers of self-government as are provided by general or special law, including municipality powers to provide electric service. The County argues that to the extent it would offer electric service within the Franchise Area, it would be a municipal electric utility pursuant to its municipal powers, and thus an electric utility within the scope of Section 366.02(2), F.S., and not a public utility under Section 366.02(1), F.S. The County states that by planning and preparing for a successor electric service provider, including the grant of a new franchise, the County is properly addressing electric reliability and grid coordination issues within its authority.

The County asks that in the alternative, or to the extent necessary, we should initiate such proceedings as are within our jurisdiction to address the territorial agreements, service boundaries, and electric grid reliability responsibilities so as to ensure the continued and uninterrupted supply of electric service throughout the County.

E. Intervenor and Amici Curiae Responses to the Petition for Declaratory Statement

1. Statement of Facts

Vero Beach states that it accepts Indian River County's alleged facts as true but, because it believes that many pertinent facts have been omitted, it includes what it states is a more complete exposition of the relevant history. TECO takes no position on the statement of facts. OUC cites additional facts concerning its authority and jurisdiction and its contractual relationship with Vero Beach. FECA's Memorandum of Law introduces additional facts

concerning the Grid Bill. FMEA introduces additional facts concerning the historical background of electric industry regulation and our authority. FPL raises certain additional facts related to the pending sale of Vero Beach's utility to FPL.

2. Motions to Dismiss the Petition

Vero Beach and OUC each filed a motion to dismiss the Petition for Declaratory Statement. TECO, Duke and OUC support Vero Beach's motion to dismiss. FPL states that the Petition should be dismissed or denied to the extent the declarations it seeks run counter to our exclusive jurisdiction over the Florida grid and territorial matters. FMEA supports Vero Beach's motion to dismiss on Questions a-c and j-l (See listing of Questions a–n on pages 1-3 herein). FECA concludes that the declaratory relief sought by Indian River County cannot be granted and the Petition should be dismissed. The grounds alleged for dismissal are as follows:

a. The Petition is based on hypothetical and speculative facts and there is no present controversy or need for the declaratory statement

Vero Beach argues that a party seeking a declaratory statement must show that there is an actual present and practical need for the requested declaratory statement and that the declaration addresses a present controversy. Vero Beach states that a declaratory statement should not be issued if it amounts to an advisory opinion based on a hypothetical state of facts which have not arisen and are only contingent, uncertain, rest in the future, and form the basis of merely the possibility of legal injury.

Vero Beach maintains that the Petition should be dismissed because there is no present need for the requested declaratory statement because Indian River County concedes that Vero Beach plans to sell its entire electric system to FPL, the County supports the sale, and it is only unidentified, speculative reports suggesting that the sale will not be completed that allegedly give rise to the need for the declaratory statement. Further, Vero Beach alleges that the County has stated that it is prepared to grant an extension of the Franchise Agreement to Vero Beach to facilitate continued service during the hypothesized transition period, and the expiration of the Franchise Agreement will not occur for more than two and half years, if ever.

Vero Beach argues that Petition's legal assumption that our Territorial Orders will no longer be valid after the Franchise Agreement expires is contrary to Section 120.565, F.S. Vero Beach states that Questions a-i and k-m are similarly based on circumstances that have not occurred or that are purely hypothetical and speculative.

b. The Petition improperly seeks to determine the conduct of Vero Beach and other third parties

Vero Beach states that Rule 28-105.001, F.A.C., provides that a declaratory statement is not the appropriate means for determining the conduct of another person. Vero Beach argues that the Petition should be dismissed because it is improperly asking for declarations that will clearly and unavoidably determine the conduct and substantial interests of Vero Beach and will significantly and primarily affect the conduct of Vero Beach and FPL. Vero Beach states that

eleven of the fourteen requested declaratory statements specifically reference Vero Beach by name and will directly or indirectly determine Vero Beach's conduct. Vero Beach points out as an example that Question d asks us to issue a declaratory statement concerning Commission-approved territorial agreements to which Indian River County is not a party, Question k asks us to issue a declaration concerning legal obligations to unknown "third parties," and several questions appear to seek to determine FPL's conduct.

c. The Petition improperly questions the validity of the Territorial Orders

Vero Beach asks us to dismiss the Petition as a collateral attack on our Territorial Orders. Vero Beach points out that the Board asks in Question d whether the Territorial Orders are invalid, or assumes they are invalid, citing to Questions e and f. Vero Beach states that this is contrary to the Section 120.565, F.S., requirements that a petitioner may only ask for a declaration as to the applicability of statutes, rules, and orders to the petitioner in its particular circumstances and that agency orders must be assumed to be valid. Vero Beach points out that territorial agreements we approve have the full legal effect of our Territorial Orders because they are part of those Orders.

d. This declaratory statement proceeding is not the appropriate vehicle for addressing territorial matters where there is no territorial dispute

Vero Beach states that the County's Petition asks us to resolve hypothetical future territorial disputes between the County and Vero Beach (Question g), between Vero Beach and FPL (Questions d-f and h), or between Vero Beach and other potential electric utilities (Questions f, h-j, m, and possibly n). Vero Beach argues that the hypothetical disputes arise because the County is asking us to declare that it can pick whatever utility it wants to serve in the unincorporated areas of the County where Vero Beach presently serves. Vero Beach asks us to dismiss the Petition because these results are contrary to Florida statutory and decisional law and are not an appropriate subject for a declaratory statement.

Vero Beach argues that there is no territorial dispute to be addressed, which underscores the speculative and hypothetical nature of the County's requests, as well as the impropriety of the County's efforts to utilize the declaratory statement process to address what is, at most, a highly speculative future dispute. Vero Beach states that we should reject the County's attempt to circumvent this Commission's territorial dispute procedure and associated evidentiary hearing and should accordingly dismiss the Petition.

e. Indian River County improperly assumes as undisputed the threshold legal issues involving the County's authority to provide electric service and the status of Vero Beach's Electric Facilities which are in dispute and cannot be resolved in this proceeding

Vero Beach argues that nothing in Section 120.565, F.S., authorizes a petition for declaratory statement to assume legal conclusions. In the Petition, the County improperly assumes as true threshold legal issues concerning (1) the County's basic authority to provide

electric service and (2) the status of Vero Beach Electric Facilities located in County rights-of-way if the Franchise Agreement expires or terminates.

Vero Beach alleges that Questions a-c, e, and g incorrectly assume that the County is authorized to provide electric service. Vero Beach argues that nothing in Section 125.01(1)(k) and (q), F.S., makes reference to the provision of electrical services by a county, nothing in Chapter 125, F.S., specifically authorizes the County to provide electrical service, and no county in Florida provides such service. Vero Beach maintains that this threshold legal issue involving the interpretation of provisions of Chapter 125, F.S., should be resolved in a circuit court, not assumed in this declaratory statement proceeding.

Vero Beach alleges that the Petition incorrectly assumes that if the Franchise Agreement terminates, the County can require Vero Beach to remove its Electric Facilities from the County's rights-of-way. Vero Beach states that the resolution of this legal issue will involve the construction of the Franchise Agreement, the application of preemption doctrine, and the application of various real property principles including the rights of hold-over tenants, the interpretation of easements, the analysis of eminent domain law, and the analysis of potential prescriptive rights. Vero Beach maintains that such complex real property issues should be resolved by a circuit court and cannot be assumed away in this declaratory statement proceeding.

f. Federal Power Act implications

OUC states that Questions c-e, h, and m may implicate the Federal Power Act.[27] OUC explains that the Federal Power Act grants the Federal Energy Regulatory Commission (FERC) certain jurisdiction over the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale interstate commerce and over municipal utilities concerning standards for the reliable operation of the bulk power supply system. OUC argues that if Questions c-e, h, and m are answered in the affirmative, the decision would potentially apply to investor owned utilities and other utilities that own and operate electric distribution and transmission infrastructure subject to franchise agreements. This would lead to the conclusion that an underlying landowner could seriously impact the integrity of the bulk power supply system simply by choosing to terminate the underlying franchise, easements, or rights-of-way that allow the transmission provider to locate and install the equipment to provide service, all without regard to Commission-approved territorial agreements, regulatory requirements or standards for grid operation. OUC argues that such conclusions could lead to instability in the operation of the bulk power supply system and could invite FERC to try to expand its jurisdiction. OUC concludes that the far-reaching implications of the requested declarations make the academic exercise of the type requested in the Petition improper in an action for declaratory statement.

[27] These Questions essentially address Indian River County taking possession of the Electric Facilities, voiding the territorial agreements, supplying electric service, and designating a successor provider.

g. Request for alternative relief

Vero Beach argues that we should dismiss the County's request for alternative relief because such a request is legally improper for a petition for declaratory statement. Vero Beach argues that the County lacks standing to pursue its real interest of lower electric rates through a territorial proceeding, citing to Ameristeel v. Clark, 691 So. 2d 473, 478 (Fla. 1997). Vero Beach states that the County has not complied with the pleading requirements of Rule 28-106.201, F.A.C., particularly the requirements to identify disputed issues of material fact, to identify the rules and statutes that entitle it to relief, and to explain how the facts alleged relate to the rules and statutes.

3. The Intervenors' and Amici Curiae's Responses in Opposition to the Petition

Vero Beach argues that if we do not grant its motion to dismiss, we should deny the majority of the statements requested in Questions a – n or should issue declarations contrary to the answers requested by Indian River County. OUC supports Vero Beach's Response in Opposition to the Petition. FMEA states that the issues raised are of great concern to its 34 municipally-owned electric utility members, and supports Vero Beach's arguments as to certain positions and specific Questions, as explained below. FMEA supports Vero Beach's position on Questions a-c (concerning whether the County under certain circumstances might be a public utility or electric utility) and j-l (concerning, generally, application of 366.04(7), Indian River County's liability regarding third party contracts, and the County's responsibilities during a transmission period following expiration of the Franchise Agreement). TECO, Duke, and FECA argue that the Petition should be dismissed or denied. The intervenors' and amici curiae's responses in opposition to the Petition, which address Questions a–n on the merits, are as follows:

a. The Commission has exclusive and superior jurisdiction over Vero Beach's service territory, and the Franchise Agreement has no effect on the Commission's jurisdiction or Territorial Orders.

Vero Beach argues that the Petition should be denied to the extent the County is requesting declarations that run counter to our exclusive and superior jurisdiction to that of Indian River County[28] over "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."[29] Vero Beach asserts that the County's argument, that after the Franchise Agreement expires, Vero Beach will have no right to serve, is contrary to and would undermine our exclusive jurisdiction over all territorial matters, planning, development, maintenance of the grid, and uneconomic duplication of facilities.

Vero Beach argues that our exclusive jurisdiction over these matters is grounded not only in the Legislature's sound policy of avoiding the uneconomic duplication of facilities; it is also

[28] Section 366.04(1), F.S.
[29] Sections 366.04(1) and (2)(d), and 366.04(5), F.S..

grounded in the need for jurisdiction over service areas to prevent antitrust violations. Order No. PSC-13-0207-PAA-EM, at p. 20, issued May 21, 2013, in Docket No. 120054-EM, In re: Complaint of Robert D. Reynolds and Julianne C. Reynolds Against Utility Board of the City of Key West, Florida d/b/a Keys Energy Services Regarding Extending Commercial Electrical Transmission Lines to Each Property Owner of No Name Key, Florida. TECO, FECA, and FMEA agree with Vero Beach that failure of this Commission to actively supervise the territorial decisions of utility service territories would be considered per se Federal antitrust violations under the Sherman Act, 15 USC §12. Parker v. Brown, 317 U.S. 341, 350 (1942).

Vero Beach argues that the Franchise Agreement is of no effect or consequence relative to our exclusive and superior jurisdiction over territorial matters and the planning, development and maintenance of a coordinated electric power supply grid in order to prevent the uneconomic duplication of distribution facilities, and, therefore, does not affect the validity of the our Territorial Orders. Vero Beach maintains that because of our exclusive and superior jurisdiction over service territories, the Franchise Agreement was never necessary to Vero Beach's serving the Franchise Area.

FPL, OUC, Duke, TECO, FECA, and FMEA generally echo or support Vero Beach's arguments that we have exclusive and superior jurisdiction over Vero Beach's service territory, and that the Franchise Agreement has no impact on our jurisdiction or Territorial Orders. FMEA states that the Grid Bill is the heart of our regulatory authority over electric service territories in Florida and that if each of Florida's 410 municipalities and 67 counties could choose their own retail electric provider, or unilaterally evict an existing electric utility provider at the end of a franchise agreement term, there would be no coordinated electric power grid in Florida. FECA believes that if a local government were allowed to evict a utility from an area it serves and had planned to serve in the future, the Grid Bill's purposes of prevention of further uneconomic duplication of facilities would be undermined.

Duke argues that any provisions in the Franchise Agreement that purport to authorize Vero Beach to provide electric service within the County are void and that the Petition should be dismissed or denied to the extent that it seeks declarations that run counter to our exclusive authority to approve territorial agreements. Duke states that the territorial agreement between FPL and Vero Beach has no expiration date and will continue in effect until the two parties either mutually agree to, or we order, its termination. Duke argues that an electric utility has an obligation to provide service to customers within its territorial boundaries until we relieve it of that obligation. Duke states that the Franchise Agreement exists to provide a mechanism for the County to recoup the costs of providing and maintaining the rights-of-way through the collection of franchise fees. Duke takes no position on Question j regarding our jurisdiction under Section 366.04(7), F.S.

TECO states that the territorial agreement and amendments we approved in our Territorial Orders merged with and became a part of our Territorial Orders and that any modification or termination of them must first be made by this Commission. TECO maintains that the Territorial Orders control, not the Franchise Agreement, and local governments have no

authority to "trump" our Territorial Orders with franchise agreements. TECO takes no position on the merits of which utility should serve the customers at issue.

b. Indian River County has no authority to choose an alternative electric service provider in order to get lower rates.

Vero Beach argues that the Petition is an attempt by Indian River County to usurp our exclusive and superior jurisdiction over service territories, planning, and the avoidance of uneconomic duplication of facilities, in an effort to get lower rates. Vero Beach states that such attempts have been consistently and unwaveringly rejected by this Commission and by the Florida Supreme Court since at least as early as 1968, and we must reach the same result here and deny the County's requested statements by which it hopes to be able to pick and choose electric suppliers. Vero Beach, TECO, and FMEA allege that the County's assertion it has the authority to designate a successor electric service provider in areas presently served by Vero Beach is contrary to the Florida Supreme Court's holding in Storey v. Mayo, 217 So. 2d 304, 307-308 (Fla. 1968), cert. denied 395 U.S. 909 (1969) (stating that an individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself).

c. Indian River County's assertion that non-City residents "have no redress at all to any governmental authority" is false and affords no basis for the declaratory statement.

Vero Beach alleges that the County's claim of "no redress" is patently false, affords no basis for the requested declaratory statements and we should accordingly deny the requested declaratory statements. In support of this position, Vero Beach cites to Storey, 217 So. 2d at 308, where the Florida Supreme Court affirmed our order approving a territorial agreement between the City of Homestead and FPL. Vero Beach points to the Court's reasoning that in the event of excessive rates or inadequate service, the customers' appeal under Florida law is to the courts or the municipal council. Vero Beach states that the Town of Indian River Shores has filed a lawsuit against Vero Beach raising exactly this claim as the first count of the complaint.[30]

d. Vero Beach provides electric service in its Commission-approved service territory pursuant to the Commission's express jurisdiction, the Territorial Orders, and additional legal authority.

Vero Beach states that, at a minimum, it has provided service pursuant to the Territorial Orders since the issuance of Order No. 5520 in August 1972. Vero Beach states that Indian River County's argument that Vero Beach has no legal right to serve absent the County's authorization pursuant to the Franchise Agreement is false on its face: If Vero Beach had no right to serve in 1972, we would not have approved its service area. Vero Beach maintains that it has provided service subject to our express statutory jurisdiction over service territories and over

[30] Town of Indian River Shores v. City of Vero Beach, Case No. 312014 CA 000748 (Fla. 19th Circuit in and for Indian River County, Complaint filed July 18, 2014).

the planning, development, and maintenance of a coordinated power supply grid for the avoidance of uneconomic duplication of facilities since the enactment of the Grid Bill in 1974 and pursuant to our "implicit authority" before that. Further, Vero Beach alleges that it provides electric service in the unincorporated areas of the County pursuant to its home rule powers under section 2(b), Article VIII of the Florida Constitution and pursuant to its powers under Sections 166.021 and 180.02(2), F.S.

Vero Beach states that the territorial agreements we approved are part of our Territorial Orders and thus have the full legal effect and authority of those Orders. Vero Beach alleges that neither the County nor any other officer or agency of the County ever appeared in any of this Commission's proceedings pursuant to which our Territorial Orders were issued. Vero Beach states that the County acquiesced in Vero Beach's serving in the unincorporated areas of the County allocated to Vero Beach, with FPL's express agreement and support, in at least three separate instances before the Franchise Agreement ever existed, and in one additional territorial amendment since the Franchise Agreement existed. Vero Beach alleges that this acquiescence may well provide additional, separate legal authority for Vero Beach's continuing ability to serve using the County's rights-of-way, but such issues should be addressed by the courts.

Vero Beach and FECA maintain that no subsection of Chapter 125, F.S., authorizes counties to own or operate electric utility systems, although that chapter does allow counties to purchase or sell water, sewer, and wastewater reuse utilities. They allege that based upon a basic tenet of statutory construction, the listing of the other utility services excludes electric utility services, and therefore Chapter 125, F.S., does not authorize the County to provide electric service to the public.

e. <u>The Legislature's statutory system of governing service areas, electric system planning, and avoiding uneconomic duplication of facilities would be undermined if a county could simply designate electric suppliers at will.</u>

Vero Beach alleges that most of Indian River County's requests, including Questions d-i, m, and n, turn critically on the mistaken belief that the Franchise Agreement is the sole legal authority for Vero Beach to use the County's rights-of-way and to provide electric service. Vero Beach states that if the County's argument is accepted as true, it would follow that any utility would need a franchise agreement with any county or city in which it provides service, and the county or city would have the power to designate any utility of its choosing upon expiration of a franchise. Vero Beach maintains this argument is absurd, as evidenced by the fact that Vero Beach operated in the unincorporated areas of the County for at least 35 years, and probably for close to 60 years, before there was ever a Franchise Agreement and that other Florida utilities serve in many cities and many counties without franchises.

Vero Beach argues that we must deny the requested statements relating to the County's asserted powers to evict Vero Beach from County rights-of-way. Vero Beach maintains that if the County's arguments are accepted, it would undermine the ability of parties to rely on their territorial agreements or on our orders approving them, with adverse impacts on whichever

parties become disfavored by a county or city for any reason. Vero Beach asserts that no utility could reasonably make investments if it were uncertain as to the continuation of its legal ability to serve. Vero Beach states that the Florida Legislature has fully and definitively addressed this potential problem by enacting the Grid Bill, which gives us the exclusive jurisdiction over all such matters and pursuant to which utilities can plan to serve their Commission-approved service areas in reliance on the statutes and our territorial orders.

f. Termination of the Franchise Agreement does not affect Vero Beach's rights to provide service in its Commission-approved service area or to continue using public rights-of-way or private easements

FECA states that the issues before us are of great concern to FECA, its 17 electric cooperative members and to the consumer-members that are served by those electric cooperatives. FECA states that one issue of extreme significance is whether a utility can rely on Commission-approved territorial agreements and the territorial provisions in Section 366.04, F.S., to define the service area that it must plan to serve now and in the future, or whether a local government can unilaterally take away a utility's customers and service area whenever a franchise agreement expires or if there is no franchise agreement.

FECA argues that termination of the Franchise Agreement does not affect Vero Beach's rights to continue using the County, state, city, or federally-owned rights-of-way or private easements. FECA states that Section 361.01, F.S., authorizes electric utilities to use eminent domain to obtain easements they require, both on public and private lands, and Vero Beach can obtain the easements it needs to continue to provide service in the Franchise Area. FECA states that Indian River County's reliance on Section 337.401(2), F.S., for the proposition that it can deny use of its rights-of-way for no cause is misplaced because that section authorizes local government to prescribe and enforce reasonable rules or regulations for the placement of utility facilities in rights-of-way, but gives no authority for a local government to require a utility to remove its facilities from a right-of-way or completely prohibit a utility from using its rights-of-way under any circumstances without good cause.

F. Indian River County's Consolidated Response and Objections to the Motions to Dismiss and Responses in Opposition to the Petition

Indian River County states that it does not disagree with the basic legal standards cited in Vero Beach's and OUC's motions to dismiss, but that the Petition fully complies with Florida law. The County states that the Petition is not based upon speculation or hypothetical situations because the Franchise Agreement's March 5, 2017 expiration is a real fact that presents a present controversy since the issues associated with transitioning to a new electric service provider require years of planning and preparation. The County maintains that because a condition precedent to selling Vero Beach's system to FPL cannot currently be met, there is a present and real need for us to answer the questions raised in the Petition.

The County states that none of the questions seek to determine, direct, instruct, or control the conduct of another person. The County maintains that even though eleven of the fourteen

questions reference Vero Beach by name, the questions seek answers for what the County should or should not do or they ask necessary prefatory legal questions. As an example, the County states that in asking whether the territorial agreements become invalid by operation of law once the Franchise Agreement expires, the County wants to understand our jurisdiction, if any, with respect to the Electric Facilities in the Franchise Area once the Franchise Agreement expires and is not seeking to determine, control, or otherwise require any conduct by Vero Beach or FPL.

In regard to its alternative request for relief, the County states that during the course of this proceeding, we may become aware of facts, laws, or other conditions that may require our further investigation, and that it would be irresponsible for us not to take up issues that raise questions. The County states that it is appropriate for the Petition to suggest that we may want to initiate a separate proceeding to do something within our jurisdiction that cannot be done in a declaratory statement proceeding if we determine that the issue merits further exploration.

Indian River County states that it is not seeking to terminate the territorial agreements between FPL and Vero Beach or otherwise challenge our authority in this area. Instead, the County alleges that it wants answers to the key issue of the effect of the Franchise Agreement's expiration on the Territorial Orders vis a vis what the County may or may not do. The County admits that Questions d, e, and f assume that the Territorial Orders may be invalid for the purpose of fully understanding the consequences of the Franchise Agreement expiration.

The County states that although a territorial order may give a utility the right to serve a geographic area, the utility may only serve subject to obtaining a variety of different property rights, authorizations, approvals, or permits from local, state, or federal government, and property owners, as appropriate. In explaining its concept of concurrent authority, the County states that a territorial order does not grant unconditional authority to begin setting poles, stringing wires, burying cable, installing transformers, or placing any other equipment in a subdivision. The County argues that this Commission and Indian River County exercise concurrent responsibilities with respect to the provision of electric service within the County and the that statutes require us to work together in exercising our respective duties.

Indian River County argues that it is irrelevant for Vero Beach to argue that the City provided service within the County without a franchise agreement prior to the 1987 Franchise Agreement because prior to the adoption of the 1968 Florida Constitution, non-charter counties such as Indian River County did not have authority to require a franchise as a precondition of service or use of the County's property. The County argues that it now has a broad grant of authority under Section 125.01, F.S., that it is only limited if there is a general or special law clearly inconsistent with its delegated powers and that a non-charter county's power to require franchise agreements from electric utilities has not been found inconsistent with our powers.

The County states that a franchise agreement is a bargained for exchange in which a county relinquishes a property right. The County maintains that it gave Vero Beach the right to access and use County property along with an exclusive right to provide electricity in exchange for which Vero Beach collects and remits a franchise fee to the County. The County argues that the Florida Supreme Court has recognized that with expiration of the franchise, the benefits of the franchise will also expire.

In support of its position, Indian River County relies upon In re: Petition to relieve Progress Energy Florida, Inc. of the statutory obligation to provide electrical service to certain customers within the City of Winter Park, pursuant to Section 364.03 and 366.04, F.S.[31] The County argues that in that docket, after expiration of the franchise agreement between the City of Winter Park and Progress Energy Florida, Inc. (f/k/a Florida Power Corp. (FPC)), we did not tell Winter Park that FPC was the authorized electric service provider that would continue to serve customers, that it would be uneconomic for Winter Park to duplicate FPC's facilities, that Winter Park could not purchase FPC's facilities, or that Winter Park could not be the electric utility. Indian River County states that we "recognized the concurrent authority of Winter Park and accepted the fact that when the franchise expires, if the parties could not negotiate a successor franchise, then the PSC-designated electric utility would no longer be the electric utility for that area." The County alleges that subsequent to Florida Power Corp. v. City of Winter Park, 887 So. 2d 1237 (Fla. 2004), we continued to work concurrently to give effect to the consequences of the expired franchise and relieved Progress Energy of its obligations to provide electric service in Winter Park. The County states that while there was no territorial order that needed to be revoked or modified in 2005, we did not approve an actual territorial agreement between Winter Park and Duke until 2014.

Indian River County's response to intervenors' and amici curiae's arguments that utilities cannot be evicted at the expiration of a Franchise Agreement is that utilities are sophisticated contracting parties that are aware of the agreement's termination date when executing the contract. The County argues that eviction at the end of a franchise would interfere with a utility's underlying power and services contracts "only if you don't act responsibly," citing to the Franchise Agreement's five year advance notification of termination provision. The County states that franchises have meaning and purpose, and to say that a utility may holdover after a franchise has expired is just as repugnant as the unilaterally imposed franchise fee rejected by the Florida Supreme Court. The County states that given its decision not to renew the franchise agreement, we should answer the Petition, and together the County and this Commission "can work together to transition electric service to a worthy successor."

V. FINDINGS

In accordance with Rule 28-105.003, F.A.C., we are relying on the facts contained in Indian River County's Petition without taking a position on the validity of those facts. This Order will be controlling only as to the facts relied upon and not as to other, different or additional facts. As our conclusion is limited to the facts described above, any alteration or modification of those facts could materially affect the conclusions reached in this declaratory statement. We take official recognition of Town of Indian River Shores v. City of Vero Beach and of Resolution 2014-069 of the Board of County Commissioners of Indian River County because of their relevance to our determination of Question j, as explained in Section F below.

[31] Order No. PSC-05-0453-PAA-EI, issued April 28, 2005, in Docket No. 050117, and Consummating Order No. PSC-05-0568-CO-EI, issued May 23, 2005.

We deny the Petition for failing to meet the Section 120.565, F.S., threshold requirements for issuance of a declaratory statement for the reasons explained below.

A. The Petition improperly assumes that the Territorial Orders are invalid and fails to state with particularity petitioner's set of present, ascertained or ascertainable circumstances

Section 120.565, F.S., requires a petition for declaratory statement to state with particularity the petitioner's set of circumstances to which the agency will apply its interpretation. The Petition alleges that the County's specific set of circumstances to which the law should be applied is its status as a Vero Beach electric customer and its status as sole authority, upon expiration of the Franchise Agreement, to terminate Vero Beach as the electric service provider and to designate by franchise agreement a successor electric utility service provider or to provide the service itself. Other facts raised in the Petition explain why Indian River County filed its Petition for Declaratory Statement, but are not relevant to an analysis of whether the questions posed meet the requirements of Section 120.565, F.S.

Other than the bare assertion that Indian River County is a Vero Beach electric customer, the Petition gives no facts concerning the County's status as a Vero Beach electric customer and does not ask for a declaratory statement related to its customer status. The alleged fact that the County is an electric customer of Vero Beach is therefore irrelevant to the requested declaratory statement.

The County's allegation that it has sole authority upon expiration of the Franchise Agreement to terminate Vero Beach as the electric service provider and to designate by franchise agreement a successor electric utility service provider or to provide service itself, does not constitute a set of facts upon which to apply the law. Instead, this statement assumes a legal conclusion that the Territorial Orders are inapplicable or invalid as to Indian River County because of its authority to issue franchise agreements. Based upon this assumption, the Petition then asks 14 questions, with subparts, which are listed on pages 1-3 of this recommendation. The County states that it is asking for a declaratory statement in order to be fully apprised of its rights, duties, and responsibilities in the event the sale of Vero Beach's utility to FPL does not close. Thus, Questions a-n are primarily centered on what actions Indian River County might or might not take relating to its alleged responsibility to pick a new electric service provider for the County after the Franchise Agreement terminates on March 4, 2017.

Section 120.565(2), F.S., requires that orders being applied to a petitioner's specific circumstances be presumed valid. The Petition does not comply with Section 120.565(2), F.S., because the Petition and Questions a-n incorrectly presume the Territorial Orders will be invalid as to Indian River County upon expiration of the Franchise Agreement. The Petition then uses this presumption of invalidity as a statement of the County's factual circumstances. If the County's assumption that the Territorial Orders are invalid is eliminated, there is no set of factual circumstances alleged which are applicable to the County and upon which to apply statutory provisions, rules, or orders.

The Petition is further premised on a legal assumption that Indian River County has statutory authority to assume ownership of Vero Beach's Electric Facilities and provide electric service within the Franchise Area (Questions a, b, e, g, i) and that it has legal authority to choose the electric service provider for the Franchise Area other than Vero Beach once the Franchise Agreement expires, notwithstanding our Territorial Orders (Questions c, f, h-l, and n). This assumption is not a present ascertainable fact, but is an untested legal theory, and is therefore not appropriately addressed in a declaratory statement.

In addition, Questions a–c, e-i, and k-m are based on alleged circumstances concerning the provision of electric service that are hypothetical, speculative, and do not demonstrate a present, ascertained or ascertainable statement of facts. The Petition gives multiple scenarios of what general actions Indian River County might or might not take after the Franchise Agreement expires in 2017. These actions include Indian River County "acquiring" or "assuming ownership" of Vero Beach's Electric Facilities (Questions a, b, c), and then possibly "leasing or otherwise conveying" those facilities to FPL or "some other provider of electric service (e.g., a public utility, another municipality, or a cooperative)" (Question c, m). The Petition alleges that the County might supply electric service (Questions a, b, e, g, i) or that FPL or another unnamed third party might become a successor electric service provider to Vero Beach (Question f, h, i, k, l, m). Furthermore, the sale negotiations between FPL and Vero Beach are still pending, and the Petition admits that if the proposed transfer from Vero Beach to FPL is successfully concluded, "the questions posed herein will be unnecessary." This admission and the wide variety of possible future scenarios presented underscore our conclusion that the Petition fails to demonstrate a present, ascertained or ascertainable statement of facts and that Indian River County's alleged factual circumstances constitute a mere hypothetical situation not proper for a declaratory statement.

B. <u>The Petition does not provide a description of how Indian River County may be substantially affected under a particular set of facts by the statutory provisions, rules, or orders it identifies.</u>

The Petition fails to describe how any statutory provisions, rules, or orders may substantially affect Indian River County under its particular set of circumstances, as required by Rule 28-105.002(5), F.A.C. The two identified rule provisions[32] are not discussed in the Petition and individual Questions and so require no further discussion.

The Petition does not describe how the Territorial Orders may substantially affect Indian River County. Further, the Petition fails to identify a controversy, questions or doubts concerning the applicability of statutory provisions or orders over which we have authority, as required by Rule 28-105.001, F.A.C. Rather, the County argues that the Franchise Agreement is the underlying legal authority for the Vero Beach - FPL territorial agreements we approved, which means that once the Franchise Agreement expires, the Territorial Orders are "called into question" and Vero Beach has no right or duty to provide electric service within the

[32] The two rules identified are Rule 25-6.0439(1) and (2), F.A.C., that define the terms territorial agreement and territorial dispute, and Rule 25-6.0441(1), F.A.C., that provides in part that a territorial dispute proceeding may be initiated by petition from an electric utility or onour own motion.

Commission-approved territory. Questions d, e, and f specifically assume the Territorial Orders are invalid. Questions a-c, i, k-l and n ask questions which presume the Orders are inapplicable, and therefore invalid, as to Indian River County. Questions g and h use circular reasoning: They specifically presume the Territorial Orders remain valid after expiration of the Franchise Agreement, but then ask whether the Orders would preclude the County from replacing Vero Beach as the service provider, which could only occur if the Orders were invalid. Questions j and m are not specific enough to determine whether the Territorial Orders are presumed valid. None of these questions describe how the Territorial Orders may substantially affect Indian River County.

Questions a-c refer to subsections 366.02(1) and (2), F.S., that define electric utility and public utility. However, the Petition does not describe how these provisions may substantially affect Indian River County's particular set of circumstances. None of Questions a-n address Sections 366.04(1) or (2), or Sections 366.05(7) or (8), F.S. Question j references Section 366.04(7), F.S., but does not ask about application of that statutory provision to the County, instead asking how Vero Beach's conduct under Section 366.04(7), F.S., might affect the County.

C. The Petition is requesting a general legal advisory opinion.

It follows from the Petition's failure to provide a present, ascertained, or ascertainable set of facts and failure to describe how the statutory provisions, rules, or orders may substantially affect Indian River County in its particular circumstances, that the Petition is asking for a general legal advisory opinion, contrary to Section 120.565, F.S. The Petition asks general questions as to the legal status of the Territorial Orders (Question d); asks whether there are any limitations on the County with respect to our jurisdiction "under Chapter 366, Florida Statutes" (Questions e and f); asks whether there are any issues for the County to address under unspecified rules or orders, or under Chapter 366, F.S. (Question i, l); fails to specify any rule, statute or order at all (Questions d, k), including a question asking about how the conduct of Vero Beach under Section 366.04(7), F.S., would affect the County's responsibilities (Question j); asks questions about our jurisdiction (Questions m, n); and asks about any limitations on an unspecified "successor electric service provider" "under Chapter 366" (Question m). These general questions do not meet the requirements of Rule 28-105.002(5), F.A.C., because they fail to describe how a particular statutory provision or order applies to specific factual circumstances of the County and, instead, ask for a general legal advisory opinion.

The essential question posed by the Petition is whether a non-charter county has the authority to designate an electric utility service provider, or provide that service itself, within the unincorporated territory of the county, notwithstanding the existence of a Florida Public Service Commission order approving a territorial agreement between a regulated public utility and municipal electric utility for that same territory. We do not have the authority to issue a legal advisory opinion or to announce general policy of far-reaching applicability in a declaratory statement proceeding.

D. The Petition asks for a declaratory statement determining the conduct of third persons.

Because a declaratory statement is used to determine how an agency will apply the law to the petitioner's particular circumstances, it is not the appropriate means for determining the conduct of another person. See Rule 28-105.001, F.A.C. Indian River County's Petition asks for a declaratory statement on the effect of expiration of the Franchise Agreement on our Territorial Orders between Vero Beach and FPL so that the Board may plan how to designate a successor electric provider to Vero Beach. The County's position is that once the Franchise Agreement expires, Vero Beach must cease conducting its business in the unincorporated area of the County, and the County may designate a successor electric provider that might be itself, FPL, or some other provider (Questions a–c, e-l, and n). The Petition states that the County might, in some unspecified manner, "acquire" or "assume ownership" of Vero Beach's Electric Facilities (Questions a-c), unless FPL buys the Vero Beach utility, in which case, the County explains, there will be no need for us to answer the Petition. If we were to issue a declaratory statement on the County's Petition, it would directly and significantly impact Vero Beach and FPL and the conduct of their businesses in reliance on the Territorial Orders. Both Vero Beach and FPL ask us to dismiss or deny the County's Petition for Declaratory Statement.

In addition, other individual questions ask for declarations that would directly determine the conduct of third persons. Question d asks for a declaration concerning the legal status of the territorial agreements between Vero Beach and FPL. Question k asks for a declaratory statement concerning Indian River County's legal obligations to Vero Beach or any third parties contracting with Vero Beach relating to electric service, which the Petition explains includes OUC and the Florida Municipal Power Agency. Question m asks about our jurisdiction over Vero Beach's Electric Facilities, and also asks for a declaration concerning an unidentified third party who the County alleges might provide service within the Franchise Area in the future. We are without authority to issue a declaratory statement on the Petition because it would determine the conduct of third persons, that is, how Vero Beach, FPL, OUC, FMPA, or other unidentified third parties would need to conduct their businesses.

E. The Petition asks for declarations that would require an analysis of statutory provisions not within this Commission's authority and/or analysis of the Florida Constitution.

Declaratory statements give an agency's opinion as to the applicability of a statutory provision or of any rule or order of the agency. We decline to issue a declaratory statement as to Questions a-c, e-l, and n because answering those questions would require application of provisions of law not within our authority.

The Petition is premised on a legal assumption that Indian River County has statutory authority to assume ownership of Vero Beach's Electric Facilities and provide electric service within the Franchise Area (Questions a-c, e, g, i) and that it has legal authority to choose the electric service provider for the Franchise Area other than Vero Beach once the Franchise Agreement expires, notwithstanding our Territorial Orders (Questions c, f, h-l, and n). A

complete determination of whether the County meets the statutory definition of "public utility" or "electric utility," whether it has the authority to provide electric service, or whether it has the authority to replace Vero Beach as the service provider, notwithstanding the Territorial Orders would involve an analysis of the powers of counties through interpretation of Chapter 125, F.S., and Florida Constitution Article VIII § 1(f) and (g). It would not be possible to give a complete and accurate declaration on these questions without addressing the County's statutory and constitutional powers. We have no authority over Chapter 125, F.S., or over any provision of the Florida Constitution.[33] Giving an incomplete declaration that only addresses Chapter 366, F.S., would undermine the purpose of the declaratory statement, which is to aid the petitioner in selecting a course of action in accordance with the proper interpretation and application of the agency's statute.[34]

Additionally, the issue raised in Question i of how expiration of the Franchise Agreement affects Vero Beach's use of the County's rights-of-way does not raise a matter within our jurisdiction, and we therefore have no authority to address this issue in a declaratory statement. Question k, addressing contracts between Vero Beach and third parties, does not identify a statute, rule, or order of this Commission to be applied to the petitioner's particular circumstances. We have no jurisdiction over county franchise agreements and, therefore, no authority to issue a declaratory statement on Question l concerning the County's possible future actions concerning extension of its Franchise Agreement with Vero Beach.

F. Question j should be denied because the subject matter raised is currently pending in Circuit Court litigation and a Chapter 164, F.S., governmental conflict resolution proceeding in Indian River County.

By letter of September 2, 2014, Indian River County waived the 90-day statutory deadline for issuing the final order on the Petition until December 15, 2014. The County stated that waiver would be appropriate in order for the County "to participate in good faith in the Chapter 164 conflict resolution process currently underway involving the Town of Indian River Shores, the City of Vero Beach, and Indian River County." The County is participating in the conflict resolution process as a primary conflicting governmental entity pursuant to Resolution No. 2014-069, A Resolution of the Board of County Commissioners of Indian River County, Florida, Joining the Florida Governmental Conflict Resolution Process Initiated by the Town of Indian River Shores with the City of Vero Beach. (Attachment B hereto) Resolution No. 2014-069 states that Indian River County shares the same conflicts with the City of Vero Beach "concerning its conflict over unreasonable electric rates, the City's refusal to comply with the referendum requirements set forth in Section 366.04(7), F.S., and the removal of the City's electric facilities from the Town upon expiration of the City's franchise." The Chapter 164, F.S., conflict resolution process was initiated in relation to Town of Indian River Shores v. City of

[33] Carr v. Old Port Cove Prop. Owners Ass'n, 8 So. 3d 403, 404-405 (Fla. 4th DCA 2009)(a declaratory statement is not the appropriate mechanism to interpret a constitutional provision); PPI, Inc. Fla. Dep't of Bus. & Prof'l Regulation, Div. of Pari-mutuel Wagering, 917 So. 2d 1020 (Fla 1st DCA 2006)(the agency had the authority to deny the request for declaratory statement because it was not authorized under section 120.565, F.S., to construe a constitutional amendment).
[34] Carr, 8 So. 3d at 405.

Vero Beach, Case No. 312014 CA 000748 (Fla. 19th Cir. in and for Indian River County, Complaint filed July 18, 2014).[35] (Attachment A hereto)

Although Indian River County did not mention Town of Indian River Shores v. City of Vero Beach or the conflict resolution proceeding in its Petition or Response, the Petition does note that even though the continuation of electric service by Vero Beach to the Town of Indian River Shores is not within the scope of the Petition, Indian River County's "actions could impact the Town as it deals with similar issues." Vero Beach alleges that the circuit court case raises the exact claim concerning excessive rates or inadequate service as is raised in Indian River County's Petition for Declaratory Statement. We take administrative notice of Town of Indian River Shores v. City of Vero Beach, and of Resolution 2014-069 of the Board of County Commissioners of Indian River County because of their relevance to our determination of Question j of the Petition.

Established case law and prior decisions of this Commission have held that a declaratory statement is not appropriate when another proceeding is pending that addresses the same question or subject matter.[36] In such cases, it would be an abuse of the agency's authority to permit the use of the declaratory statement process as a means for the petitioner to attempt to obtain administrative preemption over legal issues involving the same parties.[37] Question j asks, in part, whether Vero Beach's failure to conduct an election under Section 366.04(7), F.S., has any legal effect on the Franchise or the Board's duties and responsibilities for continued electric service within the Franchise area. Question j is not appropriately addressed in this declaratory statement proceeding because the issue of the City's refusal to comply with the Section 366.04(7), F.S., referendum requirements is pending in Circuit Court and the Chapter 164, F.S., conflict resolution proceeding.

G. The County's Request for Alternative Relief

As alternative relief, the County asks that we initiate proceedings to address the territorial agreements, service boundaries, and electric grid reliability responsibilities so as to ensure the continued and uninterrupted supply of electric service throughout the County. We deny the County's alternative request for relief because it fails to supply sufficient, specific information upon which we could determine whether to initiate any proceedings.

[35] The Town alleges in its Complaint, as Indian River County argues in its Petition, that Vero Beach's authority to provide utility service in the Town is derived directly from the consent of the Town pursuant to an exclusive franchise agreement that the Town will not renew and that Vero Beach must remove its electric facilities from the Town rights-of-way upon expiration of the franchise agreement.

[36] Intrado at p. 15 (petition for declaratory statement denied because, inter alia, the same subject matter or related issues were being addressed in several pending Commission arbitration dockets involving petitioner).

[37] Order No. PSC-02-1459-DS-EC at p. 6, In re: Petition for declaratory statement by Florida Keys Elec. Coop. Ass'n, Inc., (noting that even though the legal issue before DOAH was different than the issue presented in the Petition, the subject matter was the same, and therefore not properly decided by the Commission); Suntide Condo. Ass'n Inc. v. Div. of Fla. Land Sales, Condos. and Mobile Homes, 504 So. 2d 1343, 1345 (Fla. 1st DCA 1987).

VI. CONCLUSION

Based on our findings as set forth above, we deny Indian River County's Petition for Declaratory Statement for failure to meet the statutory requirements necessary to obtain a declaratory statement. Accordingly, we deny the motions to dismiss filed by Vero Beach and Orlando Utilities Commission as moot.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Indian River County's Petition for Declaratory Statement and Such Other Relief as May be Required is denied, as set forth in the body of this Order. It is further

ORDERED that Indian River County's Request for Reconsideration of and Request for Oral Argument on Order No. PSC-14-0423-PCO-EM are denied. It is further

ORDERED that we take official recognition of the pending circuit court case, Town of Indian River Shores v. City of Vero Beach, Case No. 312014-CA-000748 **(**Fla. 19th Cir. in and for Indian River County, Complaint filed July 18, 2014**)** and of Resolution 2014-069 of the Board of County Commissioners of Indian River County. It is further

ORDERED that the motions to dismiss filed by the City of Vero Beach and Orlando Utilities Commission are denied as moot. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 12th day of February, 2015.

Carlotta S Stauffer

CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KGWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY, FLORIDA

TOWN OF INDIAN RIVER SHORES, a Florida municipality, and MICHAEL OCHSNER,.

CASE NO.:

Plaintiffs,

v.

CITY OF VERO BEACH, a Florida municipality,

Defendant.

COMPLAINT

Plaintiff, TOWN OF INDIAN RIVER SHORES (the "Town") and Plaintiff, MICHAEL OCHSNER (the "Customer," and collectively with the Town, "Plaintiffs"), by and through their undersigned attorneys, sue Defendant, CITY OF VERO BEACH ("Defendant" or the "City"), and allege as follows:

JURISDICTION AND VENUE

1. This is an action for declaratory and injunctive relief over which this Court has jurisdiction pursuant to Section 26.012(2)(c) and (3) and Chapter 86, Florida Statutes.

2. Venue is proper in this Court pursuant to Section 47.011, Florida Statutes, because both the Town and the City are municipalities in Indian River County, Florida, the Customer resides in Indian River County, the Town's rights-of-way and other public areas which are at issue in this Complaint are located in Indian River County, and the cause of action accrued in Indian River County.

PARTIES

3. The Plaintiff, Town, is an incorporated Florida municipality of approximately 4,000 residents in Indian River County, Florida, and is an electric utility customer of the City. The Town was established by Chapter 29163, Laws of Florida (1953).

4. The Plaintiff, Customer, is a resident of the Town and is an electric utility customer of the City.

5. The Defendant, City, is an incorporated Florida municipality of approximately 15,000 residents in Indian River County, Florida, and operates a municipal electric utility that furnishes electric utility service to the Plaintiffs and other customers located within and outside the City limits. The City was established by Chapter 14439, Laws of Florida (1929).

STATEMENT REGARDING
THE FLORIDA GOVERNMENTAL CONFLICT RESOLUTION ACT

6. The Town and the City are both political subdivisions subject to Chapter 164, Florida Statutes (the "Florida Governmental Conflict Resolution Act"). Accordingly, the Plaintiffs agree to abatement of this action to pursue resolution of this dispute under the Florida Governmental Conflict Resolution Act, and the Town intends to initiate the appropriate dispute resolution procedures before further prosecution of this action. In the event that the Plaintiffs and the City fail to resolve their dispute within the time frame, and through the procedures, provided by Sections 164.1053 and 164.1055, Florida Statutes, the Plaintiffs reserve the right to immediately renew prosecution of this action and to avail themselves of all available legal rights and remedies.

GENERAL ALLEGATIONS

The City's Authority To Provide Electric Utility Service Within The Town Is Conditioned Upon The Town's Permission Which Has Been Revoked As Of November 6, 2016

7. The City owns and is responsible for operating a municipal electric utility system that serves approximately 34,000 customers, of which approximately 12,000 are located within the City ("Resident Customers") and approximately 22,000 are located outside the City ("Non-Resident Customers"). Approximately 3,500 of the City's Non-Resident Customers are in the Town.

8. The Plaintiffs are located in the Town and receive electric utility service from the City. The Town is located outside the City. Thus, Plaintiffs are Non-Resident Customers of the City.

9. The City's ability to provide electric utility service in the Town is derived directly from the consent of the Town, and the City has no legal right to provide such service absent the Town's consent.

10. The Florida Constitution and the Municipal Home Rules Powers Act provide the Town with broad powers to regulate the use of its own rights-of-way and other public areas. Art. VIII, § 2(b), Fla. Const.; § 166.021, Fla. Stat. (2014).

11. The special act that established the Town also provides it with broad powers to regulate the use of its rights-of-way, contract with other municipalities for the provision of electricity, and grant franchises of all kinds for the use of its rights-of-way and public areas. Ch. 29163, §2(e) & (f), Laws of Fla. (1953).

12. Pursuant to those broad powers, the Town entered into a franchise agreement with the City in 1986 (the "Franchise Agreement") that granted the City an exclusive franchise to

construct, maintain and operate an electric utility within the Town's rights-of-way and other public areas lying south of Old Winter Beach Road (the "Franchise"). A copy of the Franchise Agreement is attached hereto as Exhibit "A."

13. Pursuant to its Franchise, the City has placed poles, wires, fixtures, conduits, meters, cables and other electric facilities within the Town's rights-of-way and other public areas for the purpose of supplying electricity to the Town and its inhabitants.

14. The City currently provides electric utility service to approximately 3,500 customers within the Town, while Florida Power and Light Company ("FPL") serves the remainder of the customers in the Town (approximately 739 customers).

15. In return for the Town granting the City the exclusive Franchise to operate an electric utility within a certain area of the Town, the City agreed to provide the Town and its citizens with electric utility service, to furnish such electric utility services in accordance with normally accepted electric utility standards, and to charge only reasonable rates for the electric services it provides. Ex. A, Franchise Agreement, §§ 1, 2 and 5.

16. The Franchise Agreement between the Town and the City has a term of thirty (30) years and will expire on November 6, 2016.

17. The Town has formally advised the City in writing that it will not renew the City's Franchise, and that upon expiration of the Franchise the City will no longer have the Town's permission to occupy the Town's rights-of-way and public areas nor will it have the Town's permission to operate an electric utility within the Town.

18. The City's sole authority to occupy or in any manner use the Town's rights-of-ways and other public areas to provide electric service is found in the Franchise Agreement.

19. Florida law does not authorize a municipality to provide extra-territorial electric utility service within another municipality's corporate limits without the other municipality's permission. The Franchise Agreement provides the permission under which the City is currently providing electric utility service in the Town, but the City will no longer have that permission after November 6, 2016.

20. The Town has elected to revoke its permission for the City to operate its electric utility in the Town because the City continues to mismanage its utility and charge the Town and its citizens unreasonable and excessive electric rates.

The City's Failure to Charge Reasonable Rates

21. The City's electric rates have increased dramatically over the last 10 years. Today, the Plaintiffs and other Non-Resident Customers in the Town are forced to pay unreasonable electric rates that are approximately 30% higher than the electric rates paid by Town citizens receiving electric utility service from FPL.

22. Upon information and belief, Plaintiffs and other Non-Resident Customers in the Town receiving electric service from the City are collectively paying in excess of $2.0 million more per year than they otherwise would pay if electric service was provided by FPL.

23. Because FPL is an investor-owned utility, its electric rates are regulated by the Florida Public Service Commission ("PSC") under Chapter 366, Florida Statutes.

24. In contrast, as a municipal electric utility, the City and its electric utility rates are not regulated by the PSC. *See* §§ 366.04 and 366.02(1), Fla. Stat. (2014) (providing the PSC with the jurisdiction to regulate rates and services of a "public utility," but excluding municipalities from the definition of "public utility").

25. Instead, the City's electric utility is managed and its rates are set exclusively by the City Council. Ch. 14439, § 40, Laws of Fla. (1929).

26. The City's Council Members are elected by the citizens who reside inside the City's corporate limits. *See* Ch. 14439, § 9, Laws of Fla. (1929) (the Council is "elected by the qualified voters of said City."); Part I, Art. IV, § 4.01, of the City Code ("[a]ny person who is a resident of the city, who has qualified as an elector of this state, and who registers in the manner prescribed by law shall be an elector of the city.").

27. Under Florida law, the rate levels of a municipal electric utility like the City are not regulated by the PSC because there is an expectation that citizen-ratepayers of a municipal electric utility have an adequate voice in regulating their own electric rates. This expectation is based on the premise that elected municipal officials are ultimately responsible to their citizen-ratepayers for all rate impacts associated with their operation of the municipal utility system. In other words, if a customer believes that an elected official is not properly managing the municipal electric utility, then that customer can vote the elected official out of office.

28. However, because approximately 65% of the City's electric customers are Non-Resident Customers located outside of the City, a significant majority of the City's electric customers cannot vote in City elections, and thus have no voice in electing those officials that manage the City's electric utility system and set their electric rates.

29. Although the City is not subject to the PSC's rate-setting jurisdiction, the City is still required by law to set rates that are reasonable. The special act creating the City provides that the "City Council may by ordinance make *reasonable* regulations as to the use of any public utility and may fix *reasonable* rates for service furnished by public utilities to consumers." § 40, Ch. 14439, Laws of Fla. (1929) (emphasis added). A copy of the special act is attached hereto as

Exhibit "B." Likewise, the Franchise Agreement between the Town and the City expressly requires that the City only charge "reasonable" rates for the electric services it furnishes to the Town and its citizens. Ex. A, Franchise Agreement, § 5.

30. The City has engaged in improper rate-making practices that require the Plaintiffs and other Non-Resident Customers to unfairly subsidize City operations that are not related to the furnishing of electric service to customers. For example, upon information and belief:

a. The City has diverted electric utility revenues to the City's general revenue fund to cover non-utility costs, including propping up the City's unfunded pension obligations to current and former employees that had nothing to do with the operation of the City's electric utility or the furnishing of electric service; and

b. Under the pretense of eliminating a 10% surcharge on the Plaintiffs and other Non-Resident Customers, the City actually adopted an aggressive inverted rate which resulted in a net increase in base rates that disproportionately affected Non-Resident Customers.

As a result of these improper rate-making practices, Non-Resident Customers are being forced to subsidize approximately 24% of the City's total budget. These and other improper rate-making practices of the City have resulted in unreasonable and excessive rates, which the Plaintiffs and other Non-Residential Customers are being forced to pay.

31. In order to protect against unreasonable rates, the City has a legal duty to the Plaintiffs and its other electric customers to operate and manage its municipal electric utility with the same degree of business prudence, conservative business judgment and sound fiscal management as is required of private investor owned electric utilities. *State v. City of Daytona Beach*, 158 So. 300, 305 (Fla. 1934).

32. Under Florida law, customers of an electric utility are not required to bear the cost of imprudent utility management decisions. *Gulf Power Company v. Florida Public Service Commission*, 487 So. 2d 1036 (Fla. 1986).

33. Prudent electric utility management requires the implementation of proper risk management policies in order to manage fuel price volatility and keep power costs as low as reasonably possible.

34. The City has failed to prudently manage its utility system. For example:

a. Upon information and belief, the City has abdicated its operational and managerial responsibilities to others without appropriate oversight and due diligence;

b. Upon information and belief, the City has operated its electric utility system without implementing appropriate risk management protocols to mitigate fuel price volatility and keep electric power costs as low as reasonably possible; and

c. The City has conceded in filings with the PSC that it did not have the "required knowledge, capabilities, or expertise" to perform basic utility managerial functions such as determining how customers were counted prior to 2008.

These and other instances of managerial imprudence have caused the City's electric power costs to rise to excessive levels.

35. The City's elected officials have decided to pass the City's excessive power costs on to Plaintiffs by charging them unreasonable electric rates. As a result, Plaintiffs are being forced to pay unreasonable electric rates that are approximately 30% higher than the electric rates paid by other Town citizens receiving the same unit of electric service from FPL. All that

differentiates these electric customers is where they fall in terms of the City's service area versus FPL's service area.

36. The Plaintiffs and other Non-Resident Customers have had no voice in electing the City officials who made, approved and/or ratified these unreasonable rates and imprudent utility management decisions. Consequently, the Plaintiffs have been and continue to be harmed by the unreasonable, unjust, and inequitable electric rates which they are being charged by the City.

The Plaintiffs' Rights To Have An Electoral Voice Regarding the Governance of the City's Electric Utility

37. The United States Supreme Court has recognized that where a municipal government is providing electric utility services, the benefits and burdens of the electric utility operations affect all customers indiscriminately such that all customers should have an electoral voice in how the utility is governed. *See Cipriano v. City of Houma,* 395 U.S. 701, 705 (1969). However, the Plaintiffs and other Non-Resident Customers of the City, have no vote with respect to the governance of the City's electric utility.

38. In 2008, the Florida Legislature passed Chapter 2008-227, Laws of Florida, for the express purpose of providing all customers of small municipal utilities, including those outside the municipality, a voice in electing the governing board of their municipal utility.

39. Chapter 2008-227 added subsection (7) to Section 366.04, Florida Statutes, to require each "affected municipal electric utility" to conduct a referendum election of all of its retail electric customers to determine if a majority of the customers are in favor of creating a separate electric utility authority to operate the business of the electric utility. "Affected municipal electric utility" is defined as a municipality that operates an electric utility that:

a. Serves two cities in the same county;

b. Is located in a noncharter county;

c. Has between 30,000 and 35,000 retail electric customers as of September 30, 2007; and

d. Does not have a service territory that extends beyond its home county as of September 30, 2007.

§ 366.04(7), Fla. Stat. (2008).

40. The City is an "affected municipal electric utility" subject to the requirements of Section 366.04(7). In filings before the PSC, the City has admitted that: (i) it serves the City of Vero Beach and the Town, both municipalities in Indian River County; (ii) Indian River County is a noncharter county; and (iii) the City's service area does not extend beyond Indian River County. Furthermore, the City's audited financial statement for 2007 expressly notified the public that the City had 33,442 retail electric customers as of September 30, 2007. Upon information and belief, the City also represented to the PSC and to credit rating agencies that it had in excess of 33,000 retail electric customers in 2007.

41. Prior to passage of Section 366.04(7), consistent with established electric utility industry practice, the City quantified its retail customers by counting the number of separate meter accounts.

42. After Section 366.04(7) became law, the City disavowed its prior customer counts set forth in its audited financial statements and has now has asserted that it is not subject to Section 366.04(7) because the City had less than 30,000 customers as of September 30, 2007. In reversing itself and claiming that it had less than 30,000 retail electric customers the City has adopted a novel and erroneous customer count method which for the first time counts individuals with multiple meters as a single "customer".

43. The City's newfound scheme for counting customers was contrived to avoid the referendum election requirements in Section 366.04(7), and is contrary to established utility practice for counting utility customers. Moreover, it differs radically from the method of counting customers which the City uses for purposes of its own audited financial reports, and its filings with the PSC and the credit rating agencies.

44. Section 366.04(7) in fact applies to the City, and all of the City's customers are entitled by that statute to participate in a referendum election and vote on the creation of a utility authority, which if approved, would give all customers a voice in electing the governing board of their utility. The Plaintiffs, along with the City's other Non-Resident Customers, continue to be harmed by the City's ongoing failure to comply with Section 366.04(7) because they continue to be disenfranchised and have no voice in electing those officials that manage the City's electric utility and set their electric rates.

COUNT I

For Declaratory and Injunctive Relief Relating to the City's Unreasonable and Unjust Electric Rates

45. This count is an action for declaratory and injunctive relief by the Plaintiffs against the City relating to the City's unreasonable and unjust electric utility rates.

46. The Plaintiffs adopt paragraphs 1 through 44 as if set forth fully herein.

47. The City has a legal duty to its customers, including the Town and the Customer, to charge only "reasonable rates" for the electric services that the City provides, and to keep those rates as low as possible because the City is a monopoly electric service provider and is only allowed to operate as such in order to provide its customers with electric service at prices that are as low as reasonably possible. Ch. 14439, § 40, Laws of Fla. (1929); § 180.13(1), Fla. Stat. (2014); Ex. A, Franchise Agreement, § 5.

48. The City also has a legal duty to act prudently in managing its electric utility system in order to protect its customers from unreasonable rates.

49. As described in paragraph 30 above, the City has breached its legal duty to charge only reasonable rates by employing improper rate-making practices that require Non-Resident Customers, including the Plaintiffs, to unfairly subsidize City operations that are not related to the furnishing of electric service to customers. These and other improper rate-making practices by the City have resulted in unreasonable and excessive rates, which the Plaintiffs and other Non-Residential Customers are being forced to pay.

50. As described in paragraph 34 above, the City has breached its duty to prudently operate and manage its electric utility by making a series of ill-advised utility management decisions which have driven the City's cost of power to excessive levels and resulted in the City charging unreasonable electric rates.

51. The Plaintiffs have a clear legal right to pay only those electric rates which are reasonable, just, and equitable, and have been and continue to be harmed by the unreasonable, unjust, and inequitable electric rates charged by the City.

52. The Plaintiffs are being irreparably harmed by the City's continued imposition of rates which are not reasonable, just, and equitable, and have no adequate remedy of law.

WHEREFORE, the Plaintiffs request this Court:

(1) Declare that the electric utility rates the Plaintiffs are being charged by the City are unreasonable, unjust, and inequitable in violation of the special act creating the City and common law;

(2) Enjoin the City from further charging any rates beyond those that are reasonable, just, and equitable;

(3) Award Plaintiffs supplemental relief under Section 86.061, Florida Statutes, in the form of a refund of any payment of rates they have made which were in excess of what was reasonable, just, and equitable; and

(4) Grant the Plaintiffs such other and further relief as the Court deems proper under the circumstances.

COUNT II

For Declaratory Relief That The City Must Remove Its Electric Facilities from the Town Upon Imminent Expiration of the Franchise Agreement

53. This count is an action for declaratory relief by the Town against the City regarding the Town's rights under the Franchise Agreement.

54. The Town adopts paragraphs 1 through 44 as if set forth fully herein.

55. The Town granted the City an exclusive 30-year Franchise to operate and maintain electric utility facilities within certain parts of the Town pursuant to the Town's broad powers to grant or deny franchises for the use of its rights-of-way and other public areas.

56. The City's ability to provide electric utility service in the Town is derived directly from the permission of the Town, and the City has no legal right to provide such service absent the permission of the Town.

57. The Franchise Agreement provides the permission under which the City is currently providing electric utility service in the Town. However, the City will no longer have that permission when its Franchise expires on November 6, 2016.

58. Under Florida law a Franchise is a privilege not a right, and the City has no right to keep its electric facilities in the Town's rights-of-ways and other public areas after the Franchise Agreement expires unless the Town otherwise grants permission.

59. Although the City has a territorial agreement with FPL that currently envisions that the City will provide electric service to a portion of the Town, and the PSC has approved that territorial agreement pursuant to that agency's regulatory authority under Chapter 366. Florida Statutes. the Florida Legislature has confirmed that "nothing" in Chapter 366. including

the PSC's approval of the territorial agreement, should be read to restrict the Town's broad regulatory power to grant or deny franchises for the use of its rights-of-way and other public areas. § 366.11(2), Fla. Stat. (2014) ("Nothing herein shall restrict the police power of municipalities over their streets, highways, and public places...").

60. In fact, in interpreting the jurisdictional limitations in Section 366.11(2), Florida Statutes, the PSC has expressly ruled that it has no authority to impose itself in a dispute over whether a franchise agreement should be allowed to expire. *See* PSC Order No. 10543 (Jan. 25, 1982).

61. Moreover, the territorial agreement itself expressly acknowledges that the service area boundaries contained therein may be terminated or modified by a court of law.

62. Thus nothing in the territorial agreement or the PSC approval thereof impedes the prosecution of this Complaint wherein the Town seeks to enforce its broad and sovereign regulatory powers to deny a franchise to another municipality for the use of the Town's rights-of-way and public areas.

63. The Town has elected not to renew the Franchise Agreement with the City because the City continues to mismanage its electric utility and to charge the Town and its citizens unreasonable and excessive electric rates.

64. Pursuant to its broad regulatory powers over its rights-of-way and other public areas, the Town has the legal right to require the City to remove its electric utility infrastructure from the Town's public rights-of-way when the Franchise Agreement expires on November 6, 2016, and to obtain substitute electric service from other providers. *See City of Indian Harbour Beach v. City of Melbourne*, 265 So. 2d 422 (Fla. 4th DCA 1972). In that case the court was asked to resolve a similar inter-municipality dispute involving Melbourne's provision of utility

service to the residents of Indian Harbour Beach at rates which Indian Harbour Beach asserted were unreasonable. The Court resolved the dispute finding that, unless the cities mutually agreed to resolve their dispute, Indian Harbour Beach had the right to "expel" Melbourne and to obtain "substitute" utility service from other providers pursuant to an orderly process which the Court would supervise. *Id.* at 424-25.

65. There is nothing in the Franchise Agreement that prohibits or in any way restricts the Town's right to expel the City's electric facilities from its rights-of-way and other public areas when the Franchise Agreement expires.

66. There is nothing in the Franchise Agreement that requires the Town to purchase the City's electric facilities in the Town's rights-of-way or pay for the relocation of the City's electric facilities upon expiration of the Franchise Agreement. Thus, the City must bear the cost of removing its electric facilities from the Town's rights-of-way and public areas at the expiration of the Franchise, or negotiate a sale, lease or other transfer of those electric facilities to the substitute utility electric service provider selected by the Town.

67. The City has indicated that it will not vacate the Town's rights-of-way public property, or allow the Town to secure substitute electric service from other providers, when the City's Franchise expires.

68. The Town needs to act now to ensure that the City will remove its electric facilities from the Town's public property when the Franchise Agreement expires and that it does so in an orderly and efficient manner so that substitute electric utility service, other than from the City, will be available to serve the Town and its citizens when the City's Franchise expires. The Town also needs to ensure that the transition to such substitute electric utility service will not result in interruption of electric service to the Town or any of its citizens. A sufficient transition

period is required due to the number of customers involved; therefore, the Town needs the requested declaratory relief in advance of the Franchise Agreement's actual expiration in order to protect its citizens.

69. Thus, there exists a present, actual, and justifiable controversy between Town and the City, requiring a declaration of rights, not merely the giving of legal advice.

70. The Town seeks a declaration that under the Franchise Agreement and the statutory provisions cited above (i) the City has no legal authority to provide extra-territorial electric service to customers residing within the corporate limits of the Town upon expiration of the Franchise Agreement; and (ii) the Town has a clear legal right to require the City to remove its electrical facilities from the Town's rights-of-way upon expiration of the Franchise Agreement, and to seek substitute electric service from other providers.

WHEREFORE, the Town requests this Court:

(1) Declare that upon expiration of the Franchise Agreement the City has no legal authority to provide extra-territorial electric service to customers residing within the corporate limits of the Town;

(2) Declare that at the expiration of the Franchise Agreement on November 6, 2016, the City will have no right to maintain its electrical facilities in the Town's public rights-of-way, and must remove its electrical facilities from the Town's public rights-of-way;

(3) Declare that at the expiration of the Franchise Agreement on November 6, 2016, the Town has a legal right to seek substitute electric service from other providers; and

(4) Grant the Town such other and further relief as the Court deems proper under the circumstances.

COUNT III

For Declaratory and Injunctive Relief Relating to the City's Non-Compliance with Section 366.04(7), Florida Statutes

71. This count is an action for declaratory and injunctive relief by the Plaintiffs against the City relating to the City's failure to comply with Section 366.04(7), Florida Statutes.

72. Plaintiffs adopt paragraphs 1 through 44 as if set forth fully herein.

73. The City's electric utility is managed and its electric rates are set exclusively by the City's Council Members who are elected by the citizens who reside inside the City's limits.

74. Approximately 65% of the City's electric customers are not "residents" of the City, cannot as a matter of law vote in City elections, and thus have no voice in electing those officials that manage the City's electric utility and set their electric rates. Plaintiffs are part of this disenfranchised portion of the City's electric customers.

75. Section 366.04(7), Florida Statutes, was passed to provide non-resident customers of small municipal electric utilities, such as the Plaintiffs, a voice in electing the governing board of their electric utility. Section 366.04(7) requires each "affected municipal electric utility" to conduct a referendum election of all of its retail electric customers (both inside and outside the municipal limits) to determine if a majority of the customers are in favor of creating a separate electric utility authority whose governing board shall proportionately represent Resident and Non-Resident Customers.

76. For purposes of Section 366.04(7), "affected municipal electric utility" means a municipal electric utility which serves two cities in the same non-charter county, does not serve outside of its home county, and which had between 30,000 and 35,000 retail electric customers on September 30, 2007.

77. The City is an "affected municipal electric utility" subject to the requirements of Section 366.04(7).

78. Prior to passage of Section 366.04(7), consistent with established electric utility industry practice, the City counted its retail customers by quantifying the number of separate meter accounts. The City utilized this customer count methodology in preparing its 2007 audited financial statement which expressly notified the public that the City had 33,442 retail electric customers as of September 30, 2007.

79. After Section 366.04(7) became law, the City has apparently disavowed its prior customer counts set forth in its audited financial statements, and has now refused to comply with the referendum requirements in Section 366.04(7) because it claims that it had less than 30,000 customers on September 30, 2007.

80. In regulatory filings with the PSC in 2011, the City directly asserted that it is not subject to Section 366.04(7) based on an erroneous interpretation of Section 366.04(7) that would count individuals with multiple meter accounts as a single "customer" for purposes of the statute. The City's erroneous interpretation of Section 366.04(7) is nothing more than a contrived scheme to artificially lower the City's customer count below the statutory threshold to avoid the referendum election requirements in Section 366.04(7). That scheme is contrary to established utility practice for counting utility customers, and differs radically from the method of counting customers which the City uses for purposes of its own audited financial report, and its other filings with the PSC and the credit rating agencies.

81. In reliance on this erroneous legal interpretation, the City continues to refuse to comply with the directives of Section 366.04(7), and has not conducted the referendum election

required by the statute that would give Plaintiffs and other Non-Resident Customers an electoral voice in the governance of the City's municipal electric utility.

82. Plaintiffs dispute the City's erroneous interpretation of Section 366.04(7), and dispute the City's contention that it is not subject to that law.

83. Consistent with the method the City used for counting customers in its audited financial statements, its other filings with the PSC, and its filings with the various credit rating agencies, the City should be required to count customers by quantifying separate meter accounts, in which case the City is subject to the requirements of Section 366.04(7), Florida Statutes.

84. The Plaintiffs are being continually and irreparably harmed by the City's ongoing failure to comply with Section 366.04(7), because if the City complied with that statute, the Plaintiffs would have an opportunity to vote on the creation of a utility authority, which if approved, would give them a voice in electing the decision-makers who govern the City's electric utility and set the electric rates which Plaintiffs are being forced to pay. Thus, there exists a present, actual, and justifiable controversy between the Plaintiffs and the City, requiring a declaration of rights, not merely the giving of legal advice.

85. The Plaintiffs have a clear legal and ongoing right to vote in the referendum and otherwise be represented as provided by Section 366.04(7), Florida Statutes, and no adequate remedy at law to cure the ongoing denial of that right and the irreparable harm imposed on Plaintiffs.

WHEREFORE, the Town and the Customer request this Court:

(1) Declare that the City is subject to and must comply with Section 366.04(7)(a), Florida Statutes;

(2) Enjoin the City from continuing to fail to comply with the requirements of Section 366.04(7); and

(3) Grant the Town and the Customer any other relief which may be proper.

COUNT IV

For Declaratory and Injunctive Relief Relating to the City's Violation of the Customer's Constitutional Rights

86. This count is an action by the Customer against the City for declaratory judgment that the City's denial of the Customer's right to vote in a referendum and otherwise be represented as provided in Section 366.04(7), Florida Statutes, violates the Customer's due process and equal protection rights under the United States and Florida Constitutions, and for injunctive relief to require the City to comply with Section 366.04(7) in order to remedy these Constitutional violations.

87. The Customer adopts paragraphs 1 through 44 and paragraphs 71 through 85 as if set forth fully herein.

88. Section 366.04(7) provides all of the City's retail electric customers -- both Resident Customers and Non-Resident Customers -- a right to vote in a referendum on whether a separate electric utility should be created to operate the business of the City's electric utility.

89. The City has denied that right to vote to the Customer, as well as to all of its other Non-Resident Customers.

90. The process set forth in Section 366.04(7) also provides an opportunity, upon approval through the referenced referendum, for the Customer and all other Non-Resident Customers of the City to be served by a separate electric utility authority, the governing board of which shall proportionately represent the Resident and Non-Resident Customers of the City's electric utility.

91. The City continues to deny the Customer, as well as all its other Non-Resident Customers, a path to obtaining that fair and proportionate representation.

92. Rather, the City's electric utility is controlled and managed by the City Council, which is "elected by the qualified voters of said City" alone. Ch. 14439, §§ 9, 40, Laws of Fla. (1929).

93. When all citizens are affected in important ways by a governmental decision, and indeed are given the right to vote and participate in that decision by legislative act, it is unconstitutional to exclude some of those citizens from the electoral franchise rights accorded to others similarly affected.

94. By depriving the Customer (and other Non-Resident Customers) of the right to vote and participate in the processes provided for in Section 366.04(7), the City is in continual violation of the Customer's right to due process and equal protection under the United States and Florida Constitutions. U.S. Const. amend. XIV, § 1; Fl. Const. art. I, §§ 2, 9.

95. This denial of the Customer's Constitutional rights constitutes an ongoing and irreparable harm for which there is no adequate remedy at law.

96. There exists a present, actual, and justifiable ongoing controversy between the Customer and the City regarding whether the City should provide the Customer a right to vote on matters concerning the City's electric utility, requiring a declaration of rights, not merely the giving of legal advice.

WHEREFORE, the Customer requests this Court:

(1) Declare that the City's denial of the Customer's right to vote in a referendum and otherwise participate in the opportunities for representation provided in Section 366.04(7), Florida Statutes, violates the due process and equal protection clauses of the United States Constitution and the Florida Constitution;

(2) Enjoin the City from continuing to deny such voting right, and require the City to comply with Section 366.04(7) in order to address the Constitutional deficiencies alleged herein: and

(3) Grant the Customer such other and further relief as the Court deems proper under the circumstances.

Respectfully submitted this 18th day of July, 2014.

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EXHIBIT A

IRS E F (10/27/86)

RESOLUTION 414

A RESOLUTION GRANTING TO THE CITY OF VERO BEACH, FLORIDA, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE IN THE INCORPORATED AREAS OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED by the Board of the Town of Indian River Shores , Indian River County, Florida, as follows:

Section 1. That there is hereby granted to the City of Vero Beach, Florida (herein called "Grantee"), its successors and assigns, the sole and exclusive right, privilege or franchise to construct, maintain, and operate an electric system in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public places throughout all the incorporated areas of the Town of Indian River Shores, Florida, (herein called the "Grantor"), lying south of Winter Beach Road, as such incorporated limits were defined on January 1, 1986, and its successors, in accordance with established practices with respect to electric system construction and maintenance, for a period of thirty (30) years from the date of acceptance hereof. Such electric system shall consist of electric facilities (including poles, fixtures, conduits, wires, meters, cable, etc., and, for electric system use, telephone lines) for the purpose of supplying electricity to Grantor, and its successors, the inhabitants thereof, and persons and corporations beyond the limits thereof.

Section 2. Upon acceptance of this franchise, Grantee agrees to provide such areas with electric service.

All of the electric facilities of the Grantee shall be constructed, maintained and operated in accordance with the applicable regulations of the Federal Government and the State of Florida and the quantity and quality of electric service delivered and sold shall at all times be and remain not inferior to the applicable standards for such service and other applicable rules, regulations and standards now or hereafter adopted by the Federal

Government and the State of Florida. The Grantee shall supply all electric power and energy to consumers through meters which shall accurately measure the amount of power and energy supplied in accordance with normally accepted utility standards.

Section 3. That the facilities shall be so located or relocated and so constructed as to interfere as little as practicable with traffic over said streets, alleys, bridges, and public places, and with reasonable egress from and ingress to abutting property. The location or relocation of all facilities shall be made under the supervision and with the approval of such representatives as the governing body of Grantor may designate for the purpose, but not so as unreasonably to interfere with the proper operation of Grantee's facilities and service. That when any portion of a street is excavated by Grantee in the location or relocation of any of its facilities, the portion of the street so excavated shall, within a reasonable time and as early as practicable after such excavation, be replaced by the Grantee at its expense, and in as good condition as it was at the time of such excavation. Provided, however, that nothing herein contained shall be construed to make the Grantor liable to the Grantee for any cost or expense in connection with the construction, reconstruction, repair or relocation of Grantee's facilities in streets, highways and other public places made necessary by the widening, grading, paving or otherwise improving by said Grantor, of any of the present and future streets, avenues, alleys, bridges, highways, easements and other public places used or occupied by the Grantee, except, however, Grantee shall be entitled to reimbursement of its costs as may be provided by law.

Section 4. That Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its facilities hereunder, and the acceptance of this Resolution shall be deemed an agreement on the part of Grantee to indemnify Grantor and hold it harmless against any and all liability, loss, cost, damage, or expense, which may accrue to Grantor by reason of the neglect, default or misconduct of Grantee in the construction, operation or maintenance of its facilities hereunder.

Section 5. That all rates and rules and regulations established by Grantee from time to time shall be reasonable and Grantee's rates for electric service shall at all times be subject to such regulation as may be provided by State law. The Outside City Limit Surcharge levied by the Grantee on electric rates is as governed by state regulations and may not be changed unless and until such state regulations are changed and even in that event such charges shall not be increased from the present ten (10%) per cent above the prevailing City of Vero Beach base rates without a supporting cost of service study, in order to assure that such an increase is reasonable and not arbitrary and/or capricious.

The right to regulate electric rates, impact fees, service policies or other rules or regulations or the construction, operation and maintenance of the electric system is vested solely in the Grantee except as may be otherwise provided by applicable laws of the Federal Government or the State of Florida.

Section 6. Prior to the imposition of any franchise fee and/or utility tax by the Grantor, the Grantor shall give a minimum of sixty (60) days notice to the Grantee of the imposition of such fee and/or tax. Such fee and/or tax shall be initiated only upon passage of an appropriate ordinance in accordance with Florida Statutes. Such fee and/or tax shall be a percentage of gross revenues from the sale of electric power and energy to customers within the franchise area as defined herein. Said fee and/or tax, at the option of the Grantee, may be shown as an additional charge on affected utility bills. The franchise fee, if imposed, shall not exceed six (6%) per cent of applicable gross revenues. The utility tax, if imposed, shall be in accordance with applicable State Statutes.

Section 7. Payments of the amount to be paid to Grantor by Grantee under the terms of Section 6 hereof shall be made in monthly installments. Such monthly payments shall be rendered twenty (20) days after the monthly collection period. The Grantor agrees to hold the Grantee harmless from any damages or suits resulting directly or indirectly as a result of the

collection of such fees and/or taxes, pursuant to Sections 6 and 7 hereof and the Grantor shall defend any and all suits filed against the Grantee based on the collection of such moneys.

Section 8. As further consideration of this franchise, the Grantor agrees not to engage in or permit any person other than the Grantee to engage in the business of distributing and selling electric power and energy during the life of this franchise or any extension thereof in competition with the Grantee, its successors and assigns.

Additionally, the Grantee shall have the authority to enter into Developer Agreements with the developers of real estate projects and other consumers within the franchise territory, which agreements may include, but not be limited to provisions relating to;

(1) advance payment of contributions in aid of construction to finance system expansion and/or extension,

(2) revenue guarantees or other such arrangements as may make the expansion/extension self supporting,

(3) capacity reservation fees,

(4) prorata allocations of plant expansion/line extension charges between two or more developers.

Developer Agreements entered into by the Grantee shall be fair, just and non-discriminatory.

Section 9. That failure on the part of Grantee to comply in any substantial respect with any of the provisions of this Resolution, shall be grounds for a forfeiture of this grant, but no such forfeiture shall take effect, if the reasonableness or propriety thereof is protested by Grantee, until a court of competent jurisdiction (with right of appeal in either party) shall have found that Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six (6) months after final determination of the question, to make good the default, before a forfeiture shall result, with the right in Grantor at its discretion to grant such additional time to Grantee for compliance as necessities in the case require; provided, however, that the

provisions of this Section shall not be construed as impairing any alternative right or rights which the Grantor may have with respect to the forfeiture of franchises under the Constitution or the general laws of Florida or the Charter of the Grantor.

Section 10. That if any Section, paragraph, sentence, clause, term, word or other portion of this Resolution shall be held to be invalid, the remainder of this Resolution shall not be affected.

Section 11. As a condition precedent to the taking effect of this grant, Grantee shall have filed its acceptance hereof with the Grantor's Clerk within sixty (60) days after adoption. This Resolution shall take effect on the date upon which Grantee files its acceptance.

Section 12. The franchise territory may be expanded to include additional lands in the Town or in the vicinity of the Town limits, as they were defined on January 1, 1986, provided such lands are lawfully annexed into the Town limits and the Grantee specifically, in writing, approves of such addition(s) to its service territory and the Public Service Commission of the State of Florida approves of such change(s) in service boundaries.

Section 13. This Franchise supersedes, with respect to electric only, the Agreement adopted December 18, 1968 for providing Water and Electric Service to the Town of Indian River Shores by the City of Vero Beach.

Section 14. This franchise is subject to renewal upon the agreement of both parties. In the event the Grantee desires to renew this franchise, then a five year notice of that intention to the Grantor shall be required. Should the Grantor wish to renew this franchise, the same five year notice to the Grantee from the Grantor shall be required and in no event will the franchise be terminated prior to the initial thirty (30) year period, except as provided for in Section 9 hereof.

Section 15. Provisions herein to the contrary notwithstanding, the Grantee shall not be liable for the non-performance or delay in performance of any of its obligations undertaken pursuant to the terms of this franchise, where said

failure or delay is due to causes beyond the Grantee's control including, without limitation, "Acts of God", unavoidable casualties, and labor disputes.

DONE and ADOPTED in regular session, this 30th day of October, 1986.

ACCEPTED:

CITY OF VERO BEACH

By: _____ Mayor

Date: 6 Nov. 1986

Attest _____ City Clerk

TOWN COUNCIL
TOWN OF INDIAN RIVER SHORES

By: _____ Mayor

Attest: _____ Town Clerk

EXHIBIT B

Sections 35, 36 and the East Half of Section 34, lying and being in Manatee County, Florida, also Section 1, 2 and the East Half of Section 3 in Township 36 South, Range 20 East, lying and being in Sarasota County, Florida, shall be subject to the payment of taxes sufficient to pay off and discharge said indebtedness.

Section 3. For the purpose of assessing, levying and collecting such taxes, the County Commissioners of Manatee County, Florida, shall order a sufficient assessment made of the real and personal property within such territorial limits as shall lie within the County of Manatee, Florida, to pay off and discharge its just proportion of said indebtedness, and likewise the County Commissioners of Sarasota County, Florida, shall order a sufficient assessment made on the real and personal property within such territorial limits as shall lie within the County of Sarasota, Florida, to pay off and discharge its just proportion of said indebtedness. Such proportions of said indebtedness shall be figured on the basis of the assessed valuations for State and County purposes. Such property shall be assessed by the County Assessor of the Taxes, and shall be collected by the Tax Collector of the respective Counties. The proceedings in the assessments, collections, receipts and disbursements of such taxes shall be like the proceedings concerning County taxes as far as applicable, which taxes when collected shall be paid to the Treasurer of the City of Verna, for the benefit of the creditors of said city. Such Treasurer shall hold office for the sole purpose of receiving and paying out such funds and only so long as is necessary to carry out said trust.

Section 4. Any and all tax assessments, rolls or levies heretofore made by the City of Verna and uncollected are now declared null and void.

Section 5. All laws or parts of laws in conflict herewith are hereby repealed.

Section 6. This Act shall take effect immediately upon its passage and approval by the Governor, or upon its becoming a law without such approval.

Approved June 7, A. D. 1929.

CHAPTER 14439—(No. 875).

AN ACT to Abolish the Present Municipal Government of the City of Vero Beach, in Indian River County, Florida; to Create and Establish a New Municipality to be Known as City of Vero Beach,

in Indian River County, Florida; to Fix the Territorial Limits of Such City; to Legalize and Validate the Ordinances of the Abolished Municipality and Official Acts Thereon; to Validate, Legalize, Ratify and Confirm the Ordinances and Resolutions, Bonds, Certificates of Indebtedness and Obligations of the Abolished Municipality of Vero Beach, Florida, as the Ordinances and Resolutions, Bonds, Certificates of Indebtedness and Other Obligations of the New Municipality of Vero Beach, Florida; to Legalize, Validate, Ratify and Confirm all Contracts of the Abolished Municipality of Vero Beach, Florida, Making Such Contracts Binding Upon the New Municipality of Vero Beach, Florida; to Provide and Specify How Such Municipality Shall Be Governed, by What Officers It Shall Be Governed, and to Fix and Prescribe the Jurisdiction and Powers of the Said City of Vero Beach, Florida, and the Officers Thereof; and to Provide for the Assessment, Levy and Collection of Taxes and Assessments in and for the Said City.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That the municipal corporation now existing and known as City of Vero Beach, in Indian River County, Florida, be and the same is hereby abolished and a new municipality to be known as City of Vero Beach, in Indian River County, Florida, is hereby created and established to succeed such former municipality of the City of Vero Beach, in Indian River County, Florida. City of Vero Beach Beach, hereby created and established, shall embrace and include all that territory situated and being in Indian River County, Florida, described as follows, to-wit:

Beginning at the northwest corner of Section 7, Township 33, South, Range 40 East, run east to the center of the navigation channel of the Indian River,

Thence run southerly along the center of the said channel to a point due west of the south line of Government Lots 3, 4 and 5 of Section 8, Township 33 South, Range 40 East,

Thence run east along the south line of the said Lots 3, 4 and 5 to the Atlantic Ocean,

Thence run northerly along the Atlantic coast, including the waters of the Atlantic Ocean within the limits of Indian River County, Florida, to the east and west center line of Section 29, Township 32 South, Range 40 East,

Thence run west along the said center line of Section 29 to the center of Bethel Creek,

Thence run southerly and westerly along the center of Bethel Creek to the Indian River,

Thence run southwesterly past the north end of Fritz's island to the center of the west channel of the Indian River,

Thence run southerly along the west channel of the Indian River to the south right-of-way line of the Indian River Farms Drainage District's Main Canal,

Thence west along the said south right-of-way line of the Main Canal to a point due south of the east line of R. D. Carter's Subdivision lying in the northeast quarter of the southeast quarter of Section 35, Township 32 South, Range 39 East,

Thence run north along the said east line of R. D. Carter's Subdivision to the northeast corner of the said R. D. Carter's Subdivision,

Thence run west along the center line of Section 35, Township 32 South, Range 39 East to the east line of Twenty-seventh (Emerson) Avenue,

Thence run south along the said east line of Twenty-seventh Avenue to the south right-of-way line of the Main Canal of the Indian River Farms Drainage District,

Thence run westerly along the said south right-of-way line of the Main Canal to the east line of Forty-third (Clemann) Avenue,

Thence south along the said east line of Forty-third Avenue, to a point thirty-five feet north of the south line of northwest quarter of the northwest quarter of Section 10, Township 33, South, Range 39 East, the said point being on the north line of Fourteenth Street,

Thence east along the said north line of Fourteenth street to the east line of the northwest quarter of the northwest quarter of Section 12, Township 33 South, Range 39 East,

Thence north along the said east line of the northwest quarter of the northwest quarter of Section 12 to the north line of the said Section 12.

Thence run east to the point of beginning.

Section 2. The title to and jurisdiction over all streets, thoroughfares, parks, alleys, public lots and sewers, and all other property of every kind, nature or description within or without said City, and all other property and municipal plants of the City now owned, possessed or operated by it, and all property of every kind and character which said City may hereafter acquire within or

without said City, or may be vested in it or be dedicated to it, or which may have heretofore been vested in it or dedicated to it, for its use or for the public use, shall be vested in the City of Vero Beach as created under this Act. There shall also be vested in said City of Vero Beach, as created by this Act, for municipal purposes only, title to all tide water and other lands, and river and bay bottom waters, waterways and water bottoms and all riparian rights within the City limits, now owned by the State of Florida.

Section 3. All assessments for taxes, public improvements or benefits heretofore made or levied by the City of Vero Beach, and all licenses, fines or forfeitures heretofore imposed and heretofore validated and confirmed, and all acts, resolutions, doings and proceedings of the City Council of the City of Vero Beach, Florida, as said municipality existed prior to the passage of this Act relative to the issuance of bonds of said City and relative to assessments against property therein for public improvements of any kind, nature or description, which bonds have heretofore been issued and which assessments have heretofore been made, are hereby legalized, ratified, validated and confirmed, notwithstanding any want of power or authority of the said City Council or of said City, or of any defects or any irregularities or omissions in said acts, resolutions, doings and proceedings; and all bonds which have heretofore been sold and delivered by said City of Vero Beach, or which have heretofore been authorized and issued but not yet sold or delivered and which may hereafter be sold and delivered, are hereby declared to be valid and binding obligations of said City and incontestable in the hands of bona fide purchasers for value for any reason or upon any ground whatsoever. And all moneys due to or collectible by the City from taxes, assessments, licenses, fines, forfeitures or from any other source whatsoever; and all debts or obligations due the City of whatsoever nature shall henceforth be due and payable to the City of Vero Beach created under this Act. All liabilities and obligations to and rights of actions possessed by the City shall remain in force and effect; and all prosecutions for any violation of the ordinances of said City, and all offenses heretofore committed against said City are hereby saved and preserved with the right of prosecution; and all judgments, fines and sentences against persons under conviction are likewise saved and preserved under thsi Act.

Section 4. All lawful debts or obligations of the City now existing or outstanding are hereby declared to be valid and unimpaired as debts and obligations of the City of Vero Beach created

under this Act. And no obligation or contract of said City shall be impaired by this change, and all obligations, debts, bonds, time warrants, notes and other lawful obligations of every kind, nature or description heretofore incurred, executed, issued or sold by said City of Vero Beach shall be, and the same are, hereby declared to be the valid and binding obligations of the City of Vero Beach created under this Act.

Section 5. All ordinances, resolutions, rules and regulations now in force in the City of Vero Beach, not in conflict with the provisions of this Act or the Constitution of the United States or of the State of Florida, shall remain of full force and effect until rescinded, repealed or amended by the City of Vero Beach created under this Act. And all laws now in force or that may hereafter be enacted by the Legislature of the State for the benefit and protection of cities and towns, which may not conflict with the provisions of this Act, shall enure to and be applicable to the City of Vero Beach.

Section 6. All contracts entered into by the City of Vero Beach, and all pending legal proceedings of every kind and character, either by or against the City of Vero Beach, or in which the City of Vero Beach is interested, instituted prior to the passage of this Act, and all pending proceedings for public work or improvements by the City of Vero Beach, of every kind and character, whether or not the same shall result in the levying of general or special taxes or assessments, or the issuance of warrants or certificates of indebtedness or bonds or notes, shall continue in full force and effect and shall not be affected in any manner by the provisions of this Act.

Section 7. No vested right or rights acquired or held by any individual or corporation under and by virtue of the existing charter, ordinances, resolutions, rules, regulations and contracts of the City of Vero Beach shall be abridged, nullified or abolished by this charter.

Section 8. The corporate authority of said City shall be vested in a Mayor, City Council, Clerk, Tax Collector, Tax Assessor, Treasurer, Marshal and Registration Officer; and the City Council is hereby authorized and empowered to create, by ordinance, such other and additional officers, with such powers and duties, as it deems advisable. The City Council is hereby authorized and empowered to abolish the office of City Treasurer of said City provided the same shall not become effective until after the expiration of the term of office of the present incumbent.

Section 9. The Mayor and the members of the City Council shall be elected by the qualified voters of said City. The Clerk, Tax Collector, Tax Assessor, Treasurer, Marshal, Registration Officer, and any other officers hereafter created, when the City Council shall not otherwise provide, shall be appointed by the Mayor, subject to confirmation by the City Council.

Section 10. The City Council may provide by ordinance for the holding by one or more persons of the offices of Tax Assessor, Tax Collector, Clerk, Treasurer and Registration Officer.

Section 11. Any person, male or female, who has reached the age of twenty-one years and is a citizen of the State of Florida and who has resided in the County six months and in the City of Vero Beach for thirty days and who is registered as a voter on the City Registration Book, shall be qualified to hold any office in said City, and to vote in all City Elections, except bond elections, when the qualifications shall be hereinafter provided. The payment of poll tax shall not be required as a qualification for voting at elections in said City.

Section 12. No person shall be eligible to hold office in said City unless he or she be a qualified voter in said City.

Section 13. The regular annual election for the elective officers of the City of Vero Beach shall be held on the second Tuesday in December of each year, and the present officers of the City of Vero Beach, whether elected or appointed, shall retain the same offices under the City hereby created for the term for which they were elected or appointed and until their successors are elected or appointed and qualified. Provided, however, that the City Council shall have the power by ordinance to lay off the City of Vero Beach into wards not to exceed five in number and to provide for the election of a Councilman from each ward to be elected either by the qualified electors of the City at large or by the qualified electors in each ward, as the City Council may determine.

At the regular annual election to be held in the City of Vero Beach on the second Tuesday in December, 1929, there shall be elected three members of the City Council for the term of two years; at the next City election held on the second Tuesday in December, 1930, two members of the City Council shall be elected for the term of two years; and thereafter members of the City Council shall be elected for the term of two years each; so that two members are elected at one annual election, and three members are elected at the next annual election, but each for the term of two years and until their successors are elected and qualified.

Beginning with the election held in December, 1929, a Mayor shall be elected for the term of two years.

Section 14. That all officers of the City of Vero Beach shall hold office until their successors are elected or appointed and qualified.

Section 15. Each officer of the City as soon as convenient after his appointment or election shall take before the Mayor or before any person authorized to administer oaths, an oath or affirmation that he will support, protect and defend the Constitution and government of the United States and of the State of Florida against all enemies, domestic or foreign, and that he will bear true faith, loyalty and allegiance to the same and that he is entitled to hold office under the Constitution and laws of the State of Florida, and that he will faithfully perform the duties of the office on which he is about to enter.

Section 16. Said corporation shall have perpetual succession, may sue and be sued, plead and be impleaded, and shall have a common seal which may be changed by the City Council at pleasure.

Section 17. Said corporation may own, purchase, lease, receive, acquire and hold property, real and personal, within and without the territorial boundaries of said corporation to be used for any and all such public purposes as the City Council may deem necessary and proper, and that said corporation is hereby fully empowered to sell, lease, convey and otherwise dispose of any and all property, real and personal, which may belong to said corporation, and the City Council shall prescribe by ordinance the manner of making such conveyance. Provided, however, that the electric light and power plant and/or waterworks and/or any other public utilities owned or operated by said City shall never be sold, leased or otherwise disposed of unless such sale, lease or disposal shall first be ratified, approved and confirmed by a majority vote of the qualified electors of said City who are freeholders, voting at an election duly called and held for such purpose in accordance with the rules and regulations of said City providing for the holding of general elections therein.

Section 18. The City Council shall by ordinance provide for the holding of all general and special elections and for the return and canvass of the same and for the registration of voters.

Section 19. The Mayor shall have the power to preserve peace and order and to enforce the ordinances of said City and shall have such powers and duties as are conferred upon him by ordinance. His compensation shall be fixed by ordinance and shall not be changed during his term of office. He shall have jurisdiction for

the trial of all offenses against the laws of the City, and it shall be his duty to see that the ordinances are faithfully executed and the orders of the Council duly observed and enforced. He shall be Judge of the Municipal Court and shall have power by his warrant to have brought before him any person or persons charged with the violation of the ordinances. He shall have power to require the attendance of witnesses for and against the accused; to administer oaths, to take affidavits and to inquire as to the truth of all charges preferred; to decide upon the guilt or innocence of the accused, and to fix by sentence the penalty prescribed by ordinance, and to enforce the same; to pardon and release persons convicted by him, and to have and exercise all the powers incident and usual to the enforcement of his jurisdiction; and he shall also have the power to punish for contempt of Municipal Court to the extent of a fine not exceeding One Hundred Dollars or imprisonment not exceeding thirty days, or both such penalties in his discretion. Provided, however, that the City Council, with the written consent of or at the written request of the Mayor, shall have the power to elect by a majority vote, a suitable person who shall preferably be a duly licensed and practicing attorney at law of said City, and who shall also be a qualified elector therein, to be Judge of the Municipal Court of the City of Vero Beach, and when so elected said Judge shall have the same powers and duties as this Act confers upon the Mayor as such Judge, and upon the election of such Judge the authority of the Mayor as such Judge shall cease, except during the absence or sickness of such Municipal Judge, when the Mayor of said City shall be acting Judge of the Municipal Court of said City. The City Council shall fix the compensation of such Judge and the term of office of such Judge, when elected as herein provided, shall expire on the date of the term of the office of the incumbent Mayor.

Section 20. The City Council shall have authority by ordinance to provide for taking cash security for appearance before the Mayor's Court for any person or corporation accused of violating a City ordinance and for the forfeiture thereof in default of such appearance.

Section 21. The Mayor shall have power to suspend any officer, except Councilmen, for misconduct in office, or neglect of duty reporting his action in writing, with reasons therefor, to the next regular meeting of the Council, for its approval or disapproval. Notice of such suspension and the reasons therefor shall be given in writing to the suspended officer by mailing the same to his last known address, and the said suspended officer shall have

the right to a hearing before the City Council. If the City Council shall approve the action of the Mayor in suspending such officer, said officer shall thereupon stand removed and his office vacated. If the Council shall not approve the action of the Mayor in suspending such officer, the said officer shall resume his duties.

Section 22. The Mayor shall have general supervision over all City officers and the police force and may examine into the condition of the officers, books, records and papers thereof and the manner of conducting official business. He shall report to the City Council all violations or neglect of duty of any official that may come to his knowledge. He shall make such recommendations about City business to the City Council as he deems advisable.

Section 23. The Mayor shall appoint such police force with the consent of the Council as may be deemed necessary. The compensation of policemen shall be fixed by the City Council.

Section 24. When in his opinion the public good requires, the Mayor may appoint and discharge special policemen and detectives, making report thereof to the City Council at its next meeting thereafter.

Section 25. The Mayor shall communicate from time to time to the Council such information and recommend such measures touching the public services as he may deem proper, and shall perform such other duties as the ordinances prescribe.

Section 26. The Mayor may call special meetings of the Council, and when called he shall state the object for which called, and the business of such meeting shall be confined to the objects so stated in the call, unless all the members of the Council are present, when they may transact such business as they see fit.

Section 27. The Mayor may be impeached by the Council for misfeasance, malfeasance or nonfeasance in office, for drunkenness or gross immorality. Should charges be preferred against the Mayor the Council shall furnish said Mayor with a copy of the charges, giving him a reasonable time to answer, and shall proceed without unnecessary delay to investigate and decide said charges. It shall require a four-fifths vote of all the members of the City Council to remove the Mayor.

Section 28. That in case of death or absence of the Mayor from the City, or his inability from any cause to discharge the duties of the office of Mayor, the President of the Council, or in his absence the acting President of the Council, shall discharge the duties of Mayor as "Mayor pro tempore" until the office of Mayor shall be filled, or until the Mayor shall resume his duties.

Section 29. In the event there should occur, from any cause, a vacancy in any of the elective offices of said municipality, whether it be in any of the offices provided for and created by this Act, or whether it be in any offices that may hereafter be created, it shall be the duty of the City Council to fill such vacancy. In the event there should occur from any cause a vacancy in any of the offices of said municipality, other than elective offices, it shall be the duty of the Mayor of said municipality to fill such vacancy, subject to confirmation by the City Council. In either event the person so appointed to fill any such vacancy shall hold office for the unexpired term of his predecessor.

Section 30. The City Council shall be composed of five councilmen, each of whom shall receive not exceeding three dollars for each regular or special meeting he attends. The City Council shall prescribe its own rules and procedure and may prescribe penalties for non-attendance or disorderly conduct of its members and enforce the same. Four-fifths of its members concurring, it may expel a member for improper conduct in office. A majority of the members of the Council shall be necessary to constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time until a quorum is obtained. The Council shall hold meetings at such times as it may determine, holding not less than one regular meeting each month. And said Council shall be the judge of the qualification, election and returns thereof of its own members and shall prescribe rules relative to any contest over any election to membership thereon.

Section 31. The City Council shall organize immediately after any general City election by electing one of its members president, who shall preside over the Council. When acting as Mayor, he shall be disqualified from acting as president or as a member of the City Council. A president pro tem shall be elected to preside over the Council during the absence or disability of the president of the Council.

Section 32. The City Council shall have the power and is hereby authorized to create by ordinance such additional offices and provide for the election or appointment of additional officers or employees as it may in its judgment deem necessary. The Council shall have power at any time by ordinance to abolish any offices thus created.

Section 33. The City Council may make such other and further ordinances not inconsistent with the laws of the State, as shall be deemed expedient for the good government of the City, the public

safety and welfare, the protection of property, the preservation of peace and good order, the suppression of vice, the benefit of trade and commerce, the preservation of good health, the prevention and extinguishing of fires, and for the exercise of its corporate powers and the performance of its corporate duties. No ordinance shall become a law unless passed by at least three-fifths of all the members of the City Council. Every ordinance passed by the City Council before becoming a law shall be presented to the Mayor under the certificate of the Clerk. If the Mayor approves the same he shall sign it and return it to the Clerk; but if he shall not approve it, he shall return it to the Clerk with his objections in writing at or before the next regular meeting of the Council for reconsideration; and if the Council shall pass the ordinance by a four-fifths vote of all its members it shall go into effect. If the Mayor shall fail to return any ordinance, or shall return the same unsigned, without objections in writing, at or before the next regular meeting of the Council after its passage, he shall be deemed to have approved the same, and it shall become a law without his signature.

Section 34. The City Council may require any officer or employee of the City to give bond and with such sureties as the Council may by ordinance determine.

Section 35. The City Council shall have power by ordinance to impose a tax upon any and all business, professions and occupations engaged in, or carried on, either wholly or in part within the corporate limits of said City, whether the same be taxed by the State or not, and without regard to the amount of the State tax, if any, imposed upon such business, profession or occupation.

Section 36. The City Council shall have the power by ordinance to establish, maintain and regulate hospitals, jails, houses of detention and correction, public libraries and cemeteries.

Section 37. The Council shall have power by ordinance to make regulations to secure and protect the general health of the inhabitants and to prevent and remove nuisances, where affecting the health or morals of the community; to regulate the sale and storage of all articles of food and to establish and regulate markets; to establish fire limits and to regulate the construction of buildings within the fire limits; the Council shall have the power by ordinance to prohibit and suppress gambling houses, bawdy houses and disorderly houses, and any exhibition, show, circus, parade or amusement contrary to good morals, and all obscene pictures or literature; to regulate and prevent the carrying on of

business dangerous in increasing or producing fires; to regulate and prevent the storage of explosives, oils and other combustibles and inflammable material; and to regulate the use of lights, electric wiring and steam pipes in all buildings and other places; to regulate and suppress the storage and sale of firecrackers and all other fireworks, guns, pistols and other fire irons, toy pistols, air guns and sling shots; to prohibit and punish all disorderly conduct, breakers of the peace, and disorderly assemblies; to regulate the use of automobiles, motor trucks and other power driven vehicles; to regulate the use of the streets, alleys, parks and sidewalks of the City; to regulate and prohibit the running at large of any wild or domestic animals or fowl; and to provide for the impounding and disposal of the same; to prohibit and provide for the removal and abatement of any dangerous building, structure, encroachment, material or other thing dangerous to the health or safety of the inhabitants; to compel owners of buildings to erect fire escapes and to provide for prevention of fires and the safety of persons in any building or place; and the Council shall have the power to pass all ordinances necessary to the health, peace, convenience, welfare or the protection of the inhabitants of said City and to carry out the full extent and meaning of this Act and to accomplish the objects of this corporation; and the City Council may provide fines, forfeiture, terms and imprisonment with or without hard labor and other penalties for the enforcement of ordinances; and may provide ways and means to prevent the escape of prisoners.

Section 38. The City Council shall have power by ordinance to prevent the introduction and spread of infectious and contagious diseases and to make quarantine regulations for that purpose and to provide for the enforcement of the same within five miles of the City, when same does not conflict with laws of the State of Florida or of the United States.

Section 39. That the City Council shall have authority to cause to be prepared, as often as it may deem necessary, a code or digest of the City Ordinances, which may be adopted by the City Council as a single ordinance, and it shall not be necessary to post or publish the same in order that the same may become effective and in force. The Courts in this State shall take judicial cognizance of the code and ordinances of the City, and the printed copy of the code and ordinances officially printed by the City shall be taken in evidence in any trial in which the same may be com-

petent without proof of the due presentation and approval of said code and ordinances.

Section 40. The City Council shall have power by ordinance to provide the City and its inhabitants with water supply, sewer system, electric light and power, gas for light and fuel, street and other railways, telephone and telegraph lines, municipal docks, seawalls along the water fronts of said City, bulkheads, causeways, bridges, golf courses, air ports and other public utilities, and for said purposes, or any of them, may buy, construct, lease or otherwise acquire the same; and the City Council may by ordinance permit any person or corporation to buy, construct, lease or otherwise acquire and maintain any of said public utilities for the purpose of furnishing the said City and its inhabitants with service from the same; provided, however, that no exclusive permission of franchises shall be granted to any person or corporation for any public utility. The City Council may by ordinance make reasonable regulations as to the use of any public utility and may fix reasonable rates for service furnished by public utilities to consumers.

Section 41. The City Council shall by ordinance provide for the organization and maintenance of the Fire Department and provide for the prevention and extinguishing of fires.

Section 42. The City Council shall have power to open, establish, abolish, alter, extend, widen, grade, regrade, pave, repave or otherwise improve, clean and keep in repair or rebuild streets, avenues, alleys, sidewalks and crosswalks and other public ways and thoroughfares and construct, erect and keep in repair and rebuild bridges, culverts, gutters, sewers and drains; to regulate and provide for the construction, preservation and repair of streets, avenues, alleys, sidewalks, foot pavements and other public ways and thoroughfares and paving and repairing the same; to provide for the construction of sewers and drains and for keeping the same in repair; to provide for a uniform character of sidewalks which shall be built upon a grade established by the City; to take and appropriate private grounds, in manner and form provided by law for condemnation, for widening streets or parts thereof, or for extending the same, or for laying out new streets, avenues, alleys, squares, parks or promenades; to grant the right-of-way through the streets, alleys, avenues, and public grounds of the City for the use of street or other railways, but the owner of property abutting thereon shall not thereby be deprived of any right he may have to claim any damage that he may receive

by reason of such right-of-way; to require owners of property or their agents to keep their lots, tracts or parcels of land free and clean of weeds, brush, undergrowth, trash, filth, garbage or other refuse or in case of their failure to do so the City may remove or cause the removal of such weeds, brush, undergrowth, trash, filth, garbage or other refuse, and may charge and assess the expense thereof against the property so cleaned and improved, to provide for the care and protection of trees, shrubs and flowers in the public streets, avenues, parks and grounds, to impose penalties on the owner or occupant of or agent for any sidewalk, house or other structure, place or thing which may be dangerous or detrimental to the inhabitants of said City or dangerous or detrimental to their property unless after due notice the same be removed or remedied in accordance with the requirements of the City Council.

Section 43. The Council shall have the power by ordinance to acquire, improve and maintain parks for the benefit of the City and its inhabitants.

Section 44. That said City is hereby delegated authority to exercise the right and power of eminent domain, that is, the right to appropriate property within or without the territorial limits of said City for the following uses or purposes: For streets, lanes, alleys and ways; for public parks, squares and grounds; for drainage and for raising or filling in land in order to promote sanitation and healthfulness; for reclaiming and filling when lands are low or wet or overflowed altogether at times, and entirely or partly; for the abatement of any nuisance; for the use of water pipes and for sewerage and drainage purposes; for laying wires and conduits under the ground; for City buildings, waterworks, electric light plants, pounds, bridges, seawalls, bulkheads, causeways, municipal docks, golf courses, air ports, and any other municipal purpose; which shall be coextensive with the powers of said City exercising the right of eminent domain under this section; and the absolute, fee simple title to all property so taken and acquired shall vest in the said City, unless the City seeks to condemn a particular right or estate in such property. That the procedure for the exercise of eminent domain or the condemnation of any lands or property under this section shall be the same as is provided by the general laws of Florida on the subject of condemnation of property for public uses.

Section 45. The Council shall have power by ordinance to provide for the construction, improvement and maintenance of

necessary ditches and drains within said City for the purpose of protecting the lands within said City from overflow or for the protection of the health of the City's inhabitants; and the City Council shall have the power by ordinance to enter into and contract with any existing Drainage District relating to the use of any Drainage Canals or ditches under the jurisdiction of said Drainage District.

If at any time the Council shall deem it necessary or expedient for any good reason, that any lot, tract or parcel of land within said City should be cleaned of weeds, trash, undergrowth, brush, filth, garbage or other refuse, it shall have power to direct and require the owner or owners of said lot, tract or parcel of land to clean the same of weeds, trash, undergrowth, brush, filth, garbage or other refuse. Such notice shall be given by resolution of the Council, a copy of which shall be served upon the owner or owners of such lot, parcel or tract of land, or upon the agent of such owners, or if the owner is a non-resident or cannot be found within the City and has no known agent within the City, a copy of such resolution shall be published for once each week for two weeks in some newspaper published in the City and a copy thereof posted upon said lot, tract or parcel of land, and if the owner or owners shall not within such time as such resolution shall prescribe clean such lot, tract or parcel of land of weeds, trash, undergrowth, brush, filth, garbage or other refuse as therein directed, it shall be lawful for the Council to cause the same to be done and to pay therefor and to charge, assess and collect the expense thereof against said lot, tract or parcel of land and against the owner or owners thereof. Notice of hearing complaints and action thereon shall be done substantially in accordance with the provisions of Chapter 9298 of the laws of Florida with respect to assessments for local improvements.

Section 46. The City Council may by ordinance or resolution provide for standing committees of the Council; such committees to be appointed by the President of the Council annually after the organization of the Council.

Section 47. Whenever it shall be deemed advisable to issue bonds for the purpose of constructing, maintaining, or purchasing waterworks; for the purpose of constructing, maintaining or purchasing gas or electric light works, or other illuminating systems, for the purpose of constructing, maintaining or purchasing a system of sewerage; or otherwise promoting the health of said municipality; for the purpose of opening, constructing, paving or repaving, re-

pairing and (or) maintaining the streets and sidewalks of said municipality; for the purpose of opening, constructing and (or) maintaining public parks and (or) promenades; for the purpose of establishing and maintaining a fire department in said municipality; for the purpose of erecting public buildings for the use of said municipality; for the purpose of constructing seawalls along the water fronts of said City; for the purpose of constructing, repairing and (or) maintaining municipal docks; for the purpose of filling in any lot or submerged land in said City; for the purpose of constructing, repairing and (or) maintaining bridges, bulkheads and causeways; for the purpose of purchasing, constructing and (or) maintaining a municipal golf course; for the purpose of purchasing, constructing and (or) maintaining a municipal hospital; for the purpose of purchasing, constructing and (or) maintaining a municipal air port; or for any other municipal purpose, the Mayor and City Council are hereby authorized to issue bonds of said municipality, and under the seal of said corporation, to an amount of not exceeding twenty-five per cent of the assessed valuation of all the property, both real and personal, within said City, as shown by the current assessment roll, said bonds to be signed by the Mayor, countersigned by the President of the Council, and attested by the Clerk, with interest coupons attached, which shall be signed in like manner, except that such interest coupons may be signed by the lithographed or facsimile signatures of the Mayor, President of the City Council and City Clerk respectively; provided, however, that before said bonds shall be issued the issuance of said bonds shall be approved by an affirmative vote of a majority of the electors voting for each purpose separately at an election to be held for such purpose of purposes, which election shall be regulated by ordinance as to the manner of conducting and certifying the same, after the same has been advertised for not less than thirty days in a newspaper published in said City of Vero Beach, or in some newspaper published in Indian River County, Florida, and at which election only qualified electors of said City who own real estate in said City, and who have paid the taxes thereon last due shall be allowed to vote.

Section 48. When the bonds are issued under the terms of this Act the said bonds shall be under the seal of the City of Vero Beach and shall be signed by the Mayor, countersigned by the President of the City Council and attested by the Clerk, with interest coupons attached, which shall be signed in like manner, except that such interest coupons may be signed by the lithographed facsimile

signatures of the Mayor, President of the City Council and City Clerk respectively, and the Mayor and City Council of said City of Vero Beach shall be authorized to levy a special tax upon all the taxable property within said City at such rate as may be necessary to raise a sufficient fund to pay off the interest that may accrue upon said bonds, as well as to provide a sinking fund for their final redemption.

Section 49. The bonds herein provided for shall in no case be sold at a greater discount than five per cent of their par value, and shall not bear a greater rate of interest than eight per centum per annum, payable semi-annually.

Section 50. It shall be the duty of said City Council, as soon as the bonds herein authorized have been approved, to advertise the same for sale on sealed bids, which advertisements shall be published once a week for two successive weeks in a newspaper of general circulation published in Indian River County, Florida, and if said bonds be not sold pursuant to such advertisement they may be sold at private sale at any time after the date advertised for the reception of sealed bids; providing that no bonds issued hereunder shall be sold for less than ninety-five per cent of the par value thereof with accrued interest to date of delivery, and provided further that no bonds shall be sold at private sale for less than the sealed bids received therefor, and no private sale shall be made of said bonds subsequent to thirty days after the advertised date for the reception of sealed bids.

Section 51. A bank or banks, or other depository to be designated by the Council, shall receive and be custodian of said bonds and all money arising from the sale of said bond or bonds.

Section 52. The City Council shall advertise for bids for work to be done for which bonds are issued, making contracts with the lowest responsible bidder, who shall himself give bond for the faithful performance of the work, but the said Council shall have the right to reject any or all bids received; it shall personally, or through proper agents, select all material and have supervision and charge of the work for which the bonds are issued, and shall audit all accounts connected with such work, and pay the same by check on the banks or depositories handling the proceeds of the sale of the said bonds.

Section 53. The entire issue of bonds, or such portion thereof as the Mayor and Council may deem advisable, may be sold and converted into money at once.

Section 54. In the event there is remaining in the bank or banks, or other depository an unexpended balance of money that was derived from the sale of bonds after the work, the cost of which is to be paid therefrom, has been completed, the City Council shall invest such balance in such interest bearing securities as it may elect, to be approved by the Mayor, or deposit same at interest in an approved depository. Such securities shall be turned over by it to the City Treasurer or other proper officer, and the proceeds thereof be applied to the payment of the bonds or the interest thereon, as directed by resolution of the Council.

Section 55. The adverse result of an election to determine the question of the issuance of bonds for any one or more of the purposes mentioned in this Act shall not debar the then existing or any subsequent Council from resubmitting the same question to the legal voters of the City after the lapse of one year; but the question of bonding for any purpose not already voted upon can be submitted to the vote of the people whenever, in the judgment of the Council, it may be considered advisable.

Section 56. All the property within the City taxable for State and County purposes shall be assessed and listed for the purpose of taxation on the City Assessment Roll and the City Tax Assessor shall proceed substantially in the same manner as is provided by law for the assessment of real and personal property for the purposes of State and County taxation; and railway and railroad companies, including street railways, shall be subject to assessment and taxation on all real estate and personal property owned by them within the limits of the corporation, in the same manner and at the same ratio and valuation as other property, save and excepting the roadbed and rolling stock of said railroad, which shall be assessed by the State Comptroller, as provided by law; provided, the City may make its own assessment of property for taxation, and the valuation of the property by the municipality shall not be controlled by the valuation fixed for State and County taxation, but may exceed the same, and provided, further, the City Council shall act as a Board of Equalization for the purpose of equalizing the valuation instead of the Board of County Commissioners.

Section 57. The City Tax Collector shall proceed with the collection of the City taxes substantially in the same manner as provided by law for the collection of taxes and sale of property for the non-payment of taxes by State and County Tax Collectors. He shall give all notice required by law, and sell the real property of delinquents in the manner provided by law, and give to the pur-

chaser a certificate substantially in the form provided by law for State and County Collectors and shall prepare in duplicate a report of tax sales of real property for each year, one of which he shall retain and one shall be filed in the office of the Clerk of the Circuit Court for the County of Indian River for record. At all sales of land for unpaid City taxes, in the absence of purchasers therefor, the lands shall be bid in by the City Tax Collector for the City, and certificate issued accordingly. The City Tax Collector shall proceed with the collection of taxes on personal property, likewise substantially in the same manner as provided by law for State and County Tax Collectors.

Section 58. After the review and equalization of the City Assessment Roll in each year, the City Council shall determine the amount of money to be raised by taxation upon the taxable property in said City, both real and personal, which amount shall not be more than twenty mills on the dollar on the total valuation of the taxable real and personal property in said City for general City purposes, but the City Council may levy such additional tax or taxes as may be necessary for the construction, repair and (or) maintenance of City buildings; for fire protection; for City lighting; and for the construction, repair, improvement and (or) maintenance of streets and sidewalks; and a tax of not to exceed two mills on the dollar upon all the taxable property in said City for the purpose of public amusement, entertainment, publicity and advertisement of said City. The City Council shall also levy such additional tax or taxes as may be necessary to pay the interest and to provide a sinking fund for the payment of the principal of any bonded or other indebtedness of said City.

Section 59. The City Council shall have power by ordinance to provide for the construction and reconstruction, repair, paving, and repaving, hardsurfacing and rehardsurfacing of streets, boulevards and alleys; for grading and regrading, leveling, laying and relaying, paving and repaving, hardsurfacing and rehardsurfacing of sidewalks; for the construction and reconstruction of curbs; for the construction and reconstruction of drains, ditches, sanitary sewers, storm sewers, white way lighting systems, and all things in the nature of local improvements; and for the payment of all or any part of the cost of any such improvement by levying and collecting special assessments on the abutting, adjoining, contiguous or other specially benefited property, in proportion to the benefits to be derived therefrom.

Section 60. When the City Council shall determine to make any

local improvements as defined in Section 59 of this Act and to defray the whole or any part of the cost or expense thereof by special assessment, it shall so declare by ordinance, stating the necessity for and the nature of the proposed improvement, and what part or proportion of the expense shall be paid by special assessment; by what method said special assessment shall be made; what part, if any, shall be paid out of the general fund of the City, and shall designate the district or lands and premises upon which the special assessments shall be levied. It shall be stated in said ordinance the total estimated cost of the improvement and the method of payment of assessments and the number of annual installments into which said assessments shall be divided.

Section 61. At the time of passing the ordinance hereinbefore provided for, there shall be on file in the office of the City Clerk plans, specifications, estimates and profiles of the proposed improvement, and such plans, specifications, estimates and profiles of the proposed improvement shall be open to the inspection of the public.

Section 62. The ordinance thus adopted shall be published once a week for two successive weeks and shall be certified to by the City Clerk, who shall thereupon proceed to make an assessment roll in accordance with the method of assessment provided for in said ordinance, which assessment roll shall be completed and filed with the City Council of said City as promptly as possible; said assessment roll shall show the lots and lands assessed, the amount of the assessment against each lot or parcel of land, and, if said assessment is to be paid in installments, the number of annual installments into which the assessment is divided shall also be entered and shown upon said assessment roll; but in no case shall said installments be for any greater number of years than twenty years.

Section 63. Upon the completion of said assessment roll, the City Council shall cause a copy thereof to be published two times successively, once each week, in a newspaper of general circulation published in Indian River County, Florida, and in the publication of said assessment roll the said City Council shall cause to be attached to the copy of the assessment roll published a notice directed to all property owners interested in said assessment of the time and place where complaints will be heard with reference to said assessment, and when said assessment roll will be finally approved and confirmed by the City Council of said City sitting as an equalizing board.

Section 64. At the time and place named in the notice provided for in the preceding section, the City Council of said City shall meet

as an equalizing board to hear and consider any and all complaints as to such special assessments and shall adjust and equalize said assessments on a basis of justice and right, and when so equalized and approved such assessments shall stand confirmed and be and remain legal, valid and binding liens upon the property against which said assessments are made until paid, in accordance with the provisions of this Act; provided, however, that upon the completion of the improvement the said City shall rebate to the owner of any property which shall have been specially assessed for any improvement the difference in the assessment as originally made, approved and confirmed and the proportionate part of the actual cost of said improvement to be paid by special assessments as finally determined upon the completion of said improvement; the amount of said rebate to be deduced from said assessments proratably over the entire assessment period.

Section 65. Special assessments for local improvements in said City shall be payable by the owners of the property assessed for said improvements at the time and in the manner stipulated in the ordinance providing for said improvements and said special assessments shall be and remain liens superior in dignity to all other liens, except liens for taxes, until paid, from the date of the assessment upon the respective lots and parcels of land assessed, and shall bear interest at a rate not exceeding eight per cent per annum, and may be by ordinance aforesaid made payable in equal yearly installments, not exceeding twenty, with accrued interest on all deferred payments, unless paid within thirty days after said assessments shall stand approved and confirmed.

Section 66. Each annual installment provided for in the preceding section shall be paid upon the date provided in said ordinance, with interest on all deferred payments, until the entire amount of said assessment has been paid; and upon the failure of any property owner to pay any annual installment due, or any part thereof, or any interest on deferred payments, the City Council of said City shall cause to be brought the necessary legal proceedings by a bill in chancery to enforce payment thereof, with all accrued interest, together with all legal costs incurred, including a reasonable solicitor's fees, to be assessed as part of the costs; and in the event of default in the payment of any installment of an assessment, or any accrued interest on said assessment, the whole assessment with interest thereon shall immediately become due and payable and subject to foreclosure. In the foreclosure of any special assessment service of process against unknown or non-resident de-

fendants may be had by publication as is provided by law for other chancery suits. The foreclosure proceeding shall be prosecuted to a sale and conveyance of the property involved in said proceeding as now provided by law in suits to foreclose mortgages.

Section 67. After the equalization, approval and confirmation of the levying of special assessments for local improvements by the City Council, and as soon as the contract for said improvement or improvements has been finally let, the City Council may by ordinance issue bonds pledging the full faith and credit of the City, to an amount not exceeding the total cost of said improvement or improvements to be paid by special assessment, and the estimated cost of said improvement as stated in the ordinance providing for said improvement and the levying of special assessments therefor shall be used as the basis of calculation in determining the cost of said improvement; and the said bonds so issued shall be general obligations of said City. And if special assessments be not imposed and collected in respect of the improvements in season to pay the principal and all interest on said bonds, the City Council shall levy and collect against all taxable property in the City of Vero Beach a tax sufficient to pay such principal and all interest as the same respectively becomes due and payable. All bonds so issued shall be excluded from any limitation of bonded indebtedness prescribed in this Act or any general law and shall be issued by ordinance of the City Council without submitting the question as to the issuance of said bonds to a vote of the electors of said City.

All bonds issued under the provisions of this section shall be advertised for sale on sealed bids, which advertisement shall be published once a week for two weeks in a newspaper of general circulation published in Indian River County, Florida; and if said bonds be not sold pursuant to such advertisement they may be sold at private sale at any time after the date advertised for the reception of sealed bids; provided, that no bonds issued hereunder shall be sold for less than ninety-five per cent of par value thereof, with accrued interest to date of delivery, and provided further that no bonds shall be sold at private sale for less than the best sealed bid received therefor, and no private sale shall be made of said bonds subsequent to thirty days after the advertised date for the reception of sealed bids.

All bonds issued for local improvements under this section shall be in the denomination of One Hundred Dollars or some multiple thereof, and shall bear interest not exceeding six per cent per

annum, payable annually or semi-annually, and both principal and interest shall be payable at such place or places as the City Council may determine. The form of such bonds shall be fixed by ordinance of the City Council, and said bonds shall be under the seal of the City of Vero Beach, and shall be signed by the Mayor, countersigned by the President of the City Council and attested by the City Clerk, with interest coupons attached which shall be signed in like manner, except that such interest coupons may be signed by the lithographed or facsimile signatures of the Mayor, President of the City Council and City Clerk, respectively. Bonds issued hereunder shall have all the qualities of negotiable paper under the law merchant and shall not be invalid from any irregularity or defect in the proceedings for the issue and sale thereof and shall be incontestable in the hands of bona fide purchasers or holders thereof for value.

Section 68. If any special assessment made to defray the whole or any part of local improvements shall be either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the City Council shall be satisfied that any such assessment is so illegal and defective that the same cannot be enforced or collected, or if the City Council shall have omitted to make such assessment when it might have done so, the City Council is hereby authorized and required to take all necessary steps to cause a new assessment to be made for the whole or any part of such improvements, and if the second assessment is annulled the City Council may proceed to make other assessments until a valid assessment shall be made.

Section 69. All special assessments levied and imposed in respect of local improvements shall constitute a fund for the payment of principal and interest of the bonds authorized under this Act, and in the event there be a failure to collect and receive said special assessments in season to pay the principal and (or) interest of said bonds, the City Council of said City shall levy and collect on all taxable property in said City a tax sufficient to pay such principal and (or) interest, as has been hereinbefore provided.

Section 70. The City Council shall have the power to pay out of its general fund, or out of any special fund that may be provided for that purpose, such bonds for the cost of any local improvement as it may deem proper, and interest accruing while improvements are under construction and for six months there-

after, and all engineering and inspection costs, including a proper proportion of the compensation, salaries and expenses of engineering staff of the City properly chargeable to such improvements, and all costs and estimated costs, including attorney's fees, in the issuance of bonds shall be deemed and considered a part of the costs of such improvements.

Section 71. Any informality or irregularity in the proceedings in connection with the levy of any special assessments for local improvements shall not affect the validity of the same where the assessment roll has been confirmed by the City Council, and the assessment roll as finally approved and confirmed shall be competent and sufficient evidence that the assessment was duly levied, and that all other proceedings adequate to the adoption of the said assessment roll, were duly had, taken and performed as required by this Act, and no variance from the directions hereunder shall be held material unless it be clearly shown that the party objecting was materially injured thereby.

Section 72. The City Council shall have power by ordinance to provide for a consolidation of all assessments which have heretofore been made for local improvements in said City, so as to consolidate into one item the total amount of all assessments for local improvements now existing against each lot, tract or parcel of land in said City, provided that there shall be no change made in the total amount of said assessments that would cause said consolidated assessments to be in excess of the total amount of principal and interest at the time of such consolidation of the assessments as heretofore made, assessed and confirmed against said property. The City Council may also provide by ordinance that all assessments for street paving that have heretofore been made, where the costs of paving street intersections have been included in special assessments against abutting property, shall be reduced in an amount not to exceed ten per cent of the total of the principal of such assessments against such property, and that the amount of such deduction shall be paid out of the general fund of said City, or otherwise, as may be lawfully provided by said City Council. The City Council shall also have the power by ordinance to provide that all assessments for street paving and sidewalks heretofore made in said City on corner lots where said lots have a greater depth than fifty feet shall be adjusted by assessing said lots on a basis of fifty feet frontage on the side street upon which said lots shall be located, but in no case shall the frontage assessed on the said

street be less than the frontage of the lot on the principal street, and such reduction so made in such assessments shall be paid out of the general fund of said City, or in any other lawful manner that may be provided by the City Council.

Section 73. The City Council of the City of Vero Beach may, pursuant to the power herein vested in it, by ordinance provide for the consolidation of all assessments for local improvements heretofore made. The Council is hereby authorized to provide that such assessments, after adjustments as hereinbefore provided, shall be and become payable in fifteen annual payments of ten per cent each and a sixteenth payment of 7.311 per cent, payments to cover both principal and interest in accordance with the following table:

$1,000 ASSESSMENT.

Payments	Outstanding	Interest	Principal	Total
1st	$1,000.00	$60.00	$40.00	$100.00
2nd	960.00	57.60	42.40	100.00
3rd	917.60	55.06	44.94	100.00
4th	872.66	52.36	47.64	100.00
5th	825.02	49.50	50.50	100.00
6th	774.52	46.47	53.53	100.00
7th	720.99	43.26	56.74	100.00
8th	664.25	39.86	60.14	100.00
9th	604.11	36.25	63.75	100.00
10th	540.36	32.42	67.58	100.00
11th	472.78	28.37	71.63	100.00
12th	401.15	24.07	75.93	100.00
13th	325.22	19.51	80.49	100.00
14th	244.73	14.68	85.32	100.00
15th	159.41	9.56	90.44	100.00
16th	68.97	4.14	68.97	73.11

Section 74. The City Council shall further provide in the consolidation of said assessments that all delinquent interest on assessments to the date of the passage of such ordinance consolidating said assessments be computed and added to the principal sum and that the interest rate on deferred instalments, starting from the date the consolidated plan is put into effect, shall be six per cent per annum where assessments are paid to date; but continue at eight per cent per annum as long as payments are in arrears.

Section 75. The City Council shall make provision, after providing for the consolidation and adjustment of assessments in accordance with the provisions of this Act, for each property owner against whom an assessment has heretofore been made, to be notified of the consolidated and adjusted assessments, and notice shall be given to each property owner in said City that a consolidated and adjusted assessment has been made of property owned by him in said City, and such notice shall describe the property and shall state the amount of the original assessment and shall state the amount of the consolidated and adjusted assessment and the time and place when the City Council will sit as an equalizing board for the purpose of hearing any complaint that the said property owner may have to offer with respect to the consolidated and adjusted assessment, which date shall be fixed at a time not less than ten days from the date of said notice. It shall be deemed to be sufficient notice to the owner or owners of property against which special assessments shall have been made with reference to the consolidation and adjustment of such assessments if such notice shall be mailed to the last known address of such owner or owners of record with the City Tax Collector of said City.

At the time and place named in the notice herein provided for the City Council of the City of Vero Beach shall meet as an equalizing Board to hear and consider any and all complaints as to such consolidated and adjusted assessments and shall adjust and equalize the same on a basis of justice and right, and when said consolidated and adjusted assessments shall have been equalized and confirmed by the said City Council, said assessments shall stand confirmed and be and remain legal, valid and binding liens upon the property against which said assessments are made until paid in accordance with the provisions of this Act, and at the time of the confirmation of such consolidated and adjusted assessments the City Council shall provide that the first payment thereunder shall be made within a period of time not more than sixty days from the date of such confirmation, and that if such first payment is not so made within said period of time that the entire amount of said assessment shall be forthwith due and payable; and shall make provision for each property owner in said City to be notified of the amount of said consolidated and adjusted assessments as confirmed by said City Council and of the time within which the first payment thereunder shall be made, and the amount of said first payment, as well as the total amount of said assessment; and the property owner shall also be notified that unless said first payment is made in accordance with the terms of said notice that the entire amount of the assessment

will at once become due and payable and said lien subject to foreclosure, which notice shall be given to the property owner in the same manner as the notice hereinbefore provided for the notice of the meeting of the City Council as an equalizing Board to hear complaints thereon.

Section 76. Each annual instalment provided for herein of the consolidated and adjusted assessments shall be paid at the time or times specified in an ordinance of the City Council relative thereto, with interest upon all deferred payments, until the entire amount of said assessment has been paid, and upon the failure of any property owner to pay any annual instalment due, or any part thereof, or any annual interest upon deferred payments, the City Council of the City of Vero Beach shall cause to be brought the necessary legal proceedings by a bill in chancery to enforce payment thereof, with all accrued interest, together with all legal costs incurred, including a reasonable solicitor's fee, to be assessed as a part of the costs; and in the event of default in the payment of any instalment of an assessment or any accrued interest on said assessment, the whole assessment with interest thereon shall immediately become due and payable and subject to foreclosure. In the foreclosure of any special assessment service of process against unknown or non-resident defendants may be had by publication as now provided by law in other chancery suits. The foreclosure proceedings shall be prosecuted to a sale and conveyance of the property involved in said proceedings as now provided by law in suits to foreclose mortgages.

Section 77. If at any time during the life of consolidated and adjusted assessments as herein provided all special assessment bonds which were issued to cover the local improvements for which said assessments were made shall have been paid, any balance in the assessment funding account, or any uncollected assessments, shall be applied to retiring outstanding refunding bonds which were issued in lieu of special assessment bonds maturing and not otherwise paid.

Section 78. The City Council of said City is also authorized to release all improvement liens which have been recorded in the office of the Clerk of the Circuit Court of St. Lucie or Indian River Counties at the time of the passage of this Act for the purpose of executing new liens in accordance with the consolidated and adjusted plan of assessments as provided for by this Act.

Section 79. The City Council shall have power by ordinance to prescribe the width, location, grade and materials of which streets and sidewalks shall be constructed.

Section 80. It shall be the duty of the Tax Assessor to assess all taxable property, both real and personal, within the corporate limits of the City. The manner in which he shall perform his duties shall be determined by ordinance.

Section 81. The Tax Collector shall collect all City taxes and shall perform such other duties as may be prescribed by the City Council. The manner in which he shall perform his duties shall be determined by ordinance.

Section 82. The Clerk of the City of Vero Beach shall act as Clerk of the Municipal Court and of the City Council. He shall be authorized to administer oaths and take affidavits. He shall perform such other duties as may be prescribed by the City Council. The manner in which he shall perform his duties shall be determined by ordinance.

The City Treasurer shall be the official custodian of all the funds of the City. He shall deposit City funds in such bank or banks as the City Council may prescribe. He shall perform such other duties as the Council may prescribe. The manner in which he shall perform his duties shall be determined by ordinance.

Section 83. The Marshal shall be Chief of Police of the City of Vero Beach. It shall be his duty to attend all regular and special meetings of the City Council; to aid in the enforcement of order under the direction of the presiding officer; to execute the commands of the Mayor and Council from time to time, and to execute any process issued by authority of the Mayor or City Council; to attend the Municipal Court during its sittings and to execute its commands; to aid in the enforcement of order therein under the direction of the Mayor; and to perform such other duties as may be appropriate to his office under the provisions of law or as required by ordinance. He shall have control of the police force, subject to the commands of the Mayor and City Council, and shall have police powers to make arrests for any violation of the lawful orders of the Mayor and City Council. All policemen appointed by the Mayor shall be deputies of the Marshal and shall have the same authority as the Marshal, but subject to his direction and control.

Section 84. The Marshal shall have power and authority to immediately arrest and take into custody, with or without warrant, any person who shall commit, threaten or attempt to commit in his presence any offense prohibited by ordinance; and he shall without necessary delay upon making such arrests convey the offender before the Mayor to be dealt with according to law.

Section 85. The Marshal and members of the police force, in addition to the powers incident to their office and as herein designated, shall possess the common law and statutory authority of constables, except for the service of civil process.

Section 86. Should any elective or appointed officer provided for by this Act, or by ordinance, fail to give bond as required by ordinance, within thirty days from his election or appointment, said office shall be declared vacant.

Section 87. No suit against the City of Vero Beach arising from any claim or demand of whatsoever nature not heretofore presented, or which may hereafter arise, shall be brought or maintained in any court unless such claim was presented to the City Council of said City within sixty days after the time this Act takes effect or within sixty days after such alleged claim arose against said City; and no suit or proceeding at law or in equity shall be maintained on any such claim, demand or right of action unless prosecuted within six months after presentation of same to the City Council of said City.

Section 88. If any member of the City Council shall fail to attend meetings of said City Council for a consecutive period of three months, then the office of said member of the Council may be declared vacant by a majority vote of the Council.

Section 89. The registration officer shall keep a set of books in which he shall keep a list of all qualified voters. He shall open the registration books thirty days prior to any election and close the same five days prior to the election. He shall perform such other duties as may be prescribed by the City Council and the manner of performance of his duties shall be fixed by ordinance.

Section 90. The City Council shall have power to provide by ordinance for the appropriation of money for the payment of the debts and expenses of the City.

Section 91. The City Council shall fix by ordinance from time to time the compensation of all City officers and employees.

Section 92. Immediately after an ordinance has been passed by the Council and approved by the Mayor or has become a law without the approval of the Mayor, it shall be the duty of the Clerk to publish the same by posting said ordinance at the door of the City Hall or Council Chamber. The City Council may direct that such ordinance be published in a newspaper published at Vero Beach, Florida, or within Indian River County, Florida.

Section 93. The City Council shall have power for the purpose

of paying current expenses or to meet any unexpected expenses to borrow money from time to time on negotiable notes maturing in not to exceed two years after date at a rate of not exceeding eight per cent interest per annum, payable semi-annually; provided, however, that the total indebtedness at any one time under this section shall not exceed $50,000. No money shall be borrowed under this section so as to increase the indebtedness of said City as composed of bonds, time warrants and notes to more than twenty-five per cent of the assessed valuation of the taxable property of said City as shown by the current assessment roll thereof and the City Council shall assess and levy a tax upon the taxable property in said City for the purpose of paying the notes issued hereunder both principal and interest at the maturity thereof, which tax shall be levied, assessed and collected annually in the same manner as other taxes.

Section 94. The City Council is authorized to issue and sell interest bearing time warrants, bearing interest at a rate not exceeding eight per cent per annum, to an amount not exceeding One Hundred Thousand Dollars to be outstanding at any one time. The City Council shall prescribe the form, denomination and date of maturity of such warrants. The City Council may sell such warrants at private sale, provided they are not sold for less than par, or said warrants may be sold to the highest bidder after advertisement for two successive weeks in a newspaper published in Indian River County, Florida, provided that no such time warrants shall be sold for less than ninety-five per cent of par plus accrued interest to date of delivery. No time warrants provided for herein shall be issued so as to increase the indebtedness of said City, as composed of bonds, outstanding time warrants, and notes to more than twenty-five per cent of the assessed valuation of the taxable property of said City as shown by the current assessment roll of said City.

The proceeds of the time warrants provided for herein shall be used for the purpose of repairing and maintaining electric light works and extending the electric light system; for the purpose of repairing and maintaining the sewer system; for the purpose of opening, constructing, repairing and (or) maintaining the streets and (or) sidewalks, for the purpose of maintaining public parks and promenades; for the purpose of maintaining a fire department; for the purpose of constructing, repairing and (or) maintaining public buildings; for the purpose of refunding any indebtedness of said City; or for any other municipal purpose.

The City Council shall assess and levy a tax upon the taxable property in said City for the purpose of obtaining interest and raising a sinking fund for the payment of the time warrants provided for by this Act, which tax shall be levied, assessed and collected annually in the same manner as other taxes.

Section 95. The City Council shall have the power to regulate, fix and prescribe by ordinance the maximum rates to be charged by all automobiles, taxicabs, jitney buses, or wheel chairs carrying or transporting passengers for hire within the City.

Section 96. The City Council shall have power by ordinance to regulate and control the use of all streets, alleys, public ways, grounds or other public property by any person, firm or corporation in the erection, placing or maintenance of any poles for telegraph, telephone, electric or other wires, or for other purposes; to regulate and control the placing and maintenance in any street, alley, public way, ground or other public property of all underground wires, pipes or conduits; to require all such poles, wires, pipes or conduits to be kept and maintained in a proper state of repair; to regulate and control the use of the streets, alleys, public ways, grounds or other public property of said City by bicycles, automobiles and other vehicles and machines.

Section 97. The City Council shall have power by ordinance to regulate and prescribe the width of tires of all vehicles or machines driven or operated upon any street, alley, or other public way of said City; to regulate and prescribe the kinds of tires which may be used upon automobiles and other motor vehicles or machines driven or operated upon any street, alley or other public way of said City, and to require the use upon such vehicles or machines of such tires as will do the smallest degree of damage or injury to the streets, alleys or other public ways of said City.

Section 98. Said City shall have full power and jurisdiction over, and the City Council may by ordinance provide for the protection, care and control of, the waters within the City Limits; to keep pure and clean any body of water from which the public water supply of the City is taken; to prohibit the dumping of filth, dirt, garbage, shells, trash, refuse or other things in the waters of the Indian River, or any other lake, canal, or other body of water within the City Limits; to license, govern, regulate or prohibit the permanent anchorage of houseboats or other boats or vessels in the Indian River within the City Limits; to regulate or prohibit the use of boatways or boatyards within the City limits, or to restrict their use to any portion of said City; to control, manage

and designate the use of all docks, wharves or piers within the City limits; to license and control ferries landing within the City, and all bridges wholly or in part within the City, and to erect a seawall along any portion of the waterfront within the City limits; and to erect and construct bulkheads and causeways along or over or across any waters within the City limits.

Section 99. If at any time the City Council shall deem it necessary or expedient for the preservation of the public health, or for any other good reason, that any lot, parcel or tract of vacant land then lying and being within said City, which may be lower than any street, streets, avenue or public way adjoining the same or the grade established therefor, or which may be subject to overflow or to the accumulation thereon of water, should be filled in, or ditched or drained, the City Council shall have power to direct and require the owner or owners of said lot, parcel or tract of vacant land to ditch, drain, or to fill in the same to such grade as the Council shall direct. Such notice shall be given by a resolution of the Council, a copy of which shall be served upon the owner or owners of such lot, parcel or tract of vacant land or upon the agent of such owner, or if the owner is a non-resident and cannot be found within the City and has no known agent within the City, a copy of such resolution shall be published once each week for two consecutive weeks in some newspaper published in the City, and a copy thereof shall be posted upon said lot, parcel or tract of vacant land; or if no newspaper is published in the City, such posting upon such lot, parcel or tract of vacant land shall be deemed sufficient. If the owner or owners shall not, within such time as such resolution shall prescribe, fill in, ditch or drain the lot, parcel or tract of vacant land as therein directed, it shall be lawful for the City Council to cause the same to be done, and to pay therefor, and to charge, assess and collect the expenses against the said lot, parcel or tract of vacant land and against the owner or owners thereof.

All the provisions of Chapter 9298 of the Laws of Florida relative to the making of said assessment and proceedings subsequent thereto, notice to hear complaints and action thereon and the effect thereof, and providing for the issuance of bonds based upon said assessments as contained in said Chapter 9298 of the Laws of Florida, shall be applicable to and may be followed in making and enforcing the assessments authorized by this Section.

Section 100. The City Council shall have power by ordinance to regulate, suppress or prohibit the blowing of whistles or the making

of unusual noises by any engine, locomotive or train within said City; to limit and regulate the rate of speed at and manner in which any engine, locomotive, train, car or cars of any street or railway company or any automobile, truck, car, motorcycle and all other motor driven vehicles may be operated within the City limits; to require that no engine, locomotive, train, car or cars of any street or other railway company shall block or obstruct the passage of persons or vehicles at any street crossing or other public crossing in said City, and to limit the time that any engine, locomotive, train, car or cars may stand upon, obstruct or block any such street or other public crossing; to require any street or other railway company operating any engine, locomotive, train, car or cars in or through said City, to provide sub-grade crossings or gates and stations and keep watchmen at such public crossings of such railway within said City as the City Council may designate by ordinance, and it shall be the duty of such watchmen to care for and protect the public while passing over or using such track or tracks; and each day or portion of a day that such railway company shall fail or refuse to provide gates and keep a watchman at such crossing so designated shall constitute a separate offense, and for each such offense such company may be punished by a fine not exceeding one hundred dollars, and the judgment or sentence therefor may be sued upon and recovery enforced in any Court of the State of competent jurisdiction; to require any street or other railway company doing business within said City to open, establish, pave or bridge, maintain and keep in repair a proper crossing, either surface or sub-grade, for the passage of persons and vehicles over and upon its track or tracks at any point where any public street, avenue or other public way of said City may now or hereafter be located or established, and to prescribe that if such railway company shall fail or refuse to comply with the provisions of any ordinance or resolution of the City Council ordering the opening, establishing, paving or bridging, maintaining or repairing of such crossing, within such time as may be prescribed, the Council or any person authorized by it, may open, establish, place, pave or bridge, maintain or repair any such crossing and the City shall pay for the same and shall have a lien for the amount so paid, which lien may be enforced by suit at law or in equity, or the City may maintain its personal action against such street or other railway company to recover said amount, or it may enforce its lien and also maintain its personal action until actually paid the amount due, and the same remedies may be pursued and enforced in any court of competent jurisdiction.

Section 101. The said City of Vero Beach shall not be liable for personal injuries due to defective condition of or obstruction in its streets, public thoroughfares, public buildings, or parks, nor for the misfeasance, nonfeasance or malfeasance of its officers or employees; nor for any act of any of its employees, whereby through the act of such employees any injury or damage may be done or caused to the person or property of another.

Section 102. That in addition to the powers hereinbefore enumerated, said City and its officers and employees shall have all the powers and perform all the duties conferred or imposed upon cities and towns of the State of Florida and officers and employees of such cities and towns by the general laws of Florida now in force or hereafter to be enacted providing for the government of cities and towns, not inconsistent with the provisions of this Act; and in all matters of procedure and conduct for the exercise and performance of such powers and duties, the general law of the State relative to municipalities shall govern, except where otherwise especially provided by this Act, and no special power herein granted shall be construed to abridge any general power given hereunder or under the general laws of the State of Florida.

Section 103. The City Planning and Zoning Commission of the City of Vero Beach, Florida, as heretofore created by ordinance of the City of Vero Beach abolished by this Act, shall continue as the City Planning and Zoning Commission of the City of Vero Beach created by this Act, and the members of said Commission as at present constituted shall continue to hold office for the term or terms for which they were appointed and until their successors are appointed and qualified; and whenever the term of office of any of the members of said Commission shall expire, or whenever there shall be a vacancy on said Commission for any other reason, the same shall be filled by appointment by the Mayor, subject to confirmation by the City Council. Where the appointment is for an unexpired term, the person so appointed shall serve for the remainder of the term of his predecessor and until his successor is appointed and qualified; and where the appointment is for the purpose of filling a vacancy caused by the expiration of a term of a member of the Commission, the person so appointed shall serve for a term of two years and until his successor is appointed and qualified.

Section 104. That the City Planning and Zoning Commission shall annually, and at such time as by its rules it shall provide, meet

and organize and appoint such officers, with such powers and duties, as the City Planning and Zoning Commission may deem advisable and expedient for the conduct of its business under the authority herein granted, and shall prescribe such rules of procedure and adopt such by-laws as may be necessary to carry into effect and operation its duties and powers hereby granted, and may prescribe penalties for the non-attendance or disorderly conduct of its members and enforce the same. A majority of the Board shall be necessary to constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time, and under the provisions of their rules of procedure may compel the attendance of absent members by the imposition of fines and penalties. The said Commission shall provide the time and place of its regular meetings and the manner in which special meetings shall be called and held.

Section 105. The general powers and duties of the City Planning and Zoning Commission which shall be exercised and performed as herein provided and in accordance with the general ordinances of the City, shall be as follows:

(a) The City Planning and Zoning Commission shall procure information and make recommendations to the City Council of all facts bearing upon the needs of the City, with regard to recreation grounds, the development and improvement of parks and boulevards, the improvement of water fronts, the extension or opening of streets and avenues or other public ways or places and all other City plans and improvements generally.

(b) Shall receive and report on suggestions offered by citizens or officials within the scope of its powers and when it deems such suggestions practicable, to report them to the City Council with its recommendation.

(c) Shall prepare a general City plan, and if they deem it necessary they may, with the consent and approval of the City Council, employ any and all expert assistance which they may require in the preparation of such plan, which plan shall be submitted to the City Council for its approval. Upon the adoption of the City plan by the City Council the City Planning and Zoning Commission shall carry out the provisions of the same in accordance with the directions and requirements of the City Council.

(d) Shall provide plans for original landscape work to be done in, about and around City parks and boulevards now owned or hereafter acquired; and shall provide plans for all landscape work to be done by said City.

(e) Shall formulate a plan to regulate and restrict the location

of trades and industries and the location of buildings designed for specific uses; and to formulate a plan for regulation and limiting of the height and bulk of buildings hereafter directed, and to this end for that purpose may divide the City into zones in such number, shape and area as may seem best suited to carry out a definite plan for the betterment of the City, and upon the approval and adoption of any such plan by the Council, the City Planning and Zoning Commission shall have power and authority to enforce any and all provisions of such plan where especial authority therefor is granted by the City Council.

(f) Shall pass upon all questions involving the position, removal or alteration in any way work of art, including monuments, memorials and statuary, belonging to the City, and no action with reference to the removal or alteration of any such works of art, including monuments, memorials and statuary shall be taken by any officer or department unless approved by the City Planning and Zoning Commission.

(g) Shall have power to determine whether property shall be acquired for park, boulevard and recreation purposes or shall be condemned for the enlarging of any park or the widening or extension of any boulevard or street; and shall have power to pass upon all plats of lands within the City and recommend the acceptance of such plats.

(h) Shall be authorized to approve any sketch or plan of any gift to the City in the form of monuments or memorials and the proposed location thereof, and no gift shall be accepted unless the plan or sketch and the location thereof shall have been submitted first to the City Planning and Zoning Commission.

(i) Shall, when requested by the City Council or by any other department, act in advisory capacity in respect to plans for the erection of public buildings, bridges, approaches or other structures erected or to be erected by the City, and all parks, boulevards and grounds for recreation purposes.

(j) Shall have the power to call upon any other department for assistance in the performance of its duties hereunder, and it shall be the duty of such department to render such assistance as may be reasonably required, all questions as to what shall constitute a reasonable requirement to be determined by the City Council, and its determination thereof shall be final and conclusive.

(k) Shall make any and all contracts necessary to carry out the objects and purposes of the City Planning and Zoning Com-

mission as herein provided when specifically authorized to do so by the City Council.

(l) Shall have such powers as are herein prescribed or as may be necessary for the proper discharge of its duties.

(m) Shall be required to pass upon all matters submitted to it within ninety days, and if it shall fail to decide upon any such matter within said period, its decision shall thereafter be unnecessary and not required.

(n) Shall thirty days prior to making the levy of taxes of each year transmit in duplicate to the City Clerk its estimate of the amount of money required for its purposes for the ensuing fiscal year.

(o) Shall at the time of the transmission of its estimate mentioned in the preceding sub-section make a written report to the City Council of the work of the City Planning and Zoning Commission during the preceding year; the report shall be certified by the City Planning and Zoning Commission and entered of record by the City Clerk and published in such manner as the City Council may direct; the City Planning and Zoning Commission shall also make such other reports as the City Council may from time to time require.

Section 106. The City Council shall enact and is hereby given the power to enact such ordinances as may be necessary to carry out and enforce the provisions of Section 105 of this Act.

Section 107. The City Council shall have power, and it is hereby authorized and permitted to pass any ordinances which it deems necessary to carry into effect any plan or suggestion which the City Planning and Zoning Commission is authorized to make pursuant to the provisions of this Act.

Section 108. The City shall not be liable in any way for any contracts made and entered into for any acts done or undertakings begun or debts and liabilities made, assumed or created by the City Planning and Zoning Commission unless it shall first obtain from the City Council its approval of and have an appropriation made by it for the specific contract made or entered into by it or the specific debt made, created, incurred or assumed.

Section 109. That none of the powers, duties or prerogatives of the City Planning and Zoning Commission shall be construed to be in any way a limitation upon the duties, powers and prerogatives of the City Council, but in every case shall be subordinate and subject to the approval of the City Council.

Section 110. The City Council may adopt a resolution directing and requiring the owner of any lot, parcel or tract of land fronting or abutting on any street, avenue, alley or other public way to construct, build or repair a sidewalk, foot pavement, curb or gutter, or either one or more of said improvements thereon, to be built in front of such abutting property, and upon a grade, and of such materials, width and other dimensions and in such manner as the City Council shall direct. The said resolution shall fix a time within which the said work shall be done by the owner, and a copy of said resolution shall be served upon such owner or upon the agent of such owner, or if the owner is a non-resident or cannot be found within said City, and has no known agent within the City, a copy of such resolution shall be published once each week for two consecutive weeks in some newspaper published in said City, and a copy thereof posted upon said lot, parcel or tract of land; or if no newspaper is published in said City, such posting upon said lot, parcel or tract of land shall be deemed sufficient. If the owner, or owners shall not, within the time fixed in said resolution, build, construct or repair such sidewalk or foot pavement, curb or gutter, or either one or more of said improvements in the manner and as directed in said resolution, the City Council may cause the same to be done and pay therefor, and charge, assess and collect the expenses thereof against such lot, parcel or tract of land, and against the owner or owners thereof. But nothing in this section shall be construed to be in conflict with Section 59 et seq. of this Act, but both shall exist as cumulative, and as independent modes of procedure, either to be followed in the discretion of the City Council.

All the provisions of Chapter 9298 of the Laws of Florida relative to the making of said assessment and proceedings subsequent thereto, notice to hear complaints and action thereon and the effect thereof, and providing for the issuance of bonds based upon said assessments as contained in Chapter 9298 of the Laws of Florida, shall be applicable to and may be followed in making and enforcing the assesments authorized by this section.

Section 111. The fiscal year of the City of Vero Beach shall end on October 31 of each year; and as soon thereafter as possible the City Council shall have an audit made of all the books of the City of Vero Beach, and a competent accountant or firm of accountants shall be employed for this purpose.

Section 112. All officers of said City shall be exempt from jury duty during their respective terms of office.

Section 113. The City Council of the City of Vero Beach, Florida, is authorized to issue and sell bonds of said City in an amount not exceeding $1,000,000 for the purpose of refunding any bond, note, certificate of indebtedness or other obligation for the payment of which the credit of said City is pledged, or the credit of the municipality of Vero Beach abolished by this Act has been pledged.

Section 114. That upon determining to issue such bonds the City Council of the City of Vero Beach, Florida, shall by ordinance, authorize the issuance thereof, prescribe the form of said bonds; the date thereof; the rate of interest which the same shall bear, which shall not exceed six per cent per annum; and the time of maturity of said bonds. All of said bonds shall be in the denomination of One Hundred Dollars each or some multiple thereof, and the same shall be signed by the Mayor, countersigned by the President of the City Council, and attested by the City Clerk, with interest coupons attached, which shall be signed in like manner, except that such interest coupons may be signed by the lithographed or facsimile signatures of the said officers of said City.

Section 115. That bonds issued under the provisions of this Act shall have all the qualities of negotiable paper under the law merchant, and shall not be invalid for any irregularity or defect in the proceedings for the issuance and sale thereof, and shall be incontestable in the hands of bona fide purchasers or holders thereof for value. Delivery of any bonds or coupons so executed at any time thereafter shall be valid, although before the date of delivery the person signing such bonds or coupons shall have ceased to hold office.

Section 116. That it shall be the duty of the City Council of the City of Vero Beach at or before the time of issuing bonds hereunder to provide for the imposition and collection annually of a tax in excess of all other taxes on all property subject to taxation in said City sufficient in amount to pay the interest on such bonds and the principal thereof as the same respectively become due, notwithstanding any tax rate limitation for the payment of such indebtedness refunded, such tax to be levied and collected by the same officers at the same time and in the same manner as general taxes of the municipality.

Section 117. The bonds herein provided for shall in no case be sold at a greater discount than five per cent of their par value, and it shall be the duty of the City Council of said City, as soon as it shall authorize the issuance of any of the bonds herein provided for, to offer the same for sale by advertising the same for sale for

two successive weeks in some newspaper published in Indian River County, Florida. After such advertisement the Council may receive bids and sell said bonds and it shall have the right to reject any and all bids and re-advertise the same, or any part thereof remaining unsold; and if the bonds be not sold pursuant to such advertisement, they may be sold at private sale at any time after the date advertised for the reception of sealed bids, provided that no bonds issued under the authority of this Act shall be sold for less than ninety-five per cent of the par value thereof, with accrued interest, and provided further that no private sale thereof shall be made at a price lower than the best sealed bid received therefor, and no private sale shall be made of said bonds subsequent to thirty days after the advertised date for the reception of sealed bids.

Section 118. It is the intention of the Legislature by virtue of the provisions of Sections 113 to 117, inclusive, of this Act to prescribe an independent and alternative authority for the City of Vero Beach to issue bonds for the purpose of refunding any outstanding obligations of said municipality or of the City of Vero Beach abolished by this Act which in any manner constitute an indebtedness thereof. The refunding of any bonds under the provisions of said sections secured by special taxes, liens, assessments or benefits, as well as ad valorem taxes, shall not release such special taxes, liens or assessments, but the same shall in like manner constitute security for the payment of such refunding bonds; and the provisions of Sections 113 to 117, inclusive, of this Act shall, without reference to any other Act of the Legislature, or any other provision in this Act, be full authority for the issuance, sale and exchange of bonds in said sections authorized, and no ordinance, resolution or proceeding in respect to the issuance of any bonds under the provisions of said sections shall be necessary, except such as required by the provisions of said sections; and it shall not be necessary to the validity of said bonds for any election to be called for the ratification of the issuance of said bonds by the voters of said City, nor for any other proceeding of any kind or character to be taken, except as provided and prescribed by Sections 113 to 117, inclusive, of this Act, and said bonds shall not be included in any debt or other limitation on the issuance of bonds by said City.

Section 119. Should any section or part of this Act be held unconstitutional or void for any reason by any court, the same shall affect only the particular section or part so held to be invalid and shall not affect in any manner the validity of any other part or parts of said Act.

Section 120. All laws and parts of laws in conflict with this Act are hereby repealed.

Section 121. This Act shall go into effect immediately upon its passage and approval by the Governor or upon its becoming a law without such approval.

Approved May 24, A. D. 1929.

CHAPTER 14440—(No. 876).

AN ACT to Prevent and Make Unlawful the Movement into Volusia County of Honey Bees in Certain Forms of Hives, and Prohibiting the Movement of Certain Equipment into the County Prior to Inspection by a County Bee Inspector, and Providing for an Inspection Fee, and Prohibiting the Placement of Apiaries Within One Mile of Established Apiaries and Authorizing the Board of County Commissioners of Volusia County, Florida, to Appoint an Inspector of Bees and Declaring How His Compensation Shall be Fixed and Paid.

Be It Enacted by the Legislature of the State of Florida:

Section 1. From and after the passage of this Act it shall be unlawful to ship or move into Volusia County, Florida, any honey bees in log gums or other form of hives, not permitting of the ready removal of frames and it shall be unlawful for any used bee-keeping equiment to be moved or shipped into the said Volusia County, Florida, until an Inspector from the County has inspected the said used bee-keeping equipment and has certified to the apparent freedom of the bees, their combs and hives, from contagious and infectious diseases and the said certificate must be based upon an actual inspection of the bees and used bee-keeping equipment so attempted to be moved into the County.

Section 2. That all persons who are not taxpayers in Volusia County, Florida, and who desire to ship or introduce honey bees into Volusia County, Florida, shall be required to pay an inspection fee of One ($1.00) Dollar per hive, per year for having or moving honey bees into Volusia County, and in case of partnerships owning or operating any apiaries in this County where any one partner is not a taxpayer within this County, the non-resident member of such partnership shall pay the fee required by this Act to the County.

RESOLUTION NO. 2014-~~069~~

A TRUE COPY
CERTIFICATION ON LAST PAGE
J.R. SMITH, CLERK

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA JOINING THE FLORIDA GOVERNMENTAL CONFLICT RESOLUTION PROCESS INITIATED BY THE TOWN OF INDIAN RIVER SHORES WITH THE CITY OF VERO BEACH.

WHEREAS, on July 18, 2014, the Town of Indian River Shores ("Town") held a special call meeting at which the Town voted to adopt a resolution initiating the Florida Governmental Conflict Resolution process with the City of Vero Beach ("City") concerning its conflict over unreasonable electric rates, the City's refusal to comply with the referendum requirements set forth in Section 366.04(7), Florida Statutes, and the removal of the City's electric facilities from the Town upon expiration of the City's franchise; and

WHEREAS, the Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes, requires governmental entities to follow a dispute resolution process prior to engaging in litigation against another governmental entity; and

WHEREAS, on July 21, 2014, the Indian River County Board of County Commissioners received a copy of a letter from Town Mayor Barefoot sent to the City concerning the Town's lawsuit which invited Indian River County and other governmental entities, including the Indian River County Hospital District and the Indian River County School Board, to participate in the Florida Governmental Conflict Resolution process; and

WHEREAS, Indian River County shares the same conflicts with the City; and

WHEREAS, a governmental entity which receives notice of a conflict may, by passage of its own resolution, join the Florida Governmental Conflict Resolution process as a primary conflicting governmental entity;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT:

1. The Indian River County Board of County Commissioners adopts as true and correct the recitals stated above and incorporates same by reference as part of this Resolution.

2. The Indian River County Board of County Commissioners hereby joins the conflict resolution process initiated by the Town with the City, as a primary conflicting governmental entity.

3. Pursuant to Section 164.1052, Florida Statutes, the Indian River County Board of County Commissioners requests that a letter and a certified copy of this resolution be sent to Town Manager Robert H. Stabe, Town Mayor Barefoot, the Town Council, City Manager James R. O'Connor and City Council by certified mail, return receipt requested. The letter shall state the nature of the conflict, and the justification for joining the conflict resolution process, and suggestions regarding the officials who should be present at the conflict assessment meeting. Copies of the letter shall also be provided to the Indian River County Hospital District and the Indian River County School Board.

RESOLUTION NO. 2014-069

The foregoing resolution was moved for adoption by Commissioner Flescher, and motion was seconded by Commissioner Zorc and, upon being put to a vote, the vote was, as follows:

Chairman Peter D. O'Bryan	Aye
Vice Chairman Wesley S. Davis	Aye
Commissioner Joseph E. Flescher	Aye
Commissioner Bob Solari	Aye
Commissioner Tim Zorc	Aye

The Chairman thereupon declared the resolution duly passed and adopted this 19th day of August, 2014.

ATTEST: Jeffrey R. Smith, Clerk of Court and Comptroller

By: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA

By: _____
Peter D. O'Bryan, Chairman

BCC approval date: August 19, 2014

Approved as to form and legal sufficiency:

By: _____
Dylan Reingold, County Attorney

STATE OF FLORIDA
INDIAN RIVER COUNTY

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

JEFFREY R. SMITH, CLERK

BY _____ D.C.

DATE 8-20-2014