



MINUTES
For Joint Meeting Held at
Indian River Shores Community Center
6001 State Road A-1-A, Indian River Shores, Florida 32963

2nd MEDIATION SESSION:
TOWN of INDIAN RIVER SHORES,
The CITY of VERO BEACH, and
INDIAN RIVER COUNTY
Friday, May 1, 2015
9:00 a.m.

For the Town: **Bruce May**, Legal Counsel, Holland & Knight
Terry Deason, Electric Rate Consultant for Holland & Knight
Chester Clem, Town Attorney
Robert Stabe, Town Manager

For the City: **Schef Wright**, Legal Counsel
Dick Winger, Mayor
Tammy Vock, City Clerk

For the County: **Joe Baird**, County Administrator
Peter O'Bryan, Commissioner

GUESTS: **Carlos Alvarez**, Mediator; **Jerry Weick**, IR Shores Vice Mayor; **Mike Ochsner**, IR Shores Councilman; **Robert Auwaerter**, IR Shores Finance Committee Chairman; **Rick McDermott**, IR Shores Rep. on CoVB Util. Commission; **Peter Gorry**, CoVB Finance Commission Chairman; **Laura Moss**, CoVB Utilities Commission; **Amy Brunjes and Patrick Bryan**, FPL; **Debra Fromang**, Former CoVB Council; **Charlie Wilson**, former CoVB Council; **Steve Faherty**, PhD; **Glenn Heran**, CoVB resident; Commissioner **Wesley Davis**; Town residents **John McCord**, **Dick Hatch**, **Bill Grealis**; Reporters **Lisa Zahner & Phil Sunkel**, VB 32963; **Colleen Wixson**, Press Journal

Brian M. Barefoot, Mayor
Laura Aldrich, Town Clerk
Wayne Coment, City Attorney
Jim O'Connor, City Manager
Dylan Reingold, County Attorney
Terri Collins-Lister, Deputy Clerk

1. **Call to Order**

Mr. Alvarez called the Chapter 164 Mediation Process meeting to order at 9:07 a.m. He noted that Mr. Coment and the Town had provided some information regarding what had transpired thus far this year, and asked the parties to each give an update on any progress made since the first mediation meeting on December 17, 2014 and to report their current standing on the issue.

2. **Updates on Mediation Progress**

CITY update. Outside legal counsel R. Scheffel "Schef" Wright stated that the City has not had success in its "touch base" conversations with the Florida Municipal Power Agency (FMPA), FPL and the Orlando Utilities Commission (OUC) to lower costs under the FMPA contract. Regarding a sale to FPL, the FMPA would not change its bond covenant with the OUC so it is not possible for the OUC to take assignment of the contract. For now, there is no one to take assignment which negates the ability to sell the system. No one sees a way forward on that front. The City's rate study has been underway, with a draft delivered in March. For now the overall cost level, revenue and rate levels seem on target. Power Services is conducting the System Optimization Study and it will be finished this November.

Mr. Wright stated that their focus was efforts made to reduce rates, and hired seasoned consultant Bill Herrington to work diligently with him in trying to find ways to reduce those rates and power supply costs, which counts for 73% of the overall cost to customers (\$91 of \$124 bill at \$126 per kW hour). Most of the cost is paid to the FMPA and the remainder goes to the OUC per the City's 2008 contract and agreements. To maintain reserve power obligations as stipulated by the Florida Reliability Coordinating Council, the City has paid \$4 million per year to the keep the existing power plant operational. They are reviewing a new OUC offer which would save \$1.1 - \$1.2 million per year as well as an additional \$500,000 per year until 2018. The City also continues to evaluate the Florida power supply and energy markets. Mr. Wright presented two scenarios that he said both involved risks. One is to replace the 15 year OUC contract with a 9-year offer that appears pretty good, with reduced demand costs and eliminates power from the St. Lucie power plant.

Please Note: *The Town of Indian River Shores does routinely keep verbatim minutes. Any party interested in such an appeal relating to any decision made by the Council with respect to any matter considered at this meeting is responsible to record the meeting and include the testimony and evidence upon which the appeal is to be based.*

The other option is to terminate the OUC contract and go to the Florida Power Supply and Energy Markets in general. He discussed the current market rates, which are slightly lower than assumed market rates. If they do terminate the OUC contract and go to market, Mr. Herrington's analysis estimates \$30-\$32 million in net present value savings through 2023. He expounded that if "everything holds still" with the sales and price of natural gas and there are no other unexpected costs, they should be able to lower the bulk power supply costs by \$6.50-7 per kilowatt hour for 7 years.

If the City were to finance the capital expenditures of \$2-\$3 million per year over 10-15 years, there would be a significant reduction again by 2019, and the rate impact would be delayed for the next three years. In 2019 the debt from the FMPA's Stanton Unit 1 Project will roll off and switch to the City for \$2.6 million per year. This will greatly lower the cost for the project. These ideas are being vetted by the Utilities and Finance Commission for the City. There are risks no matter what the City chooses to do, he concluded.

COUNTY update. County Attorney Dylan Reingold informed everyone that the City filed a petition with the Public Service Commission (PSC) after the last mediation session. The PSC granted the declaratory statement for the City on February 3, 2015 but declined one for the County. The County filed an appeal to the Florida Supreme Court, which should be accompanied by have an amicus brief from the Florida Association of County Attorneys backing the County.

TOWN update. Mr. May said they had a more formal presentation as a possible solution, which Mr. Alvarez agreed this would be the time to present it. Attorney May conveyed the Town's frustration with the City for not relaying information on a rate relief. The Town reiterated that it believes the best solution would be for the City to sell the whole electric system to FPL, but this is being blocked by the FMPA per Section 28(c) of the contract that states "the project participant 'the City' agrees that it will not sell, lease, abandon or otherwise dispose of all or substantially all of its electric or integrated utility system without the FMPA's consent." The Town therefore proposes that the City conducts a *partial sale* to FPL.

Mr. May acknowledged three concerns that the City has with a partial sale to FPL. The first concern is that the City views itself in litigation with both the Town and the County and believes it could not settle with one and not the other. In fact, the County and the Town have separate issues in their respective lawsuits, and one is not party to the other. The second concern is that the City has a substation within the Town's limits which they believe is a backbone for the overall city electric distribution. The Town could easily work around this with the City. Last, there are concerns expressed about stranded cost issues. The Town believes that if the stranded costs exist, they should not prevent discussion of a partial sale. A brief discussion about stranded costs ensued, with reference to the most recent electric utility acquisitions, South Daytona and Winter Park, which ended up costing about \$3,000 and \$715 per customer, respectively.

3. **Town's Proposal**

Mayor Barefoot expressed hope for a resolution to avoid the continued costs and risk of litigation. He said the Town Council had voted to extend the abatement of the Town's lawsuit to May 15, 2015 so that the City could continue its research for reduced rates. He stated the Town's disappointment with the FMPA and the City's lack of concentrated effort to find a resolution through all legal means possible.

Mayor Barefoot stated that the electric rate disparity between FPL and the City has increased to almost 31% from the 25% it was when the cooling off period started. FPL is at \$94.68 per 1000 kilowatts and the City is at \$124 per 1000 kilowatts. The Town believes that the City has no control over its electric utilities. FPL is willing to discuss a purchase of the utility assets that is part of the Town. This would lower the Town's rates and would help the City's finances while possibly providing a way to lower the rates of its remaining customers.

Rate expert Terry Deason had a 2-page handout with the Town's buyout calculations at various levels. He explained that the Town does not know what a buyout would cost or even if it's the right thing to do, but it could be a beneficial solution. He reiterated that a buyout could produce savings on debt service payments as witnessed from other utility buyouts in the state. The theoretical savings presents an opportunity for the City to gain capital funds to be used in whatever manner they choose. The Town's customer base contributes approximately \$542,000 to the City's General Fund, which was shown on the second sheet as various rates for investment opportunities based on a \$3-\$10 million purchase price if offered by FPL.

Amy Brunjes stated that FPL is still open to a full purchase of Vero Electric, but they are willing to make an offer to the City for the customer base of the Town. She stated they believe a sale or acquisition of the

Town's customer base would not have a detrimental impact on the City. After Mayor Barefoot brought up the Town's May 15, 2015 deadline, Mrs. Brunjes said that FPL should be able to conduct a valuation analysis before that date.

Mediator Alvarez asked if the City had any questions for Mrs. Brunjes, and Mayor Winger referred to the Town's analysis for a buyout and felt that the \$3,000,000 amount was low. Mr. Deason apologized and explained it was just a conservative range analysis. Mayor Winger accepted the apology, and Mr. Deason said it was a simple attempt for a potential buyout, conservatively stated. Mr. Alvarez added that the Town feels that this could get them out of any legal entanglements, as the FMPA requirements contract makes it clear that the City can't sell "substantially all" and this is just 8%, which is a small part of the contract. Mr. May and Mrs. Brunjes agreed that this would not require FMPA involvement. There was then a general discussion regarding the analysis with Commissioner O'Bryan.

(Mr. Alvarez called for a recess at 10:30, with all parties resuming the meeting at 10:43)

4. **City's Response to the Proposal**

Mr. Wright said he looks forward to receiving the proposal from FPL. In response to Mr. Deason's thoughts on the City's use of funds from a buyout, he pointed out there were other repercussions involved with a loss of kilowatt hours because of the City's power purchase agreements. The City is eager for this issue to be resolved soon.

Mr. Alvarez brought up the May 15, 2015 end of the cooling off period, questioning if the Town could extend their lawsuit 30 days as it would be too soon to have ample time for consideration the proposal. Mr. May expressed concern with the November 2016 expiration of the franchise agreement quickly approaching, believing negotiations could continue during the lawsuit. The Town would be pliant if the City and FPL made progress in their discussions. Mr. Alvarez pointed out that negotiations might be more successful if the lawsuit was not active and asked the Town to extend the cooling off period to June 1, 2015.

Mayor Winger reiterated that he would not support anything done in this venue that was not beneficial to all of Vero's electric customer base. Mr. Alvarez understood that the Town wanted to have an equitable solution that is win-win, with a minimal potential burden. He asked about the idea of a Utility Board that was presented at the first mediation in December, and Attorney Wright said that it was still a priority but the City had been focusing on lowering their rates and costs. Mr. May said they could agree to let the cooling off period expire and not continue the lawsuit until June 1. Mayor Barefoot offered to participate in any discussions between the City and FPL if it would help to facilitate a favorable conclusion.

Mr. May let everyone know that the Town was proceeding with a Rate Regulation Ordinance for within the Town limits that will fill the regulatory gap should the litigation prove to be unsuccessful.

5. **County's Response**

Mr. Reingold and Commissioner O'Bryan thanked the Town for a potential solution, and reiterated that the County's only perceived solution is a full sale of the system from the City to FPL. He suggested sending a letter to the Joint Legislative Auditing Committee requesting they tell FMPA to give the City the value of their assets and exit costs.

(Mr. Alvarez called for a recess for discussion at 11:05, with all parties resuming the meeting at 11:10)

Mr. May stated that the Town will let the cooling off period lapse and reinstate the lawsuit but that they would give the City 50 days instead of 20 from the date the suit is refiled to respond to the lawsuit, pending approval from the Town Council. This would give the City and FPL time to reach an agreement for a partial sale. Mr. Wright said this was reasonable. Mr. Alvarez tried to talk them out of litigation, stating he was very pleased with what the Town brought to the table. Mr. May said the Town was holding a Special Call Meeting that day at 2:00 and would let Mr. Alvarez know what is decided.

6. **Adjournment**

Mr. Alvarez said this terminates the mediation process required by Florida Statutes Chapter 164, and adjourned the meeting at 11:20 a.m.

Respectfully submitted,

/s _____
Laura Aldrich, Town Clerk

(Approved by the Town Council at the 9-24-15 meeting)