

**SPECIAL CALL CITY COUNCIL MEETING
MONDAY, MAY 2, 2011 9:30 A.M.
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

A G E N D A

- 1. CALL TO ORDER**
 - A) Roll Call
 - B) Pledge of Allegiance

- 2. PRESENTATION FROM FPL – Letter of Intent expressing FPL’s interest in purchasing the City of Vero Beach electric utility system**

- 3. PUBLIC COMMENTS**

- 4. COMMENTS FROM COUNCIL**

- 5. ADJOURNMENT**

Council Meetings will be televised on Channel 13 and replayed.

This is a Public Meeting. Should any interested party seek to appeal any decision made by Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings and that, for such purpose he may need to ensure that a record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs a special accommodation for this meeting may contact the City’s Americans with Disabilities Act (ADA) Coordinator at 978-4920 at least 48 hours in advance of the meeting.

SPECIAL CALL CITY COUNCIL MINUTES
MONDAY, MAY 2, 2011 9:30 A.M.
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

PRESENT: Jay Kramer, Mayor; Pilar Turner, Vice Mayor; Craig Fletcher, Councilmember; Brian Heady, Councilmember and Tracy Carroll, Councilmember **Also Present:** Monte Falls, Interim City Manager; Wayne Coment, Acting City Attorney and Tammy Vock, City Clerk

1. CALL TO ORDER

A) Roll Call

Mayor Kramer called the meeting to order and the Clerk performed the roll call.

B) Pledge of Allegiance

Mayor Kramer led the Council and the audience in the Pledge of Allegiance to the flag.

2. PRESENTATION FROM FPL – Letter of Intent expressing FPL’s interest in purchasing the City of Vero Beach electric utility system

Mr. Heady noted that Council received a copy of FPL’s presentation (Power Point) this morning as part of the backup. He asked the City Clerk is he correct that this is the only backup that they know of.

The City Clerk answered yes.

Mrs. Amy Brunjes, FPL External Affairs Manager, said that since they were asked in 2009 if they would be interested in purchasing the Vero Beach electric system, they have invested significant time and resources in an effort to answer that question. They have said from the very beginning that any sale/purchase would need to be in the best interest of the citizens of Vero Beach, as well as FPL’s four point five million customers throughout Florida. She then introduced Ms. Pam Rausch, Vice President of External Affairs, Mr. Pat Brian, Lead Attorney, Mr. Sam Forrest, Vice President of Energy Marketing and Trading and Ms. Jackie Anderson, of Marketing and Communications (all part of the FPL Team).

Mrs. Brunjes said that they were present for today’s meeting asking that the City Council approve their Letter of Intent (LOI) and to begin negotiations with City staff. She noted that the Letter of Intent is simply a starting point to move forward in negotiations. She then gave a Power Point presentation (please see attached).

Mr. Forrest went over the overall objectives, Letter of Intent summary, the Federal, and the State and local regulatory approvals of the Power Point presentation. He reiterated that the

Letter of Intent was a non-binding document. It is the starting point to begin to move forward in the negotiation process.

Mrs. Brunjes went over the Reliability and Storm Preparedness, and Energy Conservation Programs of the Power Point presentation.

Mr. Heady asked is it appropriate for the public to know whether or not they are going to get a motion to approve the Letter of Intent before they speak.

Mrs. Carroll felt that the public should speak and then Council can deliberate and make a decision.

Mr. Heady said that he did not say for Council to make a decision. He felt that it would be nice for the public to know whether or not the Council was going to make a motion. He said that might change whether or not they want to speak.

Mrs. Carroll said the definition of public comment is to let Council know what they want and how they feel on the issue and Council is suppose to use that to deliberate.

Mrs. Turner moved that Council continue with public comments.

3. PUBLIC COMMENTS

Mr. Charlie Wilson said that this is a very important day. He thanked FPL for coming here, for spending their time and doing the effort that they presented. FPL has treated this with great respect and provided honorable framework for the City to move forward. He said that they are on a voyage of change for the City of Vero Beach. He said the headlines state that taxes are going to go up, City employees are at risk, etc. The problem with that is that was the headline in 1976. He thanked Council for their courage, particularly Mrs. Carroll. He said that Mrs. Carroll was appointed as the point person for communications between FPL and Council and he felt that she did a superb job. He said there are some obstacles, but no obstacles that can't be overcome. He urged Council to accept FPL's offer. He said this was the most important economic development activity in the history of Vero Beach. This has more chance of causing economic gain and economic opportunity for the citizens of Vero Beach. He said that it is time that the City returns to being the beautiful, friendly, noncontroversial wonderful City that it was and can be again. He asked what happens if the City Council doesn't accept this agreement. He said if Council doesn't accept this agreement they would go down in history along with past Council's who did not allow the Marriot to come to Vero Beach and the Council that did not think allowing the Gloria Estefan concert after the hurricane was a good idea. He said that this Council has the courage and opportunity to heal this City. He urged Council to vote immediately to move forward.

Mr. Bill Curtis, 3410 Buckinghammock Trail, said that he is a customer of the City electric. He said that he would like better reliability with the electric service and the kind of rates FPL can provide. He strongly urged Council to go ahead with the Letter of Intent.

Mr. Vince Deturris, member of the South Beach Property Owner's Association, said that they represent 33 separate subdivisions. He said that they strongly recommend that Council moves forward with the Letter of Intent and hopefully with the sale of the utilities to FPL. The South Beach area has been the supporters of the City's General Fund with no representation. They applaud this new City Council and are proud to see what happens today and in the future.

Dr. Steven Faherty, South Beach, said it has been mentioned many times that the taxpayers have paid for the City utilities. He said that they cannot use property taxes for the Enterprise Fund. It has to be paid for by the ratepayers, therefore, the ratepayers have paid for the electricity. Another point that has been made is that underground wiring should receive a premium. There have been mixed reports regarding underground wiring, such as it is more costly to install, it is better aesthetically, it is more susceptible to flooding, it is slightly less costly to maintain, etc. He said there have been discussions about the City tearing down the Power Plant. He said if it is torn down there is going to have to be a replacement for it. This was a factor that FPL should value. He said that he and Mr. Heran looked at this and they think it is probably about a \$20 to \$25 million dollar value. Also, included in the values is the cost of demolition, which he and Mr. Heran estimated to be about \$10 - \$15 million dollars. The total package that FPL is offering, when they add in the cost of demolition, the cost of the transmission lines, unfunded pension liabilities, etc., comes to about \$170 million dollars. He said there have been discussions regarding leasing the Power Plant. He said the City could estimate the additional value of the employees transferred regarding the unfunded health care. Points have been made about the need of the transfer of \$5.6 million dollars. He said that a report has never been done that shows that the City needs this. He suggested that in negotiations with OUC to terminate the contract, that they do it seeking more penalties, fees, etc., in exchange for the City assign their FMPA interest to OUC, that the OUC pays for the City's remaining bond payments and that OUC pays for a bond to cover any and all City payments and decommissioning costs. He said that this would get rid of the City's total liability to FMPA and OUC. He that what the outside City customers (61%) would get from the deal between the City and FPL is representation and lower costs. He said to move with approving the Letter of Intent and closing this deal.

Ms. Lee Regan, County resident, said that she was speaking for almost 100% of her subdivision and a good part of the West side of the County. They felt that they have been held hostage to not having representation and to high electric bills until this Council was elected. She implored Council to approve the Letter of Intent and to let go of the shackles. She thanked Council for what they were doing.

Ms. Sherry Kolodziejczak, President of the Colonial Terrace Subdivision Association, said the people in her neighborhood are not just angry, but sad. They are sad about what has been done to them and the feeling of powerlessness to do something about it. Council has that

power. She said as a CPA, she has looked and supports the work done by Mr. Heran and Dr. Faherty. She found no holes in their thinking at all. She did not see any conflicts in what they propose. She asked that Council not get lost in the details. That they look at the major points they want to accomplish in negotiations. She asked that Council sign the Letter of Intent, to move forward, analyze the steps, and negotiate the details. That Council stay true to themselves and to the goals of their campaigns and their service. She said FPL is a strong and healthy company that can provide a lot to this community.

Ms. Carol Bathum (spelling may be incorrect), Anglers Cove, said that she has been a ratepayer for over 30 years to the City of Vero Beach utilities with no rights to vote. She said that she attended a City Council meeting about one year ago when Mr. John Little and Mr. David Gregg offered their services for free to do a complete overview of the utilities and they were turned down flat. Then Council hired outside consultants at enormous fees. She felt if Council hires another consultant, that consultant should be completely impartial and unbiased. The consultants in the past have been in the pocket of the City Council. She felt that the voters in the City gave Council a very strong mandated that they expect to sell the utilities. She felt Council was obligated to follow the mandate of the voters. She urged Council to go ahead with the Letter of Intent and get rid of the albatross of the City utilities.

Mr. Phil Carpenter, President of Rockridge Homeowner's Association, said that they meet once a month and the biggest thing that everyone talks about is their electric bills. He said that the base electric cost on his last month's electric bill was \$56.18 and the electric fuel surcharge was \$62.58. He said that there were a lot of businesses closing in the City of Vero Beach. He felt that FPL made a fine offer and are interested in the community. He said there were a lot of benefits they could get from FPL, such as rebates that they cannot get from the City. He felt that the City has the opportunity now to get rid of two monsters, the Power Plant and the Water and Sewer Plant.

Mr. Jerre Bovett, City resident, was present today in support of the sale of the electric system. He said during negotiations, he would like to see FPL encourage an offer of matching a 30% rebate on solar for water.

Ms. Helen Todd, 560 10th Place, said that when they moved from an FPL service area to the City of Vero Beach electric service 15 years ago the contractor who was building their house said that was a very bad thing. She said that the City has had a bad reputation for their electric rates for a very long time. She said that when they replaced their air conditioning system they could have received a rebate from FPL. The City does not offer rebates. She felt that this was an offer that would improve the quality of life in this area.

Mr. Mark Tripson, 5020 12th Street, said that if Council decides to sell to FPL he would like their telephone numbers so when his power is out in the middle of the night he can call them. He said that FPL has a computer and people can't talk with anyone there. The City has excellent service and you pay a premium for a service.

Mr. Tom Hurley, said that he is a resident of Indian River Shores and is an FPL customer and owns a business in Vero Beach and is on City utilities. He said that this is the beginning of negotiations. He encouraged Council to start the negotiations and if it doesn't end up where they think it should, they have the option not to continue with negotiations. He felt that this was a terrific opportunity.

Mrs. Linda Hillman, 18th Avenue, said that whatever the decision is it will be a good one because Council has examined this continually. She said that Council's obligation is with the taxpayers of Vero Beach. They have voted for this Council and they have trusted Council to look at the good for the City. She said that if this is sold, she is more than sure they would have to raise taxes. She asked that they all look into everything and remember that they voted for them and depend on their good knowledge to do what is best for the voters of Vero Beach.

Mr. Steve Mulvey, owner of Quail Valley River Club, Quail Valley Golf Club and Ocean Park Developments, said that his bill for Quail Valley River Club runs \$23,000 a month. He said that is \$12,000 is for electric use and \$11,000 is for the surcharge. He said the Golf Club is on FPL and his bill is significantly less at \$2,000 a month. He said the Council's obligation to the taxpayers is to do what is right for the individuals and the corporations.

Mr. Gary Wheeler, 3302 63rd Square, said that he is a County resident on City utilities. He said that this was simply to move forward with negotiations with no commitment at this point and he did not see how Council could make any kind of reasonable decision without moving forward and understanding what the potential gain or loss is. He felt that it would almost be arrogant not to continue to look at this and get the final numbers to find out if this is a good or bad deal for the City.

Mr. Glen Heran asked everyone in the audience today who is a supporter of the FPL sale and believes that Council should go ahead with the Letter of Intent to please stand up.

Mr. Ken Daige, City resident with a vested interest in the City spoke to the Council. He said that in the Letter of Intent FPL is non-binding, which means that they can back out and he asked that Council include in the Letter of Intent that the City exercises the same right. He said that there were a lot of twists in the Letter of Intent. He asked that before Council goes into their discussion that they hear from staff and from the Consulting Firm that they have hired. He said FPL wants to make sure that none of their customers are impacted in the negative. The City voters are the City's customers and they are asking Council to look out for them. They need to make sure what they are signing and that they are not bound. They also need to remember the confidentiality agreement and explain what that means. Also, there would most likely be a referendum item on the ballot. He asked how are the people in the City going to vote to make an intelligent decision if all the information is not open to them. He said the City sent questions to FPL and he hoped they received their answers. He said that FPL stated that their due diligence would be completed by July 2011. He said the City should not rush to do their due diligence. Council has heard that FPL believes that their offer would cover all the costs. He said that Council needs to give the citizens the assurance that this would be taken care of. Once the

Letter of Intent is signed, as it stands, it becomes a private contract. FPL decides what information, if any, is released to the public. He asked what is Council's plan to prove to the residents that the funding is in place to operate the City with the level of service that the people demand. He said everyone is concerned if the taxes are going to be raised. Another question, which he heard was if this sale takes place will the City go bankrupt. He asked that they cover all the details. The Letter of Intent states that the City has to handle the FMPA and the OUC agreements. He asked how much is this going to cost. He asked is the \$100 million dollar offer going to cover everything. (Mr. Daige's comments are attached).

Mr. Daniel Fourmont, 2267 Magans Ocean Walk, felt that this situation was unfair to many people. He said that in listening to the FPL presentation and to Mr. Heran and Dr. Faherty, this is a no brainer. The numbers work and everyone wins. Regarding the tax situation, as a whole they would save about \$11 million dollars a year. The City residents would save about \$5 million dollars. The transfer from the electric to the City's CAFR is about the same amount. Therefore, for the City ratepayers and taxpayers this could be a wash. He felt that this was an easy decision.

Mr. Jim Gillon, owner of Granada Towers, said that he is a historian and lover of preservation. Royal Park is one of the original golf course communities in the State of Florida. He said that the reason this was developed was because they had electricity. That is the reason Vero Beach didn't turn out to be a little cottage community. He said that he was a member of the original Vision Team. He said that no one ever seems to think about the means that is contributed by the electric utility and the taxes to keep this City beautiful that everyone in the County enjoys. When it comes to customer service the City's existing utilities is incredible. He said that City answers the telephone. He asked how many customer service offices does FPL have in Indian River County. Not any that he is aware of. The City has a fabulous service with their utilities. He said that they might pay a little more, but they are really taken care of. He said that he was happy to pay a little more to have better service and keep it in house. He noted that he was the 19th person to speak today and only four of them live in the City.

Mr. August Barberi, 1821 Mooringline Drive, said that he never expected to come into the situation that we have here when he moved to Vero Beach. His first contract with City utilities was when he went to pay his bill. He said that he was the only person there and there were four people there to take his money. He said this was four years ago. Before coming to today's meeting he went to the utility office and there were five or six people standing around doing nothing and one person was paying their bill.

Mr. Jim Taggart, Anglers Cove, said that he has had numerous occasions to call the City electric for power outages. He said that he has never had a human being answer the phone. It has always been an answering machine. He urged Council to deal with this openly, honestly, and logically forgetting the smoke and mirrors, fear, and propaganda.

Mr. Herb Whittall, Utilities Commission member, urged Council to go ahead with discussions with FPL. He heard a lot of things said today that shows there are a lot of people who don't

know what is going on. He said that FPL has a fuel system charge just like the City. He said that the fuel charge does not go to the City CAFR. It goes to paying fuel. He said with FPL, the first 1,000 KWH is cheaper. However, beyond that they are not very much cheaper than the City of Vero Beach. FPL is about 11.2 and the City is at about 12.5, which is eight to ten percent cheaper. Yes, they would save money going to FPL, but the City needs to look at all the things that may affect what the cost is and the only way to do that is to move forward.

Mr. Peter Gorry, Finance Commission member, said one issue is how the confidentially squares with the Sunshine Law and in negotiations. Another issue is during the negotiations, it is not with one party or another. It is a various number of subject matter experts getting together. His concern was stranded assets in the City.

Mr. Robert Blumstein, Utility Commission member, was for going forward with their version of the Letter of Intent. He felt that they needed to be on the same footing in withdrawing from the Letter of Intent as FPL. He said that this really was the beginning for the City. He said that they should go forward in negotiations with the intent to make a deal. He said that this is not a simple thing. There are on-going contracts that must be worked out prior to negotiating this deal. The affects of the City, the tax system, etc., needs to be worked out.

Mrs. Jane Burton, Utilities Commission member, agreed that they must move forward. She said that this was a credible Letter of Intent. She said that they cannot turn it down and justify it. She hoped that transparency would be kept. Confidentially has to be addressed because this needs to be done in the Sunshine. She hoped that the City would keep an open mind during negotiations and come to the best conclusion after they have all the facts.

4. COMMENTS FROM COUNCIL

Mrs. Turner said that she has not received a legal review of the Letter of Intent. She felt the need to protect the City's interest in this document. She was in favor of going forward, but was concerned that she has not seen a legal review.

Mr. Falls said that he sent Council a memorandum on April 27th and he supports moving forward with the Letter of Intent. However, there are some revisions that they need to make prior to that. In his memorandum, he recommended that they listen to FPL's presentation, review the revisions suggested by GAI Consultants and the City's legal staff. He received the last version from GAI late Friday and Mr. Coment incorporated that into the document that they should be able to get to Council late today or first thing in the morning. Once they give this to the Council they would send it to the FPL Team. He said that this was putting the City on equal footing. He said that he and Mr. Coment spent a lot of time on this and are in favor of moving forward.

Mr. Coment said that they have spent a lot of time going through the Letter of Intent. He said that FPL had 12 to 14 months to do some preliminary due diligence getting us to this point. Unfortunately, the City is just beginning their due diligence. It is their job to protect the City of

Vero Beach and the fact is that there are some modifications that they would recommend in the Letter of Intent.

Mrs. Carroll asked can Council have the document by 5:00 p.m. today so they could look at it this evening and decide on it during tomorrow's Council meeting.

Mr. Coment did not see that would be a problem.

Mrs. Carroll said then they would have the document by 5:00 p.m. and add it to tomorrow's agenda under City Manager's matters.

Mr. Patrick Brian, Attorney with FPL, thought that what was being proposed was that the City's version of the Letter of Intent would be up for a vote tomorrow.

Mrs. Carroll said that she would like to look at both documents side by side.

Mr. Brian said FPL welcomes comments from the City on the Letter of Intent. They respectively request that they get to review the comments before a vote is taken.

Mrs. Carroll asked Mr. Brian if he would rather Council delay voting tomorrow in order to give FPL time to review the document.

Mr. Brian felt that would be appropriate so that they could hopefully reach an agreement. They understand the issues that have been raised. He felt that it would be better for both parties if there is complete agreement in the Letter of Intent before they move forward. He said that if they see the document tonight they might be able to provide comments as early as this evening, but barring that it would be prudent for the parties to agree to the terms.

Mr. Coment said it was their intent to have the Council to look at it and decide if they wanted them to present it to FPL for their comments.

Mrs. Carroll asked that staff have the document to Council today and Council can discuss it tomorrow to decide what they want to send to FPL.

Mr. Tom Cloud, Attorney of Gray Robinson, said that he worked on a number of Letters of Intent and he commended Council for doing this in the appropriate fashion. He was surprised to hear someone ask that Council adopt this today. He suggested that if someone was going to make a motion that they authorize staff to complete the negotiations of the Letter of Intent and bring it back to Council at the earliest possible time so that both parties have the chance to work out any kinks. He said that they would bring it back to Council as quickly as possible so that there is no unnecessary delay.

Mr. Coment said that he has comments from GAI Consulting, Mr. Cloud and his, which is in a strike through underlined format so they could see the suggested changes.

Mrs. Carroll would like to move forward with her suggestion that Council receive the document this evening and to discuss and make a decision tomorrow in terms of what they want to go to FPL.

Mrs. Turner concurred. She would like Council to review the proposed changes.

Mr. Falls said staff would have the document to Council by 5:00 p.m. today.

Mr. Fletcher said there is concern by the City Attorney and changes to be considered then it would be very imprudent for Council to go forward at this time. He concurred with waiting until tomorrow and discuss the changes to be considered.

Mr. Heady made a motion that Council accept the Letter of Intent as presented. He read from the Letter of Intent, "the parties understand that additional discussions and negotiations with respect to the potential transaction are required and that neither party is bound to proceed with the potential transaction unless and until mutually acceptable. He made a motion that Council accept the Letter of Intent today as presented and to move forward with negotiations. Mrs. Carroll seconded the motion.

Mrs. Turner said a Letter of Intent is a legal document and it does provide framework. She cautioned Council to wait at least one day so they could get the wording in the document correct.

Mayor Kramer said typically an offer is one document and a letter of intent is another. He asked Mr. Coment is there a problem with putting the offer and terms in a binding contract with the Letter of Intent.

Mr. Coment said there were a lot of terms in the Letter of Intent that they don't feel they want the City to be bound by. In abundance of caution, he recommended that Council wait and look at the proposed changes.

The motion failed 3-2 with Mrs. Carroll voting yes, Mr. Heady yes, Mr. Fletcher voting no, Mrs. Turner no, and Mayor Kramer no.

Mrs. Carroll said that Council would be having this vote again tomorrow after they see the documentation provided.

Mr. Whittall said the document itself does not keep either side from going forward with their due diligence. Doing this does not delay anything.

Dr. Faherty commented that this disturbed him because the Letter of Intent was received on April 4th and the City received a letter from the Consultant on April 27th with full knowledge that

this meeting was scheduled. He said that time is of the essence. It is very important that they not slow this up.

Mr. Fletcher hoped they understand that urgency is one thing and caution is another. It is Council's job to be cautious with what they are doing and they need to work in partnership with FPL.

Mrs. Carroll said the Letter of Intent states that FPL wishes to lease the property that the Power Plant sits on. She said that there have been people who stated that a license to use may be drafted instead of a lease. The City Charter requires a lease to go to Referendum for any City owned land. She asked could a license to use be utilized for this property as opposed to a lease that would have to go to Referendum.

Mr. Brian said that he has not specifically looked at that particular issue. He said that they reviewed the Charter and were willing to explore whether a license could be utilized. He said if it could be done, it would seem to be an excellent solution.

Mr. Coment said in doing a license they would be circumventing what the Charter says. He said Council does have the right to do this. He noted that the assets themselves that is on the land and they may need a Referendum to dispose the Power Plant from the property.

Mrs. Carroll said legally it is a possible solution.

Mr. Brian answered yes and they would be willing to explore this issue further.

Mrs. Carroll said a substation is located on this same property that would need to continue within the framework of the grid system. She asked would there be a possibility of moving that substation off this site so the entire property would come back to the City of Vero Beach.

Mr. Brian said that is something they could look at.

Mrs. Carroll said FPL mentioned that they would have public meetings with public input. She asked how would public input follow in line with confidentially agreements.

Mr. Brian said the language in the Letter of Intent is not as clear as it could be. It has always been their intention that this is a transparent process. The language in the Letter of Intent does specifically refer to the public records law. There are some FPL documents that might seek confidential treatment. Aside from that, they understand that this process is public and they are okay with that. As far as public input, they are interested in taking a pulse as the process moves forward. One of their main objectives was to put information out so that the public understands the process as they move forward.

Mr. Coment agreed that this would be a fairly open process. There are certain things that FPL would have the right to declare confidential under State law.

Mrs. Turner thanked FPL for being here today. She felt this was a fair proposal and they covered many areas. She said that this delay was not in any way a reaction to her disapproval of continuing to move forward. She certainly wants the City to move forward with their due diligence. She explained that it was just that coming through the OUC fiasco that she felt it was incumbent on this Council to ensure that they do everything in the open and maintain transparency.

Mr. Heady said regarding lease versus license, it was his understanding that regardless of the term on the document, as long as the document grants to FPL legal use, care, control, and custody of the Power Plant that is acceptable.

Mr. Brian said FPL would actually purchase the Power Plant itself and lease the real property where the Power Plant sits. If this transaction moves forward they would have control over the Power Plant itself.

Mr. Heady said then they don't care what they call the document (widget) as long as it grants FPL the care, control, and custody of the Power Plant.

Mr. Fletcher said there are issues that they can take out of the Sunshine Law that still fall inside the State Statutes. He said that they need to come up with a standard so that the public understands that they are not hiding anything.

Mrs. Carroll wanted everyone to realize that Council understands the financials given to them over the years from Dr. Faherty and Mr. Heran. That the community today is paying over \$40,000 a day more than they are paying for FPL. Over one-million dollars a month and around ten to twelve million dollars a year. She said this is a whole lot to pay for extra customer service. Customer service is great and is important, but this is a whole lot of money going out of our community and she would like to see that in the pockets of the residents.

Mr. Falls said that FPL has agreed to stay after today's meeting so they can discuss some of the major issues. He said that staff would have the document to Council late this afternoon.

5. ADJOURNMENT

Mrs. Turner made a motion to adjourn today's meeting at 11:30 a.m. Mr. Heady seconded the motion and it passed unanimously.

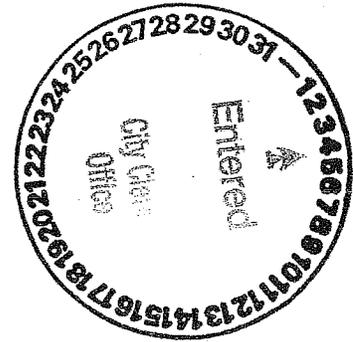
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FPL

April 4, 2011

The Honorable Jay Kramer
Mayor, City of Vero Beach
P.O. Box 1389
Vero Beach, FL 32961-1389



Dear Mayor Kramer:

On behalf of Florida Power & Light Company, I am pleased to submit the attached Letter of Intent ("LOI") expressing FPL's interest in purchasing the City of Vero Beach electric utility system for a cash payment of up to \$100 million.

FPL's offer, as outlined in the LOI, is based upon meeting two objectives: providing Vero Beach electric customers the same rates that FPL customers enjoy; and ensuring that existing FPL customers are not negatively affected by the transaction. The offer effectively accomplishes these purposes. Of course, the highlight of the offer, if accepted, is that going forward the **residents of Vero Beach will enjoy the same rates and programs that FPL customers enjoy**. A typical residential bill for FPL customers is currently the lowest of all 55 electric utilities in the state according to the February FMEA price survey.

The sale of the system to FPL under the terms of the LOI, as reflected in a mutually acceptable definitive agreement, would provide the City and its residents with important benefits that include the following:

- i. Residents of Vero Beach will enjoy electric service at the same low rates that FPL customers receive, currently a 15 % discount over the City's rates;
 - Based on current prices, City of Vero Beach electric utility customers would see a benefit of over \$11 million in the first year alone, and more than \$100 million in savings over time;
- ii. Residents and businesses of Vero Beach will receive the benefits of FPL's industry leading energy efficiency programs, best in class customer service and exceptional power delivery reliability;
 - FPL's reliability is the best in Florida and among the best in the nation
 - FPL repeatedly has been recognized as a national leader in customer service
 - FPL offers tremendous customer value and savings through industry-leading energy efficiency programs, a few of which are referenced below:
 - i. FPL's On Call[®] program provides customers with additional discounts on electric service of up to \$161 per year, and its current air conditioning replacement program offers up to \$2100 in customer rebates

Florida Power & Light Company

700 Universe Boulevard, Juno Beach, FL 33408

- ii. FPL's Online Home Energy Survey allows customers to obtain a personalized, expert analysis of a home's energy use along with specific ways to save
 - iii. FPL's Business Energy Evaluation, a comprehensive professional, on-site review of a commercial facility's energy usage;
 - iv. Commercial customer rebate programs for the installation of high efficiency lighting, and advanced HVAC and refrigeration technologies;
- iii. City of Vero Beach customers will receive electric service from one of the cleanest and most fuel-efficient electric utilities in the nation:
 - FPL's investments in fuel-efficient generating plants and technology is a large reason why its customer bills are low today and why FPL will continue to provide long term benefits to customers even if fuel prices increase
 - FPL's investments have saved customers nearly \$3 billion in fuel costs since 2002; looking ahead, FPL estimates that these investments will save customers an additional \$1 billion a year by 2014;
- iv. The City of Vero Beach will receive a purchase price that includes:
 - a cash payment in an amount up to \$100 million, available for use by the City in its discretion, including for the defeasance of debt or other contractual obligations
 - the assumption by FPL of certain liabilities that otherwise would be the City's responsibility;
- v. Active City of Vero Beach electric utility employees will have the assurance of 2 years of employment, as well as access to employment opportunities with FPL, to allow for an orderly transition of operations and to minimize the impact for existing city employees;
- vi. FPL will assume the City's pension liability for its electric utility employees;
- vii. FPL will provide additional revenue streams in the form of property taxes to the City, and other entities operating within the area served by the City's electric utility, totaling more than \$1.7 million and including more than \$500,000 in support of the Indian River County school system;
- viii. In addition to property taxes, the City will receive the following revenue streams from FPL:

 - Franchise fee revenues from FPL, estimated in the range of \$1.4 million annually
 - Annual lease payments from FPL for the property on which generation assets are located;
- ix. The City will retain ownership of the real property on which the generation assets are located and will be able to sell or use that property for other purposes when the generation assets are decommissioned; and
- x. FPL will assume the City's future obligation for dismantlement of the generating assets.

We respectfully request that the LOI be presented to the City Council for approval and authorization for the city staff to enter into formal negotiation of an Agreement for Purchase and Sale which would then be presented to the City Council for final approval.

Personally, and on behalf of FPL, I want to thank you and your staff for the professional manner the city has displayed throughout the initial review and due diligence process. We look forward to working closely with you and your staff as we proceed with this transaction, and in establishing a beneficial and productive partnership with and for the City of Vero Beach and its customers.

Although you are very familiar with FPL, I am also including a set of materials that may be of interest to you and others as you consider making FPL your new provider of electric service. I am happy to supply you with additional copies at your request.

Sincerely,

A handwritten signature in cursive script that reads "Pam Rauch".

Pam Rauch
Vice President
Corporate and External Affairs

LETTER OF INTENT

This Letter of Intent is entered into as of April ____, 2011, between FLORIDA POWER & LIGHT COMPANY, a corporation organized under the laws of the State of Florida (“*FPL*”) and THE CITY OF VERO BEACH, a municipal corporation in, and organized under the laws of, the State of Florida (“*COVB*”). FPL and COVB are jointly referred to as the “*Parties*” and individually as a “*Party*”.

This Letter of Intent is based on our current understanding of the matters set forth herein. It is not a complete statement of all terms and conditions of the Potential Transaction (as such term is defined below), but provides a basis for further discussions and negotiations between the Parties. Except as expressly set forth in Part II, Article 4 below, this Letter of Intent is not, and shall not be deemed or construed to be, legally binding on the Parties and nothing contained herein (except as set forth in said Part II, Article 4) shall impose, or shall be deemed or construed to impose, any obligations, duties, or liabilities on the part of either Party.

PART I

FPL and COVB are considering a potential transaction (the “*Potential Transaction*”), whereby FPL would purchase the electric utility assets of COVB located in Indian River County (“*Assets*”).

The Parties understand that additional discussions and negotiations with respect to the Potential Transaction are required, and that neither Party is bound to proceed with the Potential Transaction unless and until mutually acceptable, definitive Purchase and Sale Agreement and related agreements and documents are negotiated, approved and executed (the “*Definitive Agreements*”) and certain other conditions precedent as set forth in this Letter of Intent and the Definitive Agreements (including without limitation FPL senior management and board of director approvals) are satisfied. However, to facilitate further such discussions and negotiations, the Parties desire to set forth below the basic proposed terms of the Potential Transaction and their understandings with respect thereto:

- A. Purchase Price. Based on the information available to date and subject to the conditions precedent set forth below and in the Definitive Agreements, FPL would acquire the Assets, free and clear of all liens and encumbrances at the closing of the Potential Transaction, for an amount not to exceed **\$100 million** (the “*Purchase Price*”), subject to appropriate adjustments to be mutually agreed upon, including adjustment for accrued pension and other employee-related obligations associated with the Transferred Employees (as defined below) as of the date of the closing of the Potential Transaction. The Purchase Price would be paid in cash or in immediately available funds at such closing, subject to appropriate holdbacks.

- B. Retail Electric Service. Subject to such approvals as may be required by the Florida Public Service Commission (“**FPSC**”), FPL would provide retail electric service to all customers (including COVB facilities) currently served by the COVB electric utility at FPL’s then current FPSC approved retail rates and subject to FPL’s approved electric tariff, all as may be revised from time to time under FPSC jurisdiction. COVB’s adoption of a franchise ordinance on terms acceptable to FPL will be a condition precedent to the closing of the Potential Transaction.
- C. Retention of Employees. FPL shall retain COVB electric utility employees whose services or work assignments are directly associated with the Assets and who are active employees on the closing date (“**Transferred Employees**”) for two (2) years from the closing date on terms and conditions to be negotiated by the Parties.
- D. Transfers to FPL. COVB shall provide to FPL the following:
- i) assignment of all of COVB’s rights and obligations, free of any and all liens and encumbrances, under the contracts related to the Assets;
 - ii) transfer of 100% ownership to all land, buildings fixtures and improvements providing marketable title to the real property related to the Assets (other than the real property on which COVB’s power plant is located (“**Power Plant Real Property**”)), including, but not limited to leases, easements and licenses, free of any and all liens and subject only to those encumbrances approved by FPL in its sole discretion, as well as transfer of 100% ownership to all personal property related to the Assets, free of any and all liens and encumbrances, including but not limited to COVB’s power plant, transmission and distribution facilities, related buildings, equipment, interconnection facilities, switchyard facilities, telecommunication equipment and radios (including all licenses therefor), fuel inventories, fuel tanks, natural gas transportation, tools, spare parts and all other inventories of materials and supplies;
 - iii) transfer of all COVB electric utility accounting books and records, customer-related assets and Transferred Employees-related assets; and
 - iv) transfer of all permits, licenses, contracts, models, systems and rights thereunder associated with the forecasting, modeling, management and operation of the Assets.
- E. Power Plant Real Property. COVB shall retain ownership of the Power Plant Real Property, and FPL shall lease such real property from COVB on terms acceptable to FPL. FPL shall determine, in its sole discretion, if and when the power plant is removed from service. Upon removal of the power plant from service, FPL shall be responsible for dismantling the power plant. Upon completion of such

dismantling, the lease shall terminate and use of such real property shall revert to COVB, which use shall be at the sole discretion of COVB. All costs of any environmental remediation of such real property (other than resulting from releases caused by FPL after the closing of the Potential Transaction) shall be the responsibility of COVB. A condition to the closing of the Potential Transaction shall be that the lease of the Power Plant Real Property to FPL is approved in accordance with the Charter of COVB.

- F. Liabilities. COVB shall retain, and indemnify FPL from, all liabilities (including environmental liabilities) relating to the Assets and Transferred Employees arising from acts, omissions, events, conditions or circumstances occurring prior to the closing of the Potential Transaction.

- G. Orlando Utilities Commission Agreement. As a condition to the closing of the Potential Transaction, COVB shall terminate the Agreement for Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services Agreement between COVB and the Orlando Utilities Commission dated April 21, 2008. COVB shall be responsible for any payments owed to the Orlando Utilities Commission as a result of such termination.

- H. Florida Municipal Power Agency Entitlements. As a condition to the closing of the Potential Transaction, COVB shall transfer to another FMPA member the rights to receive capacity and energy from the generation entitlements to the following contracts:
 - i) St. Lucie Project Power Sales Contract, by and between the Florida Municipal Power Agency and the COVB, dated June 1, 1982, as amended;
 - ii) St. Lucie Project Power Support Contract, by and between the Florida Municipal Power Agency and COVB, dated June 1, 1982, as amended;
 - iii) Stanton I Power Sales Contract, by and between the Florida Municipal Power Agency, and COVB, dated January 16, 1984;
 - iv) Stanton I Power Support Contract, by and between the Florida Municipal Power Agency, and COVB, dated January 16, 1984; and
 - v) Stanton II Power Sales and Project Support Contract, by and between the Florida Municipal Power Agency, and COVB, dated April 17, 1991.

FPL shall not be responsible for any payments or other liabilities related to such transfer.

- I. Territorial Agreement. As a condition to the closing of the Potential Transaction, the Parties would jointly terminate the Territorial Boundary Agreement dated June 11, 1980, between FPL and COVB.

- J. Pole Leases. COVB shall assign to FPL all of COVB's rights and obligations under agreements leasing, or providing rights to use, any portion of the Assets, including poles.
- K. Separation of Assets. To the extent the Assets need to be separated from other COVB assets, such separation shall be at the cost of COVB.

PART II

ARTICLE 1. DUE DILIGENCE

Section 1.1 FPL shall have the right to evaluate the Potential Transaction through due diligence of COVB and the Assets, including but not be limited to review of information regarding:

- (a) material litigation and claims, including matters threatened but not yet brought;
- (b) defaults, or other issues limiting COVB's rights under the contractual assets;
- (c) regulatory and governmental matters, including operational filings, Federal Energy Regulatory Commission ("**FERC**") and FPSC proceedings and reports to governmental agencies;
- (d) tax matters;
- (e) real property matters, including the marketability of title to all real property (and fixtures and other improvements thereon) owned or leased and assessment of title to other real property rights, including easements;
- (f) environmental matters, including air, surface, groundwater and weather matters and the condition of the properties, assets, sites and surrounding property;
- (g) operational documents/information regarding the assets, including documentation of electrical and steam output maintenance records and plans;
- (h) security and safety plans;
- (i) material contracts;
- (j) instruments of indebtedness, including notes, loans, synthetic leases, guarantees, letters of credit, etc.; and
- (k) labor and employment matters, including employee benefits and compensation,

employee claims and/or litigation, and grievances and/or arbitrations.

In conducting its due diligence, FPL's review would also include, but not be limited to, a review of the physical assets and risk management/insurance records related to the Assets and an environmental audit.

Section 1.2 FPL will use commercially reasonable efforts to complete its due diligence of COVB and the Assets by no later than July 1, 2011. COVB would make available all documents, reports, studies, contracts and other tangible or electronic items and information as may exist relating to the Assets, including the forecasting, modeling, management and operation of the Assets. COVB will make available to FPL all of COVB's certain employees, vendors, contractors and advisors engaged prior to or subsequent to the date of this Letter of Intent so that FPL's representatives may have reasonable access to information developed or retained by such employees, vendors, contractors and advisors in relation to the Assets and reasonable opportunity to discuss such information with such persons.

ARTICLE 2. CONDITIONS PRECEDENT

Section 2.1 COVB shall not be required to execute any Definitive Agreement unless the COVB's City Council approves, in its sole discretion, entering into the Definitive Agreements.

Section 2.2 FPL shall not be required to execute any Definitive Agreement unless FPL determines in its sole discretion that all of the following conditions have been satisfied:

- (a) The due diligence described in Article 1 above has been completed and the results are satisfactory to FPL;
- (b) FPL determines that it can receive all applicable regulatory approvals, including but not limited to approvals by the FPSC and any other state commissions, FERC, the Federal Trade Commission, and the Securities and Exchange Commission, and third party consents, in each case on terms and conditions acceptable to FPL; and
- (c) FPL receives approval from its senior management and board of directors to enter into the Definitive Agreements.

Section 2.3 The Parties understand that the consummation of the Potential Transaction contemplated by this Letter of Intent shall be subject to the satisfaction of the conditions set forth in Section 2.1, the other conditions set forth in this Letter of Intent and the conditions to closing set forth in the Definitive Agreements.

ARTICLE 3. GOOD FAITH NEGOTIATIONS; EXCLUSIVITY

Section 3.1 Good Faith Negotiations. The Parties shall negotiate in good faith through July 1, 2011, unless this Letter of Intent is earlier terminated pursuant to Article 5 below (the “*Negotiation Period*”), to finalize and execute Definitive Agreements subject to the conditions set forth in this Letter of Intent.

Section 3.2 Exclusivity. In order to induce FPL to commit the resources necessary for the due diligence and evaluation of the Potential Transaction, COVB agrees that, during the Negotiation Period: (a) it will not, directly or indirectly, or through an official, employee, representative or by or through the use of any other conduit (including any other person or entity), offer to transfer (whether by asset sale or otherwise) the Assets or any portion thereof to (or offer to enter into any transaction contemplated by the Potential Transaction with) any person or entity, or request, solicit or otherwise encourage inquiries, proposals or offers from any person or entity but FPL with respect to the Assets or any portion thereof or any transaction contemplated by the Potential Transaction; and (b) it will not participate in any discussions or negotiations with, or furnish any non-public information to, any person or entity other than FPL regarding the transfer (whether by asset sale or otherwise) of the Assets or any portion thereof or any transaction contemplated by the Potential Transaction.

ARTICLE 4. EFFECT OF THIS LETTER OF INTENT

Section 4.1 This Letter of Intent:

(a) except as set forth in Section 4.2 below, does not constitute a legally binding agreement;

(b) does not constitute a legally binding offer or agreement to consummate the Potential Transactions or any other transaction or to enter into any Definitive Agreement;

(c) does not contain all of the material terms of the Potential Transactions;
and

(d) except as set forth in Section 4.2 below, shall not constitute the basis for an agreement by estoppel or otherwise.

Section 4.2 Section 3.2, this Article 4 and Articles 5, 6, 7, 8, 9, 10, 11, 12 and 13 of this Letter of Intent constitute a legally binding agreement between the Parties, enforceable against each Party in accordance with their terms.

Section 4.3 Any actions taken by a Party or any other person in reliance on the non-binding terms expressed in this Letter of Intent or statements made (whether orally or in writing) during the negotiations between the Parties shall be at that Party’s own risk, and neither this Letter of Intent (except as set forth in Section 4.2 above) nor any actions or statements (whether written or oral) made by a Party during the course of negotiation, due diligence and evaluation of the Potential Transactions shall be the basis for a contract by estoppel, implied contract or any other legal theory. Unless and until the Definitive Agreements have been duly authorized, executed and delivered by the Parties, no Party shall have any legal obligation, duty, or liability

to the other, expressed or implied, or arising in any other manner under this Letter of Intent, in the course of negotiations as contemplated by this Letter of Intent or in relation to any transaction contemplated by this Letter of Intent (except to the extent provided in Section 4.2 above). No binding commitment shall arise prior to then even if the Parties reach some understanding(s) or agreement(s) in principle.

ARTICLE 5. TERMINATION

Section 5.1 This Letter of Intent shall terminate on the earlier of: (i) execution of the Definitive Agreements, (ii) the expiration of the Negotiation Period, or (iii) written notice by FPL to COVB that FPL is not satisfied (in its sole discretion) with its due diligence.

Section 5.2 Except as expressly set forth in Part II, Article 4 above, upon termination of this Letter of Intent, the Parties shall have no further obligations, duties or liabilities hereunder; provided, however, that the terms and provisions set forth in Articles 4 through 13 shall survive the termination of this Letter of Intent.

ARTICLE 6. CONFIDENTIALITY

Section 6.1 This Letter of Intent (including the terms and conditions hereof and the fact that the Parties have entered into this Letter of Intent) and all information disclosed by a Party to the other under this Letter of Intent or during the negotiation of this Letter of Intent, any Definitive Agreement or the Potential Transaction ("**Confidential Information**") is confidential and may not be disclosed by a Party to a third party without the other Party's prior written consent, except that a Party may disclose Confidential Information to its financial, accounting, engineering and legal advisors who have a need to know such information and who agree to maintain its confidentiality. Confidential Information shall not include: (a) information which is or becomes publicly available; (b) information which is or becomes available on a non-confidential basis from a source which is not known to the receiving Party to be prohibited from disclosing such information pursuant to a legal, contractual or fiduciary obligation to the disclosing Party; (c) information which the receiving Party can demonstrate was legally in its possession prior to disclosure by the disclosing Party; or (d) information which is developed by or for the receiving Party independently of the disclosing Party's Confidential Information. Notwithstanding the foregoing, this Letter of Intent and any document submitted by a Party to the other under this Letter of Intent or during the negotiation of this Letter of Intent, any Definitive Agreement or the Potential Transaction ("**Confidential Document**") may be a public record (as defined in Section 119.011, Florida Statutes) and may be open for inspection or copying by any person or entity unless such document is exempted under Section 119.071, Florida Statutes. During the term of this Letter of Intent, FPL may claim that some or all of the Confidential Documents is, or has been treated as, confidential and proprietary by FPL in accordance with Florida law, and is exempt from disclosure under Chapter 119, Florida Statutes. In the event that COVB is requested or required by legal or regulatory authority to disclose any Confidential Information, COVB shall within three (3) days notify FPL of such request or

requirement prior to disclosure so that FPL may seek an appropriate protective order and/or waive compliance with the terms of this Letter of Intent. To the extent reasonably possible, FPL shall endeavor to provide redacted versions of documents containing Confidential Information, upon request of COVB. The Party's obligation of nondisclosure of Confidential Information shall survive the expiration or termination of this Letter of Intent.

ARTICLE 7. COSTS AND EXPENSES

Section 7.1 Each party shall bear its own costs and expenses (including fees of counsel and outside advisors) in connection with the preparation, negotiation, execution and delivery of this Letter of Intent and any Definitive Agreement (whether or not the Potential Transaction is consummated).

ARTICLE 8. LIMITATION ON LIABILITY

Section 8.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ITS REPRESENTATIVES FOR ANY SPECIAL, INDIRECT, NON-COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY TYPE, INCLUDING LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY OR BUSINESS INTERRUPTIONS WHETHER ARISING IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, WHETHER SOLE, JOINT OR CONCURRENT OR STRICT LIABILITY) OR OTHERWISE, ARISING OUT OF THIS LETTER OF INTENT.

ARTICLE 9. NO THIRD-PARTY BENEFICIARIES

Section 9.1 This Letter of Intent is intended for the benefit of the Parties hereto and is not intended to and does not confer any benefit on any third parties.

ARTICLE 10. CHOICE OF LAW

Section 10.1 This Letter of Intent shall be governed by the laws of the State of Florida without regard to its conflicts of laws principles.

Section 10.2 IN ANY LITIGATION ARISING FROM OR RELATED TO THIS LETTER OF INTENT, THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LETTER OR INTENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THIS LETTER OF INTENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS

LETTER OF INTENT.

ARTICLE 11. ASSIGNMENT

Section 11.1 This Letter of Intent may not be assigned or transferred by either Party without the prior written consent of the other Party. Article 4 and the provisions set forth therein shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties.

ARTICLE 12. COUNTERPARTS

Section 12.1 This Letter of Intent may be executed in separate counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

ARTICLE 13. ENTIRE AGREEMENT

Section 13.1 This Letter of Intent represents the entire agreement and understanding of the Parties regarding the subject matter hereof and supercedes all previous understandings, written or oral. It is the expectation of the Parties that this Letter will be superceded in its entirety by any Definitive Agreement executed by the Parties.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Letter of Intent to be executed by their duly authorized representatives on the first date written above.

FLORIDA POWER & LIGHT COMPANY

By: 
Name: SAM A. FORREST
Title: VICE PRESIDENT



ATTEST:

CITY OF VERO BEACH, FLORIDA

Tammy K. Vock
City Clerk

Jay Kramer
Mayor

(City Seal)

Approved as to form and legal
sufficiency:

Approved as conforming to municipal
policy:

Wayne R. Coment
Acting City Attorney

Monte K. Falls
Interim City Manager

Approved as to technical requirements:

Approved as to technical requirements:
