BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Town of Indian River Shores,

Petitioner,

Docket No. 160049-EU

Filed: October 25, 2016

vs.

Florida Public Service Commission,

Respondent.

_____/

THE TOWN OF INDIAN RIVER SHORES' PETITION FOR AN EXPEDITED ADMINISTRATIVE HEARING ON A PROPOSED AGENCY ACTION PURSUANT TO SECTION 120.57(2), FLORIDA STATUTES

Petitioner, TOWN OF INDIAN RIVER SHORES (the "Town"), pursuant to Rules 25-22.029, 28-106.201, and 28-106.301, Florida Administrative Code, requests an expedited administrative hearing be conducted pursuant to Sections 120.569 and 120.57(2), Florida Statutes, to protest that portion of Order No. PSC-16-0427-PAA-EU (the "Order") that relates to the Notice of Proposed Agency Action Order Denying Petition for Modification of Territorial Order Based on Changed Legal Circumstances (the "PAA Notice"), which the Florida Public Service Commission (the "Commission") issued on October 4, 2016.[1] Specifically, the Town contests the Commission's preliminary interpretation of Article VIII, Section 2(c) of the Florida Constitution and the lawfulness of the Commission's ensuing preliminary legal conclusion that the City of Vero Beach (the "City") is not in violation of that provision of the Constitution if the

[1] The Order sets forth intermediate as well as proposed action. The Notice of Further Proceeding or Judicial Review in the PAA Notice expressly advises that the Commission's proposed denial of the Town's petition for modification of the territorial order based on changed legal circumstances emanating from the Florida Constitution is "preliminary" and that substantially affected persons have the opportunity to protest the PAA Notice and request a hearing under Sections 120.569 and 120.57, Florida Statutes. However, as is discussed in more detail below, certain other components of the Order announced intermediate action. Therefore, the Town reserves the right to appeal, if necessary, those intermediate matters once final agency action is issued in response to this protest of the PAA Notice.

City continues to insist that it can unilaterally exercise extra-territorial powers within the corporate limits of the Town. In support thereof, the Town states:

Identification of Agency Affected

1. The name, address and telephone number of the agency affected are:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Telephone: (850) 342-3552

Identification of Petitioner and Petitioner's Representatives

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

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

3. The name, address and telephone number of the Town's representatives, which shall be the address for service purposes during the course of these proceedings, are:

D. Bruce May, Jr.
bruce.may@hklaw.com
Karen Walker
karen.walker@hklaw.com
Kevin Cox
kevin.cox@hklaw.com
Holland & Knight LLP
315 S. Calhoun Street, Suite 600
Tallahassee, Florida 32301
Telephone: 850-224-7000
Facsimile: 850-224-8832

With a courtesy copy to:

Chester Clem
Town Counsel
cclem@chesterclem.com
2145 15th Avenue

Vero Beach, Florida 32960-3435
Telephone: 772-978-7676
Fax: 772-978-7675

No Material Facts Are in Dispute

4. The Town is currently unaware of any disputed issues of material fact and thus is requesting that an expedited hearing be conducted pursuant to the streamlined procedures set forth in Section 120.57(2), Florida Statutes. However, the Town reserves the right to request a hearing under Section 120.57(1), Florida Statutes, if any other party disputes any of the material facts set out in this petition or otherwise relevant to Town's statement of ultimate facts or its requested relief.

5. Likewise, the Town does not believe a service hearing is required to determine whether continued unilateral exercise of extra-territorial powers by the City within the Town is unconstitutional and requires modification of the Territorial Orders. But in the event any other party requests an evidentiary hearing, and the Commission determines that such a hearing is necessary, the Town requests that it be conducted in the Town so that the Commission can hear directly from the City's captive customers in the Town.

Statement of Ultimate Undisputed Facts That Require Reversal or Modification

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

7. The City is an incorporated Florida municipality of approximately 15,000 residents in Indian River County, Florida.

8. The City owns and operates a municipal electric utility system that serves approximately 34,000 customer meters, of which approximately 12,000 are located within the corporate limits of the City ("Resident Customers") and approximately 22,000 are located

outside the City limits ("Non-Resident Customers"). Approximately 3,000 of the City's Non-Resident Customers are located within the corporate limits of the Town.

9. The City was incorporated by Chapter 11262, Laws of Florida (1925), reincorporated by Chapter 14439, Laws of Florida (1929), and reincorporated by Chapter 27943, Laws of Florida (1951). The City currently operates pursuant to a City Charter enacted by referendum election on March 9, 1982.

10. The Town was established by Chapter 29163, Laws of Florida (1953).

11. When the Town was originally established in 1953, its northern boundary generally tracked east to west along Winter Beach Road although at that time approximately 50 acres in the Town were north of Winter Beach Road. *See* Ex. "A".

12. On March 30, 1957, by Ordinance No. 2, the Town annexed approximately 11.5 additional acres north of Old Winter Beach Road. *See* Ex. "B".

13. On October 12, 1963, by Ordinance No. 50, the Town annexed approximately 52.3 additional acres north of Old Winter Beach Road. *See* Ex. "C".

14. In 1968, the Town entered into a bilateral agreement with the City which, among other things, authorized the City to provide electric service to residents "within the corporate limits of said Town" and to occupy and use the Town's rights-of-way and other public places, for a limited term of 25 years (the "1968 Agreement"). A copy of the 1968 Agreement is attached as Exhibit "D".

15. On November 1, 1971, FPL and the City entered into a bilateral territorial agreement which was contingent upon Commission approval ("Territorial Agreement"). The Territorial Agreement among other things established Winter Beach Road as the territorial

boundary line which divides the respective electric service areas of FPL and the City within the Town. That Territorial Agreement had a term of 10 years.

16. When FPL and the City entered into the Territorial Agreement on November 1, 1971, approximately 113 acres in the Town were north of Winter Beach Road.

17. Prior to the Commission's approval of the Territorial Agreement, on November 11, 1971, the Town Mayor responded to the Commission's inquiry and advised the Commission in writing that "[o]n the 18th day of December 1968 the Town of Indian River Shores signed an agreement with the City of Vero Beach for twenty five (25) years with an option for renewal of another twenty five (25) years for power and water to be furnished to the Town of Indian River Shores." *See* Ex. "E".

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

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

20. In 1986, seven years before the 1968 Agreement was to expire, the Town entered into another bilateral agreement with the City which expressly superseded the 1968 Agreement

and again granted to the City the Town's temporary consent for the City to exercise certain extra-territorial powers within the Town's corporate limits for a limited period of 30 years, including giving the City an exclusive 30-year franchise to provide electric service to certain parts of the Town (the "Franchise Agreement"). A copy of the Franchise Agreement is attached hereto as Exhibit "G."

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

22. When the Territorial Agreement was last amended in 1988 there was a formal bilateral agreement in place pursuant to which the Town gave the City temporary consent to exercise extra-territorial powers within the Town up through but not beyond November 6, 2016.

23. Subsequent to the execution of the 1968 Agreement, the Town has never collected franchise fees from the Town or from FPL.

24. The Commission has never conducted a service hearing in the Town related to the Territorial Agreement.

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

26. By certified letter dated July 18, 2014, attached hereto as Exhibit "H", the Town notified the City that the Town will not renew the City's franchise, and that upon expiration of

the Franchise Agreement the City will no longer have the Town's permission to exercise extra-territorial powers with the Town.

27. On August 12, 2015, FPL made an offer to purchase the City's electric utility system within the Town for $13 million cash. *See* Ex. "I". On August 4, 2016, FPL made a new offer to purchase the City's electric utility system in the Town for $30 million cash. *See* Ex. "J".

28. On August 9, 2016, the City's Utilities Commission unanimously recommended to approve FPL's offer to purchase the utility system in the Town dated August 4, 2016. *See* Ex. "K".

29. On August 16, 2016, the City Council, by 3-2 vote, did not accept the recommendation of its Utilities Commission; instead, they voted to reject FPL's offer to purchase the City's electric system in the Town for $30 million.

Constitutional and Procedural Background

30. Prior to November 5, 1968, Article VIII, Section 8 of the 1885 Florida Constitution established that a municipality's powers were limited to those conferred on the municipality by the Legislature: "The Legislature shall have the power to establish . . . municipalities . . . to prescribe their jurisdiction and powers, and to alter or amend the same at any time."

31. When Florida's Municipal Home Rule Amendment to the Florida Constitution ("Home Rule Amendment") was ratified by the electorate on November 5, 1968, the scope of municipal powers was broadened by Article VIII, Section 2(b) of the 1968 Florida Constitution, which now states: "Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render

municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective."

32. However, the powers bestowed on municipalities by the Home Rule Amendment are not unlimited. Under Article VIII, Section 2(c) of the 1968 Constitution, municipalities continue to be entirely dependent on the Legislature when it comes to their power to annex unincorporated areas, merge with other municipalities, or exercise extra-territorial powers outside of their municipal boundaries: "Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law."

33. In 1973, the Florida Legislature enacted the Municipal Home Rule Powers Act, which is codified in Chapter 166, Florida Statutes, and mirrors the constitutional limitations on a municipality's exercise of extra-territorial powers:

> (3) The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:
>
> (a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution.

§ 166.021(3)(a), Fla. Stat. (emphasis added).

34. Section 180.02(2), Florida Statutes, provides that a municipality may exercise extra-territorial powers outside its boundaries in surrounding unincorporated areas but such extra-territorial powers "shall not extend or apply within the corporate limits of another municipality."

35. The Town previously sought a declaration in the Circuit Court of the Nineteenth Judicial Circuit in and for Indian River County, in a case styled *Town of Indian River Shores v.*

City of Vero Beach, Case No. 31-2014-CA-000748 (the "Circuit Court proceeding"), concerning whether the City has the statutory authority required under Article VIII, Section 2(c) of the Florida Constitution and Sections 166.021(3)(a) and 180.02(2), Florida Statutes, to unilaterally exercise extra-territorial powers within the corporate limits of the Town following the November 6, 2016 expiration of the bilateral Franchise Agreement.

36. In the Circuit Court proceeding, the Town formally advised the Court that it agreed that any such determination by the court must ultimately be brought to the Commission before any territorial agreement or any rights or obligations thereunder could be modified. However, the City and the Commission's counsel asserted that the court lacked jurisdiction to resolve the constitutional issues; rather those issues were under the Commission's jurisdiction set forth in Section 366.04, Florida Statutes. The Circuit Court accepted the Commission counsel's jurisdictional assertions and dismissed the Town's claim for declaratory relief with prejudice due to lack of jurisdiction.

37. Accordingly, on January 5, 2016, the Town petitioned the Commission for a declaratory statement to confirm the extent of the Commission's jurisdiction to address the constitutional limitations on the City's exercise of extra-territorial powers within the Town. Specifically, the Town requested a limited declaratory statement that:

> The PSC lacks the jurisdiction under Chapter 366, Florida Statutes, or any other applicable law, to interpret Article VIII, Section 2(c) of the Florida Constitution, and Section 166.021, Florida Statutes, for purposes of adjudicating whether the Town has a constitutional right, codified in the statutes, to be protected from unconsented exercises of extra-territorial powers by Vero Beach within the Town's corporate limits.

38. The Commission refused to issue the declaratory statement requested by the Town. Instead, on March 4, 2016, the Commission issued a declaratory statement that the Commission "has the jurisdiction under Section 366.04, F.S., to determine whether Vero Beach

has the authority to continue to provide electric service within the corporate limits of the Town of Indian River Shores upon expiration of the franchise agreement between the Town of Indian River Shores and the City of Vero Beach." *In re: Petition for declaratory statement regarding the Florida Public Service Commission's jurisdiction to adjudicate the Town of Indian River Shores' constitutional rights*, Order No. PSC-16-0093-FOF-EU, Docket No. 160013-EU (March 4, 2016). The Commission also confirmed that in exercising such jurisdiction it could interpret Article VIII, Section 2(c) of the Florida Constitution and Section 166.021(3)(a), Florida Statutes, which limit a municipality's lawful ability to exercise extra-territorial powers. *Id*. at 14.

39. On March 4, 2016, the Town filed a Petition For Modification of Territorial Order Based on Changed Legal Circumstances Emanating from Article VIII, Section 2(c) of the Florida Constitution ("Petition"). In its Petition, the Town asserted that the Territorial Orders should be modified based on two separate grounds: first, over the course of time, the City has demonstrated that it is using the Commission's Territorial Orders to operate an unregulated monopoly within the Town and to subject captive customers in the Town to excessive rates, inferior quality of service and other monopoly abuses, which actions are not in the public interest ("Unregulated Monopoly Claim"); and second, after November 6, 2016, when the Franchise Agreement expires, the City will lack the statutory power required by Article VIII, Section 2(c) of the Florida Constitution to unilaterally exercise extra-territorial powers within the Town ("Constitutional Claim").

40. On October 4, 2016, the Commission issued Order No. PSC-16-0427-PAA-EU, which ruled on the Town's Petition and related motions, and divided its rulings into intermediate action and preliminary proposed agency action. As intermediate action, the Commission dismissed with prejudice the Town's Unregulated Monopoly Claim for lack of standing. Order

at 12 and 21.[2] As proposed agency action, the Commission preliminarily concluded that the City's provision of electric utility service in the Town did not violate the Florida Constitution and other laws cited by the Town, and further concluded that modification of the Territorial Orders was not required due to changed legal circumstances emanating from Article VIII, Section 2(c) of the Florida Constitution.

41. In the PAA Notice, the Commission proposed the following interpretation of the Florida Constitution and preliminarily concluded that its administrative approval of the Territorial Agreement between FPL and the City was sufficient to meet the requirements of Article VIII, Section 2(c):

> A plain reading of Article VIII, Section 2(c) is that Vero Beach's authority to supply electricity outside its boundaries must come from general or special law. Vero Beach is providing electric service to customers in the territory approved in the Territorial Orders as provided by general law, Section 366.04, F.S.

Order at 16.

42. Based on its proposed interpretation of Article VIII, Section 2(c) of the Florida Constitution, the Commission offered a further preliminary legal conclusion that the imminent expiration of the bilateral Franchise Agreement between the Town and the City did not constitute a change in legal circumstances requiring modification of the Territorial Order:

> Because Indian River Shores' consent was not required by the Florida Constitution or Section 366.04, F.S., for our approval of the FPL-Vero Beach territorial agreements, Indian River Shores' alleged withdrawal of consent is not a change in any circumstance that we considered or relied upon in issuing the Territorial Orders. For this reason, Indian River Shores' alleged withdrawal of consent when the Franchise Agreement expires on November 6, 2016, is not a change in circumstance requiring modification of the Territorial Orders.

Order at 18.

[2] By filing this Petition, the Town does not abandon its Unregulated Monopoly Claim and expressly reserves the right to appeal those aspects of the Order that are intermediate action, including the Commission's dismissal of the Town's Unregulated Monopoly Claim, if necessary, once final agency action is issued on the proposed action set forth in the PAA Notice.

Receipt of Notice of Agency Decision

43. On October 4, 2016, by email from the Commission Clerk's office, the Town received the Commission's Notice of Proposed Agency Action Order Denying Petition for Modification of Territorial Order Based on Changed Legal Circumstances.

The Town's Substantial Interests

44. Under Florida law the parties to a territorial agreement are not the only ones that may seek a modification of an order approving such agreement. "Nor can there be any doubt that the commission may withdraw or modify its approval of a service area agreement, or other order, in proper proceedings initiated by it, a party to the agreement, or even an interested member of the public." *Peoples Gas Sys., Inc. v. Mason*, 187 So. 2d 335, 339 (Fla. 1966); *Pub. Serv. Comm'n v. Fuller*, 551 So. 2d 1210, 1212 (Fla. 1989) ("[W]e held then [in *Mason*] and reaffirm now that 'the commission may withdraw or modify its approval of a service area agreement, or other order, in proper proceedings initiated by it, a party to the agreement, or even an interested member of the public.'"); *see also City of Homestead v. Beard*, 600 So. 2d 450, 453 n.5 (Fla. 1992) (same).

45. As an incorporated municipality, the Town has a right to be protected from the unilateral exercise of extra-territorial powers by the City in violation of Article VIII, Section 2(c) of the Florida Constitution. The Town thus has a substantial interest in seeking relief to ensure that the City's conduct is compliant with, and the Territorial Orders are modified to conform to, the Florida Constitution as such conduct and orders relate to the City's unilateral exercise of extra-territorial powers within the Town's corporate limits.

46. As such, the Commission has already determined on page 12 of the Order that the Town "has established *Agrico* standing by alleging injury to its substantial interests as a

municipality by arguing that it has a constitutional right to require us to modify the Territorial Order when the Franchise Agreement and Indian River Shores' consent expire on November 6, 2016."

Specific Constitutional Provisions, Statutes and Rules that Require Reversal or Modification, and Explanation of How the Ultimate Facts Relate Thereto

47. A reversal or modification of the Commission's proposed agency action is required by the following constitutional provisions and statutes: Article VIII, Section 2(c) of the Florida Constitution; and Sections 166.021 and 180.02(2), Florida Statutes.

48. Under Article VIII, Section 2(c) of the Florida Constitution, the authority to grant extra-territorial powers to a municipality is exclusive to the Legislature, thus the City has no inherent municipal home rule authority to unilaterally exercise extra-territorial powers within the corporate limits of the Town. Instead, the City has only those extra-territorial powers that the Legislature expressly grants to it by general or special law. Since there is no current general or special law that confers on the City the municipal power to unilaterally exercise extra-territorial powers within the corporate limits of the Town, the City needed a bilateral agreement with the Town, which it had in the 1968 Agreement and the subsequent 1986 Franchise Agreement.

49. Up until now, by virtue of the 1968 Agreement and the Franchise Agreement, every time the Commission has reviewed and approved the Territorial Agreement and any amendments thereto, there has existed a bilateral, legally binding contract between the City and the Town under which the City enjoyed the Town's temporary consent to provide extra-territorial electric service within the Town. Moreover, prior to first approving the Territorial Agreement in 1972, the Commission was expressly made aware that the Town had given the City its temporary consent to provide extra-territorial electric service within the Town pursuant to a legally binding contract.

50. Those legal circumstances have significantly changed since the Commission first reviewed and approved the Territorial Agreement. The Town has formally notified the City that when the Franchise Agreement expires on November 6, 2016, there will no longer be a bilateral agreement among the parties regarding the City's exercise of extra-territorial powers within the Town. Moreover, regardless of the statutory powers that the City may have had when the Territorial Agreement was first approved by the Commission, there is no general or special law currently on the books where the Legislature has conferred on Vero Beach the power to unilaterally exercise extra-territorial power within the corporate limits of the Town.

51. The Commission's preliminary interpretation of Florida's Constitution is erroneous because an order of an administrative agency cannot provide the City with the organic power required under Article VIII, Section 2(c) of the Florida Constitution and Section 166.021(3)(a), Florida Statutes, to exercise unilateral extra-territorial power within the corporate limits of the Town. To comply with the Constitution, the Legislature—not the Commission—must provide such extra-territorial power to the City by special or general law.

52. Section 180.02(2), Florida Statutes, expressly provides that while a municipality may exercise extra-territorial powers outside its boundaries in surrounding unincorporated areas, such extra-territorial powers "shall not extend or apply within the corporate limits of another municipality."

53. Modification of the Territorial Orders is necessary to avoid unilateral exercise of extra-territorial power within the corporate limits of the Town in contravention of the Florida Constitution, and Sections 166.021 and 180.02(2), Florida Statutes.

54. It is in the public interest for the Commission to ensure that the Territorial Orders conform with the requirements of the Florida Constitution, particularly the constitutional limitations on a municipality's unilateral exercise of extra-territorial power.

This Dispute Can Be Most Effectively Resolved Through
The Streamlined Hearing Procedures Under Section 120.57(2), Florida Statutes

55. The Town's protest regarding the PAA Notice does not involve disputed issues of material fact; instead, it is focused solely on disputed issues of law revolving around the Commission's preliminary interpretation of the Florida Constitution. Those disputed issues of law can be most efficiently and expeditiously resolved pursuant to the streamlined procedures contemplated under Section 120.57(2), Florida Statutes. Therefore, pursuant to subsection (a)2. of Section 120.57(2), the Town asks that these disputed issues of law be briefed, orally argued, and presented for final resolution, particularly since there are no disputed facts which require resolution to determine whether the City's unilateral exercise of extra-territorial powers within the Town is permitted under the Florida Constitution. Expeditious consideration of this matter is needed since the Franchise Agreement expires on November 6, 2016, and thereafter the Town's constitutional rights under Article VIII, Section 2(c) of the Florida Constitution will be violated if the City continues to insist on unilaterally exercising extra-territorial powers within the Town. To expedite the resolution of this constitutional issue, the Town suggests that any interested party be required to provide a brief in support of its position by November 15, 2016, and response briefs by December 1, 2016.

Requested Relief

56. The Town respectfully requests that: (i) the Commission conduct an expedited hearing pursuant to procedures provided by Section 120.57(2), Florida Statutes; (ii) the disputed issues of law be briefed and argued pursuant to the schedule proposed above; and (iii) thereafter,

a final order entered determining that the Territorial Orders must be modified to conform to the extra-territorial powers limitations in Article VIII, Section 2(c) of the Florida Constitution, by placing the entire Town within the service area of FPL. Such modification would be in the public interest since FPL is already serving parts of the Town, is not subject to the constitutional constraints that limit the exercise of municipal extra-territorial powers, has stated that it is willing and able to serve the entire Town, and has offered to purchase the City's electric system in the Town for $30 million.

Respectfully submitted this 25th day of October, 2016.

HOLLAND & KNIGHT LLP

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Attorneys for Petitioner Town of Indian River Shores

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2016, the foregoing has been filed via electronic filing to Ms. Carlotta Stauffer, Commission Clerk, Florida Public Service Commission and that a true and correct copy of the foregoing has been served by email to:

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kcowdery@psc.state.fl.us
John Villafrate
jvillafr@psc.state.fl.us
Office of the General Counsel
Florida Public Service Commission
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Tallahassee, Florida 32399-0850

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

EXHIBIT A

Town of Indian River Shores

1953 ORD 1

CHAPTER NO. 1

AN ORDINANCE DECLARING THE INTENTION OF THE TOWN OF INDIAN RIVER SHORES TO ANNEX A TRACT OF LAND AND EXPRESSING THE DESIRE OF SAID TOWN TO CHANGE ITS TERRITORIAL LIMITS BY THE ANNEXATION OF AN UNINCORPORATED TRACT OF LAND LYING CONTIGUOUS THERETO AND WITHIN INDIAN RIVER COUNTY, FLORIDA:

THE COUNCIL OF THE TOWN OF INDIAN RIVER SHORES HEREBY ORDAINS:

SECTION 1

That the Town of Indian River Shores does herewith declare its intention to annex the following described property and the Town does desire to change its territorial limits by the annexation of an unincorporated tract of land lying contiguous thereto and within Indian River County, Florida, which said lands are described as follows, to wit:

The South 11.5 acres of Government Lot 10, Section 36, Township 31 South, Range 39 East;

The North Half of Government Lot 9, Section 19, Township 32 South, Range 40 East.

That the Town has determined that said above described tract of land contains less than ten registered voters.

SECTION 2

That the Town of Indian River Shores does herewith declare its intention to annex the above described tract of land to the Town of Indian River Shores in order that the same shall be within the corporate limits of the Town of Indian River Shores at the expiration of thirty days from the approval of this Ordinance.

SECTION 3

All Ordinances or parts of Ordinances in conflict herewith or inconsistent with the provisions of this Ordinance are hereby repealed.

* * * * * * * * *

I hereby certify that the foregoing Ordinance was finally passed by the Town Council on the 23rd day of February, 1957.

Mayor

Attest: Conrad Clerk
Town Clerk

I hereby certify that I posted a true copy of the above and foregoing Ordinance on the bulletin board in the temporary Town Hall of the Town of Indian River Shores, Florida, after passage of said Ordinance on first reading and at least five days before the passage of said Ordinance on second reading and I posted a true copy of said Ordinance on the bulletin board in the temporary Town Hall after final passage.

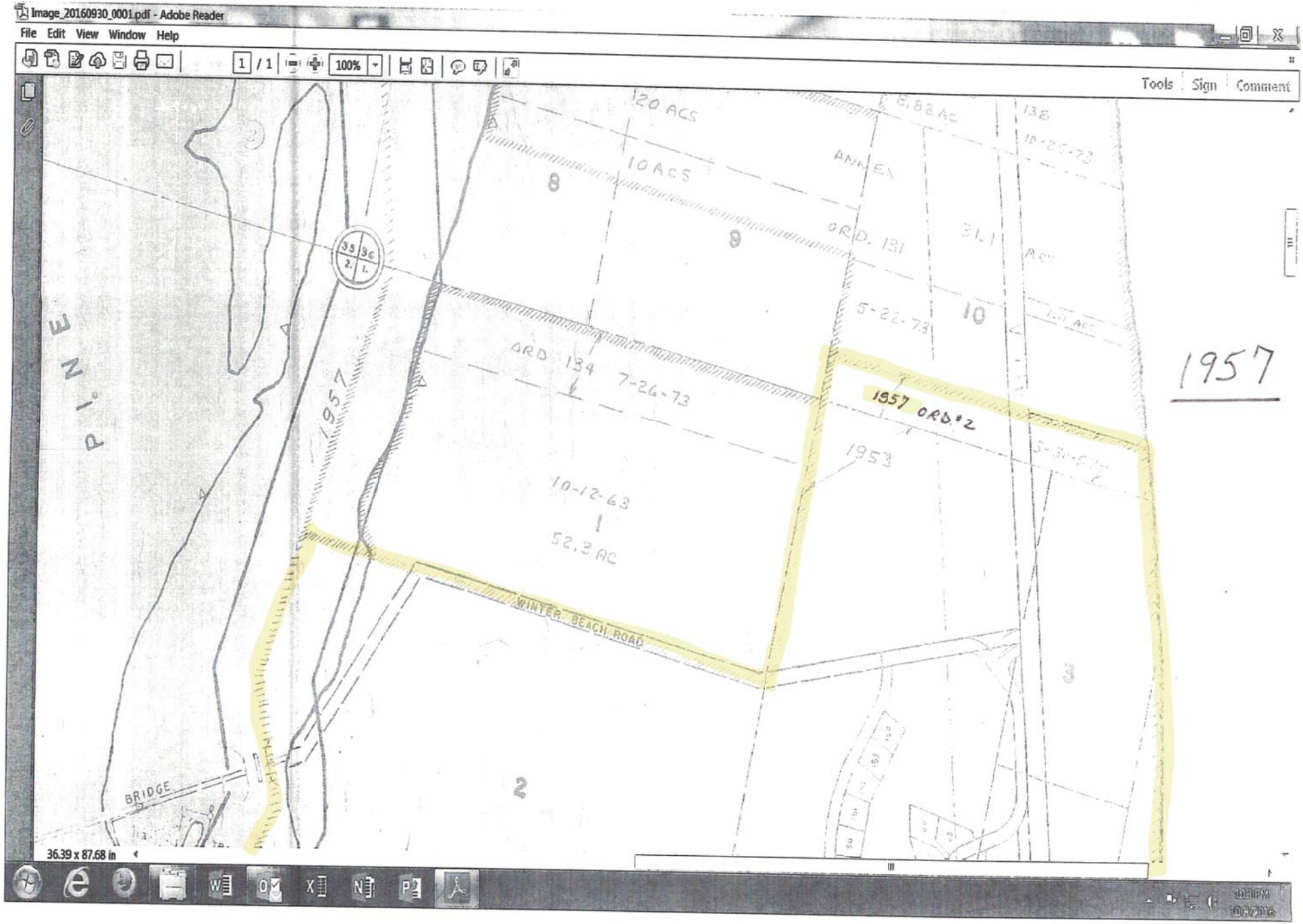
Conrad Pierk

Town Clerk

EXHIBIT B

Town of Indian River Shores

1957 ORD 2



CHAPTER NO. 2

AN ORDINANCE ANNEXING THE LANDS HEREINAFTER DESCRIBED TO THE TOWN OF INDIAN RIVER SHORES AND CHANGING THE TERRITORIAL LIMITS OF SAID TOWN BY THE ANNEXATION OF SAID UNINCORPORATED TRACT OF LAND LYING CONTIGUOUS THERETO AND WITHIN INDIAN RIVER COUNTY, FLORIDA.

THE COUNCIL OF THE TOWN OF INDIAN RIVER SHORES HEREBY ORDAINS:

SECTION 1

That the Town of Indian River Shores did declare its intention to annex into the limits of the Town of Indian River Shores the property hereinafter described by Chapter No. 1 of the Ordinances of said Town, which said Ordinance was duly and finally adopted and approved on the 23rd day of February 1957, and which three printed copies of said Ordinance were posted for four consecutive weeks at the temporary Town Hall of the Town of Indian River Shores, Florida, said place being a conspicuous place in said town, and three printed copies of said Ordinance were posted for four consecutive weeks at a conspicuous place in the district to be annexed, as will more fully appear by the Town Clerk's certificate filed in the records of said Town, and said Town does herewith find and determine that no notice has been served upon the Mayor of this Town of any petition of the Circuit Court of Indian River County, Florida, objecting to such annexation and does herewith find and determine that no petition has been filed in said Court objecting to said annexation as more fully appears by certificate of the Clerk of said Court filed with said Town and that more than thirty days have expired from the approval of said Ordinance.

Adopted 3/30/57

SECTION 2

That the Town of Indian River Shores does herewith annex into the territorial limits of said Town and does herewith change its territorial limits by the annexation of the following described unincorporated tract of land lying contiguous thereto and within Indian River County, Florida, and the boundary lines of the Town of Indian River Shores are herewith redefined

so as to include therein the following described property, situated in Indian River County, Florida, to wit:

The South 11.5 acres of Government Lot 10, Section 36, Township 31 South, Range 39 East;

The North Half of Government Lot 9, Section 19, Township 32 South, Range 40 East.

SECTION 3

All Ordinances or parts of Ordinances in conflict herewith or inconsistent with the provisions of this Ordinance are hereby repealed.

* * * * * * *

I hereby certify that the foregoing Ordinance was finally passed by the Town Council on the 30th day of March, 1957.

Fred Trench
Mayor

Attest: Conrad Tuerk
Town Clerk

I hereby certify that I posted a true copy of the above and foregoing Ordinance on the bulletin board in the temporary Town Hall of the Town of Indian River Shores, Florida, after passage of said Ordinance on first reading and at least five days before the passage of said Ordinance on second reading and I posted a true copy of said Ordinance on the bulletin board in the temporary Town Hall after final passage.

Conrad Tuerk
Town Clerk

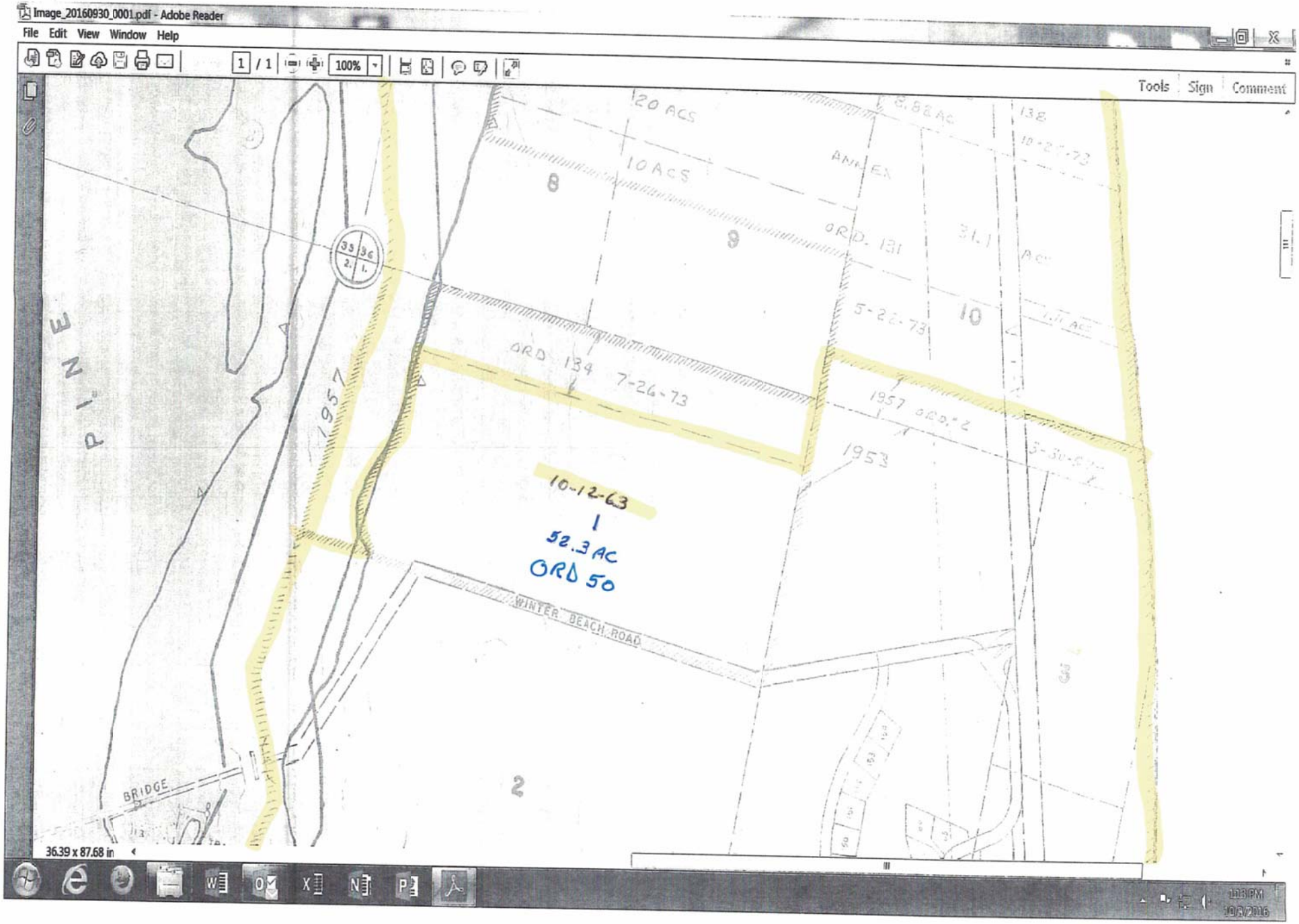
I hereby certify that I posted three printed copies of Chapter No. 1, of the Ordinances of the Town of Indian River Shores for four consecutive weeks at the temporary Town Hall of the Town of Indian River Shores, Florida, and I further posted three printed copies of said Ordinance for four consecutive weeks at a conspicuous place in the district to be annexed according to said Ordinance.

Conrad Tuerk
Town Clerk

EXHIBIT C

TOWN of INDIAN RIVER SHORES

1963



CHAPTER NO. 50

AN ORDINANCE DECLARING THE INTENTION OF THE TOWN OF INDIAN RIVER SHORES TO ANNEX A TRACT OF LAND AND EXPRESSING THE DESIRE OF SAID TOWN TO CHANGE ITS TERRITORIAL LIMITS BY THE ANNEXATION OF AN UNINCORPORATED TRACT OF LAND LYING CONTIGUOUS THERETO AND WITHIN INDIAN RIVER COUNTY, FLORIDA

THE TOWN COUNCIL OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA, HEREBY ORDAINS:

SECTION 1

That the Town of Indian River Shores, Florida, does herewith declare its intention to annex the following described property and the Town does desire to change its territorial limits by the annexation of an unincorporated tract of land lying contiguous thereto and within Indian River County, Florida, which said lands are described as follows, to-wit:

All of Government Lot 1, less the North one-half of the North one-half of Section 1, Township 32 South, Range 39 East;

South 50 feet of Government Lot 7, Section 18, Township 32 South, Range 40 East;

Adopted 10/22/63

That the Town has determined that the above described tract of land contains less than ten registered voters.

SECTION 2

That the Town of Indian River Shores does herewith declare its intention to annex the above described tract of land to the Town of Indian River Shores at the expiration of thirty days from the approval of this Ordinance.

SECTION 3

All Ordinances or parts of Ordinances in conflict herewith or inconsistent with the provisions of this Ordinance are hereby repealed.

* * * * *

I hereby certify that the foregoing Ordinance was finally passed by the Town Council on the 22nd day of October, 1963.

Roland Miller, Mayor

Attest: George W. Tuerk
George W. Tuerk, Town Clerk

I hereby certify that I posted a true copy of the above and foregoing Ordinance on the bulletin board in the temporary town hall of the Town of Indian River Shores, Florida, after passage of said Ordinance on first reading, and at least five days before the passage of said Ordinance on second reading, and I posted a true copy of said Ordinance on the bulletin board in the Town Hall after final passage.

George W. Tuerk
George W. Tuerk, Town Clerk

EXHIBIT D

C O N T R A C T

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF VERO BEACH

By _____
Mayor

Attest: _____
City Clerk

TOWN OF INDIAN RIVER SHORES

By _____
Mayor

Attest: _____
City Clerk

LAW OFFICES
Vocelle
&
Gallagher
P. O. Box 1990
Vero Beach, Florida
32962

EXHIBIT E

TOWN OF INDIAN RIVER SHORES, FLORIDA

November 11, 1971

Mr. Jesse Yarbrough
Chairman
Florida Public Service Commission
700 South Adam Street
Tallahassee, Florida 32301

Dear Jesse:

Please be advised that the writer was contacted by your Mr. Al C. Avery with regards to the City of Vero Beach and Florida Power and Light Company territorial agreement and tie line and, as I told Mr. Avery, the Town of Indian River Shores is in no way concerned with any agreement between these two parties as it is actually none of our concern.

For the Florida Public Service Commission's information, the writer entered into negotiations with the City of Vero Beach back in 1958 to furnish the Town of Indian River Shores utilities, i.e. water, power and sewer, inasmuch as it was a physical impossibility to develop this area without these items. On the 18th. day of December 1968 the Town of Indian River Shores signed an agreement with the City of Vero Beach for twenty five (25) years with an option for renewal of another twenty five (25) years for power and water to be furnished to the Town of Indian River Shores. Never at any time did the Town of Indian River Shores enter into an agreement with the Florida Power and Light Company.

With reference to a letter written to the Florida Public Service Commission by Mr. Joseph C. Thomas, 935 Pebble Lane, Indian River Shores, Vero Beach, Florida, I am at a loss to understand why Mr. Thomas did not check with the Town officials to get this background information as he has only been here a year or so and is in no way familiar with what has transpired in the past and he would be better informed if he had checked with us with regard to this item.

After we had signed an agreement with the City of Vero Beach, the owners and developers of the Pebble Beach Subdivision, in which Mr. Thomas lives, headed by Mr. William Van Busch, petitioned the Town of Indian River

Shores to take them into our Town limits so they could secure city water in order for the land to be developed. This we did at the time strictly as an accommodation to these people so they could tie on to our water facilities. I say again, why Mr. Thomas hasn't checked further into the background of this situation, I am at a loss to understand. As for him not being consulted and heard on the City of Vero Beach and Florida Power and Light Agreement, we are not concerned with it and there was no reason for him to be concerned with it as frankly it was none of our concern.

In the event that you should have a public hearing on this matter please be advised the Town of Indian River Shores will be more than glad to attend and furnish you with any information that you desire. I am sure you have a copy of our utility contract with the City of Vero Beach and if you need any further information please advise.

Yours truly,

ROLAND B. MILLER
Mayor

RBM:br
Copies to:
Councilmen, IRS
Mr. G. Johnston, Atty.
Mr. R. F. Lloyd
Mr. James Vocelle, Atty.
Mr. Joseph C. Thomas
935 Pebble Lane, IRS
Mrs. Winnie Lich
946 Pebble Lane, IRS
Mr. Edwin Eickman
926 Surf Lane, IRS
Mr. Ruel B. George
955 Reef Lane, IRS
Mrs. Mary Louise Brightwell
946 Reef Lane, IRS
Mr. Earl Groth
99 Royal Palm Blvd.
(All of Vero Beach, Fla.)

EXHIBIT F

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

The following Commissioners participated in the disposition of this matter:

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

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

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

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

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

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

O R D E R

BY THE COMMISSION:

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

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

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

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

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

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

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

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

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

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

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

William S. DeMilly
ADMINISTRATIVE SECRETARY

(SEAL)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Florida Power & Light Company for approval of a modification of territorial agreement and contract for interchange service with the City of Vero Beach, Florida.	)	DOCKET NO. 73605-EU
	)	ORDER NO. 6010

The following Commissioners participated in the disposition of this matter:

WILLIAM T. MAYO
PAULA F. HAWKINS

ORDER APPROVING MODIFICATION OF TERRITORIAL AGREEMENT

BY THE COMMISSION:

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

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

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

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

William B. DeMilly
ADMINISTRATIVE SECRETARY

(S E A L)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

The following Commissioners participated in the dispostion of this matter:

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

NOTICE OF INTENT TO APPROVE TERRITORIAL AGREEMENT

BY THE COMMISSION:

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

BACKGROUND

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

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

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

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

JUSTIFICATION FOR APPROVAL OF TERRITORIAL AGREEMENT

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

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

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

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

PROCEDURE

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

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

In view of the foregoing, it is

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

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

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

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

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

(S E A L)

Steve Tribble
COMMISSION CLERK

MBT

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

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

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

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

APPENDIX A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

The following Commissioners participated in the disposition of this matter:

CHAIRMAN JOSEPH P. CRESSE
COMMISSIONER GERALD L. GUNTER

CONSUMMATING ORDER APPROVING TERRITORIAL AGREEMENT

BY THE COMMISSION:

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

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

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

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

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

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

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

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

In that decision the Supreme Court also held that:

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

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

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

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

STEVE TRIBBLE
COMMISSION CLERK

(S E A L)

ARS

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

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION

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

BY THE COMMISSION:

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

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

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

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

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

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

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

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

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MRC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (1985), as amended by Chapter 87-345, Section 6, Laws of Florida (1987), to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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

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

If this order becomes final and effective on March 2, 1988, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ORDER NO. 18834
DOCKET NO. 871090-EU
PAGE 1

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

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

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

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

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

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

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

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

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

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

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

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

FLORIDA POWER & LIGHT COMPANY

By: _____

Attest:

By: _____
Secretary

CITY OF VERO BEACH, FLORIDA

By: _____
Mayor

By: _____
City Manager

By: _____
City Attorney

Attest:

By: _____
City Clerk

EXHIBIT G

RESOLUTION *414*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) capacity reservation fees,

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

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

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

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

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

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

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

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

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

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

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

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

ACCEPTED:

CITY OF VERO BEACH

By: _____
Mayor

Date: 6 Nov. 1986

Attest _____
City Clerk

TOWN COUNCIL
TOWN OF INDIAN RIVER SHORES

By: _____
Mayor

Attest: _____
Town Clerk

Resolution 414-Electric

EXHIBIT H

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

July 18, 2014

[VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED]

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

Re: Town of Indian River Shores

Dear Mayor Winger, Councilmembers, and City Manager:

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

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

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

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

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

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

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

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

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

THE TOWN'S LAWSUIT AGAINST THE CITY

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

THE FLORIDA GOVERNMENTAL CONFLICT RESOLUTION ACT

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

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

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

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

Sincerely,

Brian M. Barefoot

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

EXHIBIT I

Wednesday, August 12, 2015

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

Dear Mayor Winger,

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

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

The proposal is as follows:

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

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

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

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

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

Warmest regards,

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

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

EXHIBIT J

August 4, 2016

The Honorable Jay Kramer
Mayor, City of Vero Beach
P.O. Box 1389
Vero Beach, FL 32961-1389

Dear Mayor Kramer,

On behalf of Florida Power & Light ("FPL"), I am pleased to submit this non-binding offer to acquire the assets of the City of Vero Beach ("City" or "COVB") currently utilized to serve the residents of Indian River Shores (the "Proposed Transaction"). I appreciate the time the City Council, City Manager Jim O'Connor, attorney Schef Wright, and members of the City's Commissions have spent on this and we look forward to further dialogue.

We believe this Proposed Transaction provides significant value to the City and keeps the City's remaining customers "whole", protecting the customers from adverse rate impacts and other financial harm that might otherwise result from the customers within Indian River Shores leaving the COVB electric system. Subject to the conditions provided in the second to last paragraph of this letter, FPL is willing to pay the City a one-time payment of $30 million in cash for the following assets (the "Indian River Shores Assets):

- The roughly 3000 customer accounts located in Indian River Shores that are currently served by the COVB municipal electric system (the "Indian River Shores Customers").
- Facilities inside the Indian River Shores boundaries including distribution lines and feeders, real property rights, and the associated equipment and infrastructure that provide electrical distribution service directly to the Indian River Shores Customers, as well as customer information required to set up customer accounts by FPL.
- COVB's rights, title and interest in the COVB 138kV transmission system. Note that FPL Power Delivery is currently working with the COVB Transmission team to better understand the configuration of this system. If FPL and COVB are unable to come to agreement on a net book value, as well as a configuration that enables FPL to serve the customers of Indian River Shores, FPL is prepared to move forward with the Proposed Transaction without acquiring these transmission assets.
- Subject to successful negotiations on the COVB 138kV transmission system, Seller's rights, title and interest in the Fort Pierce Utilities Authority ("FPUA") Joint Facilities (the 138kV transmission and substation facilities owned jointly by COVB and FPUA in St. Lucie County, Florida, and Indian River County).
- The purchase price of these facilities will require additional Net Book Value information from COVB. If it is determined the purchase of all transmission facilities benefit the parties, the purchase of the facilities will require additional due diligence to determine

how FPL can use the facilities to interconnect its transmission and distribution system directly to Indian River Shores facilities.

- Note that separate arrangements will be made with FPUA to acquire their rights to these facilities if FPL chooses, in their sole discretion, to pursue the transmission assets; however, an agreement with FPUA will not be a prerequisite or condition to the Proposed Transaction.

I want to thank COVB's leadership for its ongoing commitment to finding a solution that works for all interested parties, including the residents of Vero Beach, Indian River Shores, and the customers of FPL. We have long appreciated COVB's efforts and recognize COVB's desire to ensure that neither COVB nor its remaining utility customers are harmed by any transaction involving the Indian River Shores customers and facilities. To that end, FPL has analyzed the materials prepared by the City's legal and rate consultants and offers the following observations:

- For sake of evaluating this Proposed Transaction, FPL has started our view of the analysis with a net present value ("NPV") of $42.5 million for the Indian River Shores Assets, which is the last offer presented to FPL by the City.
- The assumption around escalation of City expenses is currently being modeled at 3% annually. This has the potential to create significant upward pressure on customer bills over time, as base sales growth is only being escalated at 0.5% annually. By changing the escalation for both the City's Non-Department and Electric Fund expenses to 0.5% to be consistent with base sales growth, the NPV then changes to $36.8 million.
- Additionally, the model currently assumes a reduction of Non-Department and Electric Fund expenses of 7.1% and 3.8% respectively as a result of the sale of the Indian River Shores Assets. While this is a step in the right direction, we believe the City should be able to manage the expenses in accordance with a smaller customer base. By changing these reductions to 8.7% (consistent with the loss of 8.7% of the City's customer base) after 5 years, which seems a reasonable timeframe, the NPV changes to $27.5 million, $2.5 million below our $30 million offer.
- Note that in this valuation, our $30 million offer provides $2.5 million of reserve which could cover any stranded costs COVB may have in the future arising from the Proposed Transaction.
- Finally, FPL believes there are cost savings on the COVB side from FPL acquiring the FPUA Joint Facilities. We have not attempted to quantify these savings, but they range from the inventory needed to support those assets, to the ongoing O&M of maintaining the facilities, and ultimately, the NERC compliance costs of owning transmission facilities. Should FPL purchase these facilities, the savings to the City should be meaningful and should be considered in the ultimate analysis of the impact of the Proposed Transaction.

We hope to move forward as quickly as possible with COVB to make this acquisition a reality. Our offer, and the Proposed Transaction, is subject to the negotiation, mutual acceptance and execution of definitive agreements by the COVB and FPL, customary due diligence, approval of FPL's Board, all approvals necessary for the COVB to execute the Proposed Transaction, and the

receipt of acceptable approvals from the Florida Public Service Commission and the Federal Energy Regulatory Commission.

We look forward to the City Council's review and consideration of this Proposed Transaction at its August 16, 2016 City Council meeting and will be available to address any questions you or the rest of the Council may have.

Sincerely,

Sam Forrest
Vice President
Energy Marketing & Trading

cc: City Council Members
Jim O'Connor, City Manager
Wayne Coment, City Attorney
Pamela Rauch
Amy Brunjes

EXHIBIT K

VERO BEACH UTILITIES COMMISSION MINUTES
Tuesday, August 9, 2016 – 9:00 a.m.
City Hall, Council Chambers, Vero Beach, Florida

PRESENT: Chairwoman, Laura Moss; Vice Chairman/Indian River Shores Representative, Robert Auwaerter; Members: J. Rock Tonkel, Stephen Lapointe and Chuck Mechling **Also Present:** City Manager, James O'Connor; Utilities Director, Ted Fletcher and Deputy City Clerk, Sherri Philo

Excused Absences: George Baczynski, Judy Orcutt, and Bill Teston

1. CALL TO ORDER

Today's meeting was called to order at 9:00 a.m.

2. PRELIMINARY MATTERS

A) Approval of Minutes

1. July 12, 2016

Mrs. Moss referred to the second to the last paragraph on page two (2) of the July 12, 2016 Utilities Commission minutes where it states, *"The City does establish the rate and does not keep the money."* She said it should state, *"The City does **not** establish the rate and does not keep the money."* Mrs. Moss then referred to the second paragraph under Member's Matters on page 10 where it states, *"Mr. Baczynski said in a recent the FMPA report ..."* She said the word **"the"** should be deleted from the statement.

Mr. Tonkel made a motion to approve the minutes of the July 12, 2016 Utilities Commission meeting as amended. Mr. Mechling the motion and it passed unanimously.

B) Agenda Additions, Deletions, and Adoption

Mr. Mechling made a motion to adopt today's agenda as written. Mr. Tonkel seconded the motion and it passed unanimously.

3. PUBLIC COMMENT

None

4. NEW BUSINESS

A) Charles Callahan, M.D., Specialist in Infectious Disease - Presentation Regarding the Water Quality of the Indian River Lagoon as a Health-Related Concern with Specific Reference to Vibrio Vulnificus (Bacteria) and Toxic Algae. Vibrio with Emphasis upon Prevention of Infection and Proper Treatment when Infection has Occurred and Toxic Algae with Emphasis upon the Nature of the Toxin, Treatment, and Prognosis.

Mrs. Moss gave a short bio of Dr. Charles Callahan's experience.

Dr. Charles Callahan, Specialist in Infectious Disease at Indian River Medical Center, gave a report on the Indian River County Water Quality Issues 2016 (attached to the original minutes).

Mrs. Moss asked if Indian River Medical Center is currently monitoring the situation. She said they have not had to close any beaches or taken any of those special measures, but it has occurred south of them.

Dr. Callahan said that they don't monitor this. The Health Department would be the ones to respond and if there was an issue the Health Department would make them aware of it. He said they are very cognizant of their water supply as they have had issues in the past with their chillers and air-conditioners at the hospital. He said they are currently in the process of doing a water management overhaul, mostly in response to those issues as well as the potential risk for water carrying pathogens which are becoming a very big issue in hospitals. They are looking at ways to reduce their liability and risk by monitoring their water more carefully.

Mrs. Moss said that she read Vibrio is a naturally occurring bacteria.

Dr. Callahan said Vibrio Colera and Vibrio Volnificans are the two that are most commonly known. He said they can live in shellfish and oysters.

Mr. Lapointe said that he was interested in absolute rates per capita and rates of change regarding bacterial pathogens. He said it was stated in today's presentation that they see the "Fish Handler's Disease" is very common and then stated that they see two (2) to three (3) cases a year. He asked is that considered common.

Dr. Callahan answered yes. He said Micro-bacteria Marinum is what he is referring to and it can occur in salt water and it could occur with people who maintain salt water aquariums. He said it is a fairly common pathogen and mostly due to trauma caused by cuts from barnacles, etc.

Mr. Lapointe explained that he was referring to the rate of occurrences and rate of change.

Dr. Callahan said it would be impossible to know what the rate of change is because they don't routinely measure pathogens in any water system, which is one of the big weaknesses they have in the United States.

Mr. Lapointe said that he was not talking about measuring the pathogen, but measuring the cases of infection.

Dr. Callahan explained that Micro-bacteria Marinum was not a reportable disease. He said Salmonella Fibrio is probably the most well measured because it is a reportable disease. He reported that in the past 10 years there were probably about 650 cases in the State of Florida, about 7,000 nationwide, and overall there has been an increase when compared to other areas.

Mr. Lapointe asked from the laundry list of pathogens (listed on page one (1) of the Indian River County Water Quality Issues 2016), which seem to be increasing in the number of human incidents.

Dr. Callahan said Campylobacter, which is another infection that occurs mostly from infected produce, but can be in the water. Others include Campylobacter affiliated Shigella, Salmonella, Cryptosporidium, and Vibrio, which are all on the uptake compared to 20 or 30 years ago. Some of them could be increasing because of their improved ability to measure them.

Mr. Tonkel asked is there any organized effort underway at the State or local level to grasp the significance. He asked what are some measures that should be taken. He felt that it would make sense to have some form of organized approach to study the implications.

Dr. Callahan said not to his knowledge. He thought that people were starting to talk about it as they are starting to realize that these are problems they are going to be facing in the future. He felt the first step would be to come up with a comprehensive way to measure them.

Mrs. Moss asked Dr. Callahan if he had any advice.

Dr. Callahan said if someone has any underlying chronic medical problems, such as a liver problem, they need to avoid eating raw seafood and if they get a cut or scrape while in the river they need to tend to it right away. If they have any type of symptoms at all they need to contact their healthcare provider and tell them their exposure because a cut from the river is viewed differently than a cut from something else, such as slipping in their bathroom.

At this time, the Chairman opened the meeting for public comments.

Mr. Layne Sikes said that he did not have a question for Dr. Callahan, but would like to address Mr. Tonkel's question as to what could be done right now. He said that he has been working on a project for the last few years, which he calls "Filter Florida." He explained that they need to filter all the water before it enters into any of the environmentally sensitive areas or estuaries. He said there are a lot of missed numbers surrounding the water quality issues and one of the biggest contributors to all the pollution entering Lake Okeechobee and is fueling the massive algae blooms is polluted water coming from urbanized areas north of Lake Okeechobee through the Kissimmee River. He said they need to put the filter devices (Filter-Florida) at strategic locations and be able to clean the water before it enters the lake and as it leaves the lake. He said they could do the same thing locally on a smaller scale. He said in a major rain event, such as they have had the past few days, it takes five (5) hours for the water from 58th Avenue to make it into the Lagoon and there is a host of pollutants that make it into the Lagoon. He said they need to be filtering the water. It is the only smart move they have where they can actually prepare for all of the other factors that cause pollution. He said best management practices are great, but at the end of the day they need a "fail safe" and the "fail safe" is to filter the water and clean it before it enters our natural resources.

Dr. Callahan said with regards to filtration, a British study showed that activated charcoal is the only thing deemed effective enough to remove the phosphates adequately from the water system. He said filtration is a great idea and they are looking at it as a point of source. He said Indian River Medical Center has very small filters (submicron filters) that have to be replaced about every 60 days and they cost about $50 dollars each. He agreed that would be the optimal way to go, but felt the technology and costs were up in the air with regards to the large amount of water they are talking about. He said it is extremely complicated and very expensive when filtering millions of gallons of water a day.

B) Partial Sale: Indian River Shores Customers from Vero Electric to Florida Power and Light (FPL) - Review of Most Recent Information

Mrs. Moss said the Commission is charged with representing and considering all utility customers of the City including City and non-City residents alike. She reported that on November 6, 1986 Indian River Shores (IRS) signed a 30-year contract assigning to the City of Vero Beach and electric franchise. The agreement was renewable requiring the parties to give a five (5) year notice, which would have been in 2011. No notice of renewing was given by either party so the contract will expire on November 6, 2016. She said FPL has currently offered the City $30 million dollars for the City's customers of IRS. She said overall, the context for considering the sale is favorable in that the City voted in favor of the sale of the entire system years ago and the current Mayor proposed a partial sale in 2010. She said the Florida Municipal Power Agency (FMPA), which usually is cited as a stumbling block to any kind of sale, appears to be more amiable to change. She reported that Mr. Dylan Reingold, Indian River County Attorney, scheduled a meeting with FMPA, Indian River County, FPL, and the City next Wednesday to decide how to move forward in the future.

Mr. James O'Connor, City Manager, handed out to the Commission members a letter that was received this morning from Mr. Sam Forrest, Vice President – Energy Marketing and Trading for FPL (attached to the original minutes). He said there was a meeting with FPL to discuss the sale of the IRS system, i.e., the assets that are within IRS with the exclusion of the substation that is located on the south end. The direction that he and Mr. Schef Wright, Attorney, received from the City Council was that they not negotiate. He said that he did not negotiate, but did ask for clarification in which FPL sent the letter that they received this morning. He noted that he has not had time to fully review the letter, but the bottom line is that the 138kV transmission system and the substation issues are off the table. They have confined this to the purchase of the customers of IRS and the $30 million dollar bracket. He reported that FPL has challenged some of the assumptions that Mr. Wright and his team put together as to how they arrived at the $42.4 million dollars, which was the City's proposal. He said that he told FPL during their discussion that what they were talking about was shifting of risk and what is tolerable for the City as to what risk changes the City would be willing to take, not only the City but their outside customers other than IRS. He reported that this would be presented to the City Council at their August 16th meeting. He noted that there is a deadline date of August 25, 2016, which only gives the City about 16 days, which he felt would be a major challenge.

Mrs. Amy Brunjes, External Affairs Regional Manager of FPL, said that their offer, other than the revision sent this morning, was straight forward in that they did decide to remove consideration of the transmission assets as requested by the City. She said it is a straight

$30 million dollar offer for the customers of IRS, as well as the distribution assets, which is outlined in this morning's letter. She said they are asking the City Council to consider their offer at their August 16th meeting. She said they have spent a tremendous amount of time and resources on this and feel this was a very fair offer. She noted that their original offer was $13.6 million dollars. She said they do believe it is a fair offer, it protects the City's customers, and is a win/win for all parties. She said they did impose a deadline on the offer because they have been at this long enough. She asked the Commission to encourage the City Council that this be moved forward to a decision in an expeditious manner.

Mrs. Moss said originally a $13 million dollar offer was made and an evaluation was set by the City at about $64 million dollars, which was very far apart. Now the numbers are a lot closer at $30 million dollars and $42.4 million dollars. She asked Mrs. Brunjes to explain how FPL came up with $30 million dollars and how the City came up with $42.4 million dollars.

Mrs. Brunjes said FPL did start with $42.4 million dollars as that was what the City wanted for the system. One thing FPL challenged was the escalation of the City's expenses. She said the City modeled it at 3% escalation of expenses every year over a 30 year period. She said that would definitely create some pressure on customer bills going forward. At the same time, the City based the sales growth at .5% annually. FPL is suggesting that if they change the escalation for the City's expenses to 2.5% to be consistent with revenue growth that would change the net present value to $36.8 million dollars. She said the City's model assumes a reduction in expenses of 7.1% for Non-Departmental expenses and 3.8% for Electric Fund expenses, which is a step in the right direction because expenses will go down. She said by changing the 7.1% to 8.7%, which is consistent with IRS customer base, after five (5) years it would bring the net present value down further to $27.5 million dollars, which is $2.5 million dollars below FPL's offer. That $2.5 million dollars would be for any contingent liabilities or reserves that the City feels they need. She said FPL made an offer based on the sale price in what they feel is a fair price. They have spent a lot of time and both the City and FPL has said they are not going to negotiate.

Mr. Auwaerter said that he did his own independent analysis, separate from FPL. He handed out to the Commission members two (2) pages of backup material on his analysis (attached to the original minutes).

Mr. Lapointe asked how was the deadline of August 25, 2016 arrived at.

Mrs. Brunjes said to take any politics out of the consideration in that the offer would be decided on its merits. She said it is time to make a decision.

At this time, Mr. Auwaerter explained the spreadsheet that he handed out was put together by Mr. Bill Harrington and Mr. Schef Wright, Attorneys for the City, that has details regarding the *General Fund Transfer, Electric Debt Service, Non-Departmental Expenses, and Electric Fund Expenses* that shows both with and without Indian River Shores. He took those numbers and made some relatively modest changes that doesn't put the City at risk and shows that the offer from FPL is fair. His first assumption was the *Non-Departmental expenses and Electric Fund expenses* would only grow at 2% rate, rather than 3% each year. He said initially Mr. Wright's analysis made a one (1) time cut

of *Non-Departmental expenses* of 7.1% and *Electric Fund expenses* of 3.8%. If they look down in red under *Without Indian River Shores, Savings from Sale* what he did was for the first three (3) years they would go with the City's assumption of 7.1% and then in the fourth year they would drop by 8.7%, which is the share of the IRS customer revenues. Similarly with the *Electric Fund expenses,* he gave the City three (3) years to adjust their expenses dropping them from 3.8% to 8.7%. Just making those three (3) modest changes, the present value of revenue, what he calls "the shortfall needed to make everyone whole" for 30-years drops down to $25,058,286 dollars. He said in this analysis, it does not make any adjustment to profit transfer, return on investment, or whatever they want to call it. All the changes up top remain the same. If they look at the General Fund Transfer *With Indian River Shores* in the model it represents 6% of revenues. If they look under *Without Indian River Shores* they would see that the numbers are exactly the same. Therefore, the impact to the City's General Fund expenses were not touched at all by the changes that he made to the model. It actually shows a growth in the profit transfer, return on investment, or whatever term they want to use, over the entire model. He then briefly went over the second handout, *Partial Sale of VB Electric Assets Supporting Indian River Shores Present Value Analysis* with the Commission members. He felt that the changes made were reasonable. He then gave a brief overview of a third handout that he gave the Commission members, *City of Vero Beach Electric System Potential Use of Sales Proceeds of Assets that Support Indian River Shores Customers* (attached to the original minutes).

Mr. Tonkel thanked Mr. Auwaerter for the work that he did. He felt that the assumptions made were very reasonable and defensible.

Mr. Mark Mucher said it was his understanding that the $30 million dollars would be put into the Electric Fund. If that is the case, it would seem that it would have some impact on lowering rates.

Mr. Layne Sikes said when the City of Vero Beach transfers funds from the Electric Utility and revenue to the General Fund on the backs of ratepayers living outside the City limits is without argument taxation without representation. They can all agree that FPL offers lower rates than FMPA, OUC, and the City of Vero Beach is able to offer. FPL has a standing offer, not only for a partial sale, but to purchase the entire electric system. He said in 2011 FPL offered to the City what amounted to about $3,000 dollars per customer for the partial sale. This current offer is over three (3) times that amount. He hoped that the Commission would send to the City Council a strongly worded recommendation for this offer with a copy sent to the President of the Florida Senate, the Speaker of the House, as well as members of the Joint Legislative Auditing Committee. He said the politicizing of the issues has got to stop. This is a fair offer and almost single handedly solves the financial crater that the City finds itself in and it is the first step in selling the entire electric system to FPL.

Mr. Harry Howle, Councilmember, thanked Mr. Auwaerter for his analysis. He then read a prepared statement. He said that he heard rumors that some people might want an impact study on the offer. He said that he could tell them the impact without a study. He said the City is tens of millions of dollars in the hole as a result of unfunded pension liabilities. He said they have an offer on the table that will relieve their neighbors of extremely harsh electric rates above and beyond what they would be paying to FPL. He said they could undo 30 years of poor planning in one (1) action. If they plan properly

they could turn a train wreck into a flower garden almost overnight. In addition, discretionary spending habits would lead to an improved local economy. Less money spent on fixed expenses means more money spent on dinners, plays at Riverside Theatre, etc. He said this offer was not a political football and they shouldn't allow it to be treated as such. It is a clear solution for the future of the City of Vero Beach. He said they are three (3) years shy of the City's 100th Anniversary and it would be a travesty to still be hearing whispers of bankruptcy when they could be discussing celebrations and plans for the next 100 years. He encouraged anyone present for today's meeting or watching it on television to show up at Tuesday's City Council meeting in favor and support of this offer. He said they must accept this offer now and hope that it is followed by the sale of the entire system. His vision is that one day in the near future there would be lower taxes and this offer is the first step in doing so.

Mr. Robert Stabe, Town Manager of IRS, said one area that was not discussed today is that by accepting this offer, the City could enjoy the litigation expenses alone. In the City's original analysis, they indicated a cost of about $900,000 dollars in litigation expenses that could be saved. In their revised analysis they no longer included that. However, if they took that $900,000 dollars and reduced it down to $100,000 dollars in savings, the effect that has on the net present value is nearly $2 million dollars. More importantly, this has been ongoing for a number of years and has become an emotionally charged issue for residents of IRS and in the City. He felt this transaction would benefit everyone involved and put an end to litigation and allow them to start rebuilding their relationship as neighboring municipalities.

Mr. Glenn Heran felt that Mr. Howle and Mr. Sike's points were right on. He said this is a terrific offer. It is almost twice what the last offer was. More importantly, the City needs the cash. The City's pensions are under water and they haven't even been looking at OPEB liabilities. He said that Mr. Mucher mentioned that there is a possibility that the $30 million dollars would stay in the Enterprise Fund. Mr. Heran said to his knowledge the City is unregulated on how much they can transfer from the Enterprise Fund to the General Fund. Even if the City did this over a period of time, they would be able to fund the pension and OPEB costs that are underwater. He said there is no need for delay. They know this is a terrific offer and this issue has been studied to death. They have been doing this for eight (8) years. In addition to the cash, it finally sets the City on the path of selling. The electric business is a failed business and it will continue to fail. They will not be able to compete with FPL. He said that he has been tracking the electric rates and for the past 16 years there has never been a time where the City could compete with FPL. At some point, the City has to get off the train and this will be a representation of the City's commitment to doing just that. They would be doing what the City's voters chose to do back in 2013, which is to sell the entire system.

Mr. Peter Gorry, Chairman of the Finance Commission, noted that he was not speaking today on behalf of the Finance Commission. He said it has been eight (8) years of them trying to understand a contract and trying to execute a contract. He said the feeling that there is no issue with FMPA is not good enough for him. He felt that they should be cautious before they recommend a date certain to sell without understanding what the total risks are. He said the gap between the $30 million dollars and the $42 million dollars could potentially be a difference in rates that would have to be made up. He said the kWh usage for everyone except IRS, is an average of 960 kWh per month. The average with IRS is 1,060 kWh. IRS's usage per meter is 1,300 kWh. He said as they

know, there is an escalator in the tiers once they go over 1,000 kWh. Therefore, they are taking the top revenue producers, which has to be made up. All he was saying was that they need to be very cautious and not have a "feeling" about FMPA, but something in writing on all the potential risks.

Mrs. Moss said that she doesn't have a "feeling" about FMPA. It is a fact that FMPA approached Mr. Reingold, Indian River County Attorney, to have a conversation. She said the State Audit uncovered that FMPA lost $250 million dollars engaging with practices inconsistent with industry standard.

Mr. Gorry said because of the uncertainty of the contract with FMPA, they need to have something in writing before they go forward and accept an offer.

Mr. Auwaerter said they can get to the point where there is paralysis by analysis. In his analysis, he utilized Mr. Wright and Mr. Harrington's analysis. If they look at the numbers going out into the future, they showed some fairly hefty rises in costs per megawatt hour. He said some higher costs are built in and in spite of that, the deal still makes sense. They could all discuss the escalator on what is appropriate, but he felt that he put out some good facts as to why the escalator should be at 2%. He said that he made some very modest changes, but more importantly the 6% of revenues was not touched in his analysis. He felt that this deal made sense.

Mr. Harry Howle, Councilmember, said this does not need to be a political football that they punt around. At some point the deal has to be completed, whether it is a yes or a no. But, if they want to look at this from a philosophical standpoint, they have a group of people that are essentially being held hostage. They are being taxed without representation, which to him is completely un-American. He said the $30 million dollars would help the City and their citizens get through some high hurdles that they created on their own.

Mr. Mechling asked if there has been any discussions with FMPA.

Mr. O'Connor said FMPA verbally stated that they did not think there would be a problem with this transfer of approximately 10% of the City's customer base. But, that is verbal and they obviously would have to have it documented.

Mr. Tony Young said that he has given a lot of consideration to this partial sale. What concerned him most and what he would ask the Commission to do is step back and think about what are the larger implications. One of the implications is that they are showing preference for a wealthy neighborhood (IRS). People who live on Oslo Road would not be able to come to the City and use attorney's to represent them if they didn't like the rates. But, IRS has a good case and this might be a good offer, financially speaking. But, he has had people come to him and threaten the City with bankruptcy by incrementally attacking the City Electric Utilities. He takes this as a serious concern. He asked the Commission members to look at the implications. He said maybe the right answer now is to go back and look at the entire sale as opposed to just the sale of IRS. Some concerns were made about the financial circumstances of the City, but it depends on what their perspective is. The reserves of the City are quite substantial so it can be said that the City is not in dire need. They could look at OPEB as an accounting measure that is roughly new. This is not a simple analysis that should be made in haste.

Mr. Auwaerter referred to the threat to the City of bankruptcy. He said that he knows municipal bankruptcy well and no one can take a municipality into bankruptcy unless the municipality wants to do it. It is not like a corporation where they could be forced into bankruptcy. If someone made that comment to Mr. Young, they are completely uninformed and have no idea how the laws work. He said no one is thinking of bankruptcy. In fact, this deal as he laid it out, to try to plug some retirement related pension and OPEB gaps would make the City a stronger entity from a financial perspective.

Mrs. Moss said regarding the comment of "class" preference a survey was sent to all the City's customers including the County and IRS and all parties were in favor of the sale and they are still in favor of the sale.

Mr. O'Connor referred to the term "bankruptcy" that keeps coming up and asked that they look at the City's bond ratings and the City's CAFR. He said they would see that the City is in a very good financial situation. He said the City has a very good positive long term affect with or without this sale. They have taken a lot of extreme measures to get themselves balanced just right in the financial makings. Also, the City's electric rates are not the highest in the State. They are higher than FPL and he does not see in the foreseeable future that they will have FPL rates. But, FPL rates are not the only achievable goal. The question is, is this a good deal for the City of Vero Beach and the ratepayers who would be surviving the contract. He felt that was what it really came down to. He said they, as a community, have to determine the risk in what they can bare and what they can tolerate.

Mr. Glenn Heran said that he has been involved with this issue for eight (8) years and he can hear the voices in the room. He can hear the naysayers, the voices of complacency, the voices to study this more, etc. He said not at one point in the past 16 years has the City been able to compete with FPL. No utility in the State of Florida has. He said the naysayers offer nothing. There is no alternative. The alternative is that they continue to lose $20 million dollars a year because they don't have FPL rates. He said this community has already voted not to delay, this is a great deal.

Mr. Mechling said he appreciated Mr. Young's comments. He looks at this as a situation where there is a 30-year agreement that is coming to an end and there has to be some resolution with that. He also appreciated Mr. Auwaerter's analysis. He felt it was time for some action. He said a lot of money has been spent on debating these issues, there have been referendums that had the support of the citizenry in their votes, and although he agrees with the concept of selling the entire system, he also realizes that others, such as FMPA, have a different viewpoint. At the time Mayor Kramer brought forward the concept of a partial sale, he didn't think it was realistic. Now they have a contract that is coming due with IRS and he felt that the concept of this partial sale could be an excellent alternative to seeing how all this might work if they can get an agreement with FMPA.

Mr. Mechling made a motion that the Commission recommends to the City Council to move ahead with this offer from FPL. Mr. Tonkel seconded the motion.

Mrs. Moss said if acceptable to Mr. Mechling she would like to amend the motion to include the deadline date of August 25th. Mr. Mechling agreed to the amendment to the motion.

Mr. Auwaerter said to make the motion more clear, that they state, "within the framework of the FPL letter dated August 9, 2016."

Mr. Mechling agreed.

Mr. Tonkel said that he was very impressed with the logic that has been expressed. He hoped that in some way they capture the essence of the comments made today. He felt it was important that the public understands that the architect of this has been the City Council, particularly led by the Mayor. He felt that while there were people that doubted that initiative originally, that they have come to accept the fact that the two (2) parties have found a way to respond to that challenge and FPL has laid out a generous approach, which he hoped the City Council would accept. He also felt that there would be community acceptance and believed that there would be broad support. He said what they have not discussed today is if this offer is not accepted by the City, that is going to reopen a lot of discussion on what initiatives must be taken to take the City out of the power business. He did not think the City should be in the power business as they cannot compete and never will. He said there would be some negative consequences if this deal doesn't happen. He felt that this was a very fair and reasonable offer and is something that needs to be done.

Mrs. Moss said it is important to her that the will of the people be honored and she viewed this as the first step.

Mr. Lapointe said that his intention is to vote in favor of the motion, but he would be very interested in what the Finance Commission recommends in their analysis of the offer.

Mayor Kramer referred to the Referendum where the people voted in favor of the sale. He said that was a different deal. This deal is going to make the citizens of Vero Beach pay more for their electric rates. The people in the County to the west and on South Beach are going to pay more for electric rates. The number of $42.5 million dollars was not a sale price. That was the price for a breakeven so the City would not feel the financial burdens. He said that he spoke with Mayor Brian Barefoot of IRS about this and the specific language was to develop a framework to make this happen. He said that he would not be voting in favor of this deal. It is a "no" for him. He will not throw the City's customers under the bus for FPL and IRS. He said they are going to be paying higher rates. Not only would they be paying higher rates, but the liabilities are going to get compressed on the remaining customers and it would be harder to do a future sale with FPL. He will be voting no on this as it is not a good deal.

Mr. Auwaerter said that he made some very reasonable changes to the assumptions with regards to adjusting expenses and having the cost go up 2% rather than 3%. He said the number came in at just around $26 million dollars, which leaves $4 million dollars for liabilities or contingencies. He said IRS customers only represent about 1/12th and if they take that $4 million dollars and multiply it by 12, they have $50 million dollars for contingencies, which none are listed in the FMPA annual statements of September 30, 2015. He said that his assumptions did not change the 6% of revenue transfer to the City.

Even with the lower revenues with IRS going away, his analysis shows that those numbers are still there. Actually, the rest of the ratepayers are kept whole and the taxpayers are kept whole.

Mr. Tonkel asked Mayor Kramer if it would change his mind to think of this as the beginning of a succession of steps that need to be taken. He said that he (Mayor Kramer) supported the idea that the utilities should be sold.

Mayor Kramer said as one option, yes that is true. He said this has only been a one option deal from day one.

Mr. Tonkel said now they have a second option and he is looking at it as a stepladder. He said if they have to take this step in order to reach the ultimate goal then why not.

Mayor Kramer said because they would be taking a small step that makes the next step even larger.

Mr. Lapointe said the motion made was not a strong endorsement of the offer. It is simply a recommendation that the City Council in their wisdom consider the offer.

Mr. Auwaerter said it was a recommendation that the City Council approve it.

At this time, the Deputy City Clerk reread the motion.

Mr. Auwaerter asked that they amend the motion to "approve" the offer of FPL.

Mr. Tonkel said that he would withdraw his second to the motion so they could insert the word "approve."

Mr. Mechling amended his motion to "approve" the FPL offer.

Mr. Auwaerter said they need to be very clear on the wording of the motion. The motion is that the Vero Beach Utilities Commission recommends to the City Council that they approve the offer that FPL made for the assets that support customers in Indian River Shores as described in their letter dated August 9, 2016. Mr. Mechling agreed that is the motion on the floor.

Mr. Tonkel felt that because references were made in the second letter that they received this morning that it should be referenced in the motion as well.

Mr. Mechling felt that the letter itself would stand on its own. Mr. Auwaerter agreed.

Mr. Auwaerter seconded the motion and it passed 5-0 with Mr. Lapointe voting yes, Mr. Mechling yes, Mr. Tonkel yes, Mr. Auwaerter yes, and Mrs. Moss yes.

C) 2016 Electric Reliability Performance Report Second Quarter – Mr. Ted Fletcher

Mr. Ted Fletcher, Utilities Director, gave a brief overview of the 2016 Electric Reliability Performance Report Second Quarter with the Commission members (attached to the

original minutes). He noted that the reliability numbers are better because of some of the capital improvements they have been making.

Mr. Mechling said the report is well put together as it is very easy to read and understand.

Mr. Fletcher asked the Commission members if at any time they want to see more information on the outage report that they contact him.

Mrs. Moss felt that Mr. Fletcher did a nice job on the report.

Mr. Tonkel noted that the Commission members need to make sure that if they want information that they contact Mr. Fletcher before he has to produce the data. He said sometimes they tend to put a lot of pressure on some of the staff and whatever they could do to give staff plenty of notice would be beneficial to both the Commission and to staff.

D) FMPA Solar Power Survey – Vice Chairman Auwaerter

Mr. Auwaerter reported that they had a two hour conference call regarding what they want in the Request for Proposals (RFP). He received the revised RFP yesterday and signed off on it. He reported that most of the cities involved in the survey only want to survey residential customers. If the City wants to survey commercial customers it will cost more. He said that Mr. O'Connor did indicate that he would be willing to survey commercial customers, but they need to find out the cost. Mr. Auwaerter said the short survey would consist of four (4) or five (5) minutes at a cost of about $3,000 to $5,000 dollars to be borne by each member who is having the survey done. The long survey would be nine (9) to 12 minutes and could cost up to $10,000 to $12,000 dollars. They hope to conduct the surveys in December and have the results sometime in late January or early February.

Mr. Mechling asked who is in charge of the length of survey.

Mr. Auwaerter said that wasn't clear. He thought they would get actual proposals and then come up with one (1) standardized survey so they would have a standardized set of the data across the State.

Mr. Mechling said it has been his experience that when there is a three (3) to five (5) minute survey more people tend to do it as opposed to a survey that takes 10 to 12 minutes.

5. OLD BUSINESS

None

6. CHAIRMAN'S MATTERS

Mrs. Moss reported that she would be making a presentation to the Airport Commission at their meeting this Friday to explain what they were doing regarding the survey on solar power. She asked Mr. Auwaerter to send the City Clerk's office a brief bio so she could use the information in her presentation.

Mrs. Moss asked the Commission members if they had any matters they would like on next month's agenda. She said they do have two items at this point. One item was Mr. Baczynski's item on the Kilroys and the Indian River Lagoon. The other item was Mr. Tonkel's item regarding the budget.

Mr. Tonkel thought that Mr. O'Connor told the Commission members that they would make the presentation on the budget at their October meeting.

Mrs. Moss said that she spoke with Ms. Cindy Lawson, Finance Director, and she wasn't sure what Mr. Tonkel wanted.

Mr. Tonkel said that he would speak to Ms. Lawson prior to the October meeting.

7. MEMBER'S MATTERS

None

8. ADJOURNMENT

Today's meeting adjourned at 11:28 a.m.

/sp