

FACT SHEET

Town of Indian River Shores v. City of Vero Beach

WHAT: On July 18, 2014 the Town of Indian River Shores ("Town") filed a civil lawsuit in the 19th Circuit Court against the City of Vero Beach ("City"), with the ultimate goal of seeking electric utility rate relief for residents and businesses served by the City's electric utility. The suit asks the Court to:

- Provide relief to customers who have been subject to unreasonable rates, in the form of a refund.
- Require the City's electric utility to begin the process of vacating the Town at the end of the electric service franchise agreement, which expires Nov. 6, 2016. The Town separately informed the City that it will not renew that agreement. This would require the City to remove its electric facilities from the Town's public areas over an orderly transition period to allow for substitute service from another electric provider.
- Require the City to adhere to state law, and hold a referendum election of all customers to determine whether a separate utility authority should be formed that would be accountable to all customers, both resident and non-resident alike.
- Restore the Constitutional rights of non-resident customers of the City's electric utility, whose utility payments benefit the City's general fund but who have no voting rights with respect to how Vero Beach's utility is managed and how electric rates are set.

Before further prosecuting this lawsuit the Town and the City are required to participate in mandatory mediation under the Governmental Conflict Resolution Act. Pursuant to Florida Law, the Town Council passed a resolution stating its intent to abate the legal action while this procedure is followed.

The Town Council authorized a budget amendment to cover up to \$250,000 in legal and utility consultant costs through the end of the Fiscal Year.

WHY: Approximately 80 percent of the Town's residents are electric service customers of Vero Beach, (approximately 20 percent of the residents are served by Florida Power & Light Company (FPL)). For many years those residents of the Town that receive electric service from Vero Beach have paid excessively high electric rates. Currently, rates are approximately 30 percent higher than those charged by FPL. The Town believes that it and its residents pay in excess of \$2 million each year in unreasonable electric rates.

The Town believes that the excessive rates are the result of poor management decisions by Vero Beach. The Town's residents and other non-resident customers of Vero Beach are being asked to bear the brunt of the City's imprudent utility management.

Town leaders were anticipating that a proposed sale of the Vero Beach utility system to FPL would result in lower electric rates for its citizens. As that sale now appears stalled, the Town decided legal action was necessary to achieve rate relief for citizens.

WHO: The Town of Indian River Shores is a municipality in Indian River County located on Florida's Treasure Coast, with a population of approximately 4,000.

The City of Vero Beach is a municipality also located in Indian River County adjacent to Indian River Shores, with a population of approximately 15,000. The City operates an electric utility which serves customers in the city, as well as non-resident customers in the Town of Indian River Shores and unincorporated areas of Indian River County.

A majority of Vero Beach Utilities customers reside outside of the city limits. Vero Beach has approximately 34,000 customers, of which approximately 22,000 reside outside of the City and have no voice in how the utility manages its system and sets its electric rates. Rate decisions are regulated exclusively by the Vero Beach City Council, and excess revenues are transferred exclusively to the City's general fund.

A resident of Indian River Shores, Michael Ochsner, joined the legal complaint as a co-plaintiff, with standing specific to Constitutional issues in Count III below.

The Town of Indian River Shores and Michael Ochsner are represented by Holland & Knight LLP.

LAWSUIT: The civil lawsuit is based on the following fundamental legal principles:

1. Florida law requires the City to charge "reasonable" rates for the electric services it furnishes to the Town and its citizens;
2. In order to protect the Town's rights to reasonable rates, the City has a corresponding legal duty to prudently manage its electric system;
3. The Town has a right to exercise broad regulatory powers over its rights-of-way and other public areas to protect its citizens from unreasonable rates and imprudent managerial practices; and
4. The Town and other non-resident customers have statutory and constitutional rights to have a voice in electing the governing board of their municipal utility.

The Town's civil lawsuit includes four primary counts:

Count I – Refunding Unreasonable Electric Rate Payments

The lawsuit alleges that the City has breached its legal duty by employing improper rate-making practices that require non-resident customers to pay unreasonably high rates.

The City's improper ratemaking practices require that the Town and its citizens unfairly subsidize the City's operations that are not related to furnishing electric service to customers.

The lawsuit further alleges that the City has breached its legal duty to prudently manage its utility through a series of ill-advised utility management decisions which have driven the cost of power to excessive levels.

The suit asks the court to declare that Vero Beach's rates are unreasonable and award a refund of any payment of excess rates.

Count II – Removal of electric facilities upon imminent expiration of franchise agreement

Under Florida law, the City's ability to provide electric utility service within the Town is derived directly from the permission of the Town, and the City has no legal right to provide such service absent the permission of the Town.

The franchise agreement which the Town has entered into with the City provides the permission under which the City is currently furnishing electric utility service in the Town. However, the City will no longer have that permission when the franchise expires on November 6, 2016.

Under Florida law, the City has no right to keep its electric facilities within the Town after the franchise agreement expires.

The Town has formally notified the City that it will not renew the franchise with the City because the City continues to mismanage its electric utilities and to impose unreasonable and excessive electric rates on the Town and its citizens.

As decided in *City of Indian Harbour Beach v. City of Melbourne*, once the franchise agreement expires, the Town has the legal right to require the City to remove its electric utility infrastructure from the Town's rights-of-way, and to obtain substitute electric service from other utility providers.

The Town has asked for a Declaratory Judgment holding that the City must remove its electrical facilities from the Town's rights-of-way at the expiration of its franchise agreement Nov. 6, 2016. Doing so in an orderly and efficient manner will ensure that substitute electric service from another provider will be fully operational and ready to serve the Town when the franchise agreement expires.

Count III – Requiring the City to comply with state law

Approximately 65 percent of the City's electric customers are not residents of the City, cannot vote in City elections, and thus have no voice in electing officials that manage the utility and set electric rates. The lawsuit asserts that the City has continued to violate state law by refusing to comply with Section 366.04(7), Florida Statutes, which provides all customers of small municipal electric utilities like the City of Vero Beach with a voice in electing the governing board of their municipal utility.

According to the law, a municipal utility which had between 30,000 and 35,000 retail electric customers as of September 30, 2007, and which serves two cities in the same county, must hold a referendum election to determine if a utility authority accountable to all customers should be established. The City of Vero Beach, by its own admissions and by its own 2007 audited financial statement, had in excess of 33,000 customers as of September 30, 2007 and therefore is clearly subject to the referendum and other requirements in Section 366.04(7). The customer count was based on established industry practice of counting each metered account as a "customer."

After Section 366.04(7) took effect, the City disavowed its prior customer counts set forth in its audited financial statements and took a position that it does not have 30,000 customers. The Town believes that the City adopted a novel and an erroneous customer count methodology (which counts individuals with multiple metered accounts as single customers) to circumvent the referendum requirements in the statute.

Count III asks the Court for a declaration that the City of Vero Beach is indeed subject to Section 366.04(7)(a), Florida Statutes, and must conduct a referendum election pursuant to the law.

Count IV – Restoring Constitutional Rights

As co-plaintiff, Town of Indian River Shores resident Michael Ochsner has asserted that the City's refusal to adhere to Section 366.04(7)(a), Florida Statutes, denies his electoral rights under the Florida and U.S. Constitutions.

Florida law provides that all of the City's retail electric customers should have the right to vote in a referendum election on whether a separate utility authority should be created to operate the utility. The City denied this right to Mr. Ochsner and all other non-resident customers.

By denying Mr. Ochsner and other non-resident customers of their right to vote in this referendum election, the City has violated their Constitutional rights to due process and equal protection. Having been denied their Constitutional rights, Mr. Ochsner and all non-resident customers of the utility are afforded no voice in decisions that have a direct financial impact on them and their families.

CONFLICT

RESOLUTION: Pursuant to Florida's Governmental Conflict Resolution Act (Florida Statutes, Chapter 164), before the Town can prosecute its lawsuit, it and City must first attempt to resolve the dispute. The Town's lawsuit acknowledges that the Town will agree to abate the litigation to pursue resolution under the Act. The process includes a series of public meetings and public mediation sessions that occur over a period of approximately 100 days, and which are designed to resolve the lawsuit short of full fledged litigation. If at the end of that dispute resolution process no settlement is reached, the Town's lawsuit would move forward.