



May 26, 2015

STATEMENT FROM
MAYOR BRIAN BAREFOOT
REINSTATEMENT OF LAWSUIT

As you know, our Town participated in mediation with Vero Beach in an attempt to resolve our electric rate crisis. With mediation having ended with no resolution, we were left with no choice but to move forward with our lawsuit against the City, which was amended and re-filed on Monday, May 18.

It's unfortunate that we find ourselves in this position. I continue to believe that a partial sale of the utility system in our town to FPL is a viable option that would eliminate the need for litigation, provide compensation to the City and lower electric rates for our citizens (and potentially for remaining customers of the City utility). It has become clear, however, that the City is either unwilling or unable to engage in fruitful discussions with FPL.

After the City and FPL met on Tuesday, the City's utility attorney advised the City Council that no sale was possible because the City utility is so far "under water" that no reasonable offer from FPL could cover its costs. The City believes that, like a homeowner "under water" on a mortgage, it owes far more than its utility system is worth.

The City does not find itself "under water" by accident. It is "under water" due to its own mismanagement and imprudent decision-making. What's even more astounding is that the City is demanding that non-resident customers - who have "paid the City's mortgage" through unreasonable rates - must remain its tenants forever. To me, the City's "under water" comment confirms the very foundation of our lawsuit.

As our lawsuit moves forward, you will continue to see a focus on those high rates our residents have been forced to pay because of the City's imprudent decision-making. You will also see some changes from our initial filing. At the advice of counsel, our Town amended its complaint in the lawsuit in order to focus our claims on the most critical issues related to rate relief and our Town's rights and powers as a municipality.

Following is a brief overview provided by our litigation and utility counsel, Karen Walker and Bruce May:

"Like its initial Complaint, the Town's Amended Complaint addresses the unreasonable rates charged by the City and the Town's rights to protect itself and its residents from such rates. In particular, the Amended Complaint emphasizes the important legal issues at stake here, where one municipality – the City – seeks to assert extra-territorial monopoly power within the corporate limits of another municipality – the Town – without the Town's consent. There are four counts in the Amended Complaint:

- *"Count I seeks a declaration that upon the imminent expiration of the Franchise Agreement between the Town and the City (set to expire on November 6, 2016), the City does not have the legal right to provide electric service within the Town. Count I also seeks recognition that the Town has the right to decide how electric service is to be furnished to its inhabitants.*
- *"Count II is based on an 'anticipatory breach' of the Franchise Agreement by the City, which has asserted it will continue to encroach and provide electric service in the Town even after agreed-upon expiration of the Franchise Agreement.*

- *“Counts III and IV are based on the City’s violation of the Franchise Agreement and violation of the City’s general duties under Florida law, each of which requires the City to charge only reasonable rates and to prudently manage its utility in order to protect its customers from unreasonable rates.*

“The Town has requested that certain issues in Counts II, III and IV be tried by jury comprised of registered voters in Indian River County.

“Unlike the Town’s initial Complaint, the Amended Complaint has been streamlined to omit constitutional claims by an individual resident, and claims about the City’s non-compliance with Section 366.04(7), Florida Statutes. That statute requires the City to conduct a referendum election regarding representative management of its utility, an issue which is secondary to the Town’s core concerns regarding the City’s unlawful extra-territorial service, breach of the Franchise Agreement, imprudent utility management and unreasonable rates.”

As we move forward in litigation against the City, we will continue to provide regular updates. Thank you.