

Stefanie Osborn

From: Laura Aldrich <townclerk@irshores.com>
Sent: Thursday, September 15, 2016 2:29 PM
To: Laura Aldrich
Subject: 9-15-16 Mayor's Statement
Attachments: 9-15-16 Mayor Stmt re 9-13-16 PSC mtg.pdf

Importance: High

Good afternoon,

Attached please find a statement from Mayor Barefoot regarding Tuesday's Florida Public Service Commission meeting. The Mayor will discuss this and other information in more detail at next week's Town Hall meeting. We hope to see you there!

Respectfully yours,

Stefanie-Jo Osborn for

Laura Aldrich, MMC
Town Clerk, Indian River Shores
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September 15, 2016

FLORIDA PUBLIC SERVICE COMMISSION (PSC) PRELIMINARY ACTION

Dear Friends and Neighbors,

As you may know, on Tuesday the Florida Public Service Commission (by a 4-1 vote) decided to preliminarily accept staff's recommendation and deny our claims that the territorial agreement boundaries that divide the Town should be modified to comply with the Florida Constitution and protect captive disenfranchised customers in the Town from unregulated monopoly abuses by the City's electric utility.

Town Manager Robbie Stabe, Vice Mayor Gerry Weick and Finance Committee Chairman Bob Auwaerter, along with Town residents Dave Morgan and Paul Nezi, all appeared before the Commission and provided compelling statements as to the injustices that are being inflicted on the Town and its residents. Robbie read a letter that I prepared which is attached. Also attached are the written remarks of Bob Auwaerter. Just prior to the hearing, Senator Jack Latvala filed the attached letter, which was joined by Representative Debbie Mayfield, and encouraged the Commission to "amend the territorial boundaries as requested in order to end the abusive practices that have befallen the citizens of the Town of Indian River Shores." Representative Mayfield also drove up to Tallahassee and encouraged the Commission to approve our petition. Our legal team and all of the folks from the Town that presented did an excellent job conveying our case to the Commission.

The PSC is scheduled to issue a proposed order memorializing its vote on October 3.

The PSC's preliminary decision is clearly disappointing to all the disenfranchised customers of the City electric utility who have been subject to unregulated monopoly abuses for far too long. Though the Commissioners expressed concern over the treatment of our citizens by the City utility, four of the Commissioners said they did not believe they have the authority to address the unregulated monopoly problem that their predecessors on the Commission inadvertently created. Commissioner Edgar disagreed with PSC staff's recommendation and dissented.

We disagree with the Commission's decision, and with the City's continued insistence that it can ignore the Constitution and operate as an unregulated monopoly utility in our Town in perpetuity. As Senator Latvala and Representative Mayfield said in a letter to the Commission:

"It was never the intent of the Legislature that Florida's consumers be subject to the whims of an unregulated utility provider acting as a monopoly and lacking accountability to its customers...If the law gives the Public Service Commission the authority to establish monopoly service areas, surely that carries with it the authority to protect disenfranchised customers where the utility is abusing its monopoly status."

It's important to remember that the PSC action is **preliminary**, and we will have an opportunity to challenge that action and have the Commission conduct a more detailed review of the matter.

As we consider our options for additional steps we may take to address this issue, we remain committed to securing long-term rate relief for our citizens. To that end, we are hosting a Town Hall meeting on Thursday, September 22, to provide an update on the status of our litigation with the City and to answer questions regarding our options going forward. I encourage you to attend this meeting, which will be held at 2 p.m. at the Town Community Center.

Thank you.

Brian M. Barefoot
Mayor

MAYOR
BRIAN M. BAREFOOT

VICE MAYOR
GERARD A. WEICK

COUNCIL:
THOMAS W. CADDEN
RICHARD M.
HAVERLAND
THOMAS F. SLATER



TOWN MANAGER
ROBERT H. STABE, JR.

TOWN CLERK
LAURA ALDRICH

TOWN ATTORNEY
CHESTER CLEM

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September 13, 2016

Chairman Julie I. Brown
Commissioner Ronald Brisé
Commissioner Lisa P. Edgar
Commissioner Art Graham
Commissioner Jimmy Patronis
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0810

RE: Petition for modification of territorial order based on changed legal circumstances emanating from Article VIII, Section 2(c) of the Florida Constitution, by the Town of Indian River Shores
Docket No.: 160049-EU

Madam Chair and Commissioners:

I wish that I could be with you today as you review our request for a change in territorial boundaries, but unfortunately I have a previously scheduled commitment that could not be changed.

I appreciate the opportunity to share my comments with you so that they can become part of the official record.

Let me start by framing this issue as succinctly as possible. As Mayor of the Town of Indian River Shores, I represent thousands of constituents who for years have been subject to the abuses of an unregulated, monopoly utility.

Almost three decades ago, your predecessors on this Commission approved a service territory boundary that split our Town in two and quite literally divides our community. Those who happen to live north of Old Winter Beach Road receive service from Florida Power & Light (FPL), whose rates and quality of service are regulated extensively by you. In addition, Town residents who are FPL customers are provided with state-funded legal representation from the Office of Public Counsel, whose responsibility it is to protect those customers from unreasonable rates and unfair monopoly practices. Those who live south of Old Winter Beach Road are not so fortunate. They are forced to receive electric service from the Vero Beach

utility, with rates established by a Vero Beach City Council that has no accountability to the Town or our residents.

Furthermore, Town residents that are being forced to take service from Vero's unregulated monopoly have no say over how the City uses the monopoly profits it extracts from them, including the City's continued diversion of those profits to pay for costs that have nothing to do with electric service. Moreover, our residents who are being forced to take service from this unregulated monopoly receive no protection from the Office of Public Counsel. To make matters worse, your staff on pages 16 and 17 of its recommendation states that the Town is forbidden from representing its residents and trying to protect them these unregulated monopoly abuses. This, in my opinion, is a travesty. Certainly it cannot be the policy of the state of Florida to strip a group of its citizens of all regulatory protection.

Members of the Vero Beach City Council have admitted publicly that mistakes made by this unregulated monopoly utility over many years led to higher rates for customers. They have promised to address these issues and lower rates, but it is now clear from recent City financial analyses that systematic increases are planned over the next 30 years.

The City, meanwhile, refuses to offer meaningful representation to our citizens who are served by the utility, and has gone to great lengths to avoid such representation. When a law was passed in 2008 that would have pushed the City to form a representative utility authority accountable to all its customers—resident and non-resident alike — the City actually changed the way it historically defined the word "customer" in order to evade the statute.

And now, Madame Chair, despite your specific direction that our municipalities work in good faith toward a negotiated settlement, the City has turned its back on just such a settlement offer.

Just last month, the Vero City Council rejected the unanimous recommendation of its own Utilities Commission and voted to refuse a \$30 million offer from Florida Power & Light to purchase the utility's distribution system in our Town. This offer, on a per customer basis, doubled the highest purchase price the City's own consultants could identify in a national survey of utility system sales. It would have doubled the City's annual revenue. And our analysis, led by a former Chair of your Commission, found that it would have more than covered the City's real and potential costs and protected the City's remaining customers from rate increases.

In the interest of a negotiated settlement, our Town Council offered to contribute \$3 million toward FPL's offer. And yet, no settlement could be reached.

I share all this with you, Madame Chair and Commissioners, so that you understand the context behind our request to amend the territorial boundaries. I am not an attorney, so I will leave it to our legal team to discuss the unique Constitutional and anti-monopoly issues. For our citizens, this isn't just an abstract Constitutional issue. And we are not pursuing this request just to lower our rates. What we are doing is attempting to protect our citizens from a situation in which a majority are subject to the abuses of an unregulated monopoly.

Our franchise agreement with the City expires in two months. We have informed the City that at that time, it will no longer have our bi-lateral agreement to exercise extra-territorial powers and operate an unregulated monopoly within our municipal boundaries.

The City's response to us is the same response it has given for decades to non-resident customers subject to unregulated monopoly abuses: "Who cares?" I am hoping, Madame Chair and Commissioners, that you will tell the City that such a response will no longer be accepted.

Having a PSC-regulated utility, with professional and neutral oversight of utility rates, as the single electric utility provider in the Town would cure the issues that I have described. The City has shown no interest in addressing these issues, either by solving the underlying causes of unreasonable rates, by providing meaningful representation, or by accepting an offer for what would likely have been the nation's largest per-customer utility system purchase. We need your help.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Brian M. Barefoot". The signature is written in a cursive, flowing style.

Brian M. Barefoot
Mayor
Town of Indian River Shores

Testimony before the Florida Public Service Commission
regarding
Docket No. 160049-EU – Petition for modification of territorial order based on
changed legal circumstances emanating from Article VIII, Section 2(c) of the
Florida Constitution, by the Town of Indian River Shores

September 13, 2016

By
Robert Auwaerter
Indian Shores Representative and Vice Chairman
of the City of Vero Beach Utilities Commission

Madam Chairwoman and Members of the Commission,

Good morning. Thank your for allowing me to speak on the subject on the docket. For the record, I am Robert Auwaerter, the Indian River Shores Representative on the City of Vero Beach Utilities Commission, which is solely an advisory board to Vero Beach's City Council on utility matters. I also serve as Vice Chairman of the Utilities Commission. In addition, I serve as Chairman of the Town of Indian River Shores Finance Committee. Prior to retiring and becoming a full time resident of Indian River Shores, I worked for 35 years in bond and money market investment management, almost all of which was at the Vanguard Group, the world's largest mutual fund complex, where I ran their Fixed Income Group responsible for \$750 billion of shareholder assets. During my career, I had many opportunities to perform financial analysis to determine whether securities issued by both investor-owned as well as municipal electric utilities were suitable investments.

As a Vero Beach Electric customer, I pay one of the highest electric rates in the State of Florida. Much has been made of how much higher Vero Beach's rates are

compared to Florida Power & Light, which supplies power to the portion of Indian River County not served by Vero Beach. What usually is not mentioned is how poorly Vero Beach's rates compare to the other 32 municipal electric utilities in the State. If one ranks the lowest cost municipal power provider in this universe as #1, and the highest cost provider as #33, since 2013 (when this data was available in this format from the Florida Municipal Electric Association) Vero Beach has generally ranked between #26 and #30. The data for the latest month available, July 2016, showed that it was nearly dead last at #30.

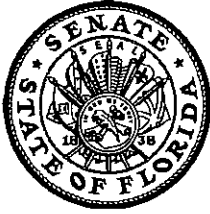
Now consider that consistently bottom quartile electric rate performance with the amount of money that the City of Vero Beach has transferred from the Electric Fund to its General Fund. In the fiscal years that span this decade, there has been a "profits" transfer of almost \$39.5 million and a General Fund administrative chargeback of an additional \$12 million for a total transfer to the General Fund of \$51.5 million. On average during this decade, these transfers funded 36% of the City's General Fund expenditures. No wonder that the City of Vero Beach's ad valorem property tax rate is one of the lower rates in the State. As of 2015, statistics from the State of Florida Department of Revenue showed that if you looked at all the towns and cities in Florida, 84% of them had higher property tax millage rates than Vero Beach.

The last piece of this puzzle is that, on a percentage basis, Vero Beach Electric has more customers outside of its incorporated boundaries than any other electric municipal utility in the State. Over 60% of its customers reside outside its borders. As you know, municipal electric rates are usually set by the local City or Town Council. In most of the municipal electric utilities around the State, there is a very high overlap between the ratepayers and the citizens of the City or Town that operates the utility. If those Council members do a poor job running the utility,

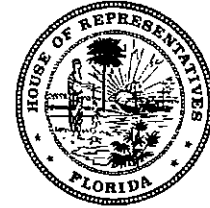
they can be voted out of office by the citizen ratepayers. Obviously, this remedy is not available to the majority of Vero Beach Electric ratepayers.

Vero Beach Electric customers who reside outside the City's incorporated borders are subject to the perfect storm. They consistently pay some of the highest electric rates in the State of Florida. While doing so, they massively subsidize the City of Vero Beach's General Fund operating budget which allows it to keep its property tax rates at some of the lowest levels in the State. Finally, these outside customers have no recourse to anybody if their electric rates are too high or their service is poor. They cannot vote the operating board—the Vero Beach City Council—out of office or appeal to this Commission like a customer of an investor-owned utility. If this is not the classic example of an unregulated monopoly using its abusive pricing powers to grind its captive customers into the ground, then I do not know what is. It is pure and simple “taxation without representation.”

I would urge this Commission to deny staff's recommendation on issues 4 and 5 and redraw the territorial boundaries so that the Town's residents can be protected from unregulated monopoly abuse, and all residents in the Town can be served by a single utility provider—FP&L—which would be extensively regulated and directly accountable to this Commission. Thank you for your consideration.



Senator Jack Latvala
26133 U.S. Highway 19 North
Suite 201
Clearwater, FL 33763



Representative Debbie Mayfield
1053 20th Place
Vero Beach, FL 32960

September 12, 2016

Julie Brown, Chair
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Indian River Shores; PSC Docket No. 160049-EU

Chairwoman Brown,

It has been brought to my attention that the Public Service Commission will be holding public hearings on Tuesday, September 13th, regarding a request to modify the electric service territorial boundaries within the corporate limits of the Town of Indian River Shores (the "Town").

In considering this request, I strongly encourage you to carefully consider your actions and listen closely to the pleas from the aggrieved citizens of Indian River Shores.

This is a unique situation that not only involves constitutional issues, but also issues of fundamental fairness. For far too long, the citizens of the Town have been given no voice and no form of representation before their electrical provider, the City of Vero Beach. With no way to redress their complaints at either the ballot box or through a representative utility authority, thousands of consumers in the Town have been subjected to excessive rates and poor quality service from an unresponsive provider. When your predecessors approved the territorial boundary line that now divides the Town, I'm sure that they never envisioned that the City of Vero Beach electric utility would systematically disenfranchise its non-resident customers in the Town.

But that is what has happened and that is unacceptable. It was never the intent of the Legislature that Florida's consumers be subject to the whims of an unregulated utility provider acting as a monopoly and lacking accountability to its customers.

As commissioners of the Public Service Commission, it is your responsibility to consider the rights of the public and take the necessary actions to provide solutions and protect the best interests of our citizens. I know none of you take that responsibility lightly. If the law gives the Public Service Commission the authority to establish monopoly service areas, surely that carries with it the authority to protect disenfranchised customers where the utility is abusing its monopoly status.

I am confident that the Public Service Commission will make the right decision in this matter and amend the territorial boundaries as requested in order to end the abusive practices that have befallen the citizens of the Town of Indian River Shores.

Thank you for your attention in this matter.

Regards,



Jack Latvala
State Senator, District 20



Debbie Mayfield
State Representative, District 54

cc: The Honorable Rick Scott, Governor of Florida
Braulio Baez, Executive Director, Florida PSC
Commissioner Ronald Brise
Commissioner Lisa Edgar
Commissioner Art Graham
Commissioner Jimmy Patronis
Summertree Water Alliance