

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 5, 2018

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk

FROM: Charles W. Murphy, Senior Attorney, Office of the General Counsel *Cm*

RE: Docket No. 20170235-EI - Petition by Florida Power & Light Company (FPL) for authority to charge FPL rates to former City of Vero Beach customers and for approval of FPL's accounting treatment for City of Vero Beach transaction.

Docket No. 20170236-EU - Joint petition to terminate territorial agreement, by Florida Power & Light and the City of Vero Beach.

Please place the attached Motion from Brian T. Heady in the above-referenced docket file.

CWM:csc
Attachment

RECEIVED-FPSC
2018 SEP -5 PM 1:04
COMMISSION
CLERK

1 Brian Heady
406 19th Street
2 Vero Beach, Fl 32960
772 696-4242
3 brianheady@msn.com

4 PUBLIC SERVICE COMMISSION

6 IN RE: PETITION BY FLORIDA POWER &
7 LIGHT (FPL) TO CHARGE FPL RATES,

Docket Number 20170235-EI

10 IN RE: JOINT PETITION TO TERMINATE
11 TERRITORIAL AGREEMENT BY FPL AND THE
CITY OF VERO BEACH

Docket Number 20170236-EU

13 Testimony in Support of:

15 Motion to Reverse Prior Approvals

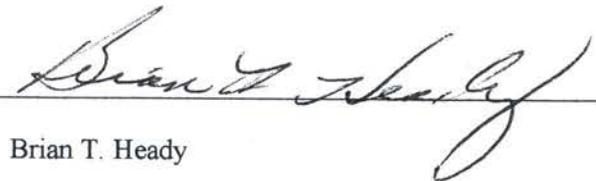
16 Motion to Deny Petitions by FPL and Vero Beach

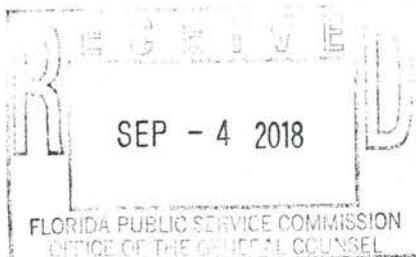
17 Motion for Relief

18 Brian T. Heady a citizen resident of Vero Beach Florida respectfully requests the Florida
19 Public Service Commission to consider the following testimony and submission and grant and approve
20 relief requested.

21 Petitioner further request this submission be included in the official record for the Docket
22 Numbers above.

24 Petitioner states the following in support of Motions and furthers states the following is
25 true to the best of my knowledge.

26 
27
28 Brian T. Heady



1 **Introduction:**

2
3 Ab Initio; the lawyers call it ab initio. Latin for "from the beginning." If the
4 discussion were about an invalid contract, and it was invalid ab initio, the discussions would be
5 referring to the very beginning. So, a contract or agreement ruled void ab initio would be void
6 from the beginning. My complaint can be summed up in just a couple of words, the proposed
7 agreement between FPL and the Vero Beach should be ruled void ab initio. I have been
8 personally involved, and I have watched the interaction between the parties involved for almost
9
10 20 years.

11
12 Florida law requires governing bodies to provide an opportunity to the public to
13 address the Council on matters upon which they have authority and intend to take action.
14 Beginning in 2007 and continuing to the present the Vero Beach City Council has refused to
15 allow certain members of the public the opportunity to address the Council. The Public Service
16 Commission should take judicial notice that members of the public were not allowed an
17 opportunity to present opposing views. Members of the general public who were in opposition to
18 the majority of City Council members were not allowed opportunity to present their views.

19
20 In actions taken keeping the public in the dark, documents were removed from
21 City Hall preventing the public from inspecting the public record, viewing or making copies of
22 these documents. Originals and all known copies of an agreement between Vero Beach and OUC
23 were stored in a safe outside of the city of Vero Beach, outside of the State of Florida, essentially
24 secreting these documents away from public view thus denying public access to the public
25 record.
26
27
28

1 I have personally witnessed FPL personnel removing documents from City Hall.
2 These documents were public record. The Custodian of Records (City Clerk) was not provided
3 with a copy.
4

5 In one example extraordinary efforts were taken to secret the proposed terms of a
6 contract. The original and redacted versions were taken out of City Hall to the Staples Copy
7 Center to make copies for governing authorities only. Upon information and belief, the reason
8 for making these copies outside of City Hall was to ensure that City Hall would not have a
9 permanent record of the original document. In today's electronic world copy machines
10 electronically store information when required to make multiple copies of multiple pages.
11

12 To further protect the document (and therefore the terms of the contract involving
13 the electric utility) uniformed police officers were engaged to take custody of the copies and
14 deliver only to a chosen few. Use of police ensured that only certain people received the redacted
15 version. The unredacted complete version was removed from City Hall and transported to Boston
16 in clear violation of the open public records laws. The unredacted version was not made
17 available to the public until two years later.
18

19
20 **This is what happened; The Facts:**
21

22
23 During 2009, FPL representatives came to me and said if I were interested in
24 knowing what FPL would offer to buy the electric utility I would be required to have City
25 Council ask them formally. So, I did.
26

27 At a noticed meeting of the Vero Beach City Council I made a motion to send a
28 letter to FPL to ask them if they would make a purchase offer to buy Vero Beach's electric

1 utility. I made that motion at a regularly scheduled Vero Beach City Council meeting. I did not
2 receive any support from any other council member. The motion died for lack of second.

3 At the very next city council meeting another council member made essentially
4 the same motion, to formally ask FPL to make a purchase offer. I seconded the motion and it
5 passed with a majority in favor of sending FPL an invitation to make an offer to buy the electric
6 utility. This was a fairly straight forward request. This issue was before the Vero Beach City
7 Council in November and December of 2009.

8
9 At the same time, it was uncovered that no place in any city records was there a
10 copy of a 2007 electric utility contract between OUC and Vero Beach. The contract contained
11 terms and conditions that were set to go into full force and effect on January 1st 2010. A very
12 public dispute ensued between more than one city council member and the city attorney and the
13 city manager. Council members wanted to see an unredacted original copy and they were told
14 the only copy was removed from city hall by a Boston consultant. The document in question was
15 in the consultant's safe in Massachusetts. This document plays a major role in the current
16 proposed sale and is pivotal to the sale of Vero Beach's electric utility in the proposed
17 transaction.
18

19
20 In 2009 immediately upon the document's release it became clear the "original"
21 in the Massachusetts safe was different (emphasis added) than the highly redacted copy approved
22 by a majority vote of the City Council in April of 2007. Public outrage resulted. A State
23 Attorney investigation was started and public criticism and concern saw both City Manager and
24 City Attorney leaving their positions, forced out, and no longer employed by the City of Vero
25 Beach.
26
27
28

1 Because there were multiple, clear, and meaningful differences between the
2 unredacted version of the contract delivered in the fall of 2009 and the redacted version approved
3 by a city council in the spring of 2007 legal questions arose as to the validity of any contractual
4 obligations between the parties.
5

6 Several years went by, all played out in front of TV cameras at noticed council
7 meetings. The debate raged on. Off camera however, in meetings with Vero Beach
8 representatives, FPL sought full unconditional support from council members seeking election or
9 reelection. I personally was told by FPL representatives they would support and financially back
10 only those candidates who unconditionally supported FPL. Absent an unconditional assurance
11 that I would vote in the affirmative for any proposal brought by FPL to the council they would
12 not support my candidacy. Since that time, approximately \$100,000 every year has been spent on
13 candidates expressing support of a sale to FPL. And that's ok with me. It's one of the benefits of
14 the underpinning principle of free speech. I don't in any way have issues with donating to a
15 political campaign. I fully support the rights of other candidates to spend huge amounts of money
16 to prevent my reelection.
17
18

19 In November 2011 I lost reelection. I did not lose interest in the city or the electric
20 issue. A case could be made that the money which poured in from outside the city and from FPL
21 was responsible for the winning campaigns of the candidates who supported a sale of the utility.
22 That's politics and my issues are not politics or political. My issues include the basic right of free
23 speech was denied to those who did not blindly support the sale of the utility. I have no problem
24 losing an election and I have no problem maintaining my integrity.
25

26 My issues involve doing public business in the public eye and not being deceitful
27 in the public's business dealings. I also don't in any way support back room deals made out of
28

1 the public eye when it involves public money or public assets. And when City Council members
2 are directed to not answer questions, and public records are void of any copies of notes involving
3 a proposed sale, or copies of contracts then the resulting proposed contracts are and meet the
4 very definition of back room deals.

5
6 FPL wanted the OUC contract issues to go away and FPL wanted exclusivity in
7 their dealings with the purchase of Vero Beach's electric utility. FPL sought approval of letters
8 of intent that would prohibit any city official from any formal discussions with any other electric
9 provider regarding a sale of the utility. I was not in favor of exclusivity. FPL also wanted to
10 block any official discussions with any other electric generating providers for bulk power needs
11 of the Vero Beach utility. I also publicly opposed exclusivity in bulk provider discussions.
12 Essentially, I wanted and supported an open bid process which invited any electric utility
13 company, including publicly held, privately owned, or municipal providers.
14

15 Unbelievably, a new city council eventually "retroactively" approved the 2007
16 contract between OUC and Vero Beach. This is the ultimate action in stifling public input on the
17 issues. Retroactively approve a contract that the public would have never agreed to in the first
18 instance. And it is impossible to retroactively give an opportunity for the public to speak.
19

20 Certainly, legal questions arise as to how a future council could retroactively
21 approve changes
22

23 It is absolutely within the authority of a newly elected governing body to approve
24 new contracts. I understand. And without question a new governing body has the authority to
25 adopt new rules or adopt new provisions to contracts. I understand. But having me or any citizen
26 arrested and taken out of city meetings because they raised a dissenting voice is not due process.
27 This is and was an abuse of power and a violation of Florida Statutes.
28

1 Removing dissenting voices, intimidation of members of the public who would
2 disagree with majority opinion is silencing the public input. Public input is protected by Florida
3 law.

4 Forcing dissenting voices to remain silent violates so many laws and fundamental
5 principles of government by and government for the people, by the people. Such measures taken
6 by the governing authority in such circumstances would render the actions invalid because the
7 action was taken without the requisite free speech and public input required by both statutory and
8 constitutional law. Essentially any such action would render official votes void ab initio.

9
10
11 I could easily refer to years of council meetings in which the public was
12 wrongfully silenced. I have filed a lawsuit in the Nineteenth Judicial District (Case No.
13 312018CA000431) testing the validity of contracts approved without free public comment from
14 all sides of the issue.

15 Vero Beach City Council has already tried to clean up some of the legal issues of
16 secreting documents outside the sunshine by “retroactively” approving contracts in which clear
17 and convincing evidence demonstrated improper action of city officials. The City was wrong in
18 silencing the public and hiding or denying the existence of documents all of which constitute
19 clear public records violations.

20
21 I would respectfully submit to the PSC that any consideration of the issues in this
22 matter is not ripe for debate until the courts have ruled. Before the PSC should rule on a matter;
23 the legal issues as to the validity of the submissions to the PSC must be resolved. As it is now
24 any open-minded review of city meetings could only result in one conclusion. That conclusion is
25 the issues were sent to the PSC before local approval met the legal requirements. For years this
26
27
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1 electric issue has been a back-room deal. This entire electric issue does not meet the basic sniff
2 test.

3 4 **Conclusions and Relief**

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7 Given the seriousness of diverting millions of dollars from the rate payers that
8 built and maintained the electric utility with rates sufficient to provide reliable electric;

9 Given the fact these owners, the rate payers, in the ordinary course would
10 rightfully be entitled to the proceeds of any sale of the system they own and they have paid for;

11
12 Given the unrefuted testimony that citizens were taken into police custody, and
13 wrongfully removed from City Hall for having and expressing opposing views;

14 Given the undenied facts that show both criminal and civil violations involved in
15 the case before the PSC;

16 Given the presumption that governing agencies are created to protect the public;

17
18 Given that the PSC works to protect the public;

19
20 It is therefore respectfully submitted to the Public Service Commission that
21 government for and by the people is so fundamental to the health and welfare of our
22 communities and our nation that any issue before the Commission is and will be denied until the
23 issues are properly, legally resolved at a local level;

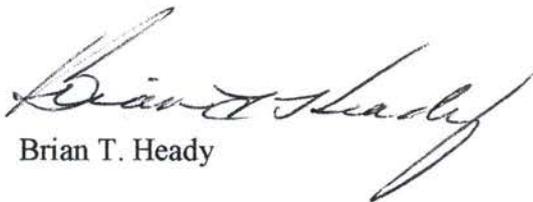
24
25 and the PSC further states that any approval of any sale of a municipal utility to
26 any special interest groups and / or for profit corporations will not be allowed before proper and
27 lawful resolution and agreement of the issues at the local level;

1 and further resolves the Commission will not allow any entity to cheat the public
2 and the citizens of Vero Beach;

3 and therefore the Public Service Commission hereby denies the FPL and Vero
4 Beach's petitions to effect the sale of the electric utility;

5 and the PSC further remands the entire matter back to the citizens of the
6 community for resolution. All petitions for the sale of Vero Beach's electric utility currently
7 before the PSC are therefore denied and ruled void ab initio.
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10 Respectfully submitted the 28th day of August 2018,
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14 Brian T. Heady
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1 I certify a true and correct copy has been served electronically this 28th day of

2 August 2018 to the following:

3
4 Kathryn G. W. Cowdery
5 Jennifer Crawford, Esq.
6 Charles Murphy, Esq.
7 Office of General Council
8 2540 Shumard Oak Blvd.
9 Tallahassee, Florida 32399-0850
10 kcowdery@psc.state.fl.us
11 j.crawford@psc.state.fl.us
12 c.murphy@psc.state.fl.us
13 Florida Public Service Commission

14 J.R. Kelly
15 Stephanie Morse
16 Charles Rehwinkel
17 Office of Public Counsel
18 111 W. Madison Street, Room 812
19 Tallahassee, Florida 32399
20 Kelly.jr@leg.state.fl.us
21 Morse.stephanie@leg.state.fl.us
22 Rehwinkel.charles@leg.state.fl.us

23 Jon C. Moyle
24 Karen A. Putnal
25 Florida Industrial Power Users Group
26 118 North Gadsden Street
27 Tallahassee, Florida 32301
28 jmoyle@moylslaw.com
kputnal@moylslaw.com

Michael Moran
P.O. Box 650222
Vero Beach, Florida 32965
mmoran@veronet.net

J. Michael Walls
Carlton Law Firm
4221 Boy Scout Boulevard, Suite 1000
Tampa, Florida 33607
mwalls@carltonfields.com

Lynne A. Larkin
Civic Association of Indian River County, Inc.
5690 HWY A1A, #101
Vero Beach, Florida 32963
lynnelarkin@bellsouth.net

James O'Connor
Wayne R. Coment
City of Vero Beach
P.O. Box 1389
Vero Beach, Florida 32961
citymgr@covb.org
wcoment@covb.org