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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by the Town of Indian River Shores For Modification of Territorial Order Based on Changed Legal Circumstances Emanating From Article VIII, Section 2(c) of the Florida Constitution.

Docket No. _____

Filed: March 4, 2016

_____/

PETITION FOR MODIFICATION OF TERRITORIAL ORDER BASED ON CHANGED LEGAL CIRCUMSTANCES EMANATING FROM ARTICLE VIII, SECTION 2(C) OF THE FLORIDA CONSTITUTION

Pursuant to sections 120.57 and 366.04, Florida Statutes, the Town of Indian River Shores (the "Town") petitions for modification of an order (the "Order") issued by the Florida Public Service Commission (the "Commission") approving a territorial agreement between the City of Vero Beach (the "City") and Florida Power and Light Company ("FPL"). The territorial agreement establishes a territorial boundary line between the City and FPL systems that divides the Town and results in fragmented electric service where some of the Town residents are served by FPL while others in the Town are served by the City. The last time the Commission reviewed and approved the territorial agreement was over 28 years ago. Modification of the Order is required based on changed legal circumstances because the City will be in violation of the Florida Constitution if it exercises extra-territorial powers by providing electric service in the Town after November 6, 2016 when the Franchise Agreement between the City and the Town expires, and the City no longer has the Town's consent to exercise those extra-territorial powers within the Town. Alternatively, the Town -- as a current electric customer of the City -- requests that the Commission treat this petition as a Complaint against the City and modify its Order approving the City's service within the Town's corporate limits for the reasons set forth herein.

Summary

This Petition involves legal circumstances which have changed significantly since the last time the Commission reviewed and approved the territorial agreement over 28 years ago. Those changed legal circumstances emanate from unique constitutional limitations of municipal powers, which necessitate modification of the Commission's Order. Article VIII, section 2(c) of the Florida Constitution establishes that a municipality like the City of Vero Beach has no inherent authority to exercise extra-territorial powers within the corporate limits of the Town. Instead, the City only has those extra-territorial powers expressly granted to it by the Florida Legislature. Modification of the Order is required as a matter of law because the Florida Legislature has not provided the City with statutory power by general or special law to exercise extra-territorial powers within the corporate limits of the Town without the Town's consent as is required by Article VIII, section 2(c) of the Florida Constitution.

Up until now, every time the Commission has reviewed and approved the territorial agreement and any amendments thereto relating to City's service within the Town's municipal limits, the City has enjoyed the Town's express written consent. This consent has been in the form of formal service and franchise agreements pursuant to which the Town expressly gave the City temporary permission to exercise extra-territorial powers by providing electric service within the Town's corporate limits for a limited period of time. Those circumstances, however, have significantly changed. By certified letter dated July 18, 2014, the Town formally notified the City that when the Franchise Agreement between the Town and the City expires on November 6, 2016, the City will no longer have the Town's consent to exercise extra-territorial powers in the Town's corporate limits. In order to comport with limitations on extra-territorial powers in the Florida Constitution, the Commission's Order must be modified to address that change in legal

circumstances so that the City no longer exercises extra-territorial powers within the Town. Modification of the Order is also consistent with the public interest because it will allow the entire Town to be served by a single electric utility whose rates are professionally and neutrally regulated by the Commission rather than place the Town and its residents at the mercy of the City's unregulated utility with which they have no recourse since they cannot vote in City elections.

Accordingly, the Town asks that the Commission exercise its authority under section 366.04, Florida Statutes, on an expedited basis, modify the Order in accordance with the Florida Constitution, and ensure that Town residents currently served by the City will be transitioned to service by FPL in an orderly and efficient manner.

Parties

1. The agency whose relief is sought by this Petition is as follows:

   Florida Public Service Commission
   2540 Shumard Oak Boulevard
   Tallahassee, Florida 32399-0850

2. The name, address, and telephone number of the Town are as follows:

   The Town of Indian River Shores
   Robbie Stabe, Town Manager
   6001 Highway A-1-A
   Indian River Shores, Florida 32963
   Telephone: 772-231-1771

3. All pleadings, orders and correspondence should be directed to the Town's representatives as follows:

   D. Bruce May, Jr.
   Karen Walker
   Kevin Cox
   Holland & Knight LLP
   315 S. Calhoun Street, Suite 600
   Tallahassee, Florida 32301
   Telephone: 850-224-7000
   Facsimile: 850-224-8832

With a courtesy copy to:

Chester Clem
Town Counsel
2145 15th Avenue
Vero Beach, Florida 32960-3435
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Applicable Law

4. Article VIII, section 2(c) of the Florida Constitution establishes that a municipality has no inherent authority to exercise extra-territorial powers; instead, the "exercise of extra-territorial powers by municipalities shall be as provided by general or special law."

5. No general or special law currently provides the City with the power to exercise extra-territorial powers within the corporate limits of the Town without the Town's consent.

6. Moreover, section 180.02(2), Florida Statutes, establishes that a municipality's exercise of extra-territorial powers outside its boundaries "shall not extend or apply within the corporate limits of another municipality."

7. The application of these provisions of the Florida Constitution and Florida statutes demonstrate that the City has no inherent constitutional authority to exercise extra-territorial powers within the Town's corporate limits without the Town's consent and that the exercise of such extra-territorial powers by the City would violate the Florida Constitution. The imminent expiration of the Town's consent to exercise such powers, on November 6, 2016, constitutes a changed legal circumstance that necessitates modification of the Commission's Order on an expedited basis.

8. The Commission has held that:

> Territorial agreements are horizontal divisions of territory, considered to be per se Federal antitrust violations under the Sherman Act, 15 U.S.C. § 1. *Parker v. Brown,*

> 317 U.S. 341, 350 (1942) (a territorial agreement effective "solely by virtue of a contract, combination or conspiracy of private persons, individual or corporate, would violate the Sherman Act.") When territorial agreements are sanctioned by the State, however, they are entitled to state action immunity from liability under the Sherman Act. 317 U.S. at 350; *Municipal Utilities Board of Albertville v. Alabama Power Co.,* 934 F. 2d 1493 (11th Cir. 1991). Entitlement to state action immunity is demonstrated by a "clearly articulated and affirmatively expressed state policy" encouraging the activity in question, and "the policy must be actively supervised by the State itself." *California Retail Liquor Dealers Ass'n v. Midcal Aluminum,* 445 U.S. 97, 105 (1980).

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, Order No. PSC-13-0207-PAA-EM, Docket No. 120054-EM at 20 (May 21, 2013). In that same order, the Commission also acknowledged that territorial agreements, if not actively supervised, could expose electric customers to "anti-competitive behavior." *Id.* at 16-17. Thus, the Commission made it clear that it "is important that we have, and fully exercise, our jurisdiction over electric service territorial agreements, not just to approve them in the first instance as a simple geographical boundary, but to actively supervise their implementation and enforce their terms." *Id.* at 20. These regulatory pronouncements confirm that the Commission has a duty to actively supervise the City's implementation of the territorial agreement from the perspective of the customer, and to modify the territorial boundaries where necessary to protect the Town and its residents from unlawful actions in violation of the Florida Constitution as well as from monopoly abuses and other anticompetitive behavior.

Material Facts

9. The Town is an incorporated Florida municipality of approximately 4,000 residents in Indian River County, Florida, and receives electric service from the City.

10. The City is an incorporated Florida municipality of approximately 15,000 residents in Indian River County, Florida. The City owns and operates a municipal electric utility system that serves approximately 34,000 customers, of which approximately 12,000 are located within the corporate limits of the City ("Resident Customers") and approximately 22,000 are located outside the City limits ("Non-Resident Customers"). Approximately 3,000 of the City's Non-Resident Customers are located within the corporate limits of the Town.

11. The Town was established by Chapter 29163, Laws of Florida (1953), pursuant to which the Florida Legislature gave the Town powers to contract "on behalf of the inhabitants of the Town" with other utilities for the provision of electricity and grant public utility franchises of all kinds. Ch. 29163, § 2(e) & (f), Laws of Fla. (1953). The Town also possesses broad home rule powers as a municipality under Chapter 166, Florida Statutes.

12. In 1968 the Town entered into a bargained-for agreement with the City pursuant to which the Town gave the City temporary consent to exercise certain extra-territorial powers within the corporate limits of the Town, including temporary permission to provide electric service to residents "within the corporate limits of said Town" and to occupy and use the Town's rights-of-way and other public places, for a limited term of 25 years (the "1968 Agreement"). A copy of the 1968 Agreement is attached as Exhibit "A."

13. In 1971, the City and FPL began negotiations regarding an agreement that called for those two parties to observe a territorial boundary between their electric systems. On

November 1, 1971, FPL and the City entered into a bilateral territorial agreement which was contingent upon Commission approval (the "Territorial Agreement").

14. In 1972, the Commission approved the Territorial Agreement. *In re: Application of Florida Power and Light Co. for approval of a territorial agreement with the City of Vero Beach,* Order No. 5520, Docket 40045-EU (Aug. 29, 1972). The Order approving the Territorial Agreement and Orders approving its subsequent amendment are attached as hereto as Composite Exhibit "B". For purposes of this Petition, the term "Order" means the Order, as amended, as reflected in Composite Exhibit "B."

15. The last time that the Order was modified was in 1988, when the Commission determined that the territorial boundaries should be redrawn to avoid having a particular subdivision straddle the territorial dividing line, which the Commission recognized could cause problems including "customer confusion." *In re Petition of Florida Power & Light Company and the City of Vero Beach for Approval and Amendment of a Territorial Agreement*, Order No. 18834, Docket No. 871090-EU (Feb. 9, 1988).

16. In 1986, the Town entered into another bargained-for agreement with the City which superseded the 1968 Agreement and again granted to the City the Town's temporary consent for the City to exercise certain extra-territorial powers within the Town's corporate limits for a limited period of 30 years, including giving the City an exclusive 30-year franchise (the "Franchise") to provide electric service to certain parts of the Town. A copy of the 1986 Franchise Agreement (the "Franchise Agreement") is attached hereto as Exhibit "C." Accordingly, when the Commission Order was last amended there was a formal written agreement in place pursuant to which the Town gave the City temporary consent to exercise extra-territorial powers within the Town up through but not beyond November 6, 2016.

17. As reflected in Composite Exhibit "B" to this Petition, the Territorial Agreement has been periodically amended by the City and FPL, and such amendments have been approved by the Commission. Since the inception of the Territorial Agreement in 1972, and through the course of these amendments, the City has always had the Town's express written consent to exercise extra-territorial powers within the Town by virtue of the 1968 Agreement and the Franchise Agreement. That will no longer be the case after November 6, 2016.

18. The Franchise Agreement between the Town and the City has a limited term of 30 years, has no automatic or mandatory renewal provisions, and is scheduled to expire on November 6, 2016.

19. By certified letter dated July 18, 2014, attached hereto as Exhibit "D", the Town notified the City that the Town will not renew the City's Franchise, and that upon expiration of the Franchise Agreement the City will no longer have the Town's consent to exercise extra-territorial powers with the Town.

20. Under the Territorial Agreement, as amended, the Town currently straddles the territorial boundary line which divides the respective service areas of FPL and the City. As a result, the territorial boundary line divides the community and results in the fragmentation of electric utility service within the Town. FPL serves within that portion of the Town lying north of Old Winter Beach Road (approximately 739 customers), while the City serves within that portion of the Town lying south of Old Winter Beach Road (approximately 3,000 customers).

21. Unlike investor-owned electric utilities, the City's electric utility pays no corporate income taxes, no property taxes, and has access to low cost financing subsidized by tax-free bonds. Furthermore, unlike investor-owned electric utilities, the City's electric utility is not subject to the costs of complying with state mandated energy efficiency and conservation requirements. Despite

having these cost advantages, the City's electric rates have been some of the highest in the State of Florida over the last 10 years, and are substantially higher than the rates charged by FPL, an investor-owned utility that does not have similar cost advantages.

22. For example, according to the comparative rate statistics compiled by the Commission and the Florida Municipal Electric Association, the City's residential electric rates for 1000 kWh usage were approximately:

a. 45.01% higher than FPL's rates in December 2005;

b. 9.56% higher than FPL's rates in December 2006;

c. 31.12% higher than FPL's rates in December 2007;

d. 30.23% higher than FPL's rates in December 2008;

e. 30.63% higher than FPL's rates in December 2009;

f. 26.46% higher than FPL's rates in December 2010;

g. 21.57% higher than FPL's rates in December 2011;

h. 31.45% higher than FPL's rates in December 2012;

i. 41.19% higher than FPL's rates in December 2013;

j. 25.22% higher than FPL's rates in December 2014; and

k. 26.81% higher than FPL's rates in December 2015.

23. Upon information and belief, over the last 10 years, the Town and its residents receiving electric service from the City collectively paid approximately $16 million more for electricity than they otherwise would have paid if electric service had been provided by FPL.

24. Because FPL is an investor-owned utility, its electric rates are regulated by the Commission under Chapter 366, Florida Statutes.

25. In contrast, as a municipal electric utility, the City and its electric utility rates are not regulated by the Commission. *See* §§ 366.04 & 366.02(1), Fla. Stat. (2015) (providing the Commission with the jurisdiction to regulate rates and services of a "public utility," but excluding municipalities from the definition of "public utility").

26. Instead, the City's electric utility is managed, and its rates are set, by the City Council. City Charter, § 2.05.

27. The City Council Members are elected by the citizens who reside inside the City's corporate limits. City Charter, § 2.01 (the Council is to be "elected at large by electors of the City"); City Charter, § 4.01 ("[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"). Thus, the Town and its residents have no voice in City elections.

28. Under Florida law, the rate levels of a municipal electric utility like the City are not regulated by the Commission 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.

29. However, that premise fails with respect to the Town because the Town and its residents who receive electric service from the City are located outside of the City, they 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.

30. Upon information and belief, the City uses the unregulated monopoly service area established by the territorial Order as a surrogate vehicle for taxation, and has diverted electric utility revenues it extracts from the Town and its residents to its general revenue fund as a means to keep ad valorem taxes on property within the City artificially low.

31. Upon information and belief, the City also diverts electric utility revenues from the Town and its residents to its general fund to cover costs that have nothing to do with the operation of the City's electric utility, including subsidizing the City's unfunded pension obligations to current and former employees whose work had nothing to do with the City's provision of electric service to the Town or other customers.

32. On January 5, 2016, the Town petitioned the Commission for a declaratory statement to confirm the extent of the Commission's jurisdiction to address the constitutional limitations on the City's exercise of extra-territorial powers within the Town's corporate limits. On March 1, 2016, the Commission voted to issue a declaratory statement that it "has the jurisdiction under Section 366.04, F.S., to determine whether Vero Beach has the authority to continue to provide electric service within the corporate limits of the Town of Indian River Shores upon expiration of the franchise agreement between the Town of Indian River Shores and the City of Vero Beach." In that vote the Commission also confirmed that in exercising such jurisdiction it could interpret Article VIII, section 2(c) of the Florida Constitution and section 166.021(3)(a), Florida Statutes, which limit a municipality's lawful ability to exercise extra-territorial powers.

The Town Has Standing to Seek Modification of the Territorial Order

33. Florida law is clear that the parties to a territorial agreement are ***not*** the only ones who may seek a modification of an order approving such agreement. Indeed, there cannot "be any doubt that the commission may withdraw or modify its approval of a service area agreement, or

other order, in proper proceedings initiated by it, a party to the agreement, ***or even an interested member of the public***." *Peoples Gas Sys., Inc. v. Mason*, 187 So. 2d 335, 339 (Fla. 1966) (emphasis added); *Pub. Serv. Comm'n v. Fuller*, 551 So. 2d 1210, 1212 (Fla. 1989) ("[W]e held then [in *Mason*] and reaffirm now that 'the commission may withdraw or modify its approval of a service area agreement, or other order, in proper proceedings initiated by it, a party to the agreement, or even an interested member of the public.'"); *see also City of Homestead v. Beard*, 600 So. 2d 450, 453 n.5 (Fla. 1992) (same).

34. For reasons elaborated herein, the Town's interest here is significant and immediate. Because the City has no organic constitutional or statutory power to exercise extra-territorial power within the Town's corporate limits without the Town's consent, the Town will be subject to an unconstitutional encroachment within its boundaries when the Franchise Agreement expires on November 6, 2016. The Town and its residents will be immediately harmed by a violation of Florida's constitutional protections which prohibit one municipality from exercising unconsented extra-territorial power in the corporate limits of another municipality.

35. The Town's harm results not only from a facially unconstitutional encroachment within its boundaries, but also by the fact that the City has been using, and plans to continue to use, its unregulated monopoly electric service area within the Town to extract monopolistic profits from the Town's residents in order to subsidize City operations that are unrelated to its electric utility. This is exactly the type of utility customer interest that proceedings to approve or modify territorial agreements were designed to protect. The Commission has a duty to actively supervise the City's implementation of the territorial agreement and to modify the territorial boundaries where necessary to protect the Town and its residents from unlawful actions in violation of the Florida Constitution as well as from monopoly abuses and other anticompetitive behavior. As

described in detail above, there can be no doubt that the Town will suffer an injury of sufficient immediacy to entitle it to relief from the Commission if the relief requested in this Petition is not granted.

36. Even if the Town did not have standing, which it plainly does, the Commission could, and should, address on its own motion the changed legal circumstances that will render the City's extra-territorial provision of electric service to the Town unconstitutional upon expiration of the Franchise Agreement. Section 350.05, Florida Statutes, establishes that each member of the Commission has an affirmative duty to "support, protect, and defend" the Constitution of the State of Florida. Thus, the Commission cannot and should not condone the provision of extra-territorial electric service by a municipality in direct contravention of the Florida Constitution, particularly where there is a Commission-regulated utility ready, willing and able to serve the customers at issue at a lower rate and with demonstrated reliable service.

Changed Legal Circumstances Require Modification of the Territorial Order

37. Modification of the Commission's Order is necessary here because, as a matter of law, the fundamental legal circumstances have changed since the Commission last reviewed and approved the Territorial Agreement over 28 years ago. *Peoples Gas Sys., Inc.*, 187 So. 2d at 339. ("[T]he commission may withdraw or modify its approval of a service area agreement, or other order, in proper proceedings initiated by it, a party to the agreement, or even an interested member of the public. However, this power may only be exercised after proper notice and hearing, and upon a specific finding based on adequate proof that such modification or withdrawal of approval

is necessary in the public interest because of changed conditions or other circumstances not present in the proceedings which led to the order being modified.").

38. Article VIII, section 2(c) of the Florida Constitution makes it clear that the City has no inherent authority to exercise extra-territorial powers; instead, the "exercise of extra-territorial powers by municipalities shall be as provided by general or special law." There is no current general or special law that provides the City with the power to exercise extra-territorial powers within the corporate limits of the Town without the Town's consent.

39. The Town does not dispute that the Commission has stated in an administrative order that the City can provide electric service to a portion of the Town, but the Commission did so when the City had the Town's consent to exercise such extra-territorial powers within the Town pursuant to the 1968 Agreement and later the Franchise Agreement.

40. The City will no longer have the Town's consent when the Franchise Agreement expires on November 6, 2016. Hence, there can be no doubt that the legal circumstances regarding the legal authority of the City to provide extra-territorial electric services within the corporate limits of the Town have changed since the Commission last reviewed approved the Territorial Agreement over 28 years ago.

41. The City has previously cited section 180.02(2), Florida Statutes, for its purported municipal power to provide extra-territorial electric service "outside of its corporate limits" in unincorporated areas of Indian River County. *See* City's filing on August 14, 2014, in Docket No. 140142-EM, at page 36. However, section 180.02(2) cannot authorize the City's provision of extra-territorial electric service in the Town because that same section further provides that "said corporate powers shall ***not*** extend or apply within the corporate limits of another municipality." (Emphasis added). Thus, section 180.02(2) is entirely consistent with the restrictions on extra-

territorial municipal powers as set forth in Article VIII, section 2(c) of the Florida Constitution, and as further codified in section 166.021, Florida Statutes.

42. The City has previously argued that its exercise of extraterritorial power in the Town is constitutionally valid because the Commission's territorial orders were issued "pursuant to" the general law found in Chapter 366, Florida Statutes. Thus, the City has argued that an agency's order approving a bilateral territorial agreement "pursuant to" Chapter 366 supersedes the protections found in Article VIII, section 2(c) of our Constitution. The City's argument ignores the plain language in the Constitution. The framers of our Constitution made it crystal clear that a municipality has no inherent authority to exercise extra-territorial powers; instead, the "exercise of extra-territorial powers by municipalities shall be as provided by general or special law." On its face, the clause "provided by general or special law" in the Florida Constitution means that a municipality can only exercise extra-territorial power if the Legislature grants that power ***to the municipality***. A statute giving authority ***to the Commission*** to approve a territorial agreement involving a municipality ***is not*** a legislative grant of extra-territorial power ***to the municipality***. While the Commission's jurisdiction under Chapter 366 is certainly broad, it does not supersede the Florida Constitution.

43. According to the Florida Supreme Court, the limiting language in Article VIII, section 2(c) -- the "exercise of extra-territorial powers by municipalities shall be as provided by general or special law" -- means that there must be a "specific" legislative grant of such extra-territorial power to a municipality. *Ford v. Orlando Utils. Comm'n*, 629 So. 2d 845, 847 (Fla. 1994) (affirming determination that the Orlando Utilities Commission has certain extra-territorial powers because "the legislature enacted a statute ***specifically authorizing*** the [Orlando Utilities] Commission to acquire and operate its plant in both Orange and Brevard Counties." (emphasis

added)); *State ex rel. Stephens v. City of Jacksonville*, 137 So. 149, 151 (1931) ("It is elementary that a municipal corporation must receive all its powers, rights, and franchises from its creator, the Legislature, and it can only exercise those municipal powers which ***are conferred*** by the Legislature." (emphasis added)). The City has not, and cannot, point to any current law passed by the Florida Legislature that gives the City the power to provide electric service within the corporate limits of the Town or any other municipality.

44. The Commission has acknowledged that an order approving a territorial agreement between a municipal utility and an investor-owned utility does ***not*** provide a municipal utility the inherent statutory authority to serve extra-territorially outside its municipal boundaries. *See In re: Joint petition for approval to amend territorial agreement between Progress Energy Florida, Inc. and Reedy Creek Improvement District*, Order No. PSC-10-0206-PAA-EU, Docket No. 090530-EU (Apr. 5, 2010). The original territorial agreement in that proceeding was approved by the Commission in 1987 and provided Reedy Creek Improvement District ("RCID"), a special district akin to a municipal utility, with the exclusive right to serve a development area. However, when the development area was de-annexed from the RCID political boundary in 2008, the Commission saw the need to modify the territorial agreement because "pursuant to its charter, RCID cannot furnish retail electric power outside of its boundary." *Id.* at 2. Consequently, the Commission modified the territorial agreement by placing the pertinent area within Progress Energy's service territory. *Id.* at 3. By so ruling the Commission recognized that its earlier administrative order approving the original territorial agreement did not grant the municipal utility the statutory authority to exercise extra-territorial powers outside its municipal limits.

45. For all these reasons, the City has no inherent statutory authority to exert extra-territorial powers within the corporate limits of the Town without the Town's consent. That

consent will expire on November 6, 2016 when the Franchise Agreement expires. At that point in time, the City will be in violation of the Florida Constitution if it continues to exercise its powers on an extra-territorial basis within the Town.

The Requested Modification

46. Based on the changed legal circumstances set forth above, the Order approving the current territorial boundaries should be modified to conform to the Florida Constitution by placing the entire Town within the electric service area of FPL.

47. Moreover, modifying the current territorial boundary line to place the entire Town within the electric service area of FPL would be in the public interest for the following additional reasons:

a. The Town currently straddles the territory boundary line between the City and FPL electric systems and thus part of the Town is served by FPL and part of the Town is served by the City. As a consequence, Town residents receive vastly different service, at vastly different rates, with vastly different regulation and oversight. Modifying the territorial boundaries to place the entire Town within FPL's electric service territory would eliminate the fragmented electric service within the Town and enable the Town and all its residents to receive reliable electric service from one Commission-regulated utility at the same reasonable rates which do not unfairly subsidize the City's municipal functions unrelated to its electric service.

b. Not only does the current territory boundary line physically fragment utility service within the Town, it creates winners and losers, pits neighbor against neighbor, and causes discord and confusion among Town residents. The Commission recognized that this divisive community dynamic is not in the public interest when it last

reviewed the Territorial Agreement and "redrew" the territorial boundary line because a particular subdivision "straddled the territorial dividing line" and thus could cause "customer confusion" and other problems. *See In re Petition of Florida Power & Light Company and the City of Vero Beach for Approval and Amendment of a Territorial Agreement*, Order No. 18834, Docket No. 871090-EU (Feb. 9, 1988). These issues are no less applicable for a Town of 4,000 residents.

c. The Town and its residents are completely disenfranchised from the City and have no voice in the operation of the utility or the setting of the utility rates. Having a Commission-regulated utility, with professional and neutral oversight of utility rates, as the single electric utility provider in the Town would better protect the consumer. The Commission has specifically recognized this as a significant factor in reviewing boundaries of service territories and determining whether a territorial agreement is in the public interest. *See In Re: Joint Motion for approval of territorial agreement and dismissal of territorial dispute,* Order No. PSC-92-1071-FOF-EU, Docket No. 891245-EU at 2 (Sept. 28, 1992) (denying petition to approve territorial agreement, and stating that "[s]everal customers complained that if they were transferred to [Fort Pierce Utility Authority], they would have no representation on a utility that is not subject to PSC regulation.").

d. Having FPL as the single electric provider would allow all Town residents to access the energy conservation programs offered by FPL, which are not offered by the City. The Commission has specifically recognized this as a significant factor in reviewing territorial boundaries and determining whether territorial agreements are in the public interest. *Id.* at 2 ("Several customers testified that they benefited from

the numerous conservation programs offered by FPL, that were not available from FPUA.… Another factor we may consider in determining whether a transfer of territory is in the public interest is the availability of conservation programs to customers being transferred.").

e. Having FPL as the single electrical provider would also provide the Town with the benefits of FPL's storm hardening initiatives. The Commission has specifically recognized this as a significant factor in reviewing territorial boundaries and determining whether territorial agreements are in the public interest. *See id.* at 2 ("Customers also testified that FPL was better equipped, provided better service, was superior in service calls, could provide service during a hurricane, and was better equipped to fix storm damage.").

f. Having FPL as the single electrical provider would provide the Town and its residents access to FPL's deployment of solar generation and FPL's smart meters, which are not offered by the City.

g. Having FPL as the single electric provider would dramatically reduce the utility costs to the Town's residents. As described above, over the last 10 years, the Town and its residents receiving electric service from the City collectively paid approximately $16 million more for electricity than they otherwise would have paid if electric service had been provided by FPL.

h. Having FPL as the single electrical provider would provide the Town with the benefits of FPL's highly regarded management expertise and high customer satisfaction ratings.

i. Having FPL as the single electric provider would protect the Town and its residents from having to subsidize the City's municipal operations which have nothing to do with the operation of the City's electric utility.

j. FPL is already providing reliable electric service within portions of the Town and is fully capable of providing reliable service throughout the entire Town. Indeed, in August of 2015, FPL proposed to purchase the City's electrical facilities in the Town for $13 million in cash (*see* Exhibit "E") and has stated that it is ready, willing, and able to serve all of the customers within the Town upon such purchase and modification of the Order approving the Territorial Agreement.

48. The Town's residents are overwhelmingly in favor of having FPL as the single electric provider within the Town.

Conclusion

Wherefore, the Town respectfully requests, in an expedited proceeding, that the Commission modify the Order approving the City's provision of electric service in the Town by placing the entire Town within the electric service area of FPL. The Town further requests that the Commission fashion the modification of the Order and provide such other relief in a manner that satisfies the Commission's duties under Chapter 366, Florida Statutes, including any relief to ensure that Town residents currently served by the City will be transitioned to service by FPL in an orderly and efficient manner.

Alternatively, the Town -- as a current electric customer of the City -- requests that the Commission treat this petition as a Complaint against the City and to modify its Order approving the City's service within the Town for the reasons set forth above.

Finally, consistent with Commission practice, the Town requests that the Commission conduct a service hearing in the Town so that it can hear directly from Town residents that are impacted by the City's exercise of extra-territorial powers within the Town.

Respectfully submitted this 4th day of March, 2016.

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Attorneys for Petitioner Town of Indian River Shores

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing via email to Kathryn Cowdery, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399, kcowdery@psc.state.fl.us, counsel to the PSC on this 4th day of March, 2016.

/s/D. Bruce May, Jr.
D. Bruce May, Jr.

EXHIBIT A

C O N T R A C T

This agreement made and entered into this 18 day of December, 1968, by and between the CITY OF VERO BEACH, a municipal corporation of the State of Florida, hereinafter referred to as the CITY, and TOWN OF INDIAN RIVER SHORES, a municipal corporation of the State of Florida, hereinafter referred to as the TOWN;

WITNESSETH:

WHEREAS, the Town, through its Town Council has requested the City, to provide water service and electric power service to any residents within the corporate limits of said Town, desiring to obtain such service, and

WHEREAS, the City has referred said request to its consulting engineers for their study and has received a report from the consulting engineers that said proposal is advantageous to all parties concerned and have recommended its acceptance;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements on the part of each party hereto, as hereinafter set forth, the parties hereto do hereby covenant and agree as follows:

1. The City hereby agrees to furnish water at 40 psi at the South Town-City limit line for any persons, firms or corporations desiring to receive such service within the Town Limits of said Town, and the City will make available to such users its water service to the Town Limits. The City, however, will not be responsible for any failure to so furnish such water that may be occasioned by force majeure or an act of war against the United States.

2. All facilities for water service within the Town Limits, except for the installation of water motors, will be constructed and maintained at the expense of the Town, subject to the approval of the City consulting engineers with regard to the

construction thereof, and upon completion of such facilities and approval thereof by the City's consulting engineers, the Town shall deliver by proper conveyance, title to all such facilities to the City.

3. The City will operate and maintain such water facilities, and the Town hereby gives and grants unto the City the right to perform the necessary operating and maintenance operations in connection with said water facilities within the right of way where said water facilities are located.

4. If the Town desires fire hydrants installed, the Town will purchase and install such fire hydrants, subject to the approval of the Consulting Engineers of the City and the City will furnish water to such hydrants, when connected, and for each of such hydrants so installed the Town will pay unto the City the sum of Eighty ($80.00) Dollars per year, but the City reserves the right to increase this rent if there is an increase in any hydrant charge within the City and the City will bill the Town annually for such service, during the existance of this agreement.

5. Each customer within the Town connecting to the water service of the City will be charged by the City for such water at the rate of 115% of the rates charged and fixed from time to time for water consumers within the City and such billing will be made in accordance with the rules and regulations of the City, governing the discontinuance of such service in the event of non-payment of bills therefor.

6. The City also agrees to furnish electric power to any applicant therefor within the corporate limits of the Town, from a distribution line furnished by the City and will bill each customer therefor at the rate fixed and charged from time to time for such current to persons within the corporate limits of the City, plus 10% additional thereto, and each consumer will be billed

direct by the City for such service and will be subject to all rules and regulations of the City with regard to the disconnection of such service upon non-payment of bills so furnished.

7. This agreement shall extend for a period of twenty-five (25) years from the date hereof and shall be subject to renewal at the option of the parties hereto, and is predicated upon the Town furnishing to the City all necessary easements and rights of way for the location of the facilities required under the terms of this agreement.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed by its duly authorized officers the day and year first above written.

CITY OF VERO BEACH

By _____
Mayor

Attest: _____
City Clerk

TOWN OF INDIAN RIVER SHORES

By _____
Mayor

Attest: _____
City Clerk

LAW OFFICES
Vocelle
&
Gallagher
P. O. Box 1389
Vero Beach, Florida
32961

EXHIBIT B

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Florida Power and Light Company for approval of a territorial agreement with the City of Vero Beach.	)	DOCKET NO. 72045-EU
	)	ORDER NO. 5520

The following Commissioners participated in the disposition of this matter:

JESS YARBOROUGH, Chairman
WILLIAM T. MAYO
WILLIAM H. BEVIS

Pursuant to notice, the Florida Public Service Commission, by its duly designated Chief Hearing Examiner, Harold E. Smithers, held a public hearing on the above matter in Vero Beach, Florida, on April 17, 1972.

APPEARANCES: Talbot D'Alemberte, 1414 First National Bank Building, 100 Biscayne Boulevard, Miami, Florida, for the applicant.

James T. Vocelle, P. O. Box 1900, Vero Beach, Florida, for the City of Vero Beach, Intervenor in support of the application.

John T. Brennan, 519 South Indian River Drive, Ft. Pierce, Florida, for Tom Holman, Intervenor in opposition the application (Intervention denied by Order No. 5470).

M. Robert Christ, 700 South Adams Street, Tallahassee, Florida, for the Florida Public Service Commission staff and the public generally.

O R D E R

BY THE COMMISSION:

Florida Power and Light Company (FPL or applicant) seeks Commission approval of a territorial agreement with the City of Vero Beach, entered into on November 1, 1971. The agreement is purportedly designed to eliminate destructive competition between the applicant and the city in the furnishing of electric power outside the Vero Beach city limits by establishing a boundary beyond which neither utility may extend or maintain its facilities, except under certain stated conditions (Ex. 2). This agreement also encompasses the interconnection of the two systems.

This application was filed as the result of the implied power obtained by the Commission in judicial decisions culminating in Storey v. May, 217 So.2d 304 (Fla. 1968), certiorari denied, 395 U.S. 909, 80 Sup. Ct. 1751, 23 L.Ed.2d 222, which makes it abundantly clear that the Commission has the power to approve territorial agreements which are in the public interest, and as stated in the cited case at page 307, "an individual has no organic, economic, or political right to service by a particular utility merely because he deems it advantageous to himself." The cases do not set forth standards for determining when the public interest will require the approval of territorial agreements. This was done in Order No. 3035 which states in pertinent part:

> "* * * the absence of express statutory authority to award service areas leaves us with only an implied power to do so, and it is founded primarily in the imminence of destructive competition between neighboring utilities. Patently, with such a basis for our authority, we should not approve an agreement which awards to a utility territory with respect to which

there is no reasonably immediate possibility of duplicating service by one or the other of the parties to the agreement. In truth, what we call 'territorial agreements' are more aptly described in most cases as a boundary agreement and the extent of the boundary line should bear a reasonable relationship to the area in which competition may be expected.

"In the case at hand we have such a boundary drawn across two counties, providing a line of demarcation beyond which neither utility may extend its facilities. While the contractual agreement between the parties went much farther and purported to secure to each company, inviolate from any competition by the other, all that part of the two counties on its side of the line, we do not think that we have the authority to grant our approval to this extent. Rather, our approval should be limited to the establishing of a line beyond which the utilities will not extend their service facilities, and the extent of such line should be limited to the area in which possible encroachment is threatened." (emphasis supplied) Order quashed on other grounds, Peoples Gas System, Inc. v. Mason, 187 So.2d 335 (Fla. 1966).

In the most recent order approving territorial agreement (5121), the Commission confirmed that duplicate lines can establish the existence of destructive competition.

Although no specific evidence was presented on the actual location of lines in the various areas involved, Appendix "A" in Exhibit 1 (the agreement) shows that duplicating and crossing of lines to serve the outlying areas must exist; further, two areas, one served by each utility, are completely encompassed by service from the other utility. Although the proposed boundary involves a great deal of "gerrymandering", it cannot be said that it is unrealistic.

Two FPL customers located in an area isolated by the present and proposed Vero service area objected to their transfer to the city system since its rates are higher. Two customers of the city testified that they did not object to their transfer to FPL. No residents of Indian River Shores appeared although that is the largest area under development in which competition exists; the proposed boundary reserves this area to the city.

From the foregoing, the Commission finds that the evidence presented shows a justification and need for the territorial agreement; and, that the approval of this agreement should better enable the two utilities to provide the best possible utility services to the general public at a less cost as the result of the removal of duplicate facilities. It is therefore,

ORDERED by the Florida Public Service Commission that the application of Florida Power and Light Company for approval of a territorial agreement with the City of Vero Beach relative to respective electrical systems and service be granted.

By Order of Chairman JESS YARBOROUGH, Commissioner WILLIAM T. MAYO and Commissioner WILLIAM H. BEVIS, as and constituting the Florida Public Service Commission, this 29th day of August, 1972.

William S. de Mello

ADMINISTRATIVE SECRETARY

(SEAL)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.	)	DOCKET NO. 73605-EU
	)	ORDER NO. 6010

The following Commissioners participated in the disposition of this matter:

WILLIAM T. MAYO
PAULA F. HAWKINS

ORDER APPROVING MODIFICATION OF TERRITORIAL AGREEMENT

BY THE COMMISSION:

By Order No. 5520 dated August 29, 1972, issued in Docket No. 72045-EU, the Commission granted the application of Florida Power & Light Company for approval of a territorial agreement with the City of Vero Beach relative to respective electrical systems and service. On March 6, 1973, the City of Vero Beach, pursuant to a favorable vote of its City Commission, has requested a slight modification in the aforesaid territorial agreement. As a result of this request, Florida Power & Light Company on October 5, 1973, filed the captioned application with this Commission.

After a thorough review of the proposed service area transfer, the Commission finds that only a slight territorial modification of the original agreement is involved with no facilities or customers being affected. This being the case, the Commission concludes that the request is reasonable and should be approved. It is, therefore,

ORDERED by the Florida Public Service Commission that the application of Florida Power & Light Company in Docket No. 73605-EU for approval of a modification of the territorial agreement and contract for interchange of service with the City of Vero Beach, Florida, which was approved by Order No. 5520 in Docket No. 72045-EU be and the same is hereby granted.

By Order of Chairman WILLIAM H. BEVIS, Commissioner WILLIAM T. MAYO and Commissioner PAULA F. HAWKINS, as and constituting the Florida Public Service Commission, this 18th day of January, 1974.

William B. DeMilly
ADMINISTRATIVE SECRETARY

(S E A L)

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 dispostion 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 bounday 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.

JUSTIFICATION FOR APPROVAL OF TERRITORIAL AGREEMENT

Under this agreement, the City of Vero Beach will transfer approximately 146 electric service accounts to FPL and FPL will transfer approximately 22 electric service accounts to the City. The value of the distribution facilities to be transferred from FPL to the City is approximately $11,000, while the value of the facilities to be transferred from the City to FPL is approximately $34,200.

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 petiton 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.

(S E A L)

Steve Tribble
COMMISSION CLERK

MBT

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 repsect 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.

APPENDIX A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Florida Power and Light Company and the City of Vero Beach for approval of an agreement relating to service areas.	) DOCKET NO. 800596-EU) ORDER NO. 11580) ISSUED: 2-2-83	

The following Commissioners participated in the disposition of this matter:

CHAIRMAN JOSEPH P. CRESSE
COMMISSIONER GERALD L. GUNTER

CONSUMMATING ORDER APPROVING TERRITORIAL AGREEMENT

BY THE COMMISSION:

On November 3, 1981, the Florida Public Service Commission issued Order No. 10382, which provided that a proposed territorial agreement between the City of Vero Beach (Vero Beach) and Florida Power and Light Company (FPL) would be granted final approval, if no objections were filed within 30 days. A timely petition was filed on behalf of 106 customers served by Vero Beach who apparently did not want to be transferred to FPL. A hearing was properly noticed for May 5, 1982 in Vero Beach and was conducted as scheduled.

During the course of the hearing it became apparent that a majority of the customers wanted to continue receiving service from Vero Beach, which was provided for in the Order, but had somehow miscontrued the Commission's order as requiring that they submit a petition or a request for hearing. After listening to the parties' presentations and an explanation of the Commission's decision, the customers expressed their satisfaction with the agreement as it was originally proposed to be approved.

However, a group of Vero Beach customers residing along State Road 60 outside of Vero Beach voiced strong opposition to being transferred to FPL. The customers expressed a fear that their rates would significantly increase if they were to receive service from FPL. They also expressed their doubts concerning whether FPL would promptly respond to service problems.

Vero Beach presently has a three-phase distribution circuit along State Road 60 with single phase laterals to the north and south providing service to this group of residential customers. The territory north, west and south of the area is now within FPL's service territory. We are not unmindful of the concerns voiced by these customers. However, we find that the corridor should be transferred to FPL because this will provide the most economical means of distributing electrical service to all present and future customers in this area.

The majority of customers approved of the territorial agreement as initially presented in Commission Order No. 10382. The customers residing along the State Road 60 corridor opposed being transferred to FPL, but did not present evidence which would support reversal of the Commission's original decision. We find that Order No. 10382 should be adopted as the Commission's final order.

We believe that our decision is in the best interest of all parties concerned. Our approval of the territorial agreement

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serves to eliminate competition in the area; prevent duplicate lines and facilities; prevent the hazardous crossing of lines by competing utilities; and, provides for the most efficient distribution of electrical service to customers within the territory. We find continued support for our approval of the territorial agreement in a Florida Supreme Court decision, Storey v. Mayo, 217 So. 2d 304, (Fla. 1968), cert. den., 395 U.S. 909, 80 Sup. Ct. 1751 23 L. Ed 2d 222, which held that:

> "...Because of this, the power to mandate an efficient and effective utility in the public interest necessitates the correlative power to protect the utility against unnecessary, expensive competitive practices. While in particular locales such practices might appear to benefit a few, the ultimate impact of repetition occurring many times in an extensive system-wide operation could be extremely harmful and expensive to the utility, its stockholders and the great mass of its customers."

In that decision the Supreme Court also held that:

> "An individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself."

We find that the assertions made on behalf of those customers residing within the corridor along State Road 60 do not justify reversing our decision in this case as proposed in Order No. 10382. It is, thefore,

ORDERED by the Florida Public Service Commission that Order No. 10382, issued on November 3, 1981, is hereby adopted as a final Order.

By ORDER of the Florida Public Service Commission, this 2nd of FEBRUARY 1983.

STEVE TRIBBLE
COMMISSION CLERK

(S E A L)

ARS

In re: Petition of Florida Power & Light Company and the City of Vero Beach for Approval of Amendment of a Territorial Agreement.	)	DOCKET NO. 871090-EU ORDER NO. 18834 ISSUED: 2-9-88

The following Commissioners participated in the disposition of this matter:

KATIE NICHOLS, CHAIRMAN
THOMAS M. BEARD
GERALD L. GUNTER
JOHN T. HERNDON
MICHAEL McK. WILSON

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING AMENDMENT TO TERRITORIAL AGREEMENT BETWEEN FLORIDA POWER & LIGHT COMPANY AND THE CITY OF VERO BEACH

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

By a joint petition filed on October 16, 1987, Florida Power & Light Company (FPL) and the City of Vero Beach (City) requested approval of an amendment to their previously approved territorial agreement. (See Orders Nos. 5520, 10382, and 11580). The original agreement and subsequent amendments delineate the service territories of the two utilities in Indian River County, Florida.

According to the proposed amendment, a new subdivision, known as Grand Harbor, is presently under construction, which straddles the territorial dividing line, previously approved by the Commission. To avoid any customer confusion which may result from this situation and to ensure no disputes or duplication of facilities will occur, the City and FPL have agreed to amend the existing agreement by establishing a new territorial dividing line. The results of this amendment will be the transfer of the area, shown in Attachment 1, from FPL to the City. There are currently no customers or facilities existing in the area.

The amended agreement is consistent with the Commission's philosophy that duplication of facilities is uneconomic and that agreements eliminating duplication should be approved. Having reviewed all the documents filed in the docket, we find that it is in the best interest of the public and the utilities to approve, on a proposed agency action basis, the amendment to the territorial agreement. It is, therefore,

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's and the City of Vero Beach's joint petition for approval of an amendment to a territorial agreement is granted. It is further

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01453 FEB-9 88
FPSC-RECORDS/REPORTING

ORDERED that Attachment 1, is hereby made a part of this order. It is further

ORDERED that the provisions of this order, issued as proposed agency action, shall become final unless a petition in the form provided by Rule 25-22.036, Florida Administrative Code is received by the office of the Director of the Division of Records and Reporting at 101 East Gaines Street, Tallahassee, Florida 32301 by the close of business on March 1, 1988.

By ORDER of the Florida Public Service Commission, this 9th day of FEBRUARY, 1988.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MRC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (1985), as amended by Chapter 87-345, Section 6, Laws of Florida (1987), 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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 1, 1988. In the absence of such a petition, this order shall become effective March 2, 1988 as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on March 2, 1988, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the effective date 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.

AMENDMENT TO TERRITORIAL BOUNDARY AGREEMENT BETWEEN FLORIDA POWER & LIGHT COMPANY AND CITY OF VERO BEACH, FLORIDA

This Amendment to a Territorial Boundary Agreement dated June 11, 1980, by and between Florida Power & Light Company (FPL) and the City of Vero Beach, Florida (City), is made this 18TH day of SEPTEMBER, 1987.

WHEREAS, the parties hereto have observed certain territorial boundaries to eliminate undesirable duplication of facilities and to promote economic and efficient electric service to their respective customers; and

WHEREAS, the parties deem it desirable to redefine the territorial boundaries previously approved by the Florida Public Service Commission so that such territorial division will better conform to present land development and will avoid uneconomic duplication of facilities in a development known as Grand Harbor.

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual benefits to be obtained from the covenants herein set forth, the parties do hereby agree as follows:

1. The map attached hereto and labelled Exhibit A shows the existing territorial boundaries and the areas in which the City and FPL provide electric service to retail customers.

2. The map attached hereto and labelled Exhibit B shows the existing territorial boundary line and the areas in which the City and FPL provide electric service in and around the Grand Harbor development project. The map also shows the new boundary line agreed upon by the parties and further described in this Amendment, adjusting the existing boundary to the north.

3. The parties agree that the existing boundary line shown on Exhibit B shall be redefined as follows:

> Commencing at the juncture of the existing boundary and the west property line of Grand Harbor (approximately 700 feet east of U.S. Highway 1), the new boundary line shall be established on said Grand Harbor property line, then extending north on said property line (approximately 650 feet) to the Grand Harbor/River Club property line, then east to a point where the Grand Harbor property line turns north, continuing easterly following the proposed drainage and waterways to the channel of the Indian River and the point of intersection with the existing territorial boundary.

4. The provisions of this Amendment shall supersede the territorial boundary-related provisions of the Territorial Boundary Agreement between the parties dated June 11, 1980 for that certain boundary described herein. However, the remaining provisions of said Agreement shall in no way be affected by this Amendment.

5. This Amendment shall not be effective until the date it is approved by the Florida Public Service Commission. The parties agree to cooperate in petitioning the Commission for approval of the Amendment under Section 366.04(2)(d), Florida Statutes (1986 Supp.)

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized representatives, and copies delivered to each party, as of the day and year first above written.

FLORIDA POWER & LIGHT COMPANY

By: _____

Attest:

By: _____
Secretary

CITY OF VERO BEACH, FLORIDA

By: _____
Mayor

By: _____
City Manager

By: _____
City Attorney

Attest:

By: _____
City Clerk

EXHIBIT C

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

Resolution 414 - Electric

EXHIBIT D

MAYOR:
BRIAN M. BAREFOOT

VICE MAYOR:
GERARD A. WEICK

COUNCIL
THOMAS W. CADDEN
RICHARD M. HAVERLAND
THOMAS F. SLATER

TOWN MANAGER
ROBERT H. STABE, JR.

TOWN OF INDIAN RIVER SHORES
6001 NORTH A-1-A, INDIAN RIVER SHORES, FLORIDA 32960
(772) 231-1771 FAX (772) 231-4348

July 18, 2014

[VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED]

Mayor Richard Winger
Vice-Mayor Jay Kramer
Councilmember Craig Fletcher
Councilmember Amelia Graves
Councilmember Pilar Turner
City Manager James R. O'Connor
City of Vero Beach
P. O. Box 1389
Vero Beach, FL 32961-1389

Re: Town of Indian River Shores

Dear Mayor Winger, Councilmembers, and City Manager:

As you know, residents of the Town of Indian River Shores ("Town"), the majority of whom receive electric utility service from the City of Vero Beach ("City"), have for years paid much higher electric rates than their neighbors who are served by another utility.

This morning, the Town Council voted to take several actions to achieve rate relief for its citizens. By this letter, the Town is notifying the City that:

(i) The City's Franchise to operate an electric utility within the corporate limits of the Town expires November 6, 2016, and thereafter the City will no longer have the Town's permission to operate its electric utility within the Town;

(ii) The Town has initiated a lawsuit against the City which, among other things, challenges the City's unreasonable electric rates and seeks a court order to have the City remove its electric facilities from the Town upon expiration of the Franchise Agreement; and,

(iii) The Town agrees to abate its lawsuit against the City in order to pursue a resolution of this dispute under the conference and mediation procedures set forth in Florida's Governmental Conflict Resolution Act.

THE CITY'S FRANCHISE TO PROVIDE ELECTRIC SERVICE WITHIN THE TOWN EXPIRES ON NOVEMBER 6, 2016

The City provides electric utility service to approximately 80 percent of the Town. The remainder of the Town is served by Florida Power & Light Company ("FPL"). The City's provision of electric utility service within the Town is permitted pursuant to a Franchise Agreement which the Town entered into with the City in 1986. In that agreement the Town granted the City an exclusive 30-year franchise to operate an electric utility within certain parts of the Town south of Old Winter Beach Road. In return, the City agreed to only charge the Town and its residents "reasonable" rates for the electric services that it provides.

The City's electric rates have increased dramatically over the last ten years. Today, the Town and its residents are being forced to pay unreasonable electric rates which are approximately 30 percent higher than the electric rates paid by other Town citizens receiving the same unit of electric service from FPL. Our conservative calculations show that citizens of the Town that receive electric service from the City are collectively paying in excess of $2 million per year more than they otherwise would pay if electric service were to be provided by FPL. To compound these inequities, the City has given the Town and its citizens that receive electric service from the City no voice in electing those officials that manage the City's electric utility system and set rates.

The Town and its citizens have waited patiently for the City to address its excessive electric rates and the myriad of other problems that continue to plague its electric utility. However, our Town Council has a responsibility to protect its citizens and can wait no longer. As you know, the Franchise Agreement between the Town and the City will expire on November 6, 2016. Please be advised that the Town will not renew the Franchise. Furthermore, as of November 6, 2016, the City will no longer have the Town's permission to occupy the Town's rights-of-way and other public areas, nor will it have the Town's permission to operate its electric utility within the Town's corporate limits.

THE TOWN'S LAWSUIT AGAINST THE CITY

In addition, please be advised that the Town has filed a suit (enclosed) against the City to protect our citizens. Included in that suit is a challenge to the City's unreasonable electric rates, a demand that the City remove its electric facilities from the Town when the Franchise Agreement expires, and a Constitutional challenge regarding the denial of rights to non-resident customers. Although litigation is something that we had hoped to avoid, the City's actions have left us with no other alternative to protect our citizens from the City's unreasonable electric rates and disregard for its non-resident customers who have no voice in electing the officials who manage the utility.

THE FLORIDA GOVERNMENTAL CONFLICT RESOLUTION ACT

Because the lawsuit involves two municipalities, the suit is subject to the procedures of the Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes (the "Conflict Resolution Act"). By the passage of Resolution 14-05 today, a certified copy of which is attached, the Town has agreed to abatement of its lawsuit in order to pursue dispute resolution under the conference and mediation procedures set forth in the Conflict Resolution Act. The Town is hopeful that a mediated resolution can be reached, but if not, the Town will have no choice but to proceed with prosecution of the lawsuit.

The Conflict Resolution Act sets forth an expedited timeline and procedural requirements to encourage the prompt resolution of disputes between municipalities. The Town proposes that the initial conflict assessment meeting, pursuant to Section 164.1053, Florida Statutes, be held on either August 13 or 14, 2014 at 6001 North A1A, Indian River Shores, Florida 32963. The Town suggests that the respective Chief Administrators of the Town and the City be present, along with respective counsel, as well as any other officials, counsel or advisors whom they deem appropriate. Furthermore, the Town believes that Indian River County, Indian River County Hospital District, and the Indian River County School Board are other governmental entities which should be invited to participate in these proceedings, and the Town will provide notice accordingly. The Town additionally proposes that it may be beneficial for the parties to agree on a facilitator or mediator to assist in the resolution of this dispute at an earlier stage of the process than required by the Conflict Resolution Act.

We look forward to collaborating with the City on the logistics of a mutually acceptable dispute resolution process, subject to the deadlines and procedural requirements of the Conflict Resolution Act.

Please have the City Manager contact our Town's Manager at your earliest convenience to discuss scheduling the conflict assessment meeting and any related issues.

Sincerely,

Brian M. Barefoot

Enclosures
cc: Indian River County
Indian River School Board
Indian River County Hospital District

EXHIBIT E

Wednesday, August 12, 2015

The Honorable Dick Winger
P. O. Box 1389
Vero Beach, FL 32961-1389

Dear Mayor Winger,

For more than six years Florida Power and Light Company ("FPL") has worked with the City of Vero Beach ("COVB" or "City") towards the common goal of delivering lower electric bills to Vero Beach customers. In 2013, the City Council approved a Purchase and Sale Agreement ("PSA") with FPL for its electric system, and City voters overwhelmingly supported the sale. Needless to say, we are disappointed that the sale remains stalled and we continue to believe strongly that the purchase of the entire City electric system is the best course of action for all customers.

Nevertheless, in our continuous effort to find solutions and alternatives to lowering bills and providing benefits to the greatest number of Vero Beach customers, and at the request of the Town of Indian River Shores ("Town"), FPL would like to submit this proposal to purchase the electric system of the Town. Since our initial meeting with you in May on the potential sale of the Town's electric system, FPL has spent considerable time analyzing data from several sources and looked at various scenarios. We are excited by this opportunity, which provides benefits for all parties, and hope to engage in a constructive dialogue with you and the City Council regarding this proposal. We are also amenable to including the Town in that dialogue at the appropriate time.

The proposal is as follows:

FPL will pay the City $13.0 million in cash with the following assumptions and considerations:

- FPL will acquire the COVB distribution assets (feeders, laterals and services) directly connected to the Town's customers. It is our understanding no transmission level assets are present within the Town's footprint.

- FPL assumes an execution date of October 1, 2015, and a close date of April 1, 2016. These dates are subject to approval by both the Federal Energy Regulatory Commission and the Florida Public Service Commission.
- It is estimated that it will take 28 months to properly integrate the Town's electric system into FPL's transmission grid.
- During this period between transaction close and the completion of transmission upgrades, FPL proposes to utilize the distribution and transmission assets of COVB to wheel power to the Town from FPL's transmission system. As compensation for providing these transmission services, FPL will pay COVB an additional monthly fee of $25,000 (the fee was determined using a comparable wheeling approach if FPL was to provide the service). It is estimated this service would be provided for a period of approximately two (2) years with adjustment as needed due to the transmission work being performed by FPL to tie the Town into the FPL transmission system.
    - The route FPL analyzed for the wheeling starts at FPL's Emerson substation and transmits over the COVB/Fort Pierce 138kV line to Substation 20, then to Substation 8, Substation 11, Substation 10 and then finally to Substation 9.
    - FPL understands that because the power needs to flow from Emerson to Substation 20, we will need to utilize the 138kV line jointly owned by COVB and Fort Pierce and that Fort Pierce will need to be involved in these discussions.
- Further, to successfully integrate the Town's customers, FPL will need customer data to be provided by COVB. The specifics of the information will be negotiated between the parties and will be safeguarded by FPL in a manner similar to our existing 4.8 million customer accounts. All deposits held by COVB for the Town's customers would be returned to those customers upon closing. It is estimated the lead time required for Customer Service integration is approximately 6 months. This timeline could start as soon as an agreement is executed between the parties.

FPL feels it is important to explain the basis for our proposal. The current PSA between FPL and COVB provides for a cash offer and several other considerations. All totaled, the entire package of the PSA provides for approximately $172 million in value to COVB. With a total COVB Electric Utilities customer count of approximately 34,000, the PSA provides for a price-to-customer purchase value of approximately $5,050. However, the transmission upgrades and substation relocation embedded in the PSA should be considered system integration costs. Removing those two items from the value of the PSA leaves a purchase value of approximately $4,500 per customer. The Town proposal contained herein similarly has separate components of value to COVB and integration costs. The cash component to COVB for the Town's assets is similarly $4,500 per customer. In addition, there are significant transmission efforts that FPL must undertake in order to tie the Town's system into the FPL transmission grid. The more than $12 million required for these required upgrades bring the total value of this transaction to approximately $8,500 per customer.

The proposal contained herein is indicative and does not constitute a binding offer to purchase the assets of the Town. Purchase of the Town's system is contingent upon approval of FPL's Board of Directors and execution of definitive agreements. Our team has worked hard to craft a fair and reasonable proposal and we look forward to engaging in a constructive and productive discussion with the City Council, as well as the City Manager. Please do not hesitate to call me at (561)694-3510 or Amy Brunjes at (772) 337-7006 if you have any questions or wish to discuss.

Warmest regards,

Sam Forrest
Vice President, Energy Marketing & Trading
Florida Power & Light Company

CC: City of Vero Beach City Council Members
James O'Connor, City of Vero Beach City Manager
Wayne Coment, City of Vero Beach City Attorney
The Honorable Brian Barefoot, Indian River Shores