

## RESOLUTION NO. 15-01

### A RESOLUTION OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA REGARDING THE FLORIDA AUDITOR GENERAL'S OPERATIONAL AUDIT OF THE FLORIDA MUNICIPAL POWER AGENCY (FMPA) AND THE PLANS OF THE CITY OF VERO BEACH IN RESPONSE TO THAT AUDIT

**Whereas**, the Town of Indian River Shores (“Town”), the City of Vero Beach (“City”), and Indian River County ( the “County”) are participating in a state-mandated mediation process under Chapter 164, Florida Statutes, to resolve issues associated with a complaint of the Town of Indian River Shores (“Town”) against the City of Vero Beach (“City”), Case No. 312014 CA 000748, pending but presently in abeyance in the Circuit Court in and for Indian River County, Florida (the “Lawsuit”); and

**Whereas**, as part of that state-mandated mediation process the Town, the City, and the County have entered into an Interim Mediation Agreement, which provides among other things that the Town will continue to abate the Lawsuit until March 2, 2015, so that the Parties can further evaluate options that would resolve the conflicts between them; and

**Whereas**, under the Interim Mediation Agreement the City has agreed to continue to work with “the Florida Municipal Power Agency (“FMPA”), bond trustees and others to effectuate the sale of the City’s electric utility system to FPL”; and

**Whereas**, the Florida Auditor General has conducted an operational audit of the FMPA and released its preliminary audit findings on January 21, 2015 (the “Audit Report”); and

**Whereas**, the Audit Report found that FMPA’s “fuel hedging practices were not consistent with industry practices” and, as a result of those practices, “the FMPA incurred net total losses of \$247.6 million related to fuel hedging activities over the past 12 fiscal years”; and

**Whereas**, the Audit Report found that FMPA entered into a series of pay-fixed interest rate swaps with notional amounts of \$700 million associated with the financing of a power plant project in Taylor County Florida that was never built (the “Taylor Swaps”); and

**Whereas**, the Audit Report found: FMPA’s decision to enter into the Taylor Swaps “represents risk-taking in excess of industry practice”; the “swaps were not employed consistent with industry practices”; the swaps are likely to result in “significant termination fees”; and in October of 2014 the swaps had a value of “negative \$108 Million”; and

**Whereas**, based on discussions at the City’s special meeting on January 29, 2015, the Town believes that the value of the Taylor Swaps has dropped significantly since October 2014, and the swaps currently have an approximate value of negative \$150 Million; and

**Whereas**, the Audit Report also raises serious concerns about other aspects of FMPA’s business practices, including its investment strategies, procurement protocols, professional services contracts, salary and benefit policies, and entertainment budgets; and

**Whereas**, a significant share of the hedging losses, swap termination fees, and other operational costs incurred by FMPA are passed on to the customers of the City’s electric utility and other FMPA member utilities, and are a major driver of the electric rate problems facing the citizens of our communities; and

**Whereas**, at its special meeting on January 29, 2015, the City voted to encourage FMPA to hire a consultant to protect against these abuses occurring in the future; and

**Whereas**, the Town applauds the City for trying to ensure that FMPA does not repeat mistakes in the future, but also believes that the City should hold FMPA accountable for its mistakes that have already occurred, and which have caused economic harm to the City's electric utility customers; and

**Whereas**, the Town believes that FMPA's intransigence and mismanagement are primary causes of the electric rate problems that confront all of our residents, and the City will never be able to solve those problems without holding FMPA accountable;

**NOW, THEREFORE, BE IT RESOLVED by the Town Council Of Indian River Shores that:**

Section 1. The Town adopts as true and correct the recitals stated above and incorporates same by reference as part of this Resolution.

Section 2. The Town encourages the City to meet as soon as possible with the FMPA as part of the City's obligations under the Interim Mediation Agreement to try to resolve the lawsuit by working with FMPA "to effectuate the sale of the City's electric utility system to FPL." As part of that meeting the Town encourages the City to:

- a. Demand that the FMPA do an immediate market appraisal by an independent expert of all assets and liabilities associated with the City of Vero Beach and its contractual arrangements with FMPA; and
- b. Discuss with FMPA the findings in the preliminary Operational Audit Report including, but not limited to, FMPA's hedging and swap losses; and
- c. Demand that the FMPA refund the damages suffered by the City's electric customers incurred by FMPA's imprudent hedging and swap practices; and
- d. Request that FMPA end its opposition to the sale of the City's electric utility system to FPL, and take whatever action is necessary to allow that sale to move forward.

Section 3. The Town Manager shall hand deliver on this day a certified copy of the Resolution to the City Manager along with a letter respectfully requesting that the City consider the Resolution at its meeting on February 3, 2015.

Section 4. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a Special Meeting of the Town Council this 2<sup>nd</sup> day of February, 2015.

/s \_\_\_\_\_

Brian M. Barefoot, Mayor

ATTEST:

/s \_\_\_\_\_

Laura Aldrich, Town Clerk