



July 20, 2015

STATEMENT FROM
MAYOR BRIAN BAREFOOT
TOWN'S RESPONSE TO VERO'S MOTION TO DISMISS

As you may have heard, the City of Vero Beach filed a Motion to Dismiss our electric system lawsuit on July 7, claiming incorrectly that our lawsuit usurps the authority of the Public Service Commission (PSC). Our litigation and utility attorneys, Karen Walker and Bruce May, filed a response to the City's filing on Friday. Posted below is an excerpt from the filing that concisely summarizes where we are in the process. We will continue to update you as this case moves forward.

Throughout this process, we have heard time and again from the City that lower electric rates are just around the corner, yet the gap between Vero's rates and those of FPL has only gotten wider. As of May, Vero's electric rates were approximately *31 percent higher* than FPL's.

The City is now exploring walking away from its long-term contracts with OUC, a decision that has prompted threats of costly legal action and penalties from OUC. Given the City's budget struggles with its unfunded pension liabilities, and potential impacts of massive layoffs at Piper, I continue to wonder why the City rejects out of hand the possibility of selling its system in the Shores to FPL for a very fair price. Not only would that sale eliminate the need for costly litigation, it could also bring tens of millions of dollars into the coffers of the City, which in the view of our consultants could provide much needed revenue to the City, and potentially lower electric rates not only for our citizens but for all remaining customers, both resident and non-resident, as well.

City leaders continue to insist that they are too far "under water" on their utility contracts to consider a sale. If true, that confirms one of the reasons for our lawsuit-- mismanagement and imprudent decision-making have led to an untenable position for the City utility and its non-resident customers.

The excerpt from the Friday, July 17 filing follows:

"At its core, this lawsuit is about the Florida Constitution, the Municipal Home Rule Powers Act, Section 180.02(2), Florida Statutes, and the rights and responsibilities of the Town and City under a Franchise Agreement that is scheduled to expire in less than two years. It is about settled constitutional and statutory principles that respect the equal independence of municipalities by limiting the exercise of extra-territorial municipal powers. It is about whether the City has the necessary statutory authority to exert extra-territorial powers within the corporate limits of the Town and occupy the Town's public places in perpetuity without the Town's consent after the Franchise Agreement expires. This Court, and only this Court, is the proper forum to adjudicate these important questions.

This lawsuit is not about modifying a service territory agreement approved by the PSC, and the Amended Complaint acknowledges that issues relative to modification of that agreement are for another day and will need to be taken up by the PSC. But the PSC's jurisdiction over territorial agreements in no way limits the Court's proper role in ruling on the questions that are before it. The PSC has no authority over the interpretation of the rights of the City and the Town under the Franchise Agreement, the Florida Constitution, the Municipal Home Rule Powers Act, and Section 180.02, Florida Statutes, which are all pertinent to the questions raised here regarding extra-territorial municipal powers. In fact, the PSC has stated that these types of issues are for the circuit courts to decide.

The Town also has raised valid claims for anticipatory breach of contract based on the City's repudiation of the Franchise Agreement's express expiration date, for breach of the City's obligations under Franchise Agreement to charge only reasonable rates and prudently manage its electric utility, and for declaratory relief that the City's electric rates it charges the Town are unreasonable.

For all of these reasons, there is no basis for dismissal of the Amended Complaint and the Amended Complaint should stand."