

**TOWN OF INDIAN RIVER SHORES
WORKSHOP**

**OVERVIEW OF ELECTRIC UTILITY REGULATORY ORDINANCE
MARCH 9, 2015**

I. Legal Predicate

- The Town has broad home rule and statutory powers to ensure that its inhabitants are provided with safe and reasonably-priced electricity.
- Existing ordinances reserve to the Town “the right, duty and obligation to govern and control the rates charged by public and private Utility operations.”
- The Town has agreed to temporarily refrain from regulating the City’s electric rates until the Franchise Agreement expires.
- Other than temporary limitations in the Franchise Agreement, the Town has the home rule and statutory powers to regulate the rates of electric utilities whose rates and revenue requirements are not regulated by the Florida Public Service Commission (“FPSC”).

II. Purpose of the Ordinance

- To utilize the Town’s home rule and police powers to ensure that its inhabitants are provided with reliable electric service at reasonable rates.
- To prescribe just and reasonable rates charged to persons within the Town by electric utilities and to engage in rate-setting proceedings (rate cases) when needed.
- To specify that only those utilities whose rates and revenue requirement are not regulated by the FPSC are subject to the ordinance. Electric Cooperatives are also exempted from the ordinance because, under Florida law, they are self-governing and each customer has a vote in electing management.

III. Approach to Drafting the Ordinance

- To generally follow established regulatory principles, policies, and procedures as utilized by the FPSC. (This is not to suggest that the ordinance is worded to adhere to every detailed aspect of regulation as administered by the FPSC.)
- To make the ordinance comprehensive so that all of the essential requirements are included, while also allowing flexibility to streamline regulation (and the wording of the ordinance) where feasible and efficient.
- To emphasize that regulation should be open, transparent, follow the essential requirements of law, and provide fairness and equity through adequate due process protections for both the Utility and its customers receiving service within the Town.

IV. Key Definitions

- **Authority.** The Indian River Shores Utility Regulatory Authority, which shall be comprised of the Town Council and chaired by the Town mayor.
- **Administrator.** The Town Manager (or his/her designee with the concurrence of the Authority) who shall serve as the director of regulatory and franchise administration.
- **Advocate.** An attorney appointed and compensated by the Authority to represent the interests of the Utility's ratepayers.
- **Presiding officer.** The hearing officer, or chair of the Authority, when conducting a hearing under this chapter.
- **Utility.** A person providing retail electric service within the corporate limits of the Town whose rates and revenue requirement are not regulated by the FPSC.
- **Utility trust account.** An account maintained by the Town Clerk for the purpose of receiving, holding and expending Utility funds, fees and penalty monies.

V. Powers and Duties of the Authority

- To act on all franchise related matters.
- To fix rates of a Utility which are just, reasonable, compensatory, not discriminatory and fairly balance the interest of the Utility and the customers.
- To approve, modify, or deny the filing of any tariff, or other rule or regulation proposed to be established by or on behalf of a Utility.
- To establish, and from time-to-time amend a uniform system and classification of accounts.
- To require regular or emergency reports from a Utility, including, but not limited to, financial reports, as the Authority deems necessary.
- To enter orders regarding any matter pertaining to the regulation of Utilities, deemed by the Authority to be necessary or convenient to carry out its authority.
- To hold hearings and take testimony under oath, if deemed necessary by the Authority.
- The Authority may follow the appropriate rules of the FPSC, for guidance as needed. Such rules, however, are not binding on the Council or Authority.
- To appoint, at its sole discretion, hearing officers to preside over all or any portion of a Utility-related proceeding.

VI. Rates and Charges

- A Utility may only charge rates and charges that have been approved by the Authority, or by the FPSC for any investor-owned electric Utility serving customers within the Town.
- Any Utility may choose to charge the same rates as approved by the FPSC for any investor-owned Utility providing service within the Town or it may apply to the Authority to establish or change rates, fees and charges.

- If a Utility chooses to establish rates different from those set by the FPSC, all applications for initial rates and any subsequent rate adjustments, shall include (i) pre-filed testimony and exhibits expected to be submitted in support of the application, and (ii) minimum filing requirements (MFRs).
- The MFRs contain all essential financial, operational, and rate information to enable the Authority to review the reasonableness of rates. The specific information contained in the MFRs is found in 55.05(e) and 55.05 (f) .
- In determining rates, the Authority shall review and consider the value and quality of service and the prudent cost of providing service.
- The Authority may disallow from rates any costs that it determines are not prudent and reasonable.
- The Authority may open an investigation into the reasonableness of rates at any time it deems appropriate.

VII. Fees

- Each Utility opting not to adopt rates and charges approved by the FPSC shall pay a regulatory fee to the Authority.
- The regulatory fees are to be used to pay for the ongoing costs of supervising and regulating Utilities in the Town.
- All fees collected by the Town from Utilities shall be placed in a separate enterprise fund to be called the Utility regulatory fund (Utility trust account) and such funds shall at all times remain separate and distinct from other Town funds.
- The regulatory fee shall be one percent (1.0%) of the Utility's gross revenue, derived from the Utility's gross receipts billed within the Town. Such regulatory percentage fee shall continue until amended by the Authority.

VIII. Procedures, Notices, and Conduct of Hearings

- The proposed ordinance sets forth the procedural requirements for giving notice and conducting hearings.
- The Utility (and sometimes the Authority) shall provide notice of each hearing as specified.
- All hearings shall be recorded and minutes shall be kept.
- All hearings of the Authority shall be open to attendance by the general public except at such times, if any, when the specific subject to be discussed is exempt from public attendance by application of Florida Statutes.
- As a general rule, all direct and rebuttal testimony in a rate-related hearing shall be pre-filed pursuant to a schedule set by the presiding officer.
- All testimony at a hearing shall be under oath and shall be recorded.
- Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.
- Parties to a hearing will be afforded the opportunity to conduct discovery.
- Decisions of the Authority shall be by motion approved by at least three (3) members present and voting.
- The Authority shall consider the record of the proceedings before the Authority and the legal arguments of the affected Utility and any party. No recommended order of a hearing officer, if any, shall be binding on the Authority.

IX. Enforcement

- The Authority may assess an administrative penalty not exceeding five hundred dollars (\$500.00), which may be collected through action in a civil court of law of competent jurisdiction. Each day that a violation continues may be considered as a separate violation.

- The Town may also take action in any court of competent jurisdiction as the Town deems necessary to prevent or remedy any refusal to comply with, or any violation of its ordinance, rules, or orders.
- Such actions may include and shall not be limited to an equitable action for injunctive relief, or any action at law for damages or other relief or remedy.

X. Existing Franchises

- A Utility holding a valid and unexpired Franchise from the Town on the date this ordinance is adopted shall not be subject to the requirements of this chapter so long as the Franchise is in effect.
- If a Utility is permitted by the Authority to continue to operate within the Town upon expiration of a Franchise, such Utility and its rates shall be subject to the requirements of the ordinance and the Utility shall file an application for rate approval within thirty (30) days of the date the Franchise expires.