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Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

December 9, 2009

In Re Docket #: 090524-EM

Dear Chairman Carter:

We have been advised that four of the five items in the Complaint filed by us on September 21, 2009, against the City of Vero Beach (COVB) electric utility have been accepted (Docket Number: 090524) by the Public Service Commission (PSC). With regard to the fifth item in the complaint relating to the 1981 Territorial Agreement approved by PSC which delineated the electric service areas between the Florida Power & Light (FPL) and COVB, we are re-filing that complaint per our understanding of Commission instructions.

We are seeking a Declaratory Statement from the PSC under Section 120.565 that the PSC's Territorial Agreement (Docket No. 800596-EU, Order No. 10382, dated November 3, 1981) between City and Florida Power & Light (FPL) should be amended on the PSC's own motion to recognize that there are significant demographic changes from when the Agreement was approved over 28 years ago that are detrimental to the rights of, and COVB cannot any economically serve, the 61 percent of the customer population outside of COVB in an economic manner.

DECLARATORY STATEMENT PETITION

Review of Territorial Agreement (Docket No. 800596-EU, Order No. 10382, dated November 3, 1981) between City and Florida Power & Light (FPL)

The attached Territorial Agreement (EXHIBIT 1) was the third in a series (prior revisions in 1972 and 1974) and completed 28 years ago at a time when about 10 percent of the City's electric customers were outside of the City. Now, 61 percent of the City's electric customers are outside of the City. These electric customers have been victims of Taxation Without Representation and lack of Equal Protection as guaranteed under the United States and Florida Constitutions.

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The territorial agreement reflects a number of comments which appear to be relevant in today's electric utility environment and which should be opened to public hearing under the Commission's own motion, or in relation to the City's requested changes for rate structure and elimination of its municipal surcharge.

1. In the fourth paragraph, page 1, it states that "the Commission finds no compelling reason to set this matter for hearing...there appears to be limited customer objection...moreover, the agreement is in the public interest."

In the fifth paragraph, page 1, it states that "Nevertheless, to insure that all persons who would be affected by the agreement have the opportunity to object to the approval of the agreement, the Commission is issuing this Notice of Intent to Approve."

In the first paragraph, page 2, the Commission noted the attempts by FPL and/or the City to contact the affected customers and determine their reaction to the proposal for changes to the prior territorial agreements.

Comment: The Commission should set this matter for hearing as there is significant customer objection (see also items 1 - 3 in our September 21, 2009 letter to the Commission) to the City's electric utility as evidenced by the correspondence directed to the PSC, Indian River County State Delegation, Indian River County (County) Commissioners, COVB Council and the Town of Indian River Shores (Shores) Town Council, results of recent elections to the COVB Council, and local published, television and radio media on the issues with the COVB electric utility.

COVB has inefficient operations and rates significantly higher than FPL. See Exhibits 2 A and B which show the comparative electric rates for COVB compared against FPL and other utilities where COVB's rates are 26 to 35 percent above FPL's rates depending upon the PSC rate to be approved for FPL in January 2010. In addition, COVB siphons utility revenues for City budget purposes rather than utility operations or reserves. Over \$11 M of \$22 M COVB budget comes directly or indirectly from its electric utility (See EXHIBIT 3).

COVB provides no true independent and representative voice with City elected officials for the 61 percent of customers outside of the City limits. After conducting a series of meetings last fall on the features on six of the State's utility authorities, it prepared in January 2009 and in September 2009 proposals for a COVB "Utility Authority" (UA) which would provide designated but not proportional representation for customers with all appointments to be made by the City Council and no appointments to be made for representatives by the jurisdictions served. Significant authorities were granted to the UA all of which had to be approved, modified or rejected by the City Council; therefore, it had no real or independent authority. The current City Utility Advisory Commission (UAC) reviewed the proposal and stated that the proposal was no change from the current UAC. The recently resigned COVB Electric Utility Director stated, the

proposal was cumbersome, would add another layer of government, and was no change from what existed now.

COVB is guilty of consistent mismanagement, negligence, and breach of fiduciary responsibility. See specifically January 31, 2006, COVB Special Call Meeting minutes, pages 8-9, where the City Manager comments that after discussions with staff and others “our system has been in decline for the past ten years. . . . we have not held up our fiduciary responsibility to maintain our system like we should have. . . . the Council has to decide if they want to sell or not. If they are going to TAKE OUT that option [sell option] then it can save them [City staff] a lot of work and a lot of money. . . . He said that it is a real revenue source, can keep taxes down for the citizens, etc. . . .” It appears that decisions then were “penny wise and pound foolish” and continue to haunt the City nearly four years later. (See also item # 5)

Finally, COVB knowingly ignored PSC Section 366.04(7) (a) which would have provided the opportunity to all customers to vote on having an independent and representative utility authority. If the PSC was concerned in 1981 about contacting the 168 customers affected by the modification in the Territorial agreement, why wouldn't it be concerned about the 34,500 customers in general, and the 22,000 customers (61 %) outside the City in particular, not having an opportunity for representation and comment, as would have been provided in the 2008 Referendum?

Furthermore, we have collected a significant number of signatures on petitions exhibiting a desire for a Referendum for outside customers to switch from the City electric service to FPL electric service, the electric service provider that surrounds the City's electric system. We understand that a Referendum now presents some State legal issues; however, the fact that significant numbers of customers outside of COVB have signed petitions to switch to FPL should be recognized.

Outside customers are again seeking Local Legislation proposed by Rep. Debbie Mayfield to modify the Commission's statutes to provide for the City's electric system to be subject to the Commission's statutes as if COVB were a “public utility.”

2. In the second paragraph, page 2, the Commission stated “Approval of this territorial agreement should assist in the avoidance of uneconomic duplication of facilities on the part of the parties, thereby providing economic benefits to the customers of each.

Comment: The City is uneconomical compared to FPL historically and presently (See EXHIBITS 4 A & 4 B and Exhibit 5) for a comparison of years of FPL and COVB rates where COVB's rates have been on average 15 – 26 percent higher than FPL over the past 10 years using 1,000 KWH and 2,500 KWHs. Additional cheaper capacity is coming on line from FPL between 2009 and 2012 which will make the City's power plant used even less than its current 9 % of use which will directly affect the proposed future revenue and therefore further increase the projected rate differential between the two. Also, in the City consultant's September 18, 2009 submission to the Commission, rate increases

have been projected for each of the next five years. FPL surrounds the City and could easily substitute for the City's electric utility.

In addition, the disparity in rates between the City's projected annual revenue of \$92+ M and the \$73 M annual cost for the same FPL service amounts to an annual cost to the local community of over \$19 M annually in the Vero Beach economy. \$13 M of that is from the 61 percent of the customers outside of the City. (See Exhibits 6 A and 6 B). FPL providing the electric service would conversely lead to an infusion of the same amounts of funds into the local economy!

Also, there would be nearly \$1.9 M annually in revenue flow into the COVB, County, and Shores customers' taxing districts as a result of the transmission and distribution and other electric infrastructure outside of the City being changed from nontaxable to taxable property tax rolls for all taxing districts such as Hospital, School, landfill and other taxing districts.

3. In the second paragraph, page 2, the Commission also stated "The territory will better conform to natural or permanent landmarks and to present land development."

In addition, section 366.04(2) (e) states "To resolve, upon petition of a utility, or on its own motion (underlining added), 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.

Comment: Much has changed over the last 28 years since the last territorial agreement modification in 1981. FPL has the capability to expand services in comparison to the City's electric utility which is limited geographically, has limited economic capacity, is deficit ridden, has no cash reserves, and runs its antiquated plant about 9% of the year. COVB is unable to offer rebates for more efficient appliances as FPL does. Other forms of efficient energy generation (e.g., solar) are not available to COVB as they are to FPL because of geographical constraints.

In addition, the City receives about 45 percent of its base load generation from generation interests purchased in the past in Stanton I and II and in the St. Lucie Plant. It purchases about 45 percent of its electric power from a major supplier, OUC, another municipal utility. As municipal utilities, both OUC and COVB electric utilities are price UNregulated monopolies! Since the City's new contract with OUC is 30 percent fixed rate, 70 percent is not fixed and subject to the whim of another unregulated price monopoly, OUC. To supply additional customers, COVB would have to purchase it, not generate it, and then add its cost as a middleman which is passed on to the customers. This does not even consider the fact that OUC generates 82 percent of its electricity from coal fired plants which may be subject to significant Cap and Trade sanctions and taxes whether by

legislation or by EPA Administrative actions! Again, 61 percent of customers had no say in this selection which impacts rates and costs!

The County and the Shores are each faced with situations where one side of a street in their jurisdiction is served by COVB electric and the other side is served by FPL with significant electric rate differentials between the two sides of the same street. This has been compounded with the increase in the percent of outside City customers from about 10 percent in 1981 to 61 percent outside of the City now. There are no logical natural or permanent landmarks which distinguish or which have created this situation. It is due to land development over the past 28 years and has created significant differences in the desirability of property for purchase or lease. Real estate agents and brokers state that the first question prospective purchasers or lessees ask is whether the property is served by COVB utilities. If it is, then generally they want to see other property served by FPL.

4. Furthermore, Section 366.04(2)(f), second paragraph, states "...No provision of this chapter shall be construed or applied to impede, prevent, or prohibit any municipally owned electric utility system from distributing at retail electrical energy within its corporate limits, as such corporate limits exist on July 1, 1974; however, existing territorial agreements shall not be altered or abridged hereby."

Comment: This provision appears to support the concept of protecting the municipal boundaries of electric providers. Minor changes to the City's territorial boundaries have occurred over the past 28 years, primarily by the addition of a few properties at a time from unincorporated County areas to COVB jurisdiction. Has the Commission checked to confirm that both COVB and FPL electric utilities are operating within the territorial service boundaries established 28 years ago or have annexations occurred by the City or other jurisdictions that are not reflected in the 1981 Territorial Agreement and map? This should require a review of the 1981 Territorial Agreement. It should be noted that in our discussions with residents of Indian River County, they have no interest in being annexed by the City based on the County customers' observations of the City's poor management, administration, operations, etc.

We are not asking for the City to be deprived of supplying electricity to its own residents (about 13,000 customers). We are asking that the 61 percent (22,000 of 34,500) of the customers now outside of the City be allowed to change electric supplier. City residents and customers can remain with the City as their electric supplier. The customers outside of the City are asking under section 366.04(2) (e) that the Commission, on its own motion, allows the 61 percent of customers outside of the City to switch franchise territories from the COVB to FPL.

5. It should also be noted that in the Request for Proposal (RFP) competition for the selection of the FMPA electric supplier, the City engaged in some interesting practices in relation to the RFP, Bidding, Evaluation, and Contract Signing Process:
 - The City should have done an "electric utility sell analysis" in January 2006 when the City's consultant presented 6 options, 2 of which included selling all or part of

the City's electric system. The January 31 to late Feb 2006 City Council meetings Minutes have been reviewed on the discussions of the electric options and issues and the reasons given for taking or not taking various actions (See specifically January 31, pages 7-9, referencing it would cost too much to evaluate bidders and City would lose General Fund Revenue). It appears that the decision to eliminate the two "sell options" was never voted on by the City Council but were decided by the City staff in a subsequent Request for Proposal in order to retain jobs for City workers and revenue for the City coffers. Decisions then were "penny wise and pound foolish" and continue to haunt the City and impact customers, particularly the 61 percent outside of the City.

- The bidders for the City electric provider contract had to agree in advance to first not protest anything the City did in the bid or evaluation process. This was a waiver of bidder's rights not normally seen in RFPs. What prompted the City proposing that provision? Normally the right to protest is seen a cross-check by the bidders on the bidding process to prevent inappropriate behavior by the selecting or deciding venue. Second, the bidders had to agree to keep all information confidential for 2 years rather than the normal 90 days for non trade secret information. This is not transparency in government and kept information away from the public and the City Council until nearly the start of the new OUC contract in January 2010!
- Evaluation factors to be used to evaluate bids were not published in advance in the RFP announcement as is done in Federal procurements and in State & local procurements. It seems bidders should know the RFP evaluation factors and how their bids would be evaluated in advance of their bidding. When were the Evaluation Factors developed and by whom? Was it after bidders were known? Did the person developing the Evaluation Factors know or consider who the bidders were in establishing Evaluation Factors?
- A rating of 33 1/3 % of the total rating was established using FPL's retail electric costs as the basis for evaluation rather than the current Florida Municipal Power Authority (FMPA) provider's retail electric costs. FPL was used as standard against which to compare the rates of three remaining bidders, including it (See EXHIBIT 7). This makes FPL's bid the mathematical average! FPL's scores are made artificially low, but it can't protest per the Participation Agreement it signed as a condition to bid which prohibited bid protests. Was this intentionally done to put FPL at a disadvantage or to exclude FPL? The information was not known for nearly two years after because of the confidentiality requirement! Prior comparisons used by the City's consultants were to wholesale power costs and FMPA, not FPL's retail rates.
- City officials are now quoted as saying in the 32963 newspaper that the COVB couldn't afford bidder evaluation costs on a 20 year \$2 Billion City contract. Was the cost for the City's "Boston Consultant" or for City staff? It seems like the City should budget funds for such an expensive and long term contract!
- The City's "Boston Consultant", then reviewed bidders on behalf of City's evaluation panel and she, rather than the City's evaluation panel, reduces the number of bidders from 7 to 3. She is the expensive item (\$400/hour) in

evaluating the bids, not the City staff which should have expected to devote the time necessary to the bid process. This doesn't seem like correct reasoning.

- The City Attorney has to get a "Boston Attorney" to interpret FL statutes on Sunshine law confidentiality of OUC file. There are no learned Florida attorneys for Florida law?
- In approving the OUC contract, the City Council read a proposed redacted OUC contract which had significant redacted financial penalties and other items per City official quotes in the 32963 newspaper. The City Council read redacted versions that left out such major features as penalties up to \$50 M. The penalties appear to have been asked for by City Staff negotiators, not the City Council! There are now some differences in the pre and post November election statements of 2008 City Council members, particularly after a State Grand Jury has started an investigation into the contracting process.
- The City's then Utility Director stated in the 32963 newspaper that the City Council did not need to know all matters related to the OUC selection.
- The City doesn't have all of the OUC contract official files. The Boston consultant does.
- The City Council would commit political and financial suicide in its own mind if it had to justify a FPL selection when FPL surrounds the City because the City then couldn't then justify continuing its electric business, rate markups above FPL levels when FPL is the provider, and the loss of \$ 8 M to its General Fund Revenue.
- A unilateral Option for OUC to give notice for negotiations to expand or renovate the City's power plant was granted. The ultimate cost would be approved by the COVB Council but the cost would be borne by City electric customers, mostly the 61 percent outside of the City. What was the value of that option to OUC and/or to the City? How did it lower the OUC rates?
- The base load generation interests the City has granted to Florida Municipal Power Authority (FMPA) for the term of the City's contract which expires on December 31, 2009 have been turned over to the OUC for the next 20 years in the OUC contract. What is the value of this and how is it shown on the City's books. We can't obtain the values nor get the information from the City. What did the City get in return for this?
- Section 8.3 of the OUC contract cites penalties which "shall not exceed", not "are" \$ 50 M contrary to some City speculation. The penalty is limited and for specific activities such as "Vero Beach (or OUC) have breached this agreement for purposes of pursuing more favorable market purchases (or sales) for wholesale energy or capacity" Section 15.11, first paragraph provides that "This Agreement and the rights, obligations, and performance of the Parties under this Agreement are subject to all applicable state and federal laws, and to all duly promulgated orders and other duly authorized actions of governmental authorities having jurisdiction. The second paragraph provides that some additional costs could be incurred if the laws or determinations increase OUC's costs."
- It should be noted that the up to \$ 50 M penalties in Section 8.3 of the OUC contract would not apply if PSC allowed the 61 percent of customers outside of COVB to switch to FPL because the penalty only applies if COVB or OUC seek

alternative wholesale electric purchases. We as customers are seeking an alternative electric service provider. Similarly, section 15.11 of the OUC contract allows for changes to the terms and conditions of the contract by Federal or State law or by a governmental entity with authority over the area such as the PSC has. Therefore, PSC could change the electric service provider and not adversely affect the terms and conditions of the contract between COVB and OUC.

- It would certainly appear that the PSC should have concerns about the protection of COVB customers, and particularly the 61 percent outside of the City, with the pattern and practice of poor contract and terms, negotiations, and implementation by COVB dating back to the original FMPA contracts and continuing into the OUC contract.
6. There is an October 30, 1986, agreement (Shores Resolution # 414 – EXHIBIT 8) between the Shores and the City and also a March 5, 1987 agreement (County Resolution 87-12 – EXHIBIT 9) between the County and the City for the City to provide for 30 years electric service to those parts of the Shores and County not receiving electricity from FPL. Five year advance notification must be given on or before October 29, 2011 and March 4, 2012, respectively, if either party desires to extend the agreement. These 1986 and 1987 agreements were initiated subsequent to the Commission’s 1981 Order. Both agreements reference existing territorial agreements and can be changed by a change to that territorial agreement.

The Commission is aware of, and acknowledges the existence of these types of agreements with notification periods, expiration dates, etc., such as between COVB and the County, COVB and the Shores, South Ormond Beach and FPL, etc. If they were not valid agreements, the PSC should have stopped them from being initiated years ago.

In addition, the County entered into a 1987 agreement franchising FPL to provide electric service to about 51,000 customers in certain unincorporated portions of the County. It renewed that agreement for another 30 years in 2007. The County may well provide notice to the Commission that it does not want the City to provide electric service to other unincorporated portions of the County at COVB’s exorbitant rates and that it wants to switch its current COVB electric constituents to FPL providing that service.

CONCLUSION

In conclusion, it appears that the Public Service Commission is **the answer** for 22,000 electric customers outside of COVB since it has statutory authority to request, on its own motion, a hearing on the 1981 Territorial Agreement to amend the Agreement and transfer the 61 percent of the customers outside of the COVB to FPL electrical service for their own protection!

We have tried legislation and we have petitioned the COVB, but to no avail! We are seeking legislation again that would place the COVB electric utility under the PSC as a “public Utility” and subject to all such “public utility” related rules and regulations. This is being presented at the Indian River County State Delegation meeting this month in Vero Beach.

We have no other administrative option other than the authority of the Commission! Therefore we are claiming a territorial dispute under Section 25-6.0441 and ask for the Commission to identify, on the Commission's own motion, the existence of a territorial dispute based on the reasons described above. In addition, we are seeking under Section 25-6.0442 the opportunity for customer participation in any PSC hearing, preferably in the Vero Beach area if possible.

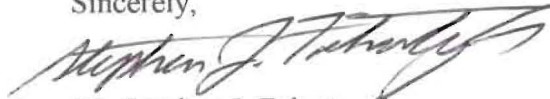
We believe that the City would have a difficult, if not impossible time, of showing under FL Statute §25-6.0441(2) that: 1) The City is better able than FPL to provide electric service during the past and in the foreseeable future, particularly to the 61 percent of the customers outside of COVB; 2) The nature and the future requirements of the disputed area HAS NOT changed since the 1981 Territorial Agreement and map; and 3) In comparison to FPL, the City is capable of providing reliable and less costly electric service in the foreseeable future with its aging and inefficient plant, equipment, transmission, and distribution capabilities in comparison to FPL.

Even, if all of the above factors were proven by the City to be equal, FL Statute § 25-6.0441(2) (d) would allow customer preference for the 61 percent, or 22,000, of the customers outside of the City.

Please support the desires of the un-represented 22,000 (61 %) customers outside of the City who want to be taken out from under the jurisdiction of the City of Vero Beach electric utility for their own protection.

Thank you for your consideration.

Sincerely,



Dr. Stephen J. Faherty, Sr.
Enclosures



Glenn Heran, CPA

ccs:

Senator Mike Haridopolis

Senator Joe Negron

Representative Ralph Poppell

Representative Debbie Mayfield

Indian River County Commissioner Davis, Chair, and Commissioners

Mayor William Kenyon and Councilmen, Town of Indian River Shores

Mayor Kevin Sawnick and Councilpersons, City of Vero Beach

EXHIBITS:

- 1 - 1981 Territorial Agreement, PSC Order No 10382, November 3, 1981
- 2 A - Electric Utility Rate Disparity, 11/24/2009, FPL rate of \$101.76
- 2 B - Electric Utility Rate Disparity, 11/24/2009, FPL rate of \$95.43
- 3 - COVB General Fund Electric Revenue Analysis
- 4 A - COVB vs. FPL averages for past 10 years, 1,000 KWH
- 4 B - COVB vs. FPL averages for past 10 years, 2,500 KWH
- 5 - COVB vs. FPL averages for past 10 years, 2,500 KWH, combined average
- 6 A - COVB Electric Bill Saving in comparison to FPL, 27% Difference

- 6 B - COVB Electric Bill Saving in comparison to FPL, 35% Difference
- 7 - KT Analysis of top three bidders for providing electric service to COVB
- 8 - Indian River Shores Resolution # 414
- 9 - Indian River County Resolution 87-12

EXHIBIT 1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of FPL and the City of Vero Beach for approval of an agreement relative to service areas.)	DOCKET NO. 800596-EU
)	ORDER NO. 10382
)	ISSUED: 11-03-81

The following Commissioners participated in the disposition of this matter:

- JOSEPH P. CRESSE, Chairman
- GERALD L. GUNTER
- JOHN R. MARKS, III
- KATIE NICHOLS
- SUSAN W. LEISNER

NOTICE OF INTENT
TO APPROVE TERRITORIAL AGREEMENT

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission of its intent to approve a territorial agreement between Florida Power and Light Company (FPL) and the City of Vero Beach, Florida (Vero Beach or the City.)

BACKGROUND

On May 4, 1981, FPL and Vero Beach filed an Amended Petition for Approval of Territorial Agreement seeking approval of a territorial agreement defining their respective service territories in certain areas of Indian River County. That agreement establishes as the territorial boundary line between the respective service areas of FPL and Vero Beach the line defined in Appendix A to this notice.

FPL and Vero Beach have since 1972 operated under an agreement to provide interchange service and to observe territorial boundaries for the furnishings of electric service to customers which was approved by the Commission in Docket No. 72045-EU, Order No. 5520, dated August 29, 1972, and modified in Docket No. 73605-EU, Order No. 6010, dated January 18, 1974.

At this point, the Commission finds no compelling reason to set this matter for hearing. There exists no dispute between the parties and there appears to be limited customer objection to the agreement. Moreover, the Commission concludes that it has before it sufficient information to find that the agreement is in the public interest.

Nevertheless, to insure that all persons who would be affected by the agreement have the opportunity to object to the approval of the agreement, the Commission is issuing this Notice of Intent to Approve. The reasons for approving the territorial agreement are listed below.

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PAGE TWO

The parties were successful in contacting 143 of the 168 accounts affected by the new agreement. Of these, 137 returned a written questionnaire on the agreement; 117 customers were not opposed to the transfer of accounts, while the remainder were.

Approval of this territorial agreement should assist in the avoidance of uneconomic duplication of facilities on the part of the parties, thereby providing economic benefits to the customers of each. Additionally, the new territorial boundary will better conform to natural or permanent landmarks and to present land development. Thus, the proposed territorial agreement should result in higher quality electric service to the customers of both parties.

For these reasons, the Commission finds that there is justification for the approval of the agreement.

PROCEDURE

Any request for a hearing on this matter must be received by the Commission Clerk by December 3, 1981. If no such request is received by that date, this Order will become final.

A copy of this Notice will be provided to all persons listed on this matter's mailing list. Also, a copy of this Notice will be mailed by the parties to those customers whose accounts will be transferred by the new agreement within ten (10) days of the date of this Order.

In view of the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition of Florida Power and Light Company and the City of Vero Beach for approval of a territorial agreement as is hereby defined in Appendix A is approved as delineated above. This Order shall become final unless an appropriate petition is received (See Rule 28-5.111 and 28-5.201, Florida Administrative Code) within thirty (30) days of the issuance of this notice. It is further

ORDERED that the applicants provide, by U.S. Mail, a copy of this Notice to each customer account which will be transferred pursuant to the territorial agreement within ten (10) days of the date of this Notice. It is further

ORDERED that upon receipt of an appropriate petition regarding this proposed action, the Commission will institute further proceedings in accordance with Rule 28-5.201(3), Florida Administrative Code. It is further

ORDERED that after thirty (30) days from the date of this Notice, this Order shall either become final or the Commission Clerk will issue notice of further proceedings.

By ORDER of the Florida Public Service Commission, this
3rd day of November 1981.

**TERRITORIAL BOUNDARY AGREEMENT
 BETWEEN
 FLORIDA POWER & LIGHT COMPANY
 AND
 CITY OF VERO BEACH, FLORIDA
 DATED JUNE 11, 1980**

By virtue of the entitled Agreement, the area bounded by the Atlantic Ocean and the following described boundary line is, with respect to Florida Power & Light Company (FPL), reserved to the City of Vero Beach (City). The area outside of the boundary line with respect to the City is reserved to FPL.

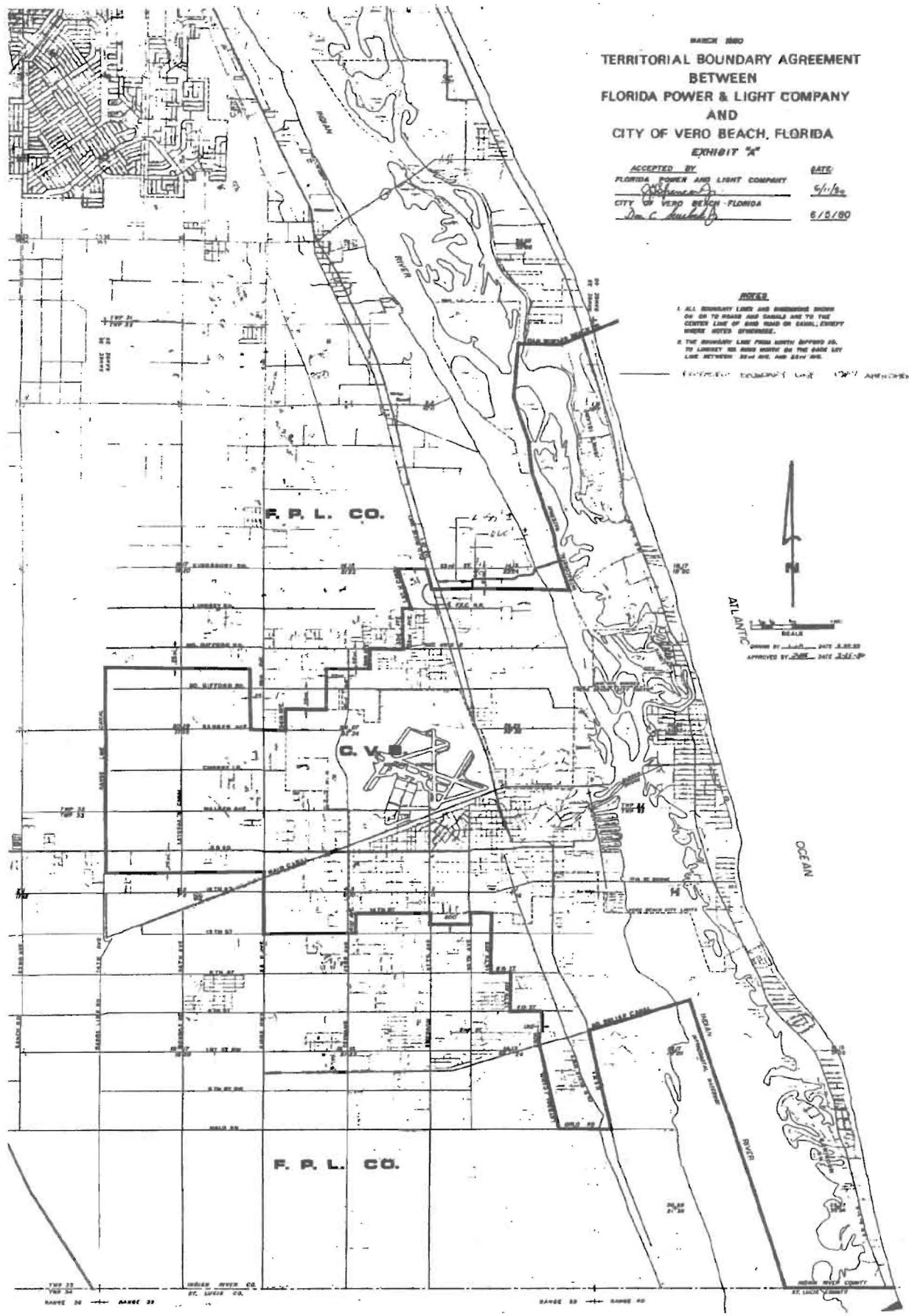
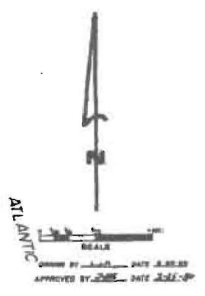
Beginning where the extension of Old Winter Beach Rd. meets the Atlantic Ocean; then westerly along Old Winter Beach Rd. and its extensions to the Intracoastal Waterway; then southerly along the Intracoastal Waterway to the intersection of a line parallel to and 1/4 mile south of Kingsbury Rd. (53 St.); then west along a line parallel to and 1/4 mile south of Kingsbury Rd. (53 St.) to the Florida East Coast Railroad right-of-way; then northerly along the Florida East Coast Railroad right-of-way to Kingsbury Rd. (53 St.); then west along Kingsbury Rd. (53 St.) to Lateral H Canal; then southerly along Lateral H Canal to Lindsey Rd.; then west along Lindsey Rd. to the rear property line between 32 Ave. and 33 Ave.; then south along the rear property line between 32 Ave. and 33 Ave. to No. Gifford Rd.; then west along No. Gifford Rd. to 39 Ave.; then south along 39 Ave. for a distance of 1/4 mile; then west along a line parallel to and 1/4 mile south of No Gifford Rd. to a point 1/4 mile west of 43 Ave.; then south along a line parallel to and 1/4 mile west of 43 Ave. to a point 1/4 mile south of So. Gifford Rd.; then west along a line parallel to and 1/4 mile south of So. Gifford Rd. to 56 Ave.; then south along 56 Ave. to Barber Ave.; then west along Barber Ave. to a point 1/4 mile west of 58 Ave.; then north along a line parallel to and 1/4 mile west of 58 Ave. to a point 1/4 mile south of No. Gifford Rd.; then west along a line parallel to and 1/4 mile south of No. Gifford Rd. to Range Line Canal; then south along Range Line Canal to a point 1/4 mile south of SR 60; then east along a line parallel to and 1/4 mile south of SR 60 to 58 Ave.; then south along 58 Ave. to 12 St.; then east along 12 St. to 41 Ave.; then north along 41 Ave. to 14 St.; then east along 14 St. to 27 Ave.; then south along 27 Ave. for a distance of 600 ft.; then east along a line parallel to and 600 ft. south of 14 St. to 20 Ave.; then north along 20 Ave. to 14 St.; then east along 14 St. to 16 Ave.; then south along 16 Ave. to 8 St.; then east along 8 St. to 12 Ave.; then south along 12 Ave. to 4 St.; then east along 4 St. to a point 130 ft. east of extended 9 Dr.; then south along a line parallel to and 130 ft. east of extended 9 Dr. to 2 St.; then west along 2 St. to 9 Dr.; then south along 9 Dr. to So. Relief Canal; then westerly along So. Relief Canal to Lateral J. Canal; then southerly along Lateral J. Canal to Oslo Rd.; then east along Oslo Rd. to US #1; then northerly along US #1 to So. Relief Canal; then easterly along So. Relief Canal to the Intracoastal Waterway; then southerly along the Intracoastal Waterway to the Indian River - St. Lucie County Line, then east along the Indian River - St. Lucie County Line to the Atlantic Ocean.

Note: All references to avenues, drives, highways, streets, railroad R/W, canals and waterways means the centerline of same unless otherwise noted.

MARCH 1960
**TERRITORIAL BOUNDARY AGREEMENT
 BETWEEN
 FLORIDA POWER & LIGHT COMPANY
 AND
 CITY OF VERO BEACH, FLORIDA**
EXHIBIT "A"

ACCEPTED BY FLORIDA POWER AND LIGHT COMPANY	DATE 4/1/60
CITY OF VERO BEACH, FLORIDA <i>Don C. ...</i>	DATE 6/5/60

- NOTES**
1. ALL BOUNDARY LINES AND PROPERTY SHOWN ON OR TO ROADS AND CANALS ARE TO THE CENTER LINE OF SAID ROADS OR CANALS, EXCEPT WHERE NOTED OTHERWISE.
 2. THE BOUNDARY LINE FROM NORTH TO SOUTH AS TO LENGTH IS BASED UPON THE DATA SET FORTH BETWEEN 30' AND 40' AND 40' AND 50'.



TWP 33
 R. 20E
 RANGE 20 RANGE 21 RANGE 22 RANGE 23 RANGE 24

EXHIBIT 2 A
Electric Utility Residential Rate Disparity
City of Vero Beach vs. the OUC vs. FP&L
11/24/2009

	1,000 Kwhs			2,500 Kwhs		
	Existing 2009 Nov	Projected 2010 Jan	% Decrease	Existing 2009 Nov	Projected 2010 Jan	% Decrease
Service only						
COVB (County)	166.44	125.95	-24%	404.19	340.45	-16%
COVB (IR Shores)	166.44	125.95	-24%	404.19	340.45	-16%
COVB (City) see Rate Consultants Report	158.82	125.95	-21%	386.24	340.45	-12%
OUC Orlando	119.82	119.82	0%	317.55	317.55	0%
OUC St Cloud	124.61	124.61	0%	330.25	330.25	0%
FP&L (County)	107.96	99.22	-8%	292.87	269.91	-8%
Service plus 2.56% Gross Receipts Tax						
COVB (County)	170.70	129.17	-24%	414.54	349.17	-16%
COVB (IR Shores)	170.70	129.17	-24%	414.54	349.17	-16%
COVB (City)	162.89	129.17	-21%	396.13	349.17	-12%
OUC Orlando	122.89	122.89	0%	325.68	325.68	0%
OUC St Cloud	127.80	127.80	0%	338.70	338.70	0%
FP&L (County) see FP&L Press Release	110.72	101.76	-8%	300.37	276.82	-8%
% more vs FP&L						
COVB (County)	54%	27%		38%	26%	
COVB (IR Shores)	54%	27%		38%	26%	
COVB (City)	47%	27%		32%	26%	
OUC Orlando	11%	21%		8%	18%	
OUC St Cloud	15%	26%		13%	22%	
FP&L (County)	0%	0%		0%	0%	

Glenn Heran CPA, 6985 57th Street, Vero Beach, FL, 32967 (772) 473-7629 Glenn@HFBLLC.com

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EXHIBIT 2 B
Electric Utility Residential Rate Disparity
City of Vero Beach vs. the OUC vs. FP&L
11/24/2009

	1,000 Kwhs			2,500 Kwhs		
	Existing 2009 Nov	Projected 2010 Jan	% Decrease	Existing 2009 Nov	Projected 2010 Jan	% Decrease
Service only						
COVB (County)	166.44	125.95	-24%	404.19	340.45	-16%
COVB (IR Shores)	166.44	125.95	-24%	404.19	340.45	-16%
COVB (City) see Rate Consultants Report	158.82	125.95	-21%	386.24	340.45	-12%
OUC Orlando	119.82	119.82	0%	317.55	317.55	0%
OUC St Cloud	124.61	124.61	0%	330.25	330.25	0%
FP&L (County)	107.96	93.05	-14%	292.87	252.75	-14%
Service plus 2.56% Gross Receipts Tax						
COVB (County)	170.70	129.17	-24%	414.54	349.17	-16%
COVB (IR Shores)	170.70	129.17	-24%	414.54	349.17	-16%
COVB (City)	162.89	129.17	-21%	396.13	349.17	-12%
OUC Orlando	122.89	122.89	0%	325.68	325.68	0%
OUC St Cloud	127.80	127.80	0%	338.70	338.70	0%
FP&L (County) see FP&L Press Release	110.72	95.43	-14%	300.37	259.22	-14%
% more vs FP&L						
COVB (County)	54%	35%		38%	35%	
COVB (IR Shores)	54%	35%		38%	35%	
COVB (City)	47%	35%		32%	35%	
OUC Orlando	11%	29%		8%	26%	
OUC St Cloud	15%	34%		13%	31%	
FP&L (County)	0%	0%		0%	0%	

**EXHIBIT 3
City of Vero Beach
General Fund
Electric Revenue Analysis**

	<u>Budget 2009-2010</u>	<u>Expected 2008-2009</u>	<u>Actual 2007-2008</u>
Total DIRECT Revenues from Electric Utility			
GF Contribution from Electricity	5,893,000	5,893,000	5,892,999
Admin Charges Electricity	1,850,500	1,793,700	1,781,900
Utility Tax Electricity City only	1,775,205	2,031,450	1,891,875
Total from Electric Utility	<u>9,518,705</u>	<u>9,718,150</u>	<u>9,566,774</u>
% of GF Revenues from Electric Utility	44%	44%	42%

Electric Munisurcharge on County & Shores customers is buried in Electric Sales

DIRECT Revenues from Non City Electric Customers			
GF Contribution	3,594,730	3,594,730	3,594,729
Admin Charges	1,128,805	1,094,157	1,086,959
Total from Electric Utility	<u>4,723,535</u>	<u>4,688,887</u>	<u>4,681,688</u>
% of GF Revenues from Electric Utility	22%	21%	21%

TOTAL Revenues from Non City Electric Customers including Muni Surcharge			
GF Contribution	3,594,730	3,594,730	3,594,729
Admin Charges	1,128,805	1,094,157	1,086,959
Muni Surcharge Residential & Commercial	2,776,602	3,177,396	2,959,087
Total from Electric Utility	<u>7,500,137</u>	<u>7,866,283</u>	<u>7,640,775</u>
Total Revenues from Electric as a % of the GF	35%	36%	34%

Total DIRECT & INDIRECT (Muni Surcharge) Revenues from Electric			
GF Contribution from Electricity	5,893,000	5,893,000	5,892,999
Admin Charges Electricity	1,850,500	1,793,700	1,781,900
Utility Tax Electricity City only	1,775,205	2,031,450	1,891,875
Muni Surcharge Residential & Commercial	2,776,602	3,177,396	2,959,087
Total from Electric Utility	<u>12,295,307</u>	<u>12,895,546</u>	<u>12,525,861</u>
Total Revenues from Electric as a % of the GF	57%	59%	55%

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EXHIBIT 4 A
COVB vs FP&L
Residential
Service only (Base, Fuel & Customer Charge)
Weighted Average Bills for 1000 KWHs
10 Year History 2000 - 2009

Source	FEMA				
	Inside	Outside			
% of Customers	39%	61%			
Muni Surcharge	0.0%	5.4%			
Year	Inside COVB	Outside COVB	COVB Weighted Average	FP&L	% higher vs. FP&L
2009	149.08	157.13	153.99	105.77	46%
2008	133.96	141.19	138.37	103.35	34%
2007	125.19	131.94	129.31	100.87	28%
2006	127.47	134.36	131.67	105.89	24%
2005	109.87	115.80	113.49	88.02	29%
2004	100.14	105.55	103.44	84.27	23%
2003	89.74	94.59	92.70	80.49	15%
2002	87.07	91.77	89.94	75.64	19%
2001	88.31	93.08	91.22	81.21	12%
2000	81.10	85.48	83.77	70.92	18%
10 year Average	109.19	115.09	112.79	89.64	26%

Muni Surcharge is actually a rate as it flows to enterprise fund revenue and is Rate Discrimination

4 B
COVB vs FP&L
Residential
Service only (Base, Fuel & Customer Charge)
Weighted Average Bills for 2500 KWHs
10 Year History 2000 - 2009

Source	FEMA				
	Inside	Outside			
% of Customers	39%	61%			
Muni Surcharge	0.0%	5.4%			
Year	Inside COVB	Outside COVB	COVB Weighted Average	FP&L	% higher vs. FP&L
2009	361.90	381.44	373.82	287.00	30%
2008	324.09	341.59	334.76	280.87	19%
2007	302.15	318.46	312.10	274.58	14%
2006	307.87	324.49	318.01	286.99	11%
2005	264.14	278.41	272.84	222.59	23%
2004	239.85	252.80	247.75	213.22	16%
2003	213.86	225.41	220.90	203.77	8%
2002	207.18	218.37	214.01	191.69	12%
2001	210.27	221.63	217.20	205.79	6%
2000	192.25	202.63	198.58	180.04	10%
10 year Average	262.35	276.52	271.00	234.65	15%

Muni Surcharge is actually a rate as it flows to enterprise fund revenue and is Rate Discrimination

EXHIBIT 5

COVB vs FP&L
 Residential
 Service only (Base, Fuel & Customer Charge)
 Weighted Average Bills from 1000 to 2500 KWHs
 10 Year History 2000 - 2009

Source	FEMA		
	<u>Inside</u>	<u>Outside</u>	
% of Customers	39%	61%	
Muni Surcharge	0.0%	5.4%	
	<u>1000 KWHs</u>	<u>2500 KWHs</u>	<u>Total</u>
Customer Usage Profile	62.1%	25.9%	88.0%

COVB % Higher vs FP&L			
Year	1000 KWHs Weighted Average	2500 KWHs Weighted Average	Combined Average
2009	46%	30%	41%
2008	34%	19%	30%
2007	28%	14%	24%
2006	24%	11%	20%
2005	29%	23%	27%
2004	23%	16%	21%
2003	15%	8%	13%
2002	19%	12%	17%
2001	12%	6%	10%
2000	18%	10%	16%
10 year Average	26%	15%	23%

Note:

In the years COVB bills were artificially low

- How much did the COVB Electric fund lose?
- How many needed capital projected were cancelled?

Muni Surcharge is actually a rate as it flows to enterprise fund revenue and is Rate Discrimination

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EXHIBIT 6 A
COVB Electric Bill Saving via Sale to FP&L
1/1/2010

Assumption:

Using the Budgeted 2009-2010 COVB Customer billing and apply the FP&L residential rate disparity to all customer classes. This is a good approximation since the COVB residential rate disparity vs. FP&L is known across all KWh usage.

	# of Customers	%
Inside City Customers	12,960	39%
County outside city Customers	16,948	51%
Shores outside city Customers	3,323	10%
Total COVB Customers All classes	33,231	100%

Extrapolation

Revenue from Electric Customer Billing	+			+			=	
	COVB vs. FP&L	COVB 2009-2010 Billing	FP&L Expected Billing	Customer Savings if FP&L	Saving by Jurisdiction based on Jurisdictional % of total Customers			Customer Savings if FP&L
		Per Budget			City	County	Shores	
	% more				39%	51%	10%	
Residential	27%	46,442,563	36,568,947	9,873,616	3,850,710	5,035,544	987,362	9,873,616
Commercial	27%	44,292,631	34,876,087	9,416,544	3,672,452	4,802,437	941,654	9,416,544
Industrial	27%	1,674,458	1,318,471	355,987	138,835	181,553	35,599	355,987
		92,409,652	72,763,506	19,646,146	7,661,997	10,019,535	1,964,615	19,646,146

EXHIBIT 6 B

**COVB Electric Bill Saving via Sale to FP&L
1/1/2010**

Assumption:

Using the Budgeted 2009-2010 COVB Customer billing and apply the FP&L residential rate disparity to all customer classes. This is a good approximation since the COVB residential rate disparity vs. FP&L is known across all KWh usage.

	# of Customers	%
Inside City Customers	12,960	39%
County outside city Customers	16,948	51%
Shores outside city Customers	3,323	10%
Total COVB Customers All classes	33,231	100%

Extrapolation

Revenue from Electric Customer Billing	+			+			=	
	COVB vs. FP&L	COVB 2009-2010 Billing Per Budget	FP&L Expected Billing	Customer Savings if FP&L	Saving by Jurisdiction based on Jurisdictional % of total Customers			Customer Savings if FP&L
	% more				City	County	Shores	
Residential	35%	46,442,563	34,401,899	12,040,664	39%	51%	10%	12,040,664
Commercial	35%	44,292,631	32,809,356	11,483,275	4,478,477	5,856,470	1,148,327	11,483,275
Industrial	35%	1,674,458	1,240,339	434,119	169,306	221,401	43,412	434,119
		92,409,652	68,451,594	23,958,058	9,343,643	12,218,610	2,395,806	23,958,058

EXHIBIT 7

Vero Beach KT Analysis September 21, 2007

		each participant was given 10 points to allocate							FPL		OUC		Constellation		Analysis of Finalist Proposals each utility evaluated with 10=best											
		Raw Vote							raw	weighted	raw	weighted	raw	weighted	MP			RB			SH			CV		
		Weighting													F	O	C	F	O	C	F	O	C	F	O	C
Total Wholesale Provider	20%	12	2	1	3	2	1	3	9	1.8	9.75	1.95	4.75	0.95	9	10	7	10	9	6	9	10	6	8	10	0
Continued On-Site Generation Business Form (IOU vs Muni)																										
Fuel Mix																										
Power Pool																										
Size Matters																										
Transmission Access	12%	7	1	1	2	1	1	1	9.25	1.85	9	1.8	6.75	1.35	10	9	5	10	9	6	9	8	10	8	10	0
\$ & Availability																										
Economics	33%	20	4	4	3	2	4	3	7.75	1.55	10	2	5.75	1.15	8	10	6	8	10	6	9	10	7	6	10	0
VB vs. FPL Retail																										
Reliability	20%	12	1	2	1	3	3	2	10	2	9	1.8	7.5	1.5	10	9	6	10	9	6	10	10	5	10	8	0
Transmission Access																										
Continuity																										
Generation Units																										
Transmission Support																										
Adequacy of Supply																										
Term	15%	9	2	2	1	2	1	1	9.25	1.85	10	2	7	1.4	9	10	6	9	10	6	9	10	5	10	10	0
Longer is Better																										
Participants & Evaluators									9.05		9.55		6.35	48	48	30	47	47	30	46	48	33	42	48	0	
John Lee																										
Sue Hersey																										
RB Sloan																										
Joe DeMarzo																										
Randall McCamish																										
Jim Stevens																										
Participants																										
Jim Gabbard																										
Tom White																										
Lee Everette																										

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.

2014

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

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

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

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Give Notice.

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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

TOWN COUNCIL
TOWN OF INDIAN RIVER SHORES

By: [Signature]
Mayor

By: [Signature]
Mayor

Date: 6 Nov. 1986

Attest [Signature]
City Clerk

Attest: [Signature]
Town Clerk

87001

Refer to City Attorney Box

330

EXHIBIT 9

IRC E F (12/05/86)

RESOLUTION 87-12.

RECORD VERIFIED
JEFFREY K. BARTON
CLERK CIRCUIT COURT
INDIAN RIVER CO. FLA

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

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BE IT RESOLVED by the Board of 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 certain unincorporated areas of Indian River County, Florida, (herein called the "Grantor"), as such Franchise limits are or may be defined in the Service Territory Agreement between the City of Vero Beach, Florida and Florida Power and Light Company, 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,

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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 by the Grantor, the Grantor shall give a minimum of sixty (60) days notice to the Grantee of the imposition of such fee. Such fee shall be initiated only upon passage, by the Grantor and acceptance by the Grantee, of an appropriate ordinance in accordance with Florida Statutes. Such fee 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, 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. Should the Grantee refuse to accept an ordinance of the Grantor imposing such a fee, this franchise agreement shall become null and void.

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, 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

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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.

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 will be expanded or contracted to include or exclude lands, provided such lands are lawfully annexed into the Grantee's City limits and/or the Service Territory Agreement between the Grantee and Florida Power and Light Company is amended and the Public Service Commission of the State of Florida approves of such change(s) in service boundaries.

Section 13. 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 14. 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.

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DONE and ADOPTED in regular session, this 27th day of

January, 1987.

ACCEPTED:

CITY OF VERO BEACH

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY

By: *Bill Costner*

Mayor

By: *Don Suddeth*

Chairman

Date: 5 March 1987

Attest: *Janice B. Moore*

City Clerk

Attest: *[Signature]*



Approved as to form
and legal sufficiency
By *Charles P. Vitunac*
Charles P. Vitunac
County Attorney

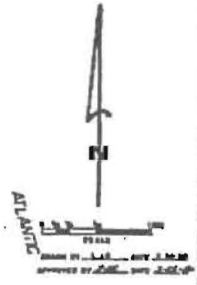
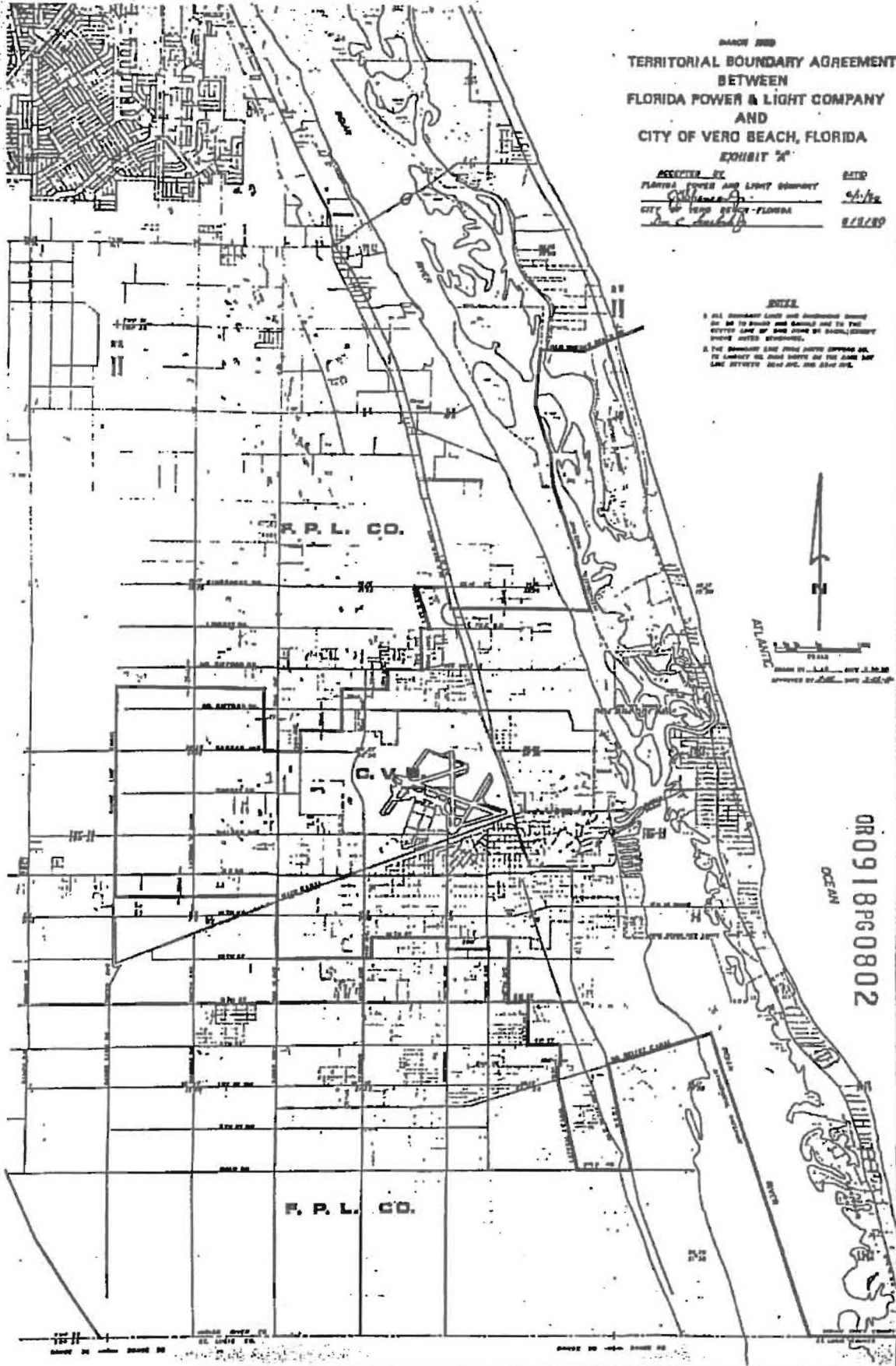
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MARCH 1928
**TERRITORIAL BOUNDARY AGREEMENT
 BETWEEN
 FLORIDA POWER & LIGHT COMPANY
 AND
 CITY OF VERO BEACH, FLORIDA**
EXHIBIT "A"

ACCEPTED BY	DATE
FLORIDA POWER AND LIGHT COMPANY	4/1/28
CITY OF VERO BEACH, FLORIDA	3/12/28

NOTES.

1. ALL BOUNDARY LINES AND DISTANCES SHOWN ON THIS MAP TO BE TAKEN FROM THE ORIGINAL SURVEY RECORDS OF THE CITY OF VERO BEACH AND THE FLORIDA POWER AND LIGHT COMPANY.
2. THE BOUNDARY LINES SHOWN ON THIS MAP ARE TO BE TAKEN AS SHOWN ON THE ORIGINAL SURVEY RECORDS OF THE CITY OF VERO BEACH AND THE FLORIDA POWER AND LIGHT COMPANY.



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