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January 30, 2015

**BY ELECTRONIC DELIVERY**

Carlotta Stauffer  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0810

Re: Commission Docket No. 140244-EM and Docket No. 140142-EM

Dear Ms. Stauffer:

As you know from your official docket records, this law firm represents the City of Vero Beach, Florida ("City" or "Vero Beach"), the petitioner in Docket No. 140244-EM<sup>1</sup> and a full party intervenor in Docket No. 140142-EM.<sup>2</sup> This letter provides the City's response to the unauthorized "Notice of Pending Litigation" ("Town's Notice") that was submitted, as a letter addressed to you, by the Town of Indian River Shores ("Town") in both dockets on January 13, 2015. In summary, as the Commission Staff noted in their January 22, 2015, recommendation in Docket No. 140244-EM, the information proffered by the Town is "not relevant to the City's Petition," and the Commission should accordingly ignore it altogether.

The Town's Notice is legally improper in that it is an attempt

<sup>1</sup> In re: Petition of the City of Vero Beach, Florida, for a Declaratory Statement Regarding Effect of the Commission's Orders Approving Territorial Agreements in Indian River County.

<sup>2</sup> In re: Petition for declaratory statement or other relief regarding the expiration of the Vero Beach electric service franchise agreement by the Board of County Commissioners, Indian River County, Florida.

by a non-party to influence the Commission's actions - as noted by Commission Staff, to persuade the Commission to refrain from issuing declaratory statements in either of the above-styled dockets. The Town has known of the County's Petition in Docket No. 140124-EM since before it was filed in July of last year, and of the City's Petition since it was filed on December 19, 2014, yet the Town sat by and did nothing until two weeks ago. As observed by the Commission Staff, the Town never sought leave to intervene in these proceedings, and never sought leave to participate as an amicus curiae in either docket. In other words, the Town lacks standing, yet now, as a non-party interloper, the Town is attempting to distract the Commission with irrelevant complaints, and thereby to derail these proceedings.

Further, as the Town well knows, the litigation pending in the Circuit Court in Indian River County is currently abated until March 2, 2015, and the City has thus not yet had an opportunity to file responsive pleadings. Accordingly, it would be premature and improper for the City to respond on the record to issues raised in the Town's Notice. However, it bears noting that the Town has misstated case law (Winter Park, Casselberry, and Indian Harbour Beach), misstated Florida statutory law, and spent more than 25 percent of its purported Notice complaining about the City's rates, which is clearly an issue for the courts of Florida, as well as completely outside the scope of any issue raised by either the City's Petition or the County's Petition. The Town's extended rhetorical complaints about the City's rates are not even logically related to the declaratory statements requested by the City.

As to the other issues in the Town's Notice, they are similarly - and entirely - irrelevant to the City's Petition, and to the County's Petition as well, and the Commission should simply ignore them, because, as correctly recognized by the Commission Staff, "the information provided in the Notice of Pending Litigation is not relevant to the City's Petition because it concerns the expiration of a franchise agreement between the Town of Indian River Shores and the City of Vero Beach, which is not addressed in this docket." PSC Staff Recommendation in Docket No. 140244-EM at 17, fn. 17. The City's Petition relates only to the City's status under the Commission's statutes and orders upon the expiration of the franchise agreement between the City and Indian River County; and, insofar as the County's Petition relates to franchise agreement issues, that petition, too, relates only to the franchise agreement between the City and Indian River County.

The Commission Staff have properly analyzed the City's Petition and concluded that the City's Petition satisfies all applicable criteria for the issuance of the declaratory statement requested by the City.

Finally, since the Town's Notice has been placed in the "Documents" section of the docket file, the City respectfully asks that this responsive letter also be placed in the Documents section of the file.

Thank you for your assistance and consideration. If you have any questions, please call or e-mail me any time.

Cordially yours,

GARDNER, BIST, WIENER, BOWDEN, BUSH,  
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Robert Scheffel Wright

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