

**Ruth Nettles**

090524-EM

**From:** Rhonda Dulgar [rdulgar@yvlaw.net]  
**Sent:** Friday, December 18, 2009 3:13 PM  
**To:** Charles Vitunac; Stephen Faherty; Glenn Heran; J.R. Kelly; Filings@psc.state.fl.us; Martha Brown; Schef Wright  
**Subject:** Electronic Filing - Docket 090524-EM  
**Attachments:** VB.Mot.ExtOfTime.12-18-09.pdf

a. Person responsible for this electronic filing:

Robert Scheffel Wright  
Young van Assenderp, P.A.  
225 South Adams Street, Suite 200  
Tallahassee, FL 32301  
(850) 222-7206  
swright@yvlaw.net

b. 090524-EM

In Re: Complaint Against the City of Vero Beach, Florida, by Stephen J. Faherty and Glenn Fraser Heran.

c. Document being filed on behalf of the City of Vero Beach, Florida.

d. There are a total of 6 pages.

e. The document attached for electronic filing is the City of Vero Beach's Motion for Extension of Time to Respond to Complaint by Stephen J. Faherty and Glenn Fraser Heran.

(see attached file: VB.Mot.ExtOfTime.12-18-09)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar  
Secretary to Schef Wright  
Phone: 850-222-7206  
FAX: 850-561-6834

*Done  
12/22/09  
R.V.N.*

DOCUMENT NUMBER-DATE

12080 DEC 18 8

FPSC-COMMISSIONER CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint Against the City of )  
Vero Beach, Florida, by Stephen J. ) DOCKET NO. 090524-EM  
Faherty and Glenn Fraser Heran ) FILED: DECEMBER 18, 2009  
\_\_\_\_\_)

MOTION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINT  
BY STEPHEN J. FAHERTY AND GLENN FRASER HERAN

The City of Vero Beach, Florida ("Vero Beach" or "City"), by and through its undersigned counsel and pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), respectfully moves the Florida Public Service Commission ("Commission") for an order granting an extension of time for the City to file responsive pleadings, possibly including an answer and appropriate responsive motions, to the Complaint of Stephen J. Faherty and Glenn Fraser Heran Against the City of Vero Beach for Unfair Electric Utility Rates and Charges," filed in the above-styled docket on December 3, 2009 (the "Complaint"). Dr. Faherty and Mr. Heran are referred to collectively as the "Complainants." As discussed below, while the Complainants apparently mailed copies of their pleadings to the Mayor and City Council, they did not serve the City Attorney, and the City Attorney only learned of the existence of this docket on December 14, 2009 when he received the Notice of Complaint mailed to the City by Ann Cole, the Commission Clerk. The City's undersigned regulatory counsel learned of the action on December 15, 2009. The City respectfully requests an extension until January 15, 2010 to respond to the Complaint because of the short notice occasioned by

the Complainants' lack of service upon the City Attorney, because of the imminent holiday season, and because the City's primary counsel has longstanding plans to visit his family outside Florida for a substantial part of the holiday season. The specific date, January 15, 2010, is requested because it is one month after the City's counsel learned of the action; the City believes that this is a reasonable request under the circumstances, and that the short notice and imminence of the holiday season constitute good cause for the requested extension.

In further support of this Motion, the City of Vero Beach states the following.

**PROCEDURAL BACKGROUND REGARDING THE CITY OF VERO BEACH**

1. The name, address, and telephone number of Respondent, the City of Vero Beach, are as follows:

City of Vero Beach, Florida  
Attention: Charles P. Vitunac, City Attorney  
1053 20th Place  
Vero Beach, Florida 32960  
Telephone: (772)978-4730  
Facsimile: (772)978-4733

2. All pleadings, orders and correspondence should be directed to Petitioner's representatives as follows:

Robert Scheffel Wright, Attorney at Law  
John T. LaVia, III, Attorney at Law  
Young van Assenderp, P.A.  
225 South Adams Street, Suite 200  
Tallahassee, Florida 32301  
(850) 222-7206 Telephone  
(850) 561-6834 Facsimile  
E-Mails: swright@yvlaw.net and jlavia@yvlaw.net

with a courtesy copy to

Charles P. Vitunac, City Attorney  
City of Vero Beach, Florida  
1053 20th Place  
Vero Beach, Florida 32960  
E-Mail: [cvitunac@covb.org](mailto:cvitunac@covb.org)

3. The City of Vero Beach is a political subdivision of the State of Florida, which operates a municipal electric utility system and other utilities. The City provides electric service to customers within the City limits and outside the City limits, pursuant to Florida law and also consistent with a Commission-approved territorial agreement between the City and Florida Power & Light Company.

**REQUESTED RELIEF AND JUSTIFICATION**

4. The City respectfully moves the Commission for an order granting the City an extension of one month from the date upon which its regulatory counsel became aware of the Complaint to file responsive pleadings. The Complainants apparently mailed copies of their pleadings to the Mayor and City Council, but they did not serve the City Attorney, and the City Attorney only learned of the existence of this docket on December 14, 2009 when he received the Notice of Complaint mailed to the City by Ann Cole, the Commission's Clerk. The City's undersigned regulatory counsel learned of the action on December 15, 2009. The undersigned counsel not only has longstanding plans to visit his family outside Florida (in Maryland) for a good portion of the holidays, he is also responsible for

filing a brief in Commission Docket No. 090451-EM on January 5, 2010.

5. Additionally, although the City will attempt to work through the Complaint and Petition to understand the gravamen of the Complainants' claims, the original Complaint does not contain either the concise statement of ultimate facts alleged or a clear statement of dispute issues of material fact, as required by Rule 28-106.201, Florida Statutes.

6. The City believes that combination of the imminent holiday season, the unavailability of the City's regulatory counsel for most of the holiday season, and the incomplete service and incomplete statements required by applicable procedural rules of the Florida Administrative Code, taken together, constitute good cause for the requested extension of time.

**STATEMENT OF OTHER PARTIES' POSITIONS**

7. The undersigned has inquired, by telephone and electronic mail, as to the Complainants' position on this motion, but has not received an answer as to their position as of the time of filing this motion. The undersigned has conferred with counsel for the Commission Staff, and is authorized to represent that the Staff do not object to the motion.

**WHEREFORE**, the City of Vero Beach respectfully requests that the Commission grant this motion and enter an order providing that the City shall have until the close of business on January 15, 2010 to file pleadings, including an answer and any appropriate

responsive motions, in response to the Complaint filed by Dr.  
Faherty and Mr. Heran.

Respectfully submitted this 18th day of December, 2009.

A handwritten signature in black ink, reading "Robert Scheffel Wright". The signature is written in a cursive style with a horizontal line drawn underneath it.

Robert Scheffel Wright  
Florida Bar No. 966721  
John T. LaVia, III  
Florida Bar No. 853666  
Young van Assenderp, P.A.  
225 South Adams Street, Suite 200  
Tallahassee, Florida 32301  
(850) 222-7206 Telephone  
(850) 561-6834 Facsimile

Attorneys for the City of Vero Beach

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic and U.S. Mail, on this 18th day of December, 2009.

Martha Carter Brown, Esquire  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

J.R. Kelly, Esquire, Public Counsel  
Office of the Public Counsel  
111 West Madison Street, Room 812  
Tallahassee, Florida 32399-1400

Charles P. Vitunac, City Attorney  
City of Vero Beach, Florida  
1053 20th Place  
Vero Beach, Florida 32960

Dr. Stephen J. Faherty  
2120 Captains Walk  
Vero Beach, Florida 32963-2821

Mr. Glenn Fraser Heran  
6985 57<sup>th</sup> Street  
Vero Beach, Florida 32967

  
Attorney