

P R O C E E D I N G S

1
2 **CHAIRMAN BROWN:** All right. We're moving on
3 to Item 2. And while the folks are -- the parties are
4 getting settled into their seats, I do want to point out
5 that there has been -- there probably will be some
6 discussion on this, and I do understand that there are
7 customers here, and a newly elected state senator who is
8 here too to address the Commission. And so I do believe
9 we're almost at the lunch hour, but we're just going to
10 kind of press through. So I just wanted to give
11 everyone a heads up. We do have snack machines out
12 there and soda machines, and so with that I'd like to
13 start off with our staff to introduce the item.

14 **MS. COWDERY:** Okay. Good morning,
15 Commissioners, Madam Chair. I'm Kathryn Cowdery with
16 the Office of General Counsel.

17 Item 2 is the petition of the Town of Indian
18 River Shores to modify the Commission's territorial
19 orders approving territorial agreements between the City
20 of Vero Beach and Florida Power & Light Company because
21 of changed legal circumstances.

22 Indian River Shores argues that the Commission
23 is required to modify the territorial orders because
24 there is no general or special law authorizing Vero
25 Beach to provide service in Indian River Shores, as is

1 required by the Florida Constitution. And for this
2 reason, they allege that Vero Beach may only provide
3 such service if it has Indian River Shores' consent, and
4 that this consent will end when the franchise agreement
5 between the Town and Vero Beach expires on November 6th
6 of this year.

7 Indian River Shores asks the Commission to
8 modify the territorial order boundaries between FPL and
9 Vero Beach so that all of Indian River Shores would be
10 deleted from Vero Beach's service territory and would be
11 added to FPL's service territory. If the territory is
12 added to FPL's service territory, about 3,000 customers
13 would be transferred.

14 To put in context the procedural posture of
15 this case, I think it is important to give a procedural
16 background of the case. The Commission has been
17 involved with the same issue in two prior proceedings in
18 the past two years: one before the circuit court and one
19 here at the Commission. Staff's recommendation today is
20 consistent with the Commission's position in the prior
21 proceedings; that is, under the statutory section
22 366.04 of the *Florida Statutes*, the Commission has
23 exclusive and superior jurisdiction over the territorial
24 orders between FPL and Vero Beach.

25 The first proceeding that the Commission was

1 involved in in circuit court in 2014, the Commission
2 participated as an amicus curiae in a lawsuit filed by
3 the Town of Indian River Shores against the City of Vero
4 Beach. There were severals issues raised in that
5 lawsuit, but the main issue that the Commission
6 addressed related specifically to its jurisdiction over
7 territorial orders.

8 The Commission argued that under Section
9 366.04 of the *Florida Statutes*, the Commission has
10 exclusive and superior jurisdiction over the territorial
11 agreements between FPL and Vero Beach, and that the
12 circuit court did not have jurisdiction to decide
13 whether, upon expiration of the Town's franchise
14 agreement with Vero Beach, the Town would have the
15 constitutional right to determine who would be its
16 service provider. The circuit court agreed with the
17 Commission that the issue concerning the territorial
18 orders must be decided by the Commission. This is the
19 only issue before the Commission today.

20 In the circuit court lawsuit, the Commission
21 did not address the Town's issue challenging Vero
22 Beach's rates, electric rates. That issue remained with
23 the circuit court to decide. This is because the
24 legislature has not given the Commission authority to
25 review electric rates for municipal utilities.

1 After the circuit court's decision, Indian
2 River Shores filed a petition for declaratory statement
3 with the Commission. In response to that petition, the
4 Commission declared that, as it had argued before the
5 circuit court, the Commission has jurisdiction under
6 366.04, *Florida Statutes*, to determine whether Vero
7 Beach has the authority to continue to provide electric
8 service within the corporate limits of the Town of
9 Indian River Shores upon expiration of the franchise
10 agreement between the Town and Vero Beach.

11 The Commission also stated in that declaratory
12 statement that in a proper proceeding it has authority
13 to interpret the phrase "as provided by general or
14 special law" as used in Article 8, Section 2C, of the
15 Florida Constitution in determining whether Vero Beach
16 has authority to continue to provide electric service
17 within Indian River Shores upon expiration of the
18 franchise agreement.

19 After receiving this declaratory statement
20 from the Commission, Indian River Shores filed its
21 petition to modify the Commission's territorial orders
22 between FPL and Vero Beach based on changed legal
23 circumstances emanating from the Florida Constitution.
24 This is where we are today. Staff's recommendation is
25 based on the case law that exists today and the current

1 statutory framework.

2 **CHAIRMAN BROWN:** Thank you, Ms. Cowdery, for
3 that overview of the steps that -- leading up to today.

4 So it is my understanding that Representative
5 Mayfield is here to address the Commission on the item.
6 Is that correct? Hello. I think we're -- oh, I see
7 you're on crutches. Do you need some assistance?

8 **MR. MAY:** No, I'm good.

9 **CHAIRMAN BROWN:** Okay. We have a podium right
10 up here. So what we're going to do is -- public
11 participation is allowed on Issue 5. We're going to
12 take up public participation at this time before we go
13 to the other issues in the docket. I understand there
14 are a few folks, so I will just call the names as they
15 come up. And if there are other customers, we'll get to
16 you as well. But I wanted to welcome Representative
17 Mayfield to the Commission.

18 Is that -- that's a new injury.

19 **REPRESENTATIVE MAYFIELD:** Sunday.

20 **CHAIRMAN BROWN:** Is it broken?

21 **REPRESENTATIVE MAYFIELD:** Yes.

22 **CHAIRMAN BROWN:** Oh, gosh.

23 **REPRESENTATIVE MAYFIELD:** Two toes. You never
24 knew your toes were problems, but, yeah.

25 **CHAIRMAN BROWN:** Been there, literally.

1 **REPRESENTATIVE MAYFIELD:** Well, I appreciate
2 you allowing me to come in and speak. You should have a
3 letter that was from Senator Latvala and myself that was
4 sent in, and I would hope that you would make that also
5 part of this hearing without me having to read the
6 letter. But I do have a few other comments that I
7 wanted to address. And, you know, it's -- I'm here
8 representing my constituents, as you guys know. I'm not
9 a stranger. I've been here before because we've had an
10 issue in Indian River County for quite some time. And
11 it does all stem around the fact that municipalities are
12 exempt from the Public Service Commission. And we have
13 tried to change that legislatively, and unfortunately we
14 have not had the support needed to do so. But I'm
15 hoping this session that we may have additional support
16 that will help us do it.

17 But, you know, over 30 years ago when your
18 predecessors approved the territorial boundary lines
19 that now divide Indian River Shores, they could not have
20 imagined the envision that the City of Vero Beach, which
21 is an exempt municipality through their utilities, would
22 systematically disenfranchise its non-resident electric
23 customers in Indian River Shores and Indian River
24 County. And I believe that you guys have recently
25 experienced this with the storm this past week with

1 Tallahassee utilities where IOUs were not allowed to
2 come in and help restore power. They wanted to wait and
3 let their other municipalities come in and do the help.
4 Well, that is disenfranchising ratepayers because the
5 sole goal should be to get power on and provide the
6 service, not wait for municipalities to come in and do
7 it. But that -- and that's precisely what has happened
8 over the years.

9 You have been appointed as a Commissioner
10 because of your intelligence and your problem-solving
11 skills and your commitment to protect the public. And
12 unfortunately as a municipality, we don't have those
13 same protections as the public because we have people
14 that live in the unincorporated area that do not have
15 representation. The people that you will hear from
16 today from my area, they have paid their own money, they
17 have paid the legal fees, they have paid for the
18 representation that other ratepayers have through the
19 Public Service Commission and through the Public Counsel
20 because they are serviced by IOUs and not
21 municipalities, which I think is totally unfair to the
22 ratepayers in my community.

23 So I urge you, unregulated monopolies are not
24 in the public's best interest, and I urge you to use the
25 tools that you do have to help solve this problem.

1 If the law gives the Commission the authority
2 to establish monopoly service territories, then surely
3 that carries with it the authority to address whether
4 the utility is abusing its monopoly. And as citizens
5 and as a resident of Indian River County, we're asking
6 you to please do that and to use those tools that you
7 have.

8 You know, we have -- went to court and we have
9 battled between municipalities having the authority to
10 go into other municipalities, and yet the courts have
11 said that you can't do that because the territorial
12 agreements trump any agreement that municipalities have
13 that says you can't come into another municipality
14 without the approval of that municipality because you
15 have control over the territorial agreements. So that's
16 what we're asking you to do. We're asking you to look
17 at those service agreements, those service territorial
18 agreements that have not been looked at for over 30 --
19 almost 30 years now, and use those tools and use your
20 intelligence and look after the interests of the
21 ratepayers and citizens. Because as an elected
22 official, that's what I do. I have to look after my
23 citizens and make sure that they're being treated
24 fairly, and that's what we're asking you to do.

25 I thank you for your time, and I look forward

1 to hearing the comments. And I'm telling you, we've got
2 one of the best teams back there that's been working on
3 this, and I think you'll be impressed with the
4 information that they have put together and what they've
5 gone through in the past few years to try to solve this
6 problem. Thank you.

7 **CHAIRMAN BROWN:** Thank you, Representative
8 Mayfield. And also congratulations on your primary
9 election.

10 I wanted to ask you a question. I've wanted
11 to ask this for many years. I know that this has been
12 an area that is very, very concerning to you and
13 something that you've just been fighting for and your
14 family has been fighting for for many, many years, and
15 so I appreciate that, and your resilience and
16 persistence to get a fix, legislative fix. Is there
17 something that we at the Commission can do to look at
18 the issue that concerns you regarding those customers
19 that live in unincorporated parts of the city? In years
20 past, this is an issue that the Commission has talked
21 about, contemplated, workshops, study committees, things
22 of that nature. Is there something that you think that
23 the Commission should be doing?

24 **REPRESENTATIVE MAYFIELD:** It would be very
25 helpful if the Commission would get engaged in the fight

1 on the legislative issue. I know that J.R. was very
2 helpful with me this past session in drafting
3 legislation that would give people in the unincorporated
4 area the representation that they needed, and
5 unfortunately, you know, we had no support from anyone
6 else to help other than him. Senator Simpson was very
7 helpful this past session in filing it on the senate
8 side, and we did get it through a couple of committees,
9 but, you know, it didn't make it through the whole
10 process. What would be helpful is if your staff could
11 help us with legislation that everyone would be
12 comfortable with that would give the -- you know, the --
13 get rid of the monopoly. Because, listen, everyone has
14 to have utilities, and when you have a municipality that
15 is exempt from the Public Service Commission, to have
16 somebody else review the rates, review their financials,
17 that's a problem because then, you know, the people
18 that -- you have to have the power, you have to have
19 utility. So we have no one that can help fight that.
20 So from the standpoint of the Commission helping, it
21 would be very helpful -- instead of people saying you
22 can't do, you can't do, help us with what can we do?
23 How can we solve this problem, instead of putting
24 roadblocks up? And I don't know -- I don't think anyone
25 does it deliberately. I just think people aren't

1 looking at it because it's not in their backyard, you
2 know. It's not their issue.

3 And I think with the issues that you just
4 recently, you know, recently went through with the
5 utilities here from the storm, you see what can happen
6 with a monopoly that is not regulated by someone that
7 does not have a financial interest in it other than
8 making sure that the citizens are protected and taken
9 care of. So that would be very helpful. If you guys
10 could help us draft legislation, that would do that.

11 **CHAIRMAN BROWN:** Thank you, Representative
12 Mayfield.

13 Commissioners, any comments or greetings?

14 Thank you, Representative Mayfield.

15 **REPRESENTATIVE MAYFIELD:** Thank you.

16 **CHAIRMAN BROWN:** All right. The next up, I
17 believe I have Town Manager Robbie Stabe, Stabe.

18 **MR. STABE:** Stabe.

19 **CHAIRMAN BROWN:** Stabe. Welcome.

20 **MR. STABE:** Thank you, Madam Chairman,
21 Commissioners. My name is Robbie Stabe. I'm the town
22 manager for the Town of Indian River Shores, and I'm
23 here on behalf of our mayor, Brian Barefoot, who was not
24 able to be here. He had an event that's been planned
25 for over a year, so unfortunately he was not able to be

1 here.

2 It was my intention to -- each of you should
3 have a copy of his letter. It was my intention to read
4 it in its entirety, but for the sake of saving some
5 time, if --

6 **CHAIRMAN BROWN:** We have copies of it.

7 **MR. STABE:** Okay.

8 **CHAIRMAN BROWN:** And it will be in the record,
9 as will Representative Mayfield and Senator Latvala's
10 letters. Those are already in the docket.

11 **MR. STABE:** Excellent. Well, we --

12 **MR. WRIGHT:** Madam Chairman, may we have a
13 copy of the mayor's letter? We did not get one.

14 **CHAIRMAN BROWN:** Absolutely. And they are
15 being distributed by staff.

16 All right. Please proceed.

17 **MR. STABE:** It was -- with your permission, I
18 was just going to hit on a couple of highlights of that
19 specific letter and then take my seat and allow others
20 to speak, if that's okay.

21 **CHAIRMAN BROWN:** Okay.

22 **MR. STABE:** Almost three decades ago your
23 predecessors on this Commission approved a service
24 territorial boundary that split our town into and quite
25 literally divides our community. Those who happen to

1 live north of Old Winter Beach Road receive service from
2 Florida Power & Light, whose rates and quality of
3 service are regulated extensively by you as the
4 Commission. Yes, I felt it would be important to give
5 the Commission basically a bird's eye view of the town.
6 And that happens to be our zoning map, but it actually
7 shows, if you can see it, the territorial boundary of
8 Old Winter Beach Road.

9 **CHAIRMAN BROWN:** It's very hard for us to see
10 it.

11 **MR. STABE:** Okay.

12 **CHAIRMAN BROWN:** It looks like it -- could you
13 put it right in front of there?

14 **COMMISSIONER EDGAR:** Thank you, Mark.

15 **CHAIRMAN BROWN:** It looks like it came right
16 off the walls.

17 **MR. STABE:** It literally did, off of my office
18 wall. Yes.

19 **CHAIRMAN BROWN:** Appreciate it.

20 **MR. STABE:** Furthermore, town residents that
21 are being forced to take service from the City of Vero
22 Beach's unregulated monopoly have no say over how the
23 City uses those monopoly profits it extracts from them,
24 including the City's continued diversion of those
25 profits to pay for costs that have nothing to do with

1 electric service. Moreover, our residents, who are
2 being forced to take power from this unregulated
3 monopoly, receive no protection from the Office of
4 Public Counsel.

5 To make matters worse, your staff, on pages 16
6 and 17 of its recommendation, state that the Town is
7 forbidden from representing its residents and trying to
8 protect them from these unregulated monopoly abuses.
9 This, in the mayor's opinion, is a travesty. Certainly
10 it cannot be the policy of the State of Florida to strip
11 a group of its citizens of all regulatory protection.

12 And now, Madam Chair, despite your specific
13 direction that our municipalities work in good faith
14 together towards a negotiated settlement, the City has
15 turned its back on just such a settlement offer. Just
16 last month the Vero Beach City Council rejected the
17 unanimous recommendation of its Utility Commission and
18 voted to refuse a \$30 million offer from Florida Power &
19 Light to purchase the utility distribution system in our
20 town. This offer, on a per customer basis, doubled the
21 highest purchase price of the City's own consultants
22 that they could identify in a national survey of utility
23 system sales. It would have doubled the City's annual
24 revenue. And our analysis, led by a former chair of
25 this Commission, found that it would more than have

1 covered the City's real and potential costs and protect
2 the City's remaining customers.

3 And finally, the City's response to us is the
4 same response it has given for decades to non-resident
5 customers subjected to these unregulated monopoly
6 abuses: "Who cares?" Madam Chairman, we are hoping
7 that you and the other Commissioners will finally tell
8 the City that such a response will no longer be
9 accepted. Thank you.

10 **CHAIRMAN BROWN:** Thank you. We do have a
11 question for you.

12 **MR. STABE:** Yes, ma'am.

13 **CHAIRMAN BROWN:** And I appreciate your
14 testimony and coming up here to Tallahassee again.
15 Commissioner Graham.

16 **COMMISSIONER GRAHAM:** Thank you, Madam Chair.
17 I just want, I guess, some clarification on the mayor's
18 letter. You said roughly 30 years ago that this
19 Commission cut your city in half. My understanding was
20 that the territory line was drawn at the end of the
21 city, but since then the City has annexed some of the
22 land outside of it.

23 **MR. STABE:** My understanding -- I'll defer to
24 our counsel -- as far as the actual timeline, that may
25 very well be. Also, 28 to almost 30 years ago, the

1 whole barrier island was a different place.

2 **COMMISSIONER GRAHAM:** Well, no, no. I realize
3 that. I'm just --

4 **MR. STABE:** So I don't think it was an
5 intentional, you know --

6 **COMMISSIONER GRAHAM:** Just the way that this
7 letter reads, it makes it sound like the Commission went
8 in and split the town. But the reality was the town
9 didn't exist north of that line; correct?

10 **MR. STABE:** I'm not sure.

11 **MR. MAY:** I think that's correct, Commissioner
12 Brown. I think that the mayor's letter, as I read the
13 mayor's letter, what he was saying is that the line your
14 predecessors created has in effect today split the town.

15 **COMMISSIONER GRAHAM:** Got you. Got you.
16 Thank you.

17 **MR. STABE:** But it was -- yes, I agree with
18 his statement.

19 **CHAIRMAN BROWN:** All right. Thank you.
20 Commissioners, any other questions?
21 Commissioner Brisé.

22 **COMMISSIONER BRISÉ:** Thank you for being here.
23 So understanding the construct that we're in, what do
24 you propose as a solution?

25 **MR. STABE:** I think ultimately our -- what I

1 hear almost on a daily basis from our residents who are
2 affected by this is that they have no say. They have no
3 way of -- they can complain directly to the City of Vero
4 Beach utility and, you know, they may come out and talk
5 to them, but there's no way that they can participate
6 and vote for the City of Vero Beach council in or out
7 because they don't live within their boundaries.

8 I think the Town, along with FPL, made a very,
9 very good offer to the City of Vero to purchase their
10 infrastructure within the town. And, quite honestly, I
11 was shocked that they did not accept it, especially when
12 their own Utility Commission unanimously recommended
13 that they do so.

14 **COMMISSIONER BRISÉ:** I understand all of that,
15 and so philosophically I agree with you. But I think
16 you understand the four corners that we're in, so I'm
17 asking what would you propose as a solution within the
18 four corners that we're in?

19 **MR. STABE:** Obviously I think the
20 Commission -- well, I know the Commission does have
21 exclusive jurisdiction over territorial boundaries. And
22 I think in this case the solution would be for this
23 Commission to, in fact, agree to revisit that
24 territorial boundary and move it to include the entire
25 town. That would ultimately solve the issue. Everyone

1 under one utility authority that is regulated by the PSC
2 that does have the Office of Public Counsel. I would
3 even suggest it might be appropriate to request that the
4 Commission come down and visit Indian River Shores and
5 hear from the residents themselves. It's something to
6 consider.

7 **COMMISSIONER BRISÉ:** All right. Thank you.

8 **CHAIRMAN BROWN:** Thank you.

9 Commissioner Patronis has a question for you.

10 **COMMISSIONER PATRONIS:** Thank you, and thank
11 you for your time up here.

12 I want to preface this by -- Debbie Mayfield,
13 my seatmate for two years, and we've had a lot of time
14 spent together working on legislation, and I just don't
15 know if your citizens realize how hard she worked over
16 that time, and Stan worked on that time, on this issue
17 with policies that had been proposed through the
18 legislative process. She killed herself on this issue
19 year after year. And so it's hard for me to take my "I
20 love Debbie" legislative hat off and try to be
21 open-minded about this, but I'm going to.

22 My concern is we move the territorial boundary
23 agreements, what do you and your council intend on doing
24 with the invested assets that Vero Beach has along your
25 right-of-ways: The lines, the transformers, possible

1 substations? How do you transition that out?

2 **MR. STABE:** Well, I know that within the
3 framework of the \$30 million offer that was made would
4 have more than paid for -- or reimbursed them for all of
5 those assets in addition to other money that could have
6 been used in any number of ways.

7 **COMMISSIONER PATRONIS:** I -- if you can
8 indulge me, Madam Chair. I had an incident when I first
9 got elected where the City of Cedar Grove wanted me to
10 file a bill to de-incorporate them. And as I educated
11 myself to what's involved, I realized that that was a
12 lift that was much larger than any one legislator could
13 necessarily do, closing a city. I challenged those
14 interested constituents out to go and make a difference
15 and take it through the citizens' initiative. They
16 collected the ballots, they collected the signatures in
17 order to petition the city, their own city, to put it on
18 the ballot. That city council refused. Those same
19 citizens the next election cycle elected their own
20 bodies, put the initiative on there, and now the city no
21 longer exists. In saying that, this is where the
22 citizens had a path to make a difference.

23 Now, granted, your folks don't have a dog in
24 the hunt to make a difference on that ballot in Vero
25 Beach, so I'm really, really torn. How can we, as a

1 body, dictate to one political subdivision to another,
2 special district to another, city to another, that you
3 must liquidate that value that has been placed before by
4 FP&L? Arguably about probably half this room or more
5 thinks it's probably more than a fair offer. But I'm
6 not the City of Vero Beach, and those people that
7 elected the citizens -- the citizens of Vero Beach who
8 elected those Commissioners expect them to have
9 fiduciary responsibility to do the absolute best
10 interest of them. So it's kind of a catch-22. I
11 totally agree with your point of view and I totally can
12 agree that -- the position that Vero Beach's citizenry
13 is supporting. I'm complete. Thank you, Madam Chair.

14 **CHAIRMAN BROWN:** And I just have a question
15 for you as well. Obviously the Town and all of the
16 parties have spent so much money on consultants and
17 legal fees, and it's -- it looks to me that it's only
18 going to continue, that no matter what the decision is
19 today, there will be a challenge. And those fees are
20 going to increase and they're going to be passed on to
21 the customers ultimately, and it is just so frustrating
22 sitting here. And it's frustrating that the Vero Beach
23 Utilities Commission recommended, after a bona fide
24 offer, increased offer of \$30 million was made after its
25 initial offer of 13 million and there was no

1 counteroffer. Is that correct?

2 **MR. STABE:** That's correct.

3 **CHAIRMAN BROWN:** There was not even a
4 counteroffer. They just, the city council, three
5 members, just rejected it. Did they state why?

6 **MR. STABE:** They said it was not enough.

7 **CHAIRMAN BROWN:** It's just very frustrating.
8 So I guess the question that I have is -- I'm assuming
9 you're going to continue to pursue remedies.

10 **MR. STABE:** We're not giving up, Madam
11 Chairman. I -- one of the things I want to make sure,
12 and I'm sure the Commission understands this, but it's
13 ironic that our ratepayers within the system are
14 basically paying the legal costs both ways. You
15 understand that.

16 **CHAIRMAN BROWN:** I do.

17 **MR. STABE:** Through our tax base in the Town
18 of Indian River Shores we're paying our attorneys.
19 Through their rates to the City of Vero Beach, they're
20 paying the attorneys to fight themselves. It's --

21 **CHAIRMAN BROWN:** Are you willing to continue
22 negotiations to get to a place of compromise?

23 **MR. STABE:** Absolutely. Absolutely. Now,
24 again, as -- and I'm only speaking on behalf of the
25 Town. We're not in the utility business. FPL very

1 graciously came in and made, again, an awesome offer.
2 So absolutely, we're supportive of that. Now they made
3 the decision, you know, they weren't going to consider
4 going up the other \$17 million that they said we were
5 short.

6 **CHAIRMAN BROWN:** Well, I just wanted to
7 express, I mean, frustration from the bench over here
8 too, on my part at least, and, you know, really wish
9 this would have been resolved outside of the courts,
10 outside of the Commission, and it's just very
11 frustrating sitting here.

12 **MR. STABE:** I'm certain it is. And, again,
13 that's why we wanted to point out we did our best on
14 trying to do what you suggested that we do.

15 And I would also just quickly say that I
16 personally know Debbie Mayfield as well, and we're
17 keenly aware of the hard work that she continues to do
18 and that her husband did along those lines.

19 **CHAIRMAN BROWN:** Commissioner Patronis does
20 have a follow-up question.

21 **MR. STABE:** Sure.

22 **COMMISSIONER PATRONIS:** Just because -- sorry.
23 Thank you. Just because I know you probably are very
24 sensitive to monitoring permits, business activities,
25 all that type of growth in your footprint, do you see

1 a -- do realtors -- do you see individuals doing
2 developments? Do they take all of this in consideration
3 when they're deciding whether they're going to be in the
4 southern part of the city or the northern part of the
5 city?

6 **MR. STABE:** Very interesting question. I'm
7 glad you asked it. It's becoming more and more
8 prevalent that people now are keenly aware of it where
9 before it didn't matter. The realtors are coming in
10 saying, "You guys have got to do something. The market
11 is wide open, but it's going down unless we have places
12 to the north in FPL territory."

13 **COMMISSIONER PATRONIS:** Okay. Thanks.

14 **CHAIRMAN BROWN:** Thank you for your testimony
15 today.

16 **MR. STABE:** Thank you, Commissioners. Thank
17 you.

18 **CHAIRMAN BROWN:** All right. We've got Rob --
19 not Atwaeter -- Rob Auwaerter.

20 **MR. AUWAERTER:** Pretty close. Auwaerter.

21 **CHAIRMAN BROWN:** Welcome, and Mr. Auwaerter is
22 with the Utilities Commission.

23 **MR. AUWAERTER:** Well, good afternoon, Madam
24 Chairwoman and members of the Commission. Thank you for
25 allowing me to speak.

1 And for the record, I'm Robert Auwaerter. I'm
2 the Indian Shores representative on the City of Vero
3 Beach Utilities Commission, which, as you know, is
4 solely an advisory board for -- to the city council of
5 Vero Beach on utility matters. I also serve as vice
6 chairman of that commission, and I also serve as
7 chairman of the Town of Indian River Shores Finance
8 Committee. And as I've listed in the handout you have,
9 I have a lot of experience in the bond market and doing
10 utility analysis of both investor-owned and municipal
11 utilities. I'm also a Vero Beach customer, and as a
12 result, I pay one of the highest electric rates in the
13 state of Florida. And much has been made about how much
14 higher Vero Beach's rates are relative to Florida Power
15 & Light, which, as you know, supplies power to a portion
16 of Indian River County not served by Vero Beach. But
17 really what is usually not mentioned is how poorly Vero
18 Beach's rates compare to the other 32 municipal electric
19 utilities in the state. So if you do a ranking where
20 you rank the lowest cost municipal power provider in
21 this universe as number one and the highest cost
22 provider as number 33, since 2013, when this data was
23 available in this format from the Florida Municipal
24 Electric Association, Vero Beach is generally ranked
25 between number 26 and number 30. And the data for the

1 latest month that I was able to pull down off the
2 website, July of 2016, shows it was nearly dead last at
3 number 30.

4 Now consider this consistently bottom quartile
5 electric rate performance with the amount of money the
6 City of Vero Beach has transferred from the electric
7 fund to its general fund. In the fiscal years that span
8 this decade, there's been a profits transfer of almost
9 \$39.5 million and an additional general fund
10 administrative charge back of almost an additional \$12
11 million, for a total transfer to the general fund of
12 \$51.5 million. So on average during this decade, these
13 transfers have funded 36 percent of the City's general
14 fund expenditures. So no wonder that the City of Vero
15 Beach ad valorem property tax rate is one of the lower
16 rates in the state. So as of 2015, statistics from the
17 State of Florida Department of Revenue website showed
18 that if you looked at all the towns and cities in the
19 state of Florida, 84 percent of them had higher property
20 tax millage rates than Vero Beach.

21 So then the last piece of this puzzle,
22 something that has been talked about a little bit, is
23 that on a percentage basis Vero Beach has more customers
24 outside its incorporated boundaries than any other
25 electric municipal utility in the state. So over 60

1 percent of its customers reside outside its borders.

2 And as you know, the municipal electric rates
3 are usually set by the Town or city council, and in most
4 of the municipal electric utilities around the state
5 there's a very high overlap between the ratepayers and
6 the citizens of the city and town that operates the
7 utility. So if those council members do a poor job of
8 running the utility, they can be voted out of office.
9 You know, clearly we don't have that -- the opportunity
10 is not available for a majority of Vero Beach electric
11 ratepayers. So Vero Beach electric customers who reside
12 outside the city's incorporated borders are really
13 subject to the perfect storm. They consistently pay
14 some of the highest electric rates in the state of
15 Florida. While doing so, they massively subsidize the
16 City of Vero Beach general fund operating budget, which
17 allows it to keep its property taxes at some of the
18 lowest levels in the state.

19 And then finally, these outside customers have
20 no recourse to anybody if their electric rates are too
21 high or their service is too poor. They can't vote the
22 operating board, which is the Vero Beach City Council,
23 out of office or appeal to this Commission like a
24 customer of an investor-owned utility.

25 If this is not the classic example of an

1 unregulated monopoly using its abuse of price and power
2 to grind its captive customers into the ground, then I
3 don't know what is. It's pure and simple taxation
4 without representation.

5 So in conclusion, I would urge this Commission
6 to deny staff's recommendation on Issues 4 and 5, and
7 redraw the territorial boundaries so that the town's
8 residents can be protected from unregulated monopoly
9 abuse and all residents of the town can be served by a
10 single utility provider, FP&L, which will be extensively
11 regulated and directly accountable to this Commission.
12 Thank you for your concern.

13 **CHAIRMAN BROWN:** Thank you, and thank you for
14 driving up to Tallahassee to present these. And your
15 comments will become part of the docket, so they'll be
16 entered into the docket so we have them in completion.

17 Commissioner Brisé has a question for you.

18 **COMMISSIONER BRISÉ:** Thank you, Madam Chair.

19 If you could just advise me on the makeup of
20 the Utilities Commission for Vero Beach.

21 **MR. AUWAERTER:** Okay. There are a total of
22 nine members. They're -- as long as the Town of Indian
23 River Shores is a customer, we're allowed to pick one
24 representative, which is myself. The other ones are
25 generally picked by the city council members. Most of

1 them are inside the city. There is one additional
2 member that does reside in the Town of Indian River
3 Shores.

4 **COMMISSIONER BRISÉ:** And the vote was
5 unanimous?

6 **MR. AUWAERTER:** Yes. There were only five
7 members that day. It was five to nothing. It was a --
8 Commissioner, it was really based on my analysis of
9 taking the City's consultant's spreadsheets and making
10 some very minor, what I thought was reasonable
11 adjustments to their calculations regarding the future
12 escalation of cost. And what I came up with was that
13 the actual money they needed to keep the other
14 ratepayers whole and importantly keep that profit
15 transfer that I referenced in my comments, they really
16 only needed about \$25 million. And just also to point
17 out that I did an analysis of the City of Vero Beach's
18 pension, unfunded pension obligations and OPEBs. They
19 could have cut those by 30 percent -- excuse me, they
20 could have cut them by 54 percent if they had committed
21 the entire \$30 million to that. So there was something
22 in it for the taxpayers of the City of Vero Beach.

23 **COMMISSIONER BRISÉ:** Thank you.

24 **CHAIRMAN BROWN:** Thank you. Thank you for
25 your testimony.

1 All right. Next up is Town Vice Mayor
2 Mr. Weick.

3 **MR. WEICK:** Good afternoon, Madam Chair and
4 Commissioners. My name is Gerard Weick. I reside at 20
5 South Hampton Terrace, Indian River Shores, and I have
6 the honor of serving as vice mayor of our small town.

7 Our mayor has shared written remarks with you
8 today that get to the heart of our case. Our attorneys
9 will share the legal details of why our request should
10 be granted.

11 I had hoped not to be here today. Our town
12 council voted to participate in what I believe to be a
13 very substantial offer from Florida Power & Light to
14 purchase the utility assets of our town. We authorized
15 \$3 million in electric surcharge payments, approximately
16 \$1,000 per resident, toward FP&L's \$30 million offer.
17 The answer from Vero Beach is one that we have been
18 accustomed to over the last several decades. They
19 simply say, "It's not enough." When we complain that
20 rates are high, we hear instead, "It's not enough."
21 When we say that the transfer of unregulated monopoly
22 profits from our residents is too high, they say, "It's
23 not enough." When FP&L offers to double the highest per
24 customer utility price in the nation, they say, "It's
25 not enough." Well, Commissioners, on behalf of the

1 residents of Indian River Shores, we've had enough.

2 Talk about frustration.

3 There is a dividing line in our community, and
4 the difference from one side of the road to the other is
5 striking. Residents served by FP&L have the lowest
6 electric rates in Florida. Those served by Vero pay
7 over 30 percent more. Served by FP&L, you have access
8 to multiple energy efficiency programs to lower your
9 bills. Served by Vero, we have nothing. Served by
10 FP&L, your utility is one of the cleanest in the nation.
11 Served by Vero, not so much. Served by FP&L, you're
12 represented by the five people who sit at the dais
13 before me and by an Office of Public Counsel that fights
14 for your rights. Served by Vero, nobody represents you,
15 nobody answers to you, nobody cares about you.

16 Commissioners, I do not blame you for these
17 problems. Your predecessors did not draw these
18 boundaries with the intent of creating an unregulated
19 monopoly. I'm sure they thought that Vero Beach would
20 be accountable to its non-resident customers and that
21 free from regulation it would not abuse its power and
22 provide inferior service at an unreasonable price. But
23 over the course of time, that's precisely what has
24 happened. On behalf of my constituents, I ask you to
25 make things right. Thank you. Do you have any

1 questions?

2 **CHAIRMAN BROWN:** Thank you, Vice Mayor.

3 Commissioners, any questions?

4 Thank you for your testimony.

5 **MR. WEICK:** Thank you.

6 **CHAIRMAN BROWN:** Are there any other customers
7 that would like to testify before us at this time on
8 Issue 5? Okay. Sir, please come on up. Welcome.

9 **MR. MORGAN:** Thank you, and good afternoon.
10 Madam Chair and Commissioners, my name is Dave Morgan,
11 and I reside in Indian River Shores. I am president of
12 my residential community in Indian River Shores known as
13 The Shores. We are 75 homeowners who pay Vero Beach for
14 our electricity. I'm here to support my town's petition
15 and ask that you grant the request.

16 Commissioners, Vero Beach charges excessive
17 utility rates, and they are now more than 30 percent
18 higher than what FPL charges. I will use my neighbors
19 the LaPortas as an example of the injustice. And I've
20 discussed this with the LaPortas, and they have no
21 problem with me sharing with you this morning their
22 numbers.

23 The Morgan home and the LaPorta home are
24 approximately 500 yards apart in Indian River Shores.
25 The only significant expense difference for both

1 homeowners is what they pay for electricity. You can
2 see where Old Winter Beach Road is on the map in front
3 of you. The Morgans, who are forced to buy electricity
4 from Vero Beach, pay approximately 30 percent more per
5 month than the LaPortas 500 yards away. Over the last
6 ten-year period, the Morgans have spent approximately
7 \$56,000 on electricity. That's us. That's a personal
8 face. With FPL, their electric bill would have been
9 much closer to \$43,000. The difference of \$13,000 is
10 truly significant, and that money went to Vero Beach
11 where the Morgans have no voting rights but where the
12 excessive Vero Beach electric fees ultimately finance
13 the low property taxes and other expenses of the
14 residents of the City of Vero Beach. From my point of
15 view, this is a classic case of taxation without
16 representation.

17 Finally, in using my own home and community as
18 an example, the following electric cost numbers are
19 illuminating. Over the last 12 months, my own electric
20 costs have totaled approximately \$5,500. That's the
21 last 12 months. And on average, it's \$412,000 for all
22 of the folks in my small community neighborhood of 75
23 residents. Were we all FPL customers paying FPL rates
24 of approximately \$317,000, the difference is a
25 staggering \$95,000 in difference, and it would be

1 \$1 million more that we would have paid over the past
2 ten years that we have paid to the City of Vero Beach.
3 Let me repeat that. A million dollars more for
4 75 residents in Indian River Shores because we pay Vero
5 Beach electric rates.

6 **CHAIRMAN BROWN:** Thank you, sir.

7 **MR. MORGAN:** Again, the residents of my
8 neighborhood as well as many other residents of Vero --
9 of Indian River Shores are financing the low taxes of
10 the residents of the City of Vero Beach as well as the
11 financial obligations of the City of Vero Beach. The
12 Town of Indian River Shores will conclude a 30-year
13 contract with the City of Vero Beach this November. The
14 contract is up and now is the time to fix the problem.

15 **CHAIRMAN BROWN:** Thank you, sir. If you could
16 wrap up your comments.

17 **MR. MORGAN:** Well, thank you very much. I
18 appreciate the opportunity to be here. And I would
19 personally like to invite you, all of the Commissioners
20 to Vero Beach, to the Town of Indian River Shores to see
21 exactly where we are and what the situation is. Thank
22 you again.

23 **CHAIRMAN BROWN:** Thank you.

24 Commissioners, any questions?

25 Thank you. Commissioner Patronis? Oh. Thank

1 you.

2 Last customer, and welcome.

3 **MR. NEZI:** Thank you. Good afternoon, Madam
4 Chair and Commissioners. My name is Paul Nezi. I
5 reside at 337 Island Creek Drive, Indian River Shores
6 32963. I am a customer of the City of Vero Beach
7 Utilities. I'll also add that I'm very happy -- I was
8 very happy to drive up here today to represent my
9 neighbors.

10 In preparing for today's hearing, I took a
11 simple approach. I went to the PSC website and reviewed
12 the PSC's mission and goals. I was pleased, when I saw
13 the mission and goals, to learn how your mission and
14 goals speak directly to the issue we are discussing
15 today. As you know, your mission is to facilitate the
16 efficient provision of safe and reliable utility
17 services at fair prices. Emphasis on fair prices.

18 You have ten goals to support that mission.
19 I'm only going to mention three of them. One, provide a
20 regulatory process that results in fair and reasonable
21 rates. Second, provide appropriate regulatory oversight
22 to protect consumers. And, third, expedite resolution
23 of disputes between consumers and utilities. I have a
24 lot to say, but I'm going to try to get it all in very
25 quickly.

1 **CHAIRMAN BROWN:** Thank you.

2 **MR. NEZI:** I'm here today to support my town's
3 request that you redraw the territorial boundaries and
4 fix a problem that increasingly divides our community.
5 Two vastly differing utilities serve our small town, and
6 where you happen to live in relation to one road, Old
7 Winter Beach Road, decides whether you are served by
8 FPL, a regulated utility with low rates and exemplary
9 service, or by the City of Vero Beach, an unregulated
10 monopoly with inferior service and some of the highest
11 rates in the state, as you recently heard. Where you
12 live in relation to one road decides whether you have a
13 utility like FPL that is held strictly accountable to
14 the PSC for its action or a utility like Vero Beach
15 Utilities that answers to no one.

16 Those of us in the town who live south of Old
17 Winter Beach Road have no say whatsoever in how the Vero
18 Beach utility -- the Vero utility operates, how its
19 rates are set, or how the City uses the profits that it
20 extracts from the good people of our town. We're
21 totally disenfranchised. Yes, we have an advisory
22 Utilities Commission, but the city council ignores their
23 advice.

24 Case in point is what happened when FPL
25 recently made an offer to purchase the electric system

1 in our town. The Utilities Commission unanimously
2 recommended that the City accept FPL's \$30 million offer
3 and settle the dispute with the town. The city council
4 not only rejected the unanimous recommendation, the
5 mayor and other council members publicly ridiculed the
6 citizens who serve on the Utilities Commission. I might
7 might also add, most of whom were appointed by the city
8 council. If you think I'm exaggerating, watch the
9 videos of the Utilities Commission meeting on August 9th
10 and the Vero city council meeting on August 16th.

11 Where you live in relation to Old Winter Beach
12 Road also decides, and this is important, whether you
13 have legal representation provided by the state or
14 whether you're on your own. I was happy to learn that
15 my neighbors who live north of Old Winter Beach Road and
16 are fortunate enough to receive service from FPL have
17 been provided with legal counsel by the State of
18 Florida, funded entirely by the State of Florida, to
19 ensure that they are not overcharged for electric
20 services.

21 **CHAIRMAN BROWN:** Thank you, sir. If you could
22 wrap up your comments, please.

23 **MR. NEZI:** Okay. I'll move on. Madam Chair
24 and Commissioners, the City of Vero Beach has actually
25 fought to exclude the rest of us from any oversight,

1 even defying a state law specifically written to create
2 a representative utility authority. As one of my
3 colleagues mentioned earlier, this is taxation, this
4 entire issue is taxation without representation, plain
5 and simple. It's also a classic example of monopoly
6 abuse.

7 The PSC, the Commission who created this
8 monopoly, can't put a stop -- if the PSC can't put a
9 stop to these abuses, then who can? With respect to
10 this issue, I respectfully ask you to fulfill your
11 mission and goals. Please help our community. And
12 thank you for your time.

13 **CHAIRMAN BROWN:** Thank you, sir.

14 Commissioners, any questions?

15 Thank you for taking the time to come on over
16 to Tallahassee. Appreciate it.

17 All right. So we're about at 12:45. This
18 item is going to take about, I believe, 30 minutes at
19 least. Is it the will of the Commission to proceed on
20 or take a short 20-minute break?

21 **COMMISSIONER GRAHAM:** Charge on.

22 **CHAIRMAN BROWN:** Charge on? Parties, do you
23 have -- okay. We're going to keep on going. I just
24 want to -- I know y'all are probably getting hungry, but
25 we're going to keep going. So Ms. Cowdery.

1 **MS. COWDERY:** Would you like to have a summary
2 of the five issues and then have the parties --

3 **CHAIRMAN BROWN:** No, I'd like to just go right
4 to the parties and have -- give them an opportunity.

5 Mr. May.

6 **MR. MAY:** Good afternoon, Madam Chair,
7 Commissioners. I'm Bruce May with the law firm of
8 Holland & Knight. We represent the Town of Indian River
9 Shores in this docket. I've practiced before this
10 agency since 1983, and I have great respect for what you
11 and your legal and technical staff do. But in this
12 unique case, we fundamentally disagree with staff's
13 legal analysis in two respects, both of which are pure
14 questions of law.

15 The first area of disagreement is with staff's
16 interpretation of the Florida Constitution, which is
17 found in Issue 5. Our second area of disagreement deals
18 with staff's legal analysis of our state and our
19 nation's anti-monopoly policies, which streams
20 throughout the recommendation, most notably in Issue 4.

21 I'll start by briefly addressing our
22 disagreement with staff's interpretation of our
23 Constitution. We fundamentally believe that under
24 Article 8, Section 2C, of the Florida Constitution, the
25 Town has a real and fundamental constitutional right to

1 be protected from unilateral exercises of
2 extraterritorial powers by another municipality, in this
3 case, the City of Vero Beach, and, thus, the territorial
4 boundaries, we submit, should be modified to reflect
5 that constitutional limitation.

6 The framers of our Constitution made it clear
7 in Article 8, Section 2C, that Vero Beach has no
8 inherent home rule powers to unilaterally impose its
9 municipal will on other disenfranchised folks outside of
10 the municipal boundaries of Vero. Instead, if a
11 municipality seeks to exercise extraterritorial powers,
12 our Constitution requires that it first get permission
13 from the legislature. That legislative permission needs
14 to be clearly conveyed to the municipality by either a
15 special or general law, not by an administrative order
16 of a state agency.

17 In Issue 5, without citing any cases, no cases
18 whatsoever, your staff argues that the Constitution
19 doesn't require Vero to obtain legislative permission to
20 impose its municipal will on disenfranchised folks
21 within the town. Instead, staff says it's
22 constitutionally sufficient that the legislature has
23 authorized the PSC to approve territorial agreements in
24 Section 366.04. Staff again cites no case law to
25 support that novel interpretation of the Constitution.

1 In fact, the cases we cite, in particular the
2 *Ford* case and the *City of Jacksonville* case, confirm
3 that extraterritorial powers must be specifically
4 conferred on the municipality. On the municipality, not
5 on some administrative agency.

6 Section 366.04 simply authorizes you to
7 approve in the abstract, in the abstract, territorial
8 agreements between electric utilities. It says
9 absolutely nothing about giving the municipality the
10 power to unilaterally impose its municipal will on
11 individuals outside of its city limits.

12 Commissioners, the only law, general or
13 special, that's on the books that purports to give Vero
14 Beach legislative permission to impose its will on
15 others outside of its city limits is Section 180.02(2).
16 Vero repeatedly cited to that statute in seeking to
17 dismiss the declaratory statement petition filed by
18 Indian River County. Now while Section 180.02(2)
19 arguably authorizes Vero Beach to exercise
20 extraterritorial powers in unincorporated areas of
21 Indian River County, that same statute makes it
22 absolutely clear that a municipality cannot unilaterally
23 extend and apply its corporate powers within the
24 corporate limits of an another equally independent
25 municipality.

1 I don't want to belabor the point, but I will
2 quote: "Any municipality may extend all of its
3 corporate powers applicable for the accomplishment of
4 the purposes of this chapter outside of its corporate
5 limits as hereinafter provided and as may be desirable
6 or necessary for the promotion of the public health,
7 safety, and welfare, or for the accomplishment of the
8 purposes of this chapter, provided, however, that said
9 corporate powers shall not extend or apply within the
10 corporate limits of another municipality."

11 I think you'll see that there's no special or
12 general law that currently confers the power to Vero to
13 unilaterally impose or exercise extraterritorial powers
14 within the town.

15 Let me touch on the circumstances that have
16 changed since the territorial agreement was approved
17 almost three decades ago. Because Vero did not have the
18 legislative permission to unilaterally impose its
19 municipal will on the town and its residents, the City
20 needed a bilateral agreement with the town, which it
21 executed in 1968. That's six years before you were ever
22 given the authority to approve a territorial agreement.
23 That bilateral agreement in 1968 had a limited duration
24 of 25 years. It was later continued in 1986 in the
25 bilateral franchise agreement, which had an express

1 limited duration of 30 years. Because that bilateral
2 franchise agreement will expire in November of this
3 year, the Town has notified Vero and this Commission
4 that Vero will violate the Constitution after the
5 expiration of the bilateral agreement if it continues to
6 insist on unilaterally exercising extraterritorial
7 powers in our town.

8 Commissioners, there's no doubt that the
9 legislature has given you broad jurisdiction, but that
10 jurisdiction, however broad, does not and cannot
11 supersede our Constitution, which is the supreme law of
12 the state.

13 Out of respect for the Constitution, we
14 believe that this Commission must, as a matter of law,
15 modify the territorial order since Vero is
16 constitutionally prohibited from unilaterally imposing
17 its municipal will on the disenfranchised folks within
18 my client's corporate limits. This can be readily
19 accomplished by placing the entire town -- Commissioner
20 Patronis, this can be accomplished, and just to answer
21 your question, by placing the entire town within the
22 service area of FPL, which is already -- it's already
23 serving a portion of the town and it's made it clear
24 that it's ready, willing, and able to serve all of the
25 town.

1 Let me turn briefly to Issue No. 4 and explain
2 why we believe staff's legal interpretation of our
3 anti-monopoly policies is ill-advised. And this is
4 something that I'm not sure that Ms. Cowdery covered,
5 but it's an important part of our petition. When we
6 object to Vero Beach unilaterally exercising
7 extraterritorial powers within the town, we're referring
8 to the actual exercise of unregulated monopoly powers.
9 As a matter of law, unregulated monopolies that have no
10 accountability to their captive customers are not in the
11 public interest. Thus, we believe that the territorial
12 order not only must be modified to comply with the
13 Constitution, it must be modified because it creates an
14 unregulated monopoly which, over the course of time, has
15 inflicted real harm on the captive customers in the
16 town.

17 Our anti-monopoly laws are based on the
18 premise that a monopoly, unregulated and left to its own
19 devices, will seek to maximize profits by charging
20 captive customers high prices for inferior service
21 offerings. By dividing the town into regulated and
22 unregulated monopoly service areas, your predecessors
23 created a real life laboratory to test that premise.
24 That premise has been validated here, as we've alleged
25 and as you've heard from the customers this morning.

1 Residents in the town that are captive customers of the
2 Vero unregulated monopoly pay significantly higher rates
3 than their neighbors who are captive customers of FPL, a
4 regulated utility.

5 You heard earlier from Mr. Auwaerter, the
6 unregulated monopoly Vero is using the monopoly revenues
7 it extracts from disenfranchised customers to pay for
8 Vero's municipal operations. For all intents and
9 purposes, the Vero unregulated monopoly is running its
10 municipality on the shoulders of captive customers in
11 the town that are completely disenfranchised. Those
12 same captive customers of Vero's unregulated monopoly
13 are deprived of the enhanced service offerings that the
14 regulated monopoly FPL offers to its captive customers.
15 I'm referring to services like energy efficiency rebates
16 that put real monetary value in the pocketbooks of
17 consumers.

18 **CHAIRMAN BROWN:** You have three minutes left.

19 **MR. MAY:** These are classic symptoms of an
20 unregulated monopoly, Commissioners: Inferior service
21 offerings at higher prices with absolutely no
22 accountability to captive customers. Your staff
23 suggests that you're powerless to do anything about
24 these monopoly abuses because you can't regulate the
25 City's rates and the quality of service. Your staff

1 actually asserts, as a matter of law, that captive
2 customers of the monopoly you created have no standing
3 to even raise monopoly abuses. We strongly agree with
4 that analysis and that part of the recommendation.

5 We believe that staff actually overlooks the
6 holdings in your *Reynolds* order and in the Florida
7 Supreme Court decision in the *City Gas* and in the *City*
8 *of Homestead*.

9 Instead of -- I wholeheartedly agree with
10 Senator Latvala and Representative Mayfield that if
11 you're empowered to draw these monopoly boundaries in
12 the public interest, you certainly have the power and,
13 we believe, the responsibility to periodically review
14 the situation, listen to captive customers, and, if
15 necessary, redraw the boundaries to prevent and to
16 protect disenfranchised customers from monopoly abuses.

17 **CHAIRMAN BROWN:** One minute.

18 **MR. MAY:** I see my ten minutes are about up.
19 I'll be remiss if I didn't mention the staff's reference
20 to the *Story v. Mayo* case. Staff cites that for the
21 proposition that it's none of your concern that Vero is
22 using your territorial order to operate an unregulated
23 monopoly. Commissioners, I'm here to tell you that's
24 not what the *Story* case stands for. In fact, in *Story*,
25 the supreme court of this state and the Public Service

1 Commission were extremely concerned about the plight of
2 disenfranchised customers and were expressly assured
3 that Homestead had adopted a formal resolution that made
4 sure that non-resident customers would only pay the FPL
5 regulated rate. They had that in place. That's the
6 only reason that the supreme court approved and affirmed
7 the Commission's order. So I think that staff is not --
8 has not completely educated the Commission as to the
9 holdings of the *Story* case.

10 So to sum it up, we're asking for you to
11 follow the supreme court's direction. Actively
12 supervise the Vero monopoly. Take a fresh look at the
13 territorial order under the facts and circumstances as
14 they exist today. Based on our research, the Commission
15 has never been to the town. The Commission has never
16 been to the town to listen to the plight of the captive
17 customers there. If you do that, we're confident that
18 you will amend the territorial order to comport not only
19 with the Constitution, but to prevent Vero from
20 continuing to operate as an unregulated monopoly and
21 inflict monopoly abuses on the town and its residents.
22 And I'll be glad to answer any questions.

23 **CHAIRMAN BROWN:** Thank you, Mr. May.

24 Mr. Wright, you'll have an extra minute.

25 **MR. WRIGHT:** Excuse me?

1 **CHAIRMAN BROWN:** You'll have an extra minute.
2 Eleven minutes.

3 **MR. WRIGHT:** Madam Chairman, respectfully,
4 several presenters took 36 minutes to talk about a
5 number of issues to which I would like to respond. I
6 would respectfully ask for little bit of latitude. I'll
7 keep it as short as I can.

8 **CHAIRMAN BROWN:** Okay.

9 **MR. WRIGHT:** Thank you. I would like to start
10 very briefly with respect to Issue 1, which is the
11 recommendation of your staff to deny our motion --
12 petition -- motion to intervene and/or alternatively to
13 be designated a party. They recommend denial of the
14 motion to intervene, silent on the motion to be
15 designated a party.

16 This is important to us. This is an unusual
17 case. The Town, not a party to the territorial
18 agreement, not a party to the order, not subject to your
19 order other than as a customer in one of the service
20 areas, is asking you to modify the order. We're a party
21 to the territorial agreement, the City is. The City is
22 a party immediately subject to your jurisdiction under
23 the order. We are a real party in interest. We are an
24 indispensable party. We would respectfully ask that
25 particularly at this juncture, it's fairly late in the

1 process, you know, we're not in danger of conducting any
2 discovery or anything like that, we would respectfully
3 ask that you include in whatever order you issue today a
4 statement stating that the City of Vero Beach is a
5 party. You can do it sua sponte. You can do it
6 responsive to our motion. We don't care. We want to be
7 a party. We believe we are fully entitled to be a
8 party. This isn't some other case where a utility is
9 asking for some modification to an ECCR program or
10 anything else. We're a real party in interest. Please
11 designate us as such. Thank you on Issue 1.

12 The remainder of my comments will address
13 Issues 4 and 5, principally 5. Briefly, we support the
14 staff's recommendation in part on Issue 4 to grant our
15 motion to dismiss for lack of standing as to their
16 allegations of monopoly abuses, to which I'll return
17 momentarily, and also as to their appearance patria
18 (phonetic) theory that they can represent their
19 customers. I'm sorry. You know, it's just like black
20 letter Florida law. Governments cannot represent their
21 citizens. It's really that simple.

22 With respect to the other point we disagree
23 with the staff, we believe that in every substantive
24 respect the Town of Indian River Shores is in this case
25 like Ameristeel in the proceedings that became

1 *Ameristeel v. Clark*. They're a customer who wants to
2 change the territorial agreement, just like *Ameristeel*.
3 We don't think they satisfied either prong of the *Agrico*
4 test, just as you found and just as the Florida Supreme
5 Court found in the *Ameristeel* proceedings.

6 With respect to staff's recommendations on the
7 merits, we support that recommendation. We do serve
8 pursuant to general law. That's what the Constitution
9 says. There's nothing about consent in there. There's
10 nothing in *Ford* about consent. There's nothing in *City*
11 of *Jacksonville* about consent. We serve pursuant to
12 367.04(2) and .04(5).

13 Further, the law is clear as to what is
14 required to modify a territorial order or modify any
15 order really, and that is a showing that any change is
16 necessary in the public interest. They haven't made any
17 such showing, nor have they made any showing that the
18 changes they request are not detrimental to the public
19 interest. Their public interest claims are a laundry
20 list of, I think, 13 specific assertions that are simply
21 self-serving allegations, most of which we would
22 dispute, all of which would work to the benefit of the
23 town and its 3,400 plus or minus customers without any
24 regard whatsoever for the 32,000 remaining customers on
25 Vero Beach's system. There is no change in

1 circumstances relative to what was before you when you
2 approved the initial territorial agreement or any other
3 territorial agreement. Your staff correctly noted that
4 they never showed up, no resident, no official, not the
5 Town per se never showed up in any of the four
6 proceedings that y'all held in approving the territorial
7 agreements here.

8 I want to touch on something that the other
9 presenters talked about and that Commissioner Graham
10 talked about. As far as I know, the line has been Old
11 Winter Beach Road since 1973 when the order was issued
12 in the 1972 docket. The Town subsequently annexed north
13 of that. Y'all didn't divide it. We didn't divide it.
14 We served in Indian River Shores since 1953, truth be
15 told, when it was incorporated. And as far as I know,
16 Old Winter Beach Road was the northern boundary of the
17 Town of Indian River Shores at that time. We didn't
18 need the agreement in 1968, as Mr. May suggests. The
19 Town needed electric service to grow and asked us to
20 please provide it. We said, "Sure. We'll be happy to
21 do so. We get to charge our rates. We'll come hook
22 people up." And water service too was part of the
23 bargain.

24 I want to address several things that were
25 argued by pretty much every speaker. The first is to

1 debunk the assertion that these customers have no
2 recourse. This is flatly false. *Story v. Mayo*, in
3 addition to saying that an individual has no organic
4 political or economic right to service by a particular
5 utility merely because he deems it advantageous to
6 himself, also says if a customer has a problem with the
7 reliability of service or with the rates charged, an
8 allegation of excessive rates, their recourse is to
9 petition the municipal council or take it to the courts.
10 They could have taken it to the courts. They tried to
11 take it to the courts. Frankly, they asked for the
12 wrong relief. Instead of asking for a declaratory
13 judgment that our rates are excessive, they asked for
14 damages. That's not something a court can award. We
15 accordingly moved to dismiss. The court did dismiss.
16 They did -- the court did allow one claim to remain
17 viable, and that was a claim with respect to contract
18 damages relative to the rates we charge relative to the
19 franchise agreement, but they have since dismissed that
20 in June of this year with prejudice. So y'all didn't
21 split it into. We didn't split it into. We served
22 where we were asked to serve.

23 The law regarding recourse of customers has
24 further been made clear in the case *Rosalind Holding*
25 *Company versus Orlando Utilities Commission*. The Court

1 made it very clear that to prevail in a claim -- this is
2 a viable claim. You know, I told my client all the
3 time, "This is a viable claim. It'll survive a motion
4 to dismiss." If they hadn't asked for damages, it would
5 have. You can ask for a declaratory judgment that the
6 rates are excessive, and the standard of proof --
7 ultimately the standard of proof is the same as a rate
8 case. You have to prove that the costs are
9 unreasonable, very similar to what's in a rate case.
10 You have to prove that the costs are unreasonable and
11 that the earned return is outside the zone of
12 reasonableness. This is the language of the *Rosalind*
13 court, the DCA decision, you have to prove that the rate
14 of return is outside the zone of reasonableness. Not
15 necessarily, they said, as would be determined by the
16 Commission, by the Public Service Commission, but
17 outside a zone of reasonableness. We hired an expert to
18 evaluate our equivalent ROE comparable to FPL's. It's
19 4.8 percent.

20 You know, furthermore, they've made much about
21 us being an unregulated, you know, monopoly abuser.
22 One, they have recourse in the court. Two, last fall
23 our city manager, James R. O'Connor, sent to Mr. Stabe a
24 letter: Now that we are where we are, with respect to
25 the court having dismissed three out of your four

1 counts, we would be very interested in getting our
2 lawyers together to talk about the possibility of
3 presenting the question whether the City of Vero Beach's
4 electric rates are reasonable to the Florida Public
5 Service Commission. They pooh-poohed that right out of
6 the box. They didn't call. They didn't have a
7 conversation.

8 I will tell you that it's an unusual and
9 interesting jurisdictional question, but my particular
10 thought on the subject was this, that if the circuit
11 court were to ask you to serve as the functional
12 equivalent of a special master, to have a hearing, take
13 evidence, and send a report back to the court as to
14 whether our rates are reasonable or not, you could do
15 it. I think you could do it. We offered that
16 opportunity. They didn't want anything to do with it.

17 Madam Chairman, I appreciate your frustration,
18 and I will guarantee you that all the other nice people
19 in Vero Beach appreciate your frustration. We didn't
20 start this, we didn't initiate this litigation, and we
21 have worked in good faith with them. This leads me to
22 talk very specifically about the \$30 million offer and
23 why the city council deemed that to be insufficient.

24 We came up with a rough estimate about a year
25 ago, August 5th, 2015, largely prepared by one of our

1 experts as to what the cost impact of no longer serving
2 The Shores would be. There were some summary formulas
3 used in that estimate. It was \$64.5 million.

4 After we met with the Town and its team,
5 Mr. Auwaerter, Mr. Deason, and Mr. May, in January of
6 this year, we went back to the drawing board. The City
7 convened a team of five experts: Gerald Warren, former
8 utilities director for GRU and the City of Winter Park;
9 Bill Harrington, who's got more than 40 years of
10 experience, 20 years plus in system planning and
11 contracting for OUC and another 20 plus consulting on
12 utility costs in ratemaking and bulk power issues in the
13 private sector in Florida; the City's rate experts Henry
14 Thomas and Murray Hamilton; and myself. I've been doing
15 this for almost 36 years.

16 So we put our pencils sharply to it and we
17 prepared a revised analysis in which we said using a
18 30-year time horizon, I argued that it should be longer
19 because it's a long-term asset that has value beyond 30
20 years, but using a 30-year time horizon, the value, the
21 cost impact, the impact of the cost shift onto the
22 citizens of -- onto all the remaining electric customers
23 of Vero Beach would be \$42.4 million, plus some
24 provision for contributions that we would otherwise
25 reasonably expect for contingent liabilities.

1 Remember, our base case was that the City
2 would continue to serve. If we get an unexpected bill
3 from one of the companies that owns the power plants --
4 OUC in the case of the Stanton units, FPL in the case of
5 the St. Lucie units -- FMPA get the bills, they pass it
6 through to us. We are virtual co-owners of these
7 plants. We don't have a choice. We don't know what
8 these are going to be. We just know that there are
9 risks out there.

10 To that we added, based largely on an analysis
11 by Mr. Harrington, an additional \$5 million. Frankly,
12 that still leaves us wearing risk that the costs could
13 be greater than that, so the number we suggested to them
14 was \$47 million.

15 Now Mr. Stabe said there was no counteroffer.
16 That's not true. Mayor Kramer has had ongoing private
17 communications, private made public, as you might
18 expect, with -- surprise -- with Mayor Barefoot, as an
19 individual, not on behalf of the City, and his letter
20 was very clear. But as an individual, Mayor Kramer
21 communicated to Mr. Bare -- Mayor Barefoot that
22 \$47 million would be a good number. He further
23 explained why he believed that that represented a
24 completely fair deal to the people of Indian River
25 Shores along this wise. Mayor Barefoot has testified

1 here and publicly on a number of occasions that it costs
2 the Town of Indian River Shores' customers \$2 million a
3 year to continue to be served by the City of Vero Beach
4 and as opposed to FPL. Now I don't think that number is
5 right, I think it's somewhat less than that, but that's
6 his number. Mayor Kramer, in his letter to Mayor
7 Barefoot, and I can get you a copy of it, it's public
8 record, Mayor Kramer, in his letter to Mayor Barefoot,
9 said, "Look, we're looking at this over 30 years. If
10 y'all save 2 million a year for 30 years, that's
11 \$60 million. You put in another 20 million on top of
12 the 27 million that Florida Power & Light is willing to
13 put in, that's \$47 million. That in my view would be
14 something that I could get my arms around."

15 Furthermore, at the council meeting on August
16 16th, the motion was made to accept the \$30 million. It
17 was denied. Mayor Kramer immediately, sitting there as
18 the mayor on the dais on the record said, "Counter
19 proposal or amend" -- actually I think he said, "Amend
20 the offer to \$47 million," and that didn't get traction.
21 Florida Power & Light, you know, completely, reasonably
22 from their perspective, said, "No." The Town wouldn't
23 respond to that. But there was a counteroffer and we're
24 certainly willing to continue talking to them.

25 I have to say one thing. Mayor Barefoot's

1 rhetorical assertion that the City's response is "Who
2 cares?" is just false, misleading, and unnecessarily
3 inflammatory here. We care a lot. I've been working
4 this case for two and a half years. My first job was to
5 try to get the deal with FPL closed. That hit a wall on
6 June 2nd, 2014, when a condition precedent to that deal
7 closing failed. We don't need to go into that anymore
8 today. But it failed, and I was then directed to turn
9 my attention to doing what we could to lower rates.

10 The facts are very simple. Roughly two-thirds
11 of the City's total cost of providing service are bulk
12 power supply costs. About half of those, maybe just
13 under half of those, are under contracts for purchases
14 from three power plants approved by this Commission,
15 pursuant to contracts ratified by the courts of Florida,
16 pursuant to statutes with FMPA, and the power plants are
17 Stanton, Stanton 2 -- Stanton 1, Stanton 2, and
18 St. Lucie. These are perfectly good power plants, but
19 when the world changed in 2009, those contracts came to
20 be underwater. We're not doing anything about those
21 contracts that have been ratified by the courts of
22 Florida.

23 The other contract is a contract with the
24 Orlando Utilities Commission for bulk power supply.
25 Probably the best thing I've done since I've been

1 working for the City is renegotiate that contract to
2 produce what we estimate will save \$170 million nominal,
3 about \$120 million NPV versus the contract as it existed
4 before we renegotiated.

5 We're doing other things. We convened a
6 study. The study actually says we probably ought to
7 spend more money than we do on distribution and things
8 like that. But we, you know, we are trying and we do
9 care.

10 **CHAIRMAN BROWN:** Okay.

11 **MR. WRIGHT:** I'm intrigued by Mr. May closing
12 by saying that somebody ought to do something to
13 actively supervise the Vero monopoly. Not only, you
14 know, do they have the right to go to court, although
15 they don't because they dismissed their case with
16 prejudice, but another citizen could file a lawsuit and
17 present the question whether our rates are excessive to
18 the courts. But we would be delighted, as City Manager
19 O'Connor suggested to Town Manager Stabe a year ago, not
20 quite, I think it was October, we'd be delighted to have
21 you take a look at our rates because we're confident
22 that our costs are fully reasonable and prudent and our
23 ROE is half of FPL's.

24 **MR. MAY:** Schef, would you be willing to get
25 with Representative Mayfield and the local delegation to

1 pass a special law that would say that your rates would
2 be regulated by the Florida Public Service Commission
3 just like FPL's?

4 **MR. WRIGHT:** I would have to talk to my client
5 on that, but --

6 **MR. MAY:** That's what we're looking for, but
7 would you be interested in doing -- would you be willing
8 to join hands with us and go in that direction?

9 **CHAIRMAN BROWN:** That's a little out of order
10 here.

11 **MR. WRIGHT:** Madam Chair --

12 **CHAIRMAN BROWN:** That's a little out of order.

13 **MR. WRIGHT:** -- I can't answer that question
14 today without conferring with my client.

15 **CHAIRMAN BROWN:** I'm giving you a lot of
16 latitude here.

17 **MR. WRIGHT:** And I appreciate it. Thank you.

18 **CHAIRMAN BROWN:** You're at, like, 17 minutes,
19 and we do need to get to that. There are folks in the
20 audience who are also waiting very patiently to get to
21 their items. And we knew this was going to be a heavy
22 agenda, but --

23 **MR. WRIGHT:** Madam Chairman, I greatly
24 appreciate your latitude. I think that I've -- my
25 second says I've addressed everything I needed to

1 address. Thank you very much. We respectfully support
2 the staff's recommendation that you deny the Town's
3 petition on the merits. Thank you.

4 **CHAIRMAN BROWN:** Okay. Before I turn to
5 staff, I'm going to give Mr. May an opportunity to
6 respond because --

7 **MR. MAY:** Just a couple of points. One, I
8 think it's important to listen to the way the City is
9 framing its constitutional argument. It said, "We're
10 operating pursuant to general law." That's not what the
11 Constitution says. The Constitution -- in 19 -- prior
12 to 1968 --

13 **CHAIRMAN BROWN:** Mr. May, just very
14 succinctly, if you can.

15 **MR. MAY:** The Constitution says the
16 municipality needs to be provided with the law, with
17 that power, not pursuant to general law. So that's one
18 point.

19 The other point is -- and this is one of those
20 unintended consequences that while this is an extremely
21 unique case, the unregulated monopoly abuses, using a
22 territorial order to inflict under-regulated monopoly
23 abuses, it really only applies in this unique case. It
24 doesn't apply to a rural electric cooperative. Rural
25 electric cooperatives, every customer of a rural

1 electric cooperative is a member that has a right under
2 Florida law to vote and elect the board of trustees that
3 sets the rates. Obviously, the investor-owned utilities
4 are intensely regulated. So this is really a unique
5 case.

6 But in this particular case, if you adopt
7 staff's recommendation, our antitrust lawyers have
8 looked at this, and there is a real possibility that
9 you've eviscerated the state action immunity defense.

10 As your staff has pointed out in its
11 recommendation, a territorial agreement among competing
12 electric utilities is a per se violation of the Sherman
13 Antitrust Act. The only reason, the only reason it is
14 immunized from the antitrust laws is the state action
15 immunity defense.

16 **CHAIRMAN BROWN:** Okay.

17 **MR. MAY:** And to effectuate that, I want to
18 read you just two passages.

19 **CHAIRMAN BROWN:** And then you'll be done.

20 **MR. MAY:** And I'll be done. Because, you
21 know, I don't want two years from now you all to be
22 facing -- having to be asked by a federal court, "Do you
23 have the ability to protect these customers from
24 monopoly abuses?" Because what I'm hearing your staff
25 say, you don't. You don't -- there's no robust

1 regulatory system in place. I just want everyone to go
2 in -- as Commissioner Edgar said earlier on, when you're
3 voting without a complete -- with all this complete
4 information, so I just want you to know where this could
5 go.

6 The Florida Supreme Court in *Homestead*
7 explained that if a territorial agreement, quote, has
8 the effect of leaving an unreasonable degree of control
9 over price, production, or quality of product or service
10 in the hands of parties thereto, it would evidence the
11 kind of monopolistic advantage that Florida's antitrust
12 laws and other statutes of the kind were intended to
13 prevent. If it does not leave such control in the hands
14 of the parties, we perceive no conflict between the
15 agreement and the antimonopoly statute. The Court
16 further analyzed -- that's the *City Gas* case.

17 The court further analyzed the conflict
18 between territorial agreements and the antitrust laws as
19 follows. Quote, our decisions exempting territorial
20 agreements from antitrust legislation have been premised
21 on the existence of a statutory system of regulations
22 governing the public utilities that is sufficient to
23 prevent any abuses arising out of the monopoly power
24 created by these agreements.

25 What your staff has said is you don't have --

1 you do not have the capacity to protect the
2 disenfranchised customers in the town from these
3 monopoly abuses.

4 **CHAIRMAN BROWN:** Thank you, Mr. May.

5 **MR. MAY:** So what you're doing is you're
6 opening this up to an antitrust challenge.

7 **CHAIRMAN BROWN:** Thank you, Mr. May. I
8 appreciate you providing the additional comments.

9 All right. So we're going to turn back to
10 staff since we -- Ms. Cowdery, if you'd like to be given
11 an opportunity to respond to some of the comments that
12 were made by both parties. My understanding is also
13 that Florida Power & Light is here to address any
14 questions, but does not have any opening statements to
15 make here.

16 **MS. COWDERY:** That is my understanding as
17 well.

18 **CHAIRMAN BROWN:** Okay. And so I do want to
19 just emphasize this is not a hearing. This is not a
20 Chapter 120 hearing here. Okay? We've given a lot of
21 latitude to the parties because this is an ongoing
22 matter that is of great concern to all involved. So
23 what we're going to do at this point is have staff go
24 over it and then the Commissioners -- bring it back to
25 the Commissioners, have us be given an opportunity to

1 discuss it among ourselves and ask questions of the
2 parties here. And so that's kind of the process I'd
3 like to lay out for you all.

4 Ms. Cowdery.

5 **MS. COWDERY:** I will be as brief as I can.
6 All right.

7 First, on Issue 1 on the intervention, I'd
8 like to address that. I think, you know, Mr. Wright
9 raises, you know, very legitimate concerns, and that is
10 one of the reasons that we brought this to the
11 Commission, because this is a little different than
12 normal. We are in a PAA proceeding, but we're having a
13 party who's asking to have an order modified between two
14 parties, which it is not an order. So the concern is
15 understandable. However, nonetheless, it still is a
16 proposed agency action that we are in and we don't have
17 parties per se. Vero Beach and FPL are being given the
18 full opportunity to participate in this proceeding.

19 **CHAIRMAN BROWN:** Very full.

20 **MS. COWDERY:** Yes. And when the PAA order is
21 issued, substantially affected parties will have 21 days
22 to file protests and request a 120 hearing to which they
23 can become parties. It is staff's opinion -- it is the
24 Office of General Counsel's opinion that in any
25 challenge to the PAA order, in any challenge, that Vero

1 Beach and FPL would be indispensable parties. They
2 would be full parties. It wouldn't be a matter of
3 whether they have to intervene or not and take the case
4 as they find it. They would be considered inter -- you
5 know, indispensable parties. So that's where we are on
6 that.

7 The Florida Supreme Court in *Story v. Mayo*, as
8 Mr. Wright stated, held that an individual has no
9 organic, economic, or political right to service by a
10 particular utility merely because he deems it
11 advantageous to himself. The court also stated in *Lee*
12 *County Electric Cooperative v. Marks* that a significant
13 price differential between two electric utility
14 providers does not give an existing customer standing to
15 protest an existing order.

16 What we are doing here is we have before us a
17 petition to modify a territorial order. You know,
18 Mr. May stated that his concerns -- this is a -- it's a
19 purely legal question in front of the Commission. It's
20 not an evidentiary hearing. And the test is that the
21 Commission must consider, based -- okay. Let me just
22 back up.

23 With the *Peoples Gas* case that was also cited
24 by Mr. May, the Commission may only modify a territorial
25 order after proper notice in hearing and upon a specific

1 finding based on adequate proof that such modification
2 or withdrawal of approval is necessary in the public
3 interest because of changed circumstances or other
4 conditions not present in the proceeding which led to
5 the order being modified. And there was no issue
6 concerning consent of Indian River Shores ever presented
7 to the Commission. That was not something that was
8 considered by the Commission.

9 If we look at the language of the Florida
10 Constitution, it states, in Section 2C of Article 8,
11 "Municipal annexation of unincorporated territory,
12 merger of municipalities, and exercise of
13 extraterritorial powers by municipalities shall be as
14 provided by general or special law." It is staff's
15 position that Vero Beach is providing electric service
16 as provided by general law 366.04 that gives the
17 Commission the authority to approve territorial
18 agreements and to modify or resolve territorial
19 disputes.

20 If a territorial dispute over this territory
21 came to the Commission, the Commission would look at all
22 the factors having to do with how customers would be
23 affected, what would be happening with the facilities,
24 with the lines that had to do with the service of 3,000
25 people. We don't have anything like that in front of

1 us. The courts, the Florida Supreme Courts have said
2 that we have to consider all affected customers. Not
3 just those being transferred, but those that are not
4 being transferred. You know, how does this kind of
5 transaction affect them? And we simply don't have that
6 information in front of us.

7 There really isn't any case law that is
8 interpreting the provision of the Florida Constitution
9 as it is applied in this case. And as we stated in the
10 staff recommendation, we disagree that *Ford* or the
11 *Jacksonville* case, for that matter, made any ruling that
12 there must be a specific law by the legislature that
13 would allow Vero Beach to provide service. That just is
14 not in the those rulings.

15 So there is only one somewhat similar case
16 that came before the Florida Public Service Commission
17 that I am aware of, and it actually was related to the
18 *Story v. Mayo* and *Homestead v. Beard* and all the City of
19 Homestead and FPL cases, and that's a 1980 case
20 complaint of the *Accursios v. Florida Power & Light*
21 *Company and the City of Homestead*. In that case, the
22 customers/petitioners asked the Commission to terminate,
23 stay and/or enjoin enforcement of a territorial
24 agreement that had been approved by the Commission order
25 12 years earlier. The petitioners alleged as changed

1 circumstances, which you've got to allege to get
2 modification of a Commission order, among other things,
3 that under the territorial agreement, the City of
4 Homestead was providing service outside its limits; a
5 substantial portion of the City budget providing service
6 to City residents was derived from profits from the
7 City-owned utilities; that the non-resident petitioners
8 to be served by the City would be paying for City
9 services to which they are not entitled as
10 non-residents; as non-residents, they had no opportunity
11 to provide input into the legislative system of the City
12 and, therefore, no control as to how the monies derived
13 from utility payments are used; and that the City was
14 charging rates in excess of the rates the non-residents
15 had previously paid to FPL.

16 The Commission dismissed the petition because
17 it did not sufficiently allege changed circumstances
18 upon which their decision had been made. The
19 petitioners filed a petition for certiorari review,
20 which --

21 **CHAIRMAN BROWN:** Ms. Cowdery, can you speak
22 closer and --

23 **MS. COWDERY:** I'm sorry. The petitioners
24 filed a petition for certiorari review with the Florida
25 Supreme Court, which was denied by the court. There's

1 no opinion, but it was denied.

2 **CHAIRMAN BROWN:** And I appreciate that and I
3 know you're available for questions.

4 **MS. COWDERY:** Right.

5 **CHAIRMAN BROWN:** So we're at 1:26. Let's take
6 about a 20-minute break and reconvene here about 1:50.
7 Hopefully folks can get some food around and be
8 refreshed by the time we get back. All right.

9 (Recess taken.)

10 **CHAIRMAN BROWN:** I hope you all enjoyed the
11 break. I did. I got a chance to regroup and get my
12 thoughts together on this item.

13 And, again, I can't apologize enough to the
14 folks that are still in the room on other issues. When
15 the agenda came out originally, I looked at it and I
16 thought, "This is going to be a very long agenda." We
17 had to take things out of order because there were
18 certain specific requests. So, again, my apologies to
19 the folks that are really waiting to get their matters
20 heard today.

21 All right. Ms. Cowdery, you had the floor,
22 and I don't know if you wanted to continue with further
23 comments or thoughts before I bring it back to the bench
24 here.

25 **MS. COWDERY:** The only thing I was going to

1 add is, going back to Issue 1 on intervention, is that,
2 you know, staff wouldn't have any objection to the
3 Commission adding a finding in the order that in any
4 challenge to the PAA order, whether in a 120.57 hearing
5 or in court, Vero Beach and FPL would be full and
6 indispensable parties. We wouldn't have a problem with
7 that --

8 **CHAIRMAN BROWN:** And including that
9 language --

10 **MS. COWDERY:** -- because that's a
11 going-forward basis as opposed to intervention in a PAA.

12 **CHAIRMAN BROWN:** I think that makes sense too.

13 **MS. COWDERY:** And then I'm available for any
14 questions.

15 **CHAIRMAN BROWN:** All right. This is just one
16 of those items that obviously we've wrestled with and
17 we're continuing to wrestle with.

18 So we have before us -- I think we could put
19 together Issues 1 through 3, which are very procedural
20 in nature, and I think we can take those up together
21 and then get to the substance on Issues 4 and 5. So do
22 the Commissioners want to --

23 **COMMISSIONER EDGAR:** Actually, could I ask a
24 question prior to calling for a vote, if that's okay?

25 **CHAIRMAN BROWN:** Absolutely.

1 **COMMISSIONER EDGAR:** Let me -- I'm just trying
2 to think back to some of this. So let me pose to both
3 Mr. May and Mr. Wright, what is your understanding of
4 the impact or change in circumstances when the franchise
5 agreement expires in another month or two?

6 **MR. MAY:** Our -- the change in circumstances
7 with respect to the franchise agreement applies to the
8 constitutional issue. As I mentioned earlier, under
9 Article 8, Section 2C, we believe that Vero Beach has
10 not been provided with legislative permission to operate
11 an unregulated monopoly within the corporate boundaries
12 of the town. In order to do that, it needed to have
13 the -- a bilateral agreement with the Town, and that
14 agreement was executed in 1968 before the Commission
15 ever had jurisdiction over territorial agreements. It
16 was continued with the franchise agreement for another
17 30 years. So after that bilateral agreement expires in
18 November of this year, there will be changed
19 circumstances. And at that point in time, if Vero
20 continues to insist that it has the right to
21 unilaterally exercise its extraterritorial powers within
22 the town, then that would be a violation of the
23 Constitution and it would be constitutionally
24 impermissible to continue to do that. And we're arguing
25 that the territorial agreement needs to be modified to

1 comport with those constitutional limitations.

2 **COMMISSIONER EDGAR:** So if the territorial
3 agreement is not modified prior to the termination of
4 the time period for the -- that the franchise agreement
5 is set to run, then how will service be provided to
6 those customers?

7 **MR. MAY:** I think we realized that the legal
8 process has to run its course. You know, obviously we'd
9 like a decision sooner rather than later, but at that
10 point in time -- right now there is a bilateral
11 agreement that -- so the constitutional prohibition is
12 not triggered. But when that bilateral agreement
13 expires in November, there will be a constitutional
14 violation, and we would submit that the Commission, as a
15 matter of law, needs to modify the territorial agreement
16 as quickly as possible to comport with that
17 Constitution.

18 Now the other alternative is what Orlando
19 Utilities Commission did when it was confronted with a
20 similar problem where there was a question as to its
21 extraterritorial power. It went over to the legislature
22 and got a special act that actually confirmed that, yes,
23 you have the authority to operate a power plant in
24 Brevard County. So that option is still available to
25 the City, but I'm not sure the City could get a special

1 act passed along those lines in light of the
2 conversations we heard this morning, but --

3 **COMMISSIONER EDGAR:** May I?

4 **CHAIRMAN BROWN:** Uh-huh.

5 **COMMISSIONER EDGAR:** I'm going to come back to
6 you with another question, but first, if I may, I'd like
7 to ask Mr. Wright to respond as well.

8 **MR. WRIGHT:** Thank you, Madam Chairman.

9 Commissioner Edgar, in brief, and I'm going to
10 read you a couple of sentences from the recommendation
11 which almost quote the Florida Supreme Court's opinion
12 in *Indian River County*, but in brief, our view of the
13 world is the existence of the franchise agreement never
14 had anything to do with our ability to serve and has no
15 effect whatsoever with respect to the territorial
16 agreement or the territorial order. As your staff
17 wrote, and this, again, is close to verbatim from *Indian*
18 *River County*, "Expiration of the franchise agreement on
19 November 6th, 2016, will not affect the validity of the
20 territorial orders. Vero Beach will continue to have
21 the right and obligation to provide electric service to
22 the entire territory within the boundaries established
23 in the territorial orders, including that portion of
24 Indian River Shores located south of Old Winter Beach
25 Road. See citation to the *Indian River County* supreme

1 court opinion earlier this year."

2 So in our opinion, it has no effect. And, you
3 know, and your question also elicited an inconsistency
4 in the Town's position, and that is if we don't have the
5 authority to serve, how do we serve after November 6th?
6 Oh, well, we really want you to serve after
7 November 6th. You know, we've been serving there for 63
8 years. Thank you.

9 **COMMISSIONER EDGAR:** 63, not 64, not --

10 **MR. WRIGHT:** 63.

11 **COMMISSIONER EDGAR:** 63, okay.

12 **MR. WRIGHT:** From 1953 until 2016, 63 years.

13 **COMMISSIONER EDGAR:** Mr. May, if -- if, again,
14 this Commission were to exercise authority -- let me
15 reword that.

16 If this Commission were to determine that we
17 were going to amend the territorial agreement line as
18 requested by your clients, then what would be the
19 financial mechanism to work out the removal of that --
20 those assets from the City?

21 **MR. MAY:** You know, obviously that's somewhat
22 of a theoretical question, but I'll answer it the best I
23 can.

24 I think that, you know, if the Commission were
25 to do that, which we think you certainly have the power,

1 if you have the authority to draw -- create a monopoly
2 and you later, through the course of time, determine
3 that that monopoly is abusing its privilege, you can
4 redraw your territorial boundaries to take that monopoly
5 away.

6 If you were to exercise that authority which
7 we believe you have, I think there is a mechanism in
8 place now for FPL to acquire the facilities of Vero.
9 Under general, you know, theories of law, a party has a
10 legal obligation to mitigate damages. So I would assume
11 that if Vero was faced with the fact that you said you
12 no longer have the right to serve in this particular
13 area, you've abused your monopoly privileges, then FPL
14 could come in and say, you know, look -- and FPL has an
15 obligation, I think, to try to use the most efficient
16 mechanism to serve, and they've said they're ready,
17 willing, and able to serve. I would assume they'd come
18 in and purchase the facilities of the City. And I'm not
19 sure, but I think the depreciated net book value of
20 those facilities are, you know -- I don't know -- Schef,
21 are less than \$8 million or something inside The Shores?

22 **MR. WRIGHT:** Madam Chair, we do not agree even
23 remotely that that's the appropriate standard of value.
24 \$8 million is at least the right order of magnitude. I
25 don't know if it's six or eight or ten, but it's not the

1 right standard of value for a proceeding where you're
2 going to take our property.

3 **CHAIRMAN BROWN:** All right. I think Mr. May
4 is speculating that Commissioner Edgar's -- answering
5 Commissioner Edgar. You have the floor.

6 **COMMISSIONER EDGAR:** Thank you. So, again,
7 what would be the mechanism of -- for compensation? You
8 said, "purchase," but at what amount? What would
9 determine the amount? What would determine the terms?

10 **MR. MAY:** I would assume it would be -- as I
11 said, I think Vero at that point in time would have an
12 obligation to mitigate its damages, so it would sit down
13 with FPL and it would determine a fair market value for
14 the assets, for the distribution assets within the town.
15 There are -- you know, there are a number of utility
16 valuation experts that are available to handle those
17 types of things. FPL has already done a lot of the
18 preliminary legwork as to what the value of the system
19 is, and I'm assuming that that mechanism would be in
20 place.

21 **COMMISSIONER EDGAR:** On a slightly different
22 tact, you have said that the -- that the City is abusing
23 the customers. You've used that word. I believe
24 Representative Mayfield used that word. It's certainly
25 in the letter from Representative Mayfield and Senator

1 Latvala. I'm not 100 percent clear on what the abuse by
2 the service provider is.

3 **MR. MAY:** Well, I think the -- as I mentioned
4 earlier, I think by -- this is a unique situation where
5 the territorial boundary essentially bifurcates a
6 municipality. There's a general premise of antitrust
7 law that a monopoly left unregulated to its own devices
8 will seek to maximize profits by charging high rates for
9 a lower quality of service. And if you look at this in
10 this laboratory in Indian River Shores, the regulated
11 monopoly, FPL, has lower rates and higher quality of
12 service than the City does. I mean, the City has
13 33 percent higher rates and it doesn't offer near the
14 quality of service that FPL does. So the answer to your
15 question, I think that that indeed is the measure there.
16 That's what you would need.

17 **COMMISSIONER EDGAR:** Is the quality of
18 service, one question, second question are the rates, in
19 both of those areas, is there a difference of service or
20 rate to those customers that are within the City and
21 those that are without?

22 **MR. MAY:** Well, we believe there's a
23 difference of service. But, again, I think I might be
24 getting ahead of myself. I think from our perspective,
25 you know, we think that where the state creates the

1 monopoly and displaces competition, which you have done
2 by approving this territorial agreement, I think the
3 State has an obligation to rigorously and actively
4 supervise the -- both of the monopolies that it's
5 created to make sure that captive customers are not
6 subject to excessive rates and lower quality of service.

7 I think that, you know, we're looking for
8 solutions here, and we think that -- you know, I think
9 all of your questions are extraordinarily good and
10 there's a lot of unanswered questions, but I think that
11 you have the mechanism and the authority now to
12 essentially establish a proceeding on your own motion.

13 Go down and look -- gather the facts. I mean,
14 Schef and I are just -- we're talking as lawyers and
15 we're trying to be as candid -- but we're not the
16 experts. But I think the people that matter are the
17 people in Indian River Shores. Open up a proceeding on
18 your own motion. Come down and take a look. Is there
19 monopoly abuses? Is the City of Vero Beach abusing the
20 monopoly privileges that you have given it by approving
21 this territorial agreement? We think they are. But
22 let's have a robust discussion and let's -- I mean, let
23 the people come in and listen to them. Let the experts
24 come in and talk. What's the City doing with the
25 regulated profits? You know, what's the return on

1 equity? What equity does the City have? All of those
2 issues are out there. And what's the quality of service
3 differential? Is the City not offering the quality of
4 service that FPL is? And those are the types of issues
5 I think -- I really, truly think you have the
6 jurisdiction and the power to do that today. Not to
7 pick a side, not to say -- not to rule in favor of the
8 City, not to rule in favor of the Town, but to open up a
9 proceeding and really dig into this issue. It's been
10 going on for far too long and people down there are
11 really wanting some relief. They need your help.

12 **COMMISSIONER EDGAR:** Mr. Wright, briefly.

13 **MR. WRIGHT:** Thank you, Madam Chairman. Thank
14 you, Commissioner Edgar.

15 First off, we would dispute pretty much all
16 the facts that he has alleged. Our rates are higher
17 than we want them to be. They've come down \$4.85 in the
18 last year. I expect them to come down again in October.
19 Our rates are higher than we want them to be. We're
20 working on it, as I explained earlier. We have some
21 cost structure issues that we can't do much about. Our
22 distribution and customer costs are not out of line.
23 Our bulk power costs are what they are. That's really
24 that simple.

25 We further dispute that our quality of service

1 is inferior to FPL's. No, we don't have energy
2 conservation programs, but our reliability is great.
3 Our rates are below -- our rates are higher than Gulf --
4 are higher than FPL's.

5 **COMMISSIONER EDGAR:** I have not asked how the
6 rates compare to any others.

7 **MR. WRIGHT:** Yeah. Oh, yes. I did want to
8 answer --

9 **COMMISSIONER EDGAR:** I'm just interested and
10 wanting to get on the record --

11 **MR. WRIGHT:** Thank you.

12 **COMMISSIONER EDGAR:** -- that the rates are the
13 same for customer classes whether they're within or
14 with -- outside the City territory.

15 **MR. WRIGHT:** We charge exactly the same rates
16 inside the city limits, in the unincorporated county,
17 and in Indian River Shores. In fact, we have a
18 contractual right to charge a 10 percent surcharge to
19 Indian River Shores, which we stopped collecting some
20 years ago. I don't remember the exact year. We charge
21 the same rates everywhere that we serve to any
22 residential, general service, or other customer.

23 **COMMISSIONER EDGAR:** All right. Thank you.

24 Thank you, Madam Chair.

25 **MR. MAY:** Could I follow up just one minor --

1 **COMMISSIONER EDGAR:** That's fine.

2 **MR. MAY:** When we brought the lawsuit in
3 circuit court, we thought that that was the forum to
4 address this constitutional issue that really is at the
5 core of our -- but as a result of that, under Chapter
6 164, we had to go through a mediation process that
7 lasted about a year. When we started that mediation
8 process, the rate differential between the bureau and
9 FPL was about 28 percent. It's now at 33 percent. So
10 we're not moving in the right direction.

11 **CHAIRMAN BROWN:** All right. Commissioner
12 Edgar.

13 **MR. WRIGHT:** Madam Chairman, just briefly,
14 it's not. Our rate today is \$117.58 for a residential
15 thousand. FPL is 91.84. It's 28 percent. Thank you.

16 **CHAIRMAN BROWN:** Thank you, Mr. Wright. Not a
17 question.

18 I do have a couple of questions before we get
19 to Commissioner Patronis and Commissioner Brisé just to
20 follow up on some of Commissioner Edgar's questions,
21 which she covered some of mine. But, I mean, really
22 legally what happens when the franchise agreement
23 expires in reality? Mr. Wright?

24 **MR. WRIGHT:** Nothing. We have a -- we have an
25 obligation to serve all of our customers. We're going

1 to continue serving all of our customers. We expect
2 them to continue to pay their bills. It's that simple.
3 It doesn't have any effect. Never did.

4 **CHAIRMAN BROWN:** Mr. May. Mr. May.

5 **MR. MAY:** I don't disagree with that as far as
6 a technical standpoint, but from a legal standpoint,
7 from a legal perspective, the City will be in violation
8 of the Constitution, and I assume that it will be -- you
9 know, if the Commission or a court were to order it, I
10 assume that the City would take all due steps to correct
11 the problem and the Commission would too. And that
12 would be by modifying the territorial boundaries to
13 comport with the constitutional limitations that we've
14 identified.

15 **CHAIRMAN BROWN:** Mr. May, do you think that
16 this Commission has the authority to require a utility
17 to sell its facilities to another utility?

18 **MR. MAY:** I don't think that -- I don't think
19 you have to get there. I think you have the ultimate
20 authority to determine -- you have the ultimate
21 authority to create a monopoly, which you've done. We
22 also think that you have an obligation, if a state
23 agency creates a monopoly, that state agency has an
24 obligation to actively supervise that monopoly to
25 protect captive customers that are disenfranchised.

1 **CHAIRMAN BROWN:** And monopoly -- from
2 monopolistic abuses that you allege have occurred. But
3 really --

4 **MR. MAY:** If the right -- if the left hand
5 giveth, the right hand can take it away. If you can
6 create a monopoly, you can uncreate it.

7 **CHAIRMAN BROWN:** Can you let me finish my
8 question, please? Because in essence what I believe
9 you're really asking is what -- the effect that it would
10 have would be that this Commission would require the
11 City to sell its facilities to Florida Power & Light,
12 and I'm just trying to find in the statute where we have
13 that authority, case law. I mean, I really am sensitive
14 to the issues and the sentiment. I mean, we've gotten
15 hundreds of letters and emails from customers. I
16 understand the concerns that they have and I sympathize
17 with them, but I'm just trying to see where we have that
18 legal authority to do something like you really are
19 suggesting.

20 **MR. MAY:** First, let me apologize for
21 interrupting you. I'm sorry. But to answer your
22 question, I -- again, I go back to the fact that if the
23 Public Service Commission created the monopoly, you can
24 uncreate the monopoly. At that point in time, it would
25 be up to the City of Vero Beach to determine how best to

1 divest itself of those assets. I mean, if it wanted to
2 salvage them, I guess it could do that. I mean, to me
3 the most -- the highest and best use of those assets
4 would be to sell them to FPL.

5 **CHAIRMAN BROWN:** Isn't it almost like inverse
6 condemnation, though, here? This is like an eminent
7 domain, and we don't have that authority, so --

8 **MR. MAY:** Well, I guess I just fundamentally
9 disagree. I think you -- if you have the authority to
10 create the monopoly, you can uncreate it.

11 **CHAIRMAN BROWN:** Okay. So let me just --
12 Commissioner Edgar touched on monopolistic abuses, and
13 I'm trying to understand and see what type of abuses,
14 other than the extraterritorial action, powers that
15 they're operating. Can you kind of elaborate on some of
16 that?

17 **MR. MAY:** Three things come to mind:
18 Excessive rates, lower quality of service, and
19 absolutely no accountability to captive customers.
20 Those are classic symptoms of an unregulated monopoly,
21 which are more than evident here. You have, as I said,
22 you have a laboratory to test that premise. You know,
23 you look at the unregulated versus the regulated. FPL's
24 rates are 33 percent or 30 percent, whatever it is,
25 30 percent lower; FPL's quality of service is better;

1 and FPL's customers -- FPL is accountable to its
2 customers. FPL's customers are protected by the State
3 of Florida: J. R. Kelly, the Office of Public Counsel.
4 FPL has to come to you for approval to do virtually
5 anything it wants to do in the utility realm. They're
6 totally accountable to you and the customers.

7 **CHAIRMAN BROWN:** Okay. I've got the three
8 ones. Thank you. And then, you know, talking about
9 recourse that customers have, you know, a lot of folks
10 think that this is -- the customers that we've been
11 getting emails from and letters, it seems that they
12 believe that this is the last resort after all these
13 years of going back and forth in a very circular
14 argument here. What -- do you believe that this is the
15 last resort for customers of Indian River Shores, of the
16 Indian River Shores customers?

17 **MR. MAY:** I think that from a regulatory
18 standpoint, it certainly is. I mean, you know, again,
19 we certainly believe that these customers deserve to be
20 protected by you all, who created this monopoly. And
21 that if you aren't -- if you aren't willing or if you
22 believe that you don't have the capacity to actively
23 supervise these -- this monopoly that you created and to
24 protect the captive customers, then that's going to have
25 to be a decision as to where they go from there. But --

1 **CHAIRMAN BROWN:** You don't believe that the
2 city council or the courts are more appropriate to
3 address the issue of the rates of the City of Vero
4 Beach?

5 **MR. MAY:** There is -- there's no way that we
6 can get relief from the city council. We don't vote.
7 This is a utility with 65 percent of its customers
8 outside of the corporate limits of the town.

9 **CHAIRMAN BROWN:** Okay.

10 **MR. MAY:** But let me just mention something
11 because I think this is what's getting lost in
12 translation. There's some concept out there under the
13 *Story v. Mayo* case that you don't have to care about the
14 fact that a territorial agreement disenfranchises
15 customers and subjects them to unregulated monopolies.
16 In that case, you had -- and when I got out of law
17 school, I represented Homestead, so I know what happened
18 there.

19 What happened there is there was a territorial
20 agreement between Homestead and FPL. The territorial
21 agreement called for about 400 customers of FPL that
22 were outside the city limits to be transferred to
23 Homestead, and they came to the Commission and said this
24 is -- we're going to be subject to unregulated monopoly
25 abuse, we're going to be -- you know, we're going to

1 have no voice, we're totally disenfranchised.

2 **CHAIRMAN BROWN:** Mr. May, I hate to cut you
3 off, but we've already been over this.

4 **MR. MAY:** But the Commission -- yeah. But I'm
5 just saying when you talk about access to court, that's
6 what the supreme court was saying. If they have a
7 problem with that, you go and sue the city council for
8 breaching its covenant.

9 **CHAIRMAN BROWN:** Do you think that the Indian
10 River Shores folks, do you think that you can pursue a
11 remedy here of what you're really seeking to achieve
12 through the courts?

13 **MR. MAY:** I would prefer to pursue the remedy
14 with you because we fundamentally believe that you have
15 that authority. And, again, I go back, not to repeat
16 myself, but if the Commission created the monopoly, I
17 think you have a legal obligation to actively supervise
18 that monopoly.

19 **CHAIRMAN BROWN:** I appreciate your argument,
20 and I --

21 **MR. MAY:** If you don't, I --

22 **CHAIRMAN BROWN:** -- think it's very creative.
23 I think it's a very creative argument and I appreciate
24 what you're espousing.

25 Last question before I turn to the

1 Commissioners.

2 **MR. MAY:** Could I follow one --

3 **CHAIRMAN BROWN:** No.

4 **MR. MAY:** Okay.

5 **CHAIRMAN BROWN:** The last question is with
6 regard to Florida Power & Light. I see Mr. Donaldson in
7 the audience. I am a little curious why Florida Power &
8 Light has not requested to modify the territorial
9 agreement at this juncture.

10 **MR. DONALDSON:** Sure. Good afternoon, Madam
11 Chair and fellow Commissioners.

12 **CHAIRMAN BROWN:** Nice to see you.

13 **MR. DONALDSON:** Good to see you.

14 **CHAIRMAN BROWN:** Long time no see.

15 **MR. DONALDSON:** I know. Well, you know, we
16 have an agreement/contract with the City of Vero Beach,
17 and so, you know, we need to have their consent in order
18 to go ahead and modify that agreement. And so, you
19 know, they haven't provided it at this point in time,
20 and so that's the reason why we haven't gone that route.

21 As you've heard before, we've already tried to
22 negotiate the sale of the Indian River Shores assets.
23 That hasn't been fruitful to this point. We'll see what
24 the future may hold, but that's the reason why we
25 haven't been able to do that extra step that you're

1 asking for.

2 **CHAIRMAN BROWN:** Thank you, Mr. Donaldson.

3 All right. So I've got a bunch of
4 Commissioners that have questions, so Commissioner
5 Patronis.

6 **COMMISSIONER PATRONIS:** Thank you, Chairman.
7 Just start with Schef a minute. Let's rehash a little
8 bit the offer, the -- what Vero Beach felt like was a --
9 take me through the steps of how you got to that number
10 again and what the numbers are.

11 **MR. WRIGHT:** Certainly, Commissioner. Madam
12 Chairman, thank you.

13 We broke -- after -- we had an original number
14 of 64.5 million. It was based on some summary
15 assumptions and formulas. After we met with the Town in
16 January of this year, we went back and we broke out our
17 costs on a long-term revenue requirements basis into the
18 five major components. Bulk power supply cost,
19 electric, what we call electric fund expenses. It's the
20 direct cost of operating the electric system. The
21 non-departmental costs that are paid by the city
22 electric system, which the city manager is -- supervises
23 the electric department. The finance department
24 provides services: IT, HR, and so on. That's the
25 non-departmental contribution. There's city electric

1 debt, that's the third component. The -- and general
2 fund -- electric, bulk power, non-departmental, electric
3 fund -- and the general fund transfer. So general fund
4 transfer; electric system debt; electric system
5 expenses; non-departmental; and bulk power supply cost,
6 which is the big one. We projected those costs for 50
7 years item by item, year by year using reasonable
8 assumptions. By the way, we used exactly the same
9 escalation rate that Florida Power & Light Company is
10 using in its rate case that's pending before you,
11 2.5 percent per year, for price inflation for those
12 costs that are subject to that, which are the electric
13 fund expenses and the non-departmental costs. We use
14 different costs based on long-term fuel cost escalation
15 rates from EIA, NYMEX, and other sources to get the bulk
16 power supply cost. The general fund transfer is a
17 calculated number. The city debt is known. I mean,
18 it's dollars for the next six years, and at the end of
19 2022, it's paid off. Year by year, component by
20 component we projected those costs out. That was base
21 case with Indian River Shores.

22 We then did a whole another analysis, 50 years
23 without Indian River Shores, taking account of all the
24 reductions in the bulk power supply costs that would
25 accrue, and we had modest reductions based on input from

1 our finance director and our electric director as to
2 what savings we believed would accrue from no longer
3 serving The Shores in the electric fund expenses and in
4 the non-departmental cost expenses.

5 We then calculated what the average cost would
6 be with The Shores and without The Shores, took the
7 difference on a nominal dollar number year by year,
8 present valued it back using a discount rate of 3
9 percent. That may sound low. I will tell you exactly
10 why we used it. We viewed the situation as if we were
11 to sell The Shores. We have to invest the money somehow
12 or another so as to be able to cover the shortfall. And
13 it's not a little bit. It's almost \$3.7 million next
14 year if they -- if we were not to serve them in 2017.
15 It's another 3.7 million in '18. It does drop as some
16 other cost things change in the future, but we would
17 have to invest the money in a secure investment that we
18 could count on.

19 **COMMISSIONER PATRONIS:** I understand.

20 **MR. WRIGHT:** The Finance Commission -- Vero
21 Beach also has a Finance Commission parallel to and
22 similar to the Utilities Commission. They thought
23 3 percent was okay. It's actually -- we thought it was
24 high. We used -- we wanted to use the 30-year T-bond
25 rate, but that was down about 2.65 percent when we did

1 the analysis and we rounded up to 3 percent to be
2 conservative. So that's where those -- and, anyway, you
3 do that and over 30 years the number is \$42,448,000. To
4 that, we rounded that down to 42 and then added
5 5 million to that to cover potential unforeseen costs.

6 You know, you don't know, but something could
7 happen at Stanton 1, there could be a big failure, there
8 could be Clean Power Plan costs, there could be
9 additional environmental costs. Similarly, Stanton 2
10 would not need any additional environmental controls,
11 but there could be another big bill there. There could
12 be an unexpected event at St. Lucie 2 that could result
13 in a bill going to FMPA with our share coming back to
14 us. So --

15 **COMMISSIONER PATRONIS:** So that the
16 \$5 million was --

17 **MR. WRIGHT:** So the \$5 million is --

18 **COMMISSIONER PATRONIS:** The \$5 million was
19 just icing on the cake to make it more comfortable for
20 all parties on your side of the equation.

21 **MR. WRIGHT:** We are co-owners of these three
22 plants. The City of Vero Beach is a virtual co-owner of
23 these power plants. If anything bad, unforeseen happens
24 that costs money to their principal owners, Orlando
25 Utilities Commission and Florida Power & Light Company,

1 they send a bill to the FMPA. They send bills to us; we
2 have to pay them. We hope nothing like that will
3 happen, but we don't know what it could be. But there
4 is risk there.

5 We analyzed it and our guy said, "I think
6 5 million is probably okay." Could it be greater? Yes.
7 Could it be less? Yes. The Town of Indian River Shores
8 wants to pay us one check and walk away, leaving us
9 bearing all the rest of the risk. We said for that we
10 know it doesn't cover the maximum potential exposure,
11 but I stood in front of the council and I said, "I think
12 this is reasonable protection for the city against such
13 cost events."

14 **COMMISSIONER PATRONIS:** Okay. Mr. May, what
15 is -- when was the last offer that was presented to Vero
16 Beach?

17 **MR. MAY:** I guess I'll defer to Mr. Donaldson.
18 The offer came from Florida Power & Light.

19 **COMMISSIONER PATRONIS:** I read where there was
20 some money offered on behalf of Indian River Shores
21 also.

22 **MR. MAY:** The Town of Indian River Shores
23 offered to contribute toward the 30 million -- toward
24 the \$30 million \$3 million, which equates to \$1,000 per
25 customer, which is a very substantial contribution from

1 our standpoint.

2 **MR. DONALDSON:** So I believe it was just a
3 couple of months ago, either between June and August, so
4 it was sometime around that time frame, if I'm not
5 mistaken.

6 **COMMISSIONER PATRONIS:** And that was
7 \$30 million.

8 **MR. DONALDSON:** Yes, sir.

9 **COMMISSIONER PATRONIS:** All right. I'm good.

10 **CHAIRMAN BROWN:** Commissioner Brisé.

11 **COMMISSIONER BRISÉ:** Thank you, Madam Chair.

12 Mr. May, I think I want to go back to the
13 abuse of customers notion. So the idea of excessive
14 rates -- and I think we've established that the rates
15 are the same for the Indian River customers and the Vero
16 Beach customers; is that correct?

17 **MR. MAY:** The Vero rates are the same.
18 Obviously the FPL rates are much lower.

19 **COMMISSIONER BRISÉ:** Right. But for the
20 customers that are being served by Vero, no matter where
21 you are within their territory, their rates are the
22 same.

23 **MR. MAY:** Correct.

24 **COMMISSIONER BRISÉ:** Has there been any
25 assessment to determine if when there are issues, that

1 the trucks roll out slower, that the response time on
2 the phone is longer for those customers that are in
3 different parts of the territory?

4 **MR. MAY:** You know, getting into the facts, I
5 think there are. I think our town manager can provide
6 you with a folder of that information, of customer
7 complaints.

8 **COMMISSIONER BRISÉ:** So -- but are those
9 complaints different from the regular complaints that
10 the Vero customers are providing themselves to the City?

11 **MR. MAY:** I'm not sure. All I have is the
12 information from the Town that it gets. But I did want
13 to go back just very briefly to --

14 **COMMISSIONER BRISÉ:** Let me finish with my set
15 of questions, and then we can go back.

16 **MR. MAY:** Sure.

17 **COMMISSIONER BRISÉ:** In terms of the
18 accountability segment, so when I served on the
19 legislature, I had the City of North Miami Beach that
20 provided water to some surrounding municipalities or
21 customers of unincorporated Dade. They didn't have
22 representation on any board. Is there a presentation
23 here on a board that helps manage the rates?

24 **MR. MAY:** No. The rates are entirely set by
25 the city council for the City of Vero Beach.

1 **COMMISSIONER BRISÉ:** But there are
2 recommendations that are made by a board that includes
3 some level of representation.

4 **MR. MAY:** It's an advisory board that is
5 purely advisory. And as Mr. Auwaerter pointed out, he's
6 vice chair. That utilities board voted unanimously and
7 recommended that the city council accept the \$30 million
8 offer and it was rejected. And I --

9 **COMMISSIONER BRISÉ:** That's understood. But
10 sometimes our staff recommends something to us and we
11 decide to go against it, so --

12 **MR. MAY:** We're hoping that happens today.

13 (Laughter.)

14 **COMMISSIONER BRISÉ:** But, I mean, the board is
15 advisory and we understand what that entails, but
16 there's still some level of input by an individual that
17 represents those members of the community, if I
18 understand it properly.

19 **MR. MAY:** I don't think Mr. Auwaerter would
20 let me get out of this room if I conceded that there was
21 meaningful input. I mean, he thinks that the Utilities
22 Commission -- in his role on the Utilities Commission,
23 they do not listen to him.

24 **COMMISSIONER BRISÉ:** Okay. And so from a
25 broader perspective, so if I live in one of the five

1 IOUs that we regulate here and I border another one and
2 my rates are higher because I live across the street
3 from this other one and the rates are lower, does that
4 give me the right to then go before the Commission or
5 seek redress in that way?

6 **MR. MAY:** It's -- that's a good question but
7 it's apples and oranges. In the situation where you're
8 a customer of an IOU, you -- the customer -- the utility
9 is directly accountable to the customer. And if it's
10 not accountable to the customer, J. R. Kelly and his
11 team of lawyers will make sure that the utility is
12 accountable. Not only that, every customer of an IOU
13 can come before you, and we just do not have that
14 capacity. We in the town are completely and totally
15 disenfranchised, voiceless.

16 **COMMISSIONER BRISÉ:** So -- but I still believe
17 that from the perspective that the legislature, in its
18 infinite wisdom, right, perceived that a body that votes
19 represents its constituency, and this body decided that
20 they would create a body that would serve as an advisory
21 body to itself to at least take in account the voice of
22 those who are represented across the area. And as we've
23 heard from Representative Mayfield, that even at the
24 legislature this issue has been brought forward multiple
25 times, and there hasn't been the will to make a change

1 to it. So why would it be appropriate for this
2 Commission to take that big of a leap on an issue that
3 the legislature has not decided to act?

4 **MR. MAY:** Just here's an example of why that
5 would not work. In 2008, Representative Mayfield's
6 husband was instrumental in passing a law that would
7 have required a municipal utility that had customers
8 between 30- and 35,000 people to have a referendum and
9 create a representative utility authority of all the
10 customers.

11 **COMMISSIONER BRISÉ:** I voted for that.

12 **MR. MAY:** Yes. And Mr. Mayfield, he -- his
13 staff came to the Florida Public Service Commission and
14 said, "How many customers does Vero Beach have?" The
15 information that Vero had filed with the Commission said
16 that they had 34,000 customers. Then when the bill
17 passed, they attempted to have the referendum. Vero
18 changed the way it counted customers and said, "Whoops.
19 We don't have 34. We only have -- we have less than
20 30." That's the kind of behavior, that is the kind of
21 attitude, and that's what we're dealing with,
22 Commissioner Brisé, when we're -- that's why our folks
23 are so frustrated.

24 **COMMISSIONER BRISÉ:** Okay. I hear you.

25 **CHAIRMAN BROWN:** Commissioner Graham.

1 **COMMISSIONER GRAHAM:** Thank you, Madam Chair.

2 You know, we've been at this now for over
3 three hours.

4 **CHAIRMAN BROWN:** Uh-huh.

5 **COMMISSIONER GRAHAM:** If the question comes
6 down to -- and we're all sympathetic of what's going on,
7 but if the question comes down to, and this is the
8 suggestion I heard, that it would be a different story
9 if Vero Beach or the people that lived outside of Vero
10 Beach would come before the Public Service Commission,
11 that would be the representation. That's fine. That
12 sounds like a good idea. But that's a decision for the
13 legislators to make. That's not a decision for us to
14 make.

15 What's before us right now is not a
16 territorial dispute. So, I mean, me being the
17 non-lawyer here, let me just cut straight through to it.
18 I see nothing other than voting the staff recommendation
19 up with the change that Kathryn made about adding them
20 to the party if this thing is challenged. That's a
21 motion.

22 **CHAIRMAN BROWN:** Okay. You got to love
23 Commissioner Graham. He cuts through the meat.
24 Although this is a very difficult issue and it does
25 deserve a lot of time and attention to sift through, so

1 I appreciate the Commissioners' and the parties'
2 indulgence and the customers who came up here because I
3 do think this is such an important issue. So I guess
4 Commissioner Graham made a motion to approve the staff
5 recommendation on Issues 1 through 5, with the
6 modification of Issue 1 to include language as
7 Ms. Cowdery delineated earlier. Is there a second?

8 (No response.)

9 Is there a second for discussion purposes?

10 **COMMISSIONER PATRONIS:** Second.

11 **CHAIRMAN BROWN:** Okay. Let's discuss.

12 **COMMISSIONER GRAHAM:** I'm not quite sure what
13 -- what you guys are looking for me to say. I -- you
14 have to vote on what's in front of you. There's not a
15 territorial dispute in front of us. Kathryn hit it
16 right on the head earlier. That's not in front of us.

17 Mr. May said earlier that after the franchise
18 agreement lapses, then it becomes a constitutional issue
19 and maybe the supreme court will make a decision there.
20 Well, then that's fine. Then maybe that needs to be
21 there because it's a constitutional decision.

22 The decision before us I think is pretty
23 clear. I understand all the fringe things that are
24 going on and the representation without -- not having --
25 taxation with no representation. I understand all that

1 part. But we're reaching out to things that have
2 nothing to do with the four corners of things that are
3 in front of us.

4 **CHAIRMAN BROWN:** Thank you, Commissioner
5 Graham, for some clarification on your motion.

6 All right. If there is no further discussion,
7 I'm going to take a vote at this time. Any further
8 discussion before we take a vote on Commissioner
9 Graham's motion?

10 All right. All those in favor of Commissioner
11 Graham's motion, say aye.

12 **COMMISSIONER PATRONIS:** Aye.

13 **COMMISSIONER BRISÉ:** Aye.

14 **COMMISSIONER GRAHAM:** Aye.

15 **CHAIRMAN BROWN:** Aye.

16 Opposed?

17 **COMMISSIONER EDGAR:** Nay.

18 **CHAIRMAN BROWN:** Okay. One nay. Motion
19 passes.

20 All right. Thank you, parties, for coming.
21 Again, encourage the parties to continue negotiations in
22 their discussions and pursuing a remedy that's in the
23 public interest as a whole. Thank you.

24 **MR. MAY:** Madam Chair, just one procedural
25 question. I understand this will be a PAA.

1 **CHAIRMAN BROWN:** That is correct. Issue 5 is
2 a PAA.

3 **MR. MAY:** And Issue 4 will be a final order.

4 **CHAIRMAN BROWN:** That is -- that's my
5 understanding. Ms. Cowdery, 1 through 4 is a final
6 order.

7 **MS. COWDERY:** Yes.

8 **CHAIRMAN BROWN:** Can you -- microphone.

9 **MS. COWDERY:** That's correct.

10 **CHAIRMAN BROWN:** Okay.

11 **MR. MAY:** So just so we understand --

12 **MS. COWDERY:** Yeah. Procedural and
13 preliminary would be what they are.

14 **CHAIRMAN BROWN:** It's a final order, 1 through
15 4 is final.

16 **MS. COWDERY:** Yes, once the consummating order
17 is issued.

18 **CHAIRMAN BROWN:** Within, right --

19 **MS. COWDERY:** The 21 days. Right.

20 **CHAIRMAN BROWN:** -- the 21 days. Okay. So do
21 you understand?

22 **MR. MAY:** I do, but the order that will be
23 issued will be partly a final order and partly a
24 proposed order.

25 **CHAIRMAN BROWN:** That is correct.

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MR. MAY: Okay. Thank you.

CHAIRMAN BROWN: Okay?

Thank you again for coming, folks.

All right. Thank you, Commissioners.

(Agenda item concluded.)

1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 21st day of September, 2016.

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LINDA BOLES, CRR, RPR
FPSC Official Hearings Reporter
(850) 413-6734

MAYOR
BRIAN M. BAREFOOT

VICE MAYOR
GERARD A. WEICK

COUNCIL:
THOMAS W. CADDEN
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September 13, 2016

Chairman Julie I. Brown
Commissioner Ronald Brisé
Commissioner Lisa P. Edgar
Commissioner Art Graham
Commissioner Jimmy Patronis
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0810

RE: Petition for modification of territorial order based on changed legal circumstances emanating from Article VIII, Section 2(c) of the Florida Constitution, by the Town of Indian River Shores
Docket No.: 160049-EU

Madam Chair and Commissioners:

I wish that I could be with you today as you review our request for a change in territorial boundaries, but unfortunately I have a previously scheduled commitment that could not be changed.

I appreciate the opportunity to share my comments with you so that they can become part of the official record.

Let me start by framing this issue as succinctly as possible. As Mayor of the Town of Indian River Shores, I represent thousands of constituents who for years have been subject to the abuses of an unregulated, monopoly utility.

Almost three decades ago, your predecessors on this Commission approved a service territory boundary that split our Town in two and quite literally divides our community. Those who happen to live north of Old Winter Beach Road receive service from Florida Power & Light (FPL), whose rates and quality of service are regulated extensively by you. In addition, Town residents who are FPL customers are provided with state-funded legal representation from the Office of Public Counsel, whose responsibility it is to protect those customers from unreasonable rates and unfair monopoly practices. Those who live south of Old Winter Beach Road are not so fortunate. They are forced to receive electric service from the Vero Beach

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utility, with rates established by a Vero Beach City Council that has no accountability to the Town or our residents.

Furthermore, Town residents that are being forced to take service from Vero's unregulated monopoly have no say over how the City uses the monopoly profits it extracts from them, including the City's continued diversion of those profits to pay for costs that have nothing to do with electric service. Moreover, our residents who are being forced to take service from this unregulated monopoly receive no protection from the Office of Public Counsel. To make matters worse, your staff on pages 16 and 17 of its recommendation states that the Town is forbidden from representing its residents and trying to protect them these unregulated monopoly abuses. This, in my opinion, is a travesty. Certainly it cannot be the policy of the state of Florida to strip a group of its citizens of all regulatory protection.

Members of the Vero Beach City Council have admitted publicly that mistakes made by this unregulated monopoly utility over many years led to higher rates for customers. They have promised to address these issues and lower rates, but it is now clear from recent City financial analyses that systematic increases are planned over the next 30 years.

The City, meanwhile, refuses to offer meaningful representation to our citizens who are served by the utility, and has gone to great lengths to avoid such representation. When a law was passed in 2008 that would have pushed the City to form a representative utility authority accountable to all its customers—resident and non-resident alike — the City actually changed the way it historically defined the word "customer" in order to evade the statute.

And now, Madame Chair, despite your specific direction that our municipalities work in good faith toward a negotiated settlement, the City has turned its back on just such a settlement offer.

Just last month, the Vero City Council rejected the unanimous recommendation of its own Utilities Commission and voted to refuse a \$30 million offer from Florida Power & Light to purchase the utility's distribution system in our Town. This offer, on a per customer basis, doubled the highest purchase price the City's own consultants could identify in a national survey of utility system sales. It would have doubled the City's annual revenue. And our analysis, led by a former Chair of your Commission, found that it would have more than covered the City's real and potential costs and protected the City's remaining customers from rate increases.

In the interest of a negotiated settlement, our Town Council offered to contribute \$3 million toward FPL's offer. And yet, no settlement could be reached.

I share all this with you, Madame Chair and Commissioners, so that you understand the context behind our request to amend the territorial boundaries. I am not an attorney, so I will leave it to our legal team to discuss the unique Constitutional and anti-monopoly issues. For our citizens, this isn't just an abstract Constitutional issue. And we are not pursuing this request just to lower our rates. What we are doing is attempting to protect our citizens from a situation in which a majority are subject to the abuses of an unregulated monopoly.

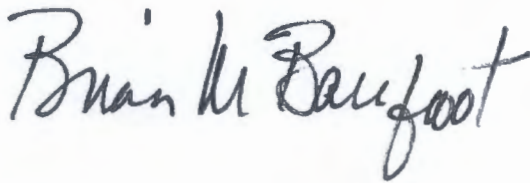
Our franchise agreement with the City expires in two months. We have informed the City that at that time, it will no longer have our bi-lateral agreement to exercise extra-territorial powers and operate an unregulated monopoly within our municipal boundaries.

The City's response to us is the same response it has given for decades to non-resident customers subject to unregulated monopoly abuses: "Who cares?" I am hoping, Madame Chair and Commissioners, that you will tell the City that such a response will no longer be accepted.

Having a PSC-regulated utility, with professional and neutral oversight of utility rates, as the single electric utility provider in the Town would cure the issues that I have described. The City has shown no interest in addressing these issues, either by solving the underlying causes of unreasonable rates, by providing meaningful representation, or by accepting an offer for what would likely have been the nation's largest per-customer utility system purchase. We need your help.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "Brian M. Barefoot". The signature is written in a cursive style with a large, prominent 'B' at the beginning.

Brian M. Barefoot
Mayor
Town of Indian River Shores

Testimony before the Florida Public Service Commission
regarding

Docket No. 160049-EU – Petition for modification of territorial order based on
changed legal circumstances emanating from Article VIII, Section 2(c) of the
Florida Constitution, by the Town of Indian River Shores

September 13, 2016

By
Robert Auwaerter
Indian Shores Representative and Vice Chairman
of the City of Vero Beach Utilities Commission

Madam Chairwoman and Members of the Commission,

Good morning. Thank your for allowing me to speak on the subject on the docket. For the record, I am Robert Auwaerter, the Indian River Shores Representative on the City of Vero Beach Utilities Commission, which is solely an advisory board to Vero Beach's City Council on utility matters. I also serve as Vice Chairman of the Utilities Commission. In addition, I serve as Chairman of the Town of Indian River Shores Finance Committee. Prior to retiring and becoming a full time resident of Indian River Shores, I worked for 35 years in bond and money market investment management, almost all of which was at the Vanguard Group, the world's largest mutual fund complex, where I ran their Fixed Income Group responsible for \$750 billion of shareholder assets. During my career, I had many opportunities to perform financial analysis to determine whether securities issued by both investor-owned as well as municipal electric utilities were suitable investments.

As a Vero Beach Electric customer, I pay one of the highest electric rates in the State of Florida. Much has been made of how much higher Vero Beach's rates are

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they can be voted out of office by the citizen ratepayers. Obviously, this remedy is not available to the majority of Vero Beach Electric ratepayers.

Vero Beach Electric customers who reside outside the City's incorporated borders are subject to the perfect storm. They consistently pay some of the highest electric rates in the State of Florida. While doing so, they massively subsidize the City of Vero Beach's General Fund operating budget which allows it to keep its property tax rates at some of the lowest levels in the State. Finally, these outside customers have no recourse to anybody if their electric rates are too high or their service is poor. They cannot vote the operating board—the Vero Beach City Council—out of office or appeal to this Commission like a customer of an investor-owned utility. If this is not the classic example of an unregulated monopoly using its abusive pricing powers to grind its captive customers into the ground, then I do not know what is. It is pure and simple “taxation without representation.”

I would urge this Commission to deny staff's recommendation on issues 4 and 5 and redraw the territorial boundaries so that the Town's residents can be protected from unregulated monopoly abuse, and all residents in the Town can be served by a single utility provider—FP&L—which would be extensively regulated and directly accountable to this Commission. Thank your for your consideration.