



**MINUTES  
TOWN COUNCIL  
WORKSHOP MEETING**  
Consumer Protection Measures  
Monday, March 9, 2015  
8:30 a.m.

**PRESENT:** **Brian M. Barefoot**, Mayor **Gerard A. Weick**, Vice Mayor  
**Michael B. Ochsner**, Councilman **Richard M. Haverland**, Councilman

**ABSENT:** **Thomas F. Slater**, Councilman (excused)

**STAFF PRESENT:** **Robert H. Stabe**, Town Manager **Laura Aldrich**, Town Clerk  
**Chester Clem**, Town Attorney

**OTHERS PRESENT:** Special Legal Counsel **Bruce May**; Utility Rate Expert **Terry Deason**; **Dylan Reingold**, IRC Legal Counsel; PZV Board Member/Council candidate **Linda Bolton**; **Bob Auwaerter**, Finance Committee; **Rick McDermott**, CoVB Utilities Commission Representative; **IRC Commissioner Tim Zorc**; **Jim Moller**, JIPOA; Reporter from VB 32963 (**Lisa Zahner**); & Resident **John McCord** (left at 9:40)

**1. Call to Order**

- a. Pledge of Allegiance
- b. Invocation (Councilman Ochsner)
- c. Roll Call

The meeting was called to order at 8:31 a.m. with the Pledge of Allegiance and invocation given. Councilman Slater was excused, and others present as listed above.

**2. Potential Consumer Protection Measures Available Upon Franchise Expiration in 2016**

- a. Introduction (Mayor Barefoot)

Mayor Barefoot said at the last Council meeting, Mr. May and Mr. Deason were tasked with drafting an ordinance to address rate control after the Town's Franchise Agreement with the City of Vero Beach expires in November 2016.

Mr. May said they understand the Council wanted a draft discussion ordinance to give the Town the opportunity to regulate rates of electric utilities whose rates and revenue requirements are not otherwise regulated by the Florida Public Service Commission (FPSC). Mr. May explained that the Town has the home rule power to ensure that residents receive reliable service at reasonable rates. Mr. May also pointed out that the Town's existing ordinances reserve to it the right to govern and control the rates of public or private utilities operating within the corporate limits of the Town.

- b. Presentation by Utility Consultant (Terry Deason)

This is an educational workshop, Mr. Deason began, and said the draft ordinance is a work in progress. He said that he and Mr. May were there to explain their perspective on the proposal should the Council decide to go this direction. FPL already serves some of the residents, and would not be subject to this ordinance since its rates are extensively regulated by the PSC. This ordinance would only apply to those utilities that are not regulated by the FPSC.

The draft follows procedures as set by the FPSC in most ways, but not all. It is not punitive regulation, but based on facts and evidence. Definitions discussed were Authority, Administrator, Advocate, Presiding Officer, Utility and Utility Trust Account.

Powers and duties of the newly created Indian River Shores Utility Regulatory Authority were reviewed. It gives the Authority the ability to act on all franchise matters, fix rates, determine tariffs or other rules or regulations, establish and amend a uniform system and classification of accounts, calls for regular reports such as financial from the Utility, authorizes them to hold hearings, and appoint presiding officers.

The Town of Indian River Shores does not transcribe verbatim minutes. Should any interested party seek to appeal any decision made by the Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs any type of special accommodation for this meeting may contact the Town Clerk at 231-1771 .

*(Mrs. Bolton arrived at 8:50, Mr. Clem at 8:53)*

Mr. Deason said each utility opting not to adopt the rates and charges approved by the FPSC will be subject to a regulatory fee to the Authority, e.g. 1%. Mr. Deason said rough estimates suggest that it could generate about \$80,000 per year. Monies would go in an account, paid by the customers who receive service, and would be available to fund any major rate case, large regulatory case, annual report production, and other routine matters such as minor change to a tariff, etc.

Enforcement is by a penalty of \$500 per day for violation of rules.

Existing franchises were discussed with the current utility that may be subject to this ordinance. The Town agreed to refrain from exercising its right to regulate its rates during the franchise. If the current franchisee continues to provide service, it would be under this ordinance or it could be opted out as part of a renegotiated franchise agreement, as determined by the Authority at that time.

Vice Mayor Weick asked for a 5-10 minute break for digesting the information at 9:05.

c. Discussion

The meeting reconvened at 9:12. Councilman Haverland asked if there is a fee or a fine for not implementing a called-out charge. Mr. Deason said he was thinking it would be more like for something like failure to meet substation construction by date certain. Councilman Haverland also asked if the Council could determine that a transfer of utility profits to a General Fund was inappropriate. Mr. Deason replied that the Authority could not prevent the transfer, but could disallow the costs to the customers within your jurisdiction if it were determined after a hearing that the transfer was unreasonable.

Councilman Ochsner summarized that the City would have the burden of coming before the Authority and proving the prudent and necessary cost to provide service to the Town, and we would have an advocate to argue before the regulatory agency. He asked Mr. Deason if this were in place today, what he thought the impact would be. The reply was that the Town would have subpoena power, the ability to audit, and have better information available. Councilman Ochsner said he understands the City passes on fees and costs from FMPA, and it seems there is a number of unreasonable or imprudent costs passed along. He asked if this regulatory body would have the authority to disapprove the costs. Mr. Deason said yes, if a hearing showed such costs were imprudent.

Vice Mayor Weick asked about the Town Treasurer rather than the Town Clerk to manage the account, which was agreeable to the Council. He received clarification that the FMPA is not a cooperative, as it cannot sell electricity at retail, only wholesale. He asked about rates not being discriminatory, and noted that we would have no authority over FPL rates. If the City or other provider cannot give the rate, he asked if they could cease to serve, and Mr. Deason said no, there has to be a transition period, with no service interrupted.

Mayor Barefoot said anyone who provides service by an agreement has been authorized to serve that territory, and cannot walk away from that obligation. Mr. May said by case law, there has to be an orderly transition. In drafting the ordinance, we assumed this, but could add language to make it clearer.

Vice Mayor Weick asked if we could tie the rates to another utility's rates without investigating and determining the rate. For example, the average rate in the state. Mr. Deason said if the Authority agreed, that could be a possibility.

Mayor Barefoot observed that future Councils may not have the foreknowledge to administer the process. He asked whether the ordinance should require a hearing officer rather than make it an option. Mr. May said his experience with the PSC and other regulatory agencies is that it is better for the Council to have the discretion to either hear the rate case themselves or to hire a hearing officer. Mr. Deason said he cautioned them against mandating a hearing officer. Mayor Barefoot said he was not advocating for a hearing officer, but rather exploring the costs and benefits of not requesting a hearing officer.

Mr. Clem said there is a restructure of the departments, with a person monitoring this activity and providing regular input to the Council. Mayor Barefoot said he wants it known that we considered the potential plusses and minuses of an ordinance by a thorough review process.

Mr. Clem asked about the Town's right to issue subpoenas during the hearing process, and if there is a disagreement is the only remedy a Writ of Certiorari? Mr. May said the day-to-day administration of the program would be handled by an Administrator (of the Town Manager) or his/her designee). It could be a consultant on retainer, or an employee. The staff can issue discovery as a decision maker. The Town attorney would have an integral role in the process.

Vice Mayor Weick asked about a 30 year franchise agreement, which is all negotiable. Mayor Barefoot said a three to five year process should be expected, but at any point of time the authority can ask the provider to justify the rates. It was noted that the Water agreement is reviewed in 10 years even though it is a 30 year agreement.

The floor was opened for audience questions. Bob Auwaerter, Ocean Colony, is a Vero Beach electric customer. He was concerned, as a bond portfolio manager who did electric rate analysis that they have to be careful with allowing a utility to automatically opt-into FPL rates. He said it is possible that the PSC could ratify FPL rates that are higher than the City's rates, so we may not want to be locked in that way. We could use benchmark of average rates, Vice Mayor Weick added.

Councilman Ochsner noted that FPL is regulated by the PSC, and the City's rates are not regulated by anyone. Vice Mayor Weick said this ordinance covers that. Mayor Barefoot said we can use indexing or some other method.

Mr. May said Mr. Auwaerter has a good point, and the rates of an investor owned utility could be presumed to be reasonable, but that assumption could be rebutted. The Council can work through this "rebuttal presumption" concept at the next meeting.

Commissioner Zorc asked about allowable expenses that comprise the rate that the City gives the Shores. The transfer to the General Fund now that is not benefitting the rate payers currently, is this an example that could be challenged? Mr. Deason said yes, it would have to bear under justification. Commissioner Zorc also mentioned the 30 year study they are doing now.

*(Councilman Haverland left at 9:52)*

Mayor Barefoot said they just received the draft notice, and Councilman Slater has not been privy to this discussion. He advised everyone to communicate questions or concerns through the Town Manager or directly to Mr. May or Mr. Deason. It could be brought back before the Council for first reading in March, and the second reading in April or May. The Council needs to fully understand what responsibilities they are undertaking for themselves and future councils.

The idea is to put some protection in place for residents down the road to avoid a position such as we are in today.

Mr. Stabe and Mr. Clem agreed that the recommendations could be through him to keep the public records straight. He asked if this would be online for the public, which everyone agreed to. We will ask for public comments at the March meeting, and will post it online. The outline is also helpful, as an executive summary.

### 3. **Adjournment**

There being no further discussion, the meeting adjourned at 10:06.

/s \_\_\_\_\_  
Laura Aldrich, MMC, Town Clerk

*(Approved by the Town Council at the March 26, 2015 Meeting)*