

State of Florida



Public Service Commission

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COMMISSION
CLERK

DATE: April 13, 2011
TO: Ann Cole, Commission Clerk, Office of Commission Clerk
FROM: Martha C. Brown, Senior Attorney, Office of the General Counsel *MCB*
RE: Docket No. 090524-EM

Please place the attached 2 documents – a letter and attached resolution from the Board of County Commissioners of Indian River County, and a letter from Robert Scheffel Wright on behalf of the City of vero Beach - in the docket file for this case.

DOCUMENT NUMBER-DATE

02445 APR 13 =

FPSC-COMMISSION CLERK

YOUNG VAN ASSENDERP, P.A.

ATTORNEYS AT LAW

Attorneys:

David S. Dec
Ronald A. Labasky
John T. LaVia, III
Timothy R. Qualls
Kenza van Assenderp
Robert Scheffel Wright
Roy C. Young

Gallie's Hall
225 South Adams Street
Suite 200
Post Office Box 1833
(ZIP 32302-1833)
Tallahassee, Florida 32301

Telephone (850) 222-7206
Telecopier (850) 561-6834

Of Counsel Attorneys:

Joseph W. Landers, Jr.
Philip S. Parsons

April 12, 2011

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

Re: Continued Abeyance of PSC Docket No. 090524-EM, Complaint of
Stephen J. Faherty and Glenn F. Heran vs. City of Vero Beach

Dear Ms. Brown:

As the parties discussed in our conference call this morning, this letter confirms the City of Vero Beach's agreement to the continued abeyance of formal proceedings in Docket No. 090524-EM, until approximately September 15, 2011. This mutually agreed-upon abeyance will allow sufficient time for the City to complete its review and analysis of the non-binding letter of intent tendered to the City by Florida Power & Light Company, which contemplates the possibility of FPL's purchasing the City's electric utility system; for negotiations between the City and FPL; and potentially for other negotiations between the parties to this docket. Without the abeyance, i.e., if the docket were to remain in active status, it would likely become necessary for the parties to file pleadings and engage in other procedural activities, such as discovery.

As I stated in this morning's conference call, the City understands that this abeyance includes the parties' mutual agreement that no party waives any rights to raise issues, oppose or move to strike issues, move to dismiss, or any other rights that the respective parties have at this time.

On behalf of the City of Vero Beach, I want to again thank you and the other members of the Commission Staff for taking the time to facilitate and participate in this morning's conference.

If you have any questions, please call me any time.

Cordially yours,

A handwritten signature in cursive script that reads "Robert Scheffel Wright". The signature is written in black ink and extends across the width of the page.

Robert Scheffel Wright

YOUNG VAN ASSENDERP, P.A.

Attorneys for the City of Vero Beach

COPIES: Monte K. Falls, Interim City Manager
Wayne R. Coment, Acting City Attorney
City of Vero Beach

Stephen J. Faherty
Glenn F. Heran

BOARD OF COUNTY COMMISSIONERS

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Chairman
District 5*

*Gary Wheeler
Vice Chairman
District 3*



April 7, 2011

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District 4*

Florida Public Service Commission

Florida Legislative Delegation:
Honorable Mike Haridopolos
Honorable Joe Negron
Honorable Debbie Mayfield
Honorable Tom Goodson

Vero Beach City Council
c/o Monte K. Falls, Interim City Manager

Indian River Shores Town Council
c/o Richard Jefferson, Town Manager

Sebastian City Council
c/o Al Minner, City Manager

Fellsmere City Council
c/o Jason R. Nunemaker, City Manager

Orchid Town Council
c/o Deb C. Branwell, Town Manager

Dr. Stephen J. Faherty, Sr.

Mr. Glenn Fraser Heran

**Re: In Re: Complaint Against the City of Vero Beach, Florida, by Stephen
J. Faherty and Glenn Fraser Heran; Docket No. 090524-EM**

Ladies and Gentlemen:

**Attached please find a copy of Resolution No. 2011-026 adopted by the Indian River
County Board of County Commissioners on April 5, 2011, entitled "A RESOLUTION OF
THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA,**

**1801 27th Street, Building A
Vero Beach, FL 32960-3365
Telephone: 772-226-1490 FAX: 772-770-5334**

Re: Docket No. 090524-EM

April 7, 2011

Page Two

SETTING FORTH THE BOARD'S POSITION ON CERTAIN ISSUES RELATING TO CITY
OF VERO BEACH ELECTRIC SYSTEM."

Yours truly,

A handwritten signature in cursive script that reads "Bob Solari".

Bob Solari
Chairman

asp/nhm
attachment

RESOLUTION 2011 - 026

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, SETTING FORTH THE BOARD'S POSITION ON CERTAIN ISSUES RELATING TO CITY OF VERO BEACH ELECTRIC SYSTEM

WHEREAS, on November 3, 1981, the Florida Public Service Commission ("PSC") approved a Territorial Agreement between the City of Vero Beach ("City") and Florida Power & Light ("FPL") which established electric service areas for the City and FPL in Indian River County. Specifically, the electric service area for the City was defined to include the City itself, the Town of Indian River Shores, the south barrier island, and other unincorporated areas of the County, and the service area for FPL was defined to include all other areas of the County; and

WHEREAS, the demographics of Indian River County have changed significantly since approval of the Territorial Agreement. In 1981, approximately 10% of the City's customers were located outside City limits ("non-resident customers"). Today approximately 61% of the City's customers are non-resident customers. Specifically, the City has approximately 34,000 total customers, of which approximately 21,000 are non-resident customers. This percentage of non-resident customers (61%) is believed to be the highest percentage of any municipal electric system in Florida; and

WHEREAS, the City's rates on average over the past ten years have been 23% higher than FPL's rates, resulting in a substantial rate disparity for County residents served by the City, compared to those served by FPL. Current residential rates per 1000 KWH, as set forth in the most recently available data, are 22.1% higher than FPL's rates. When the rate disparity is applied to all City customers (resident customers and non-resident customers), approximately \$16,000,000 in additional electric charges are paid each year compared to the amount customers would pay if served by FPL. Approximately \$9,760,000 of this amount (61%) is paid by non-resident customers. These additional payments take substantial funds out of the private sector of the local economy and have a negative impact on economic development and recovery efforts in Indian River County; and

WHEREAS, the City uses its electric system to subsidize its general fund and reduce taxes for City residents. Specifically, the City transfers approximately \$6,000,000 from its electric system to its general fund each year. Non-resident customers pay approximately \$3,660,000 of this amount (61%), resulting in a form of "taxation without representation"; and

RESOLUTION NO. 2011-026

WHEREAS, non-resident customers who bear this rate and subsidy burden have no way to protect themselves or to influence City rates or subsidy practices. While resident customers protect themselves by voting in City elections, non-resident customers have no such ability. Non-resident customers are required by the 1981 PSC order to be customers of the City electric system but, having no vote in City elections, have no ability to protect themselves from rate and subsidy burdens; and

WHEREAS, in 2008, the Florida Legislature recognized the unfair plight of non-resident customers by adopting Chapter 2008-227, Laws of Florida. This statute required that a referendum be held of retail customers of any municipal electric system falling within statutory parameters to determine whether a separate utility authority should be created to operate the system. Upon an affirmative vote, the municipality would be required to create a utility authority with a governing board made up proportionately of resident and non-resident customers. Although Chapter 2008-227 was introduced by Indian River County State Representative Stan Mayfield and was intended to apply to the City electric system, the City determined that the statute did not apply and never held the referendum; and

WHEREAS, in 2009, two Indian River County citizens, Dr. Stephen J. Faherty, Sr. and Glenn Heran filed a petition with the PSC asking that the PSC (i) act on its own motion to redefine the territorial service areas of the City and FPL in Indian River County to better protect non-resident customers, (ii) require that the City stop the practice of using its electric system to subsidize its general fund, (iii) address and mitigate the "taxation without representation" situation that exists for the 61% of City customers who are non-resident customers, and (iv) enforce Chapter 2008-227 by requiring the City to hold the referendum and, upon affirmative vote, to create a utility authority governed proportionately by resident and non-resident customers; and

WHEREAS, the County, as well as several other taxing bodies such as the Town of Indian River Shores, the Indian River County School Board and the Indian River County Hospital District, are customers of the City electric system and as such pay higher City rates. These increased costs result in higher taxes being imposed on Indian River County taxpayers; and

WHEREAS, on April 4, 2011, FPL submitted a letter of intent to the City expressing its interest in purchasing the City electric system. If FPL and the City are able to reach a definitive agreement, and FPL acquires the City electric system, many of the rate and subsidy issues set forth above will be resolved; and

WHEREAS, given the significance of these issues, particularly as they relate to non-resident customers, the Board of County Commissioners believes that it should adopt this resolution setting forth the Board's position on the issues,

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT:

RESOLUTION NO. 2011-026

1. **Recitals.** The findings set forth in the "whereas" clauses above are true and correct and are hereby adopted as the findings of the Board.

2. **Position of the Board.** The Board hereby adopts and publishes the following positions:

a. **Higher Rates.** The higher rates charged by the City of Vero Beach electric system are taking substantial funds out of the hands of local residents – estimated at \$16,000,000 per year, approximately \$9,760,000 (61%) of which is taken from non-resident customers. These higher rates are having a negative impact on the local economy and are impeding economic development and recovery efforts. Given the apparent willingness of FPL to serve City customers, these impacts are unnecessary;

b. **Subsidy Practice.** The subsidy practice of the City of Vero Beach places an unfair burden on non-resident customers who pay approximately \$3,660,000 (61%) of the \$6,000,000 transferred each year from the City electric system to the City general fund. This practice amounts to "taxation without representation" for non-resident customers;

c. **Sale of System.** On April 4, 2011, FPL submitted a letter of intent expressing its interest in purchasing the City electric system for a cash payment of up to \$100 million. The Board urges the City Council seriously to consider the transaction proposed in the letter of intent. To the extent the transaction impacts non-resident customers of the City electric system, the Board offers its support and assistance to FPL and the City with respect to negotiations for a definitive agreement. If a definitive agreement is reached, and if the agreement provides for FPL rates for City customers which are consistent with FPL's rates to its other customers, the Board urges the PSC to approve the agreement and include County areas now served by the City within FPL's new service area;

d. **Change in City Practices.** If a sale of the City electric system to FPL does not occur, the Board urges the City Council to (i) reduce electric rates to the lowest level possible, consistent with prudent practices, and (ii) stop the subsidy practice which places an unfair burden on non-resident customers;

e. **PSC Case.** The Board supports the positions asserted by Dr. Stephen J. Faherty, Sr. and Glenn Heran in the PSC case. If a sale of the City electric system to FPL does not occur, the Board urges the PSC to accept jurisdiction of the issues raised and to take appropriate action to protect non-resident customers of the City electric system from the unfair subsidy burden which they currently endure;

RESOLUTION NO. 2011-026

f. Amend State Law. If a sale of the City electric system to FPL does not occur, the Board urges the Indian River County Legislative Delegation, and the entire Florida Legislature, to amend existing state law to afford protection to non-resident customers of municipal electric systems by (i) prohibiting subsidy practices and (ii) requiring the creation of utility authorities governed proportionately by resident and non-resident customers; and

g. County Action. If a sale of the City electric system to FPL does not occur, the Board serves notice that it will seriously consider (i) intervening in the Faherty/Heran PSC case to protect non-resident customers, and (ii) filing a civil lawsuit to enforce Chapter 2008-227 so that a referendum can be held of City customers regarding the creation of an electric utility authority governed proportionately by resident and non-resident customers.


The foregoing resolution was moved for adoption by Commissioner O'Bryan, and the motion was seconded by Commissioner Flescher and, upon being put to a vote, the vote was, as follows:

Chairman Bob Solari	Aye
Vice Chairman Gary C. Wheeler	Aye
Commissioner Wesley S. Davis	Aye
Commissioner Joseph E. Flescher	Aye
Commissioner Peter D. O'Bryan	Aye

The Chairman thereupon declared the resolution duly passed and adopted this 5th day of April, 2011.


INDIAN RIVER COUNTY
Board of County Commissioners

Attest: J. K. Barton, Clerk

By: 
Deputy Clerk

By: 
Bob Solari, Chairman

Approved for form and legal sufficiency:


Alan S. Polackwich, Sr., County Attorney

BCC approval date: April 5, 2011

