

STATEMENT FROM INDIAN RIVER SHORES MAYOR BRIAN BAREFOOT

(November 13, 2014) Earlier today, the staff of the Florida Public Service Commission (PSC) issued a memorandum recommending that the PSC decline to issue a declaratory statement to Indian River County, which had petitioned for guidance regarding the County's rights upon the expiration of its franchise agreement with the Vero Beach electric utility. The PSC staff recommendation appears to be based on procedural grounds, and does not address the substantive issues raised in the County's petition.

While we support the County's efforts to protect its residents from the City's oppressive electric rates and utility practices, it's important to point out that the PSC staff recommendation has no bearing on the lawsuit our Town has filed in circuit court. Our lawsuit is fundamentally different than the County's filing with the PSC. Our Town and the County are separate and distinct legal entities that have filed in separate and distinct venues under separate and distinct legal principles.

Our lawsuit is based on the fundamental principle that, unlike the County, our Town is a sovereign municipality that has unique and broad powers when it comes to the provision of electric service to our residents. In fact, the law that created our Town expressly grants us the right to "furnish any and all local public services, including electricity" to our residents, either through direct provision of service or by contracting with other utilities.

Furthermore, under Florida's Constitution and statutes, a municipality like the City is barred from providing "extra-territorial" utility service within another municipality's boundaries without the other's permission. In other words, the City needs our permission to provide electric service to our residents. In 1986, our Town signed a franchise agreement with the City of Vero Beach that has three fundamental features:

- It called for our Town to temporarily relinquish our right to furnish residents with electricity for a period of 30 years;
- It gave the City's electric utility temporary permission to provide extra-territorial electric service within parts of our municipal boundaries for a period of 30 years; and,
- It gave the City's electric system temporary permission to place its electric facilities in our Town's rights-of-way and other public areas for 30 years.

That franchise agreement expires November 6, 2016. Our lawsuit puts the City on notice that once our franchise agreement expires, the City will no longer have the Town's permission to provide extra-territorial electric service within the Town unless it is able to complete the sale of its electric system to FPL, or bring long-term rates for non-resident customers to parity with FPL.

If the City is unwilling or unable to sell its system to FPL or bring its rates to parity with FPL over the long term, our Town intends to exercise its statutory right and obligation to furnish our citizens with reasonably priced electricity.

Our Town's position in its lawsuit neither affects, nor is affected by, the PSC's jurisdiction over territorial agreements. In fact, the courts and the PSC have recognized that a municipality like our Town can exercise its rights to provide electricity to its residents without running afoul of existing PSC-approved territorial agreements.

It remains our hope that the City will take necessary steps to address its oppressive electric rates which have plagued our community for years, and that litigation will be unnecessary. In the meantime, we continue to work with the City and the County through a state-mandated mediation process in search of a solution that is in the best interest of all ratepayers in the region.