



10B-1)

## **Addendum to the City Council Meeting Agenda**

**Author:** Pilar Turner

**Council Meeting Date:** Nov. 17, 2015

**Priority** \_\_1\_\_ of \_\_1\_\_

**Title:** Discussion of a Resolution to support HB579

**Summary:** The City purchases 48MW of power from FMPA which consists of power generated by the Stanton, Stanton II, and St. Lucie power plants. The projected average wholesale power costs from FMPA are 20% above our latest OUC costs and rising. Efforts to abide by our ratepayers wishes to exit the FMPA have been blocked.

**Public need or issue addressed:** Support legislation to require full disclosure of FMPA operations to safeguard ratepayers from speculative practices and mismanagement. As the Board of Directors of Vero Electric we must have the financial information requested in this Bill to effectively manage our utility. Currently our liabilities are unknown.

**Relevant City Charter, code references, legal:**

**Dates of past decisions by Council relevant to the issue:**

**Additional attached documentation includes:** Proposed County Resolution, HB 579

**RESOLUTION NO. 2015-**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, URGING THE FLORIDA LEGISLATURE TO ADOPT AND THE GOVERNOR RICK SCOTT TO SUPPORT HOUSE BILL 579 REGULATING MUNICIPAL POWER; AND DIRECTING CERTIFIED COPIES OF THIS RESOLUTION TO BE PROVIDED TO VARIOUS OFFICIALS.**

**WHEREAS,** The Florida Municipal Power Agency is a Joint Use Action Agency created pursuant to a series of interlocal agreements with Florida municipalities to finance, acquire, contract, manage, and operate its own electric power projects or jointly accomplish the same purposes with other public or private utilities, and

**WHEREAS,** The Florida Municipal Power Agency is governed by a Board of Directors, with one Board member appointed by each member municipality. The Board decides all issues concerning each project except for the All Requirements Project. The All Requirements Project is governed by an Executive Committee, with each All Requirements Project member municipality that purchases power from the project appointing one Executive Committee member, and

**WHEREAS,** most of those who serve on the Board of Directors and the Executive Committee are not elected by the voters of the communities to which the Florida Municipal Power Agency serves; and

**WHEREAS,** the Joint Legislative Auditing Committee received Report No. 2015-165 on March 30, 2015, regarding the Florida Municipal Power Agency, which contains findings and recommendations, and

**WHEREAS,** many of the Florida Municipal Power Agency's hedging activities were found to be inconsistent with other joint use action agencies, leading to net losses of \$247.6 million over the past 12 fiscal years, and

**WHEREAS,** several of the Florida Municipal Power Agency's personnel and payroll administration activities may negatively affect future rates, including the Chief Executive Officer's employment contract providing for severance pay and lifetime benefits even if employment is terminated for cause, and

**WHEREAS,** the Florida Municipal Power Agency did not consistently follow its own procurement and competitive selection policies, one of which may increase the cost of bond issues, and

**RESOLUTION NO. 2015-**

**WHEREAS**, the Florida Municipal Power Agency's All Requirements Project agreement to curtail peak-shaving activities are primarily voluntary, rely on self-reporting, and contain no penalties for noncompliance, and

**WHEREAS**, certain of the All Requirements Project contract provisions relating to withdrawing members are ambiguous, use a fixed discount rate rather than one based on current capital costs, and do not provide for independent verification by a withdrawing member, and

**WHEREAS**, even though the Florida Municipal Power Agency is a governmental entity, many of the laws that apply to local governments do not apply to the agency, and

**WHEREAS**, the Florida Municipal Power Agency is not subject to any rate-setting authority, including the Public Service Commission, and

**WHEREAS**, elected officials who support transparency and accountability in government, including governmental agencies, serve their constituencies well; and

**WHEREAS**, elected officials have a fiduciary duty to those they serve to understand the value of the assets and liabilities for which they are responsible; and

**WHEREAS**, House Bill 579 has been introduced to promote transparency, consistency, and public understanding and confidence in the operation of the Florida Municipal Power Agency by the member municipalities and the public, including those electric ratepayers who are not residents of the municipality supplying electric power but who are subject to a municipality that is receiving power from the Florida Municipal Power Agency,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, THAT:**

**Section 1.** The above "WHEREAS" clauses are true and correct, and are hereby adopted as findings of the Board.

**Section 2.** The Board urges the State Administration and Florida Legislature to support House Bill 579 which provides much needed regulation of municipal power.

**Section 3.** A certified copy of this resolution shall be provided to the Governor Rick Scott, the Speaker of the House, the President of the Senate and the Indian River County Legislative Delegation.

The foregoing resolution was moved for adoption by Commissioner \_\_\_\_\_, and seconded by Commissioner \_\_\_\_\_, and, upon being put to a vote, the vote was as follows:

Commissioner Wesley S. Davis \_\_\_\_\_  
Commissioner Joseph E. Flescher \_\_\_\_\_

**RESOLUTION NO. 2015-**

Commissioner Peter D. O'Bryan \_\_\_\_\_  
Commissioner Bob Solari \_\_\_\_\_  
Commissioner Tim Zorc \_\_\_\_\_

The Chairman thereupon declared the resolution duly passed and adopted this \_\_\_\_ day  
of \_\_\_\_\_, 2015.

**ATTEST:** Jeffrey R. Smith, Clerk of Circuit  
Court and Comptroller

**BOARD OF COUNTY COMMISSIONERS OF  
INDIAN RIVER COUNTY, FLORIDA**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman

BCC approval date: \_\_\_\_\_, 2015

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Dylan Reingold, County Attorney

1                                   A bill to be entitled  
 2           An act relating to municipal power regulation;  
 3           amending s. 163.01, F.S.; requiring certain entities  
 4           created under the Interlocal Cooperation Act of 1969  
 5           to submit independently prepared financial statements  
 6           for certain electric power projects to specified  
 7           public entities; providing statement requirements;  
 8           providing eligibility requirements for membership on  
 9           the governing body of certain entities created under  
 10          the Interlocal Cooperation Act of 1969; amending s.  
 11          350.0611, F.S.; expanding the duties of the Public  
 12          Counsel to include proceedings involving the Florida  
 13          Municipal Power Agency; amending s. 366.02, F.S.;  
 14          revising the definition of the term "public utility"  
 15          to include the Florida Municipal Power Agency;  
 16          defining the term "Florida Municipal Power Agency";  
 17          amending s. 366.04, F.S.; exempting the agency from  
 18          regulation by the Public Service Commission for  
 19          purposes of rates and service; providing an effective  
 20          date.

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 22           WHEREAS, The Florida Municipal Power Agency is a joint-use  
 23          action agency created pursuant to a series of interlocal  
 24          agreements with the state's municipalities to finance, acquire,  
 25          contract, manage, and operate its own electric power projects or  
 26          jointly accomplish the same purposes with other public or

27 private utilities, and

28 WHEREAS, the Florida Municipal Power Agency is governed by  
 29 a board of directors, consisting of one board member from each  
 30 member municipality, which decides all issues concerning each  
 31 project except for the "All-Requirements" power supply project,  
 32 and

33 WHEREAS, the All-Requirements power supply project is  
 34 governed by an executive committee, with each All-Requirements  
 35 project member municipality that purchases power from the  
 36 project appointing one executive committee member, and

37 WHEREAS, the Auditor General conducted an operational audit  
 38 of the of Florida Municipal Power Agency and released Report No.  
 39 2015-165 to the Joint Legislative Auditing Committee on March  
 40 30, 2015, which included findings and recommendations, and

41 WHEREAS, the Auditor General found many of the Florida  
 42 Municipal Power Agency's hedging activities to be inconsistent  
 43 with other joint-use action agencies, leading to net losses of  
 44 \$247.6 million over the past 12 fiscal years, and

45 WHEREAS, the Auditor General concluded that several of the  
 46 Florida Municipal Power Agency's personnel and payroll  
 47 administration activities may negatively affect future rates,  
 48 including the Chief Executive Officer's employment contract that  
 49 provides severance pay and lifetime benefits even if employment  
 50 is terminated for cause, and

51 WHEREAS, the Florida Municipal Power Agency did not  
 52 consistently follow its own procurement and competitive

53 selection policies, one of which may increase the cost of future  
 54 bond issues, and

55 WHEREAS, the Florida Municipal Power Agency's All-  
 56 Requirements project agreement to curtail peak-shaving  
 57 activities is primarily voluntary, relies on self-reporting, and  
 58 contains no penalties for noncompliance, and

59 WHEREAS, certain All-Requirements project contract  
 60 provisions relating to the withdrawal of members are ambiguous,  
 61 use a fixed discount rate rather than one based on current  
 62 capital costs, and do not provide for independent verification  
 63 by a withdrawing member, and

64 WHEREAS, even though the Florida Municipal Power Agency is  
 65 a governmental entity, many of the laws that apply to local  
 66 governments do not apply to the agency, and

67 WHEREAS, the Florida Municipal Power Agency is not subject  
 68 to any rate-setting authority, including by the Public Service  
 69 Commission, and

70 WHEREAS, there exists a need to promote transparency and  
 71 consistency and to increase public understanding and confidence  
 72 in the operation of the Florida Municipal Power Agency by the  
 73 member municipalities and the public, including those electric  
 74 ratepayers who are not residents of the municipality supplying  
 75 electric power but who are subject to a municipality that is  
 76 receiving power from the agency, NOW, THEREFORE,

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78 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Subsection (19) is added to section 163.01, Florida Statutes, to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(19) (a) Any entity created pursuant to this section that supplies electricity through an interlocal agreement to its member municipalities shall annually submit to the Public Service Commission, the Public Counsel, and each member municipality that participates in the electric power project an independently prepared financial statement for each individual generation asset. The financial statement must include:

1. A balance sheet that reflects assets and liabilities associated with each generation asset, including the plant in service, accumulated additions and removals, net plant, depreciation, operations and maintenance expenses, allocations, and any other material asset and liability categories.

2. An income statement that reflects each generation asset's operational and financial activities for the reporting period, including revenues, expenses, gains, and losses. Any gains or losses from hedging activities associated with the generation asset shall be separately itemized.

3. A statement of cash flows that identifies changes in the generation asset's cash flows during the reporting period.

4. The current fair market value for each generation asset. The current fair market value shall be determined assuming the price that a willing buyer would pay a willing

105 seller for the generation asset, with neither party being under  
 106 any compulsion to buy or sell and both having reasonable  
 107 knowledge of relevant facts, and assuming all risk of ownership,  
 108 loss, and decommissioning, as applicable. The current fair  
 109 market value statement shall include the overall fair market  
 110 value of the generation asset as a whole and each member  
 111 municipality's equity position net of the entity's debt, based  
 112 on the current fair market generation asset value. The current  
 113 fair market value statement shall include, after considering the  
 114 market value of the generation assets, the net return of equity  
 115 or the cost to exit the entity for each member municipality.

116 (b) To serve as a member of the governing body of an  
 117 entity created pursuant to this section for the purpose of  
 118 supplying electricity to its member municipalities, each member  
 119 of the governing body must be an elected official from one of  
 120 the entity's member municipalities. Current members of a  
 121 governing body of such an entity who are not elected officials  
 122 may continue to serve until expiration of their terms but no  
 123 later than July 1, 2018.

124 Section 2. Section 350.0611, Florida Statutes, is amended  
 125 to read:

126 350.0611 Public Counsel; duties and powers.—It shall be  
 127 the duty of the Public Counsel to provide legal representation  
 128 for the people of the state in proceedings before the  
 129 commission, ~~and~~ in proceedings before counties pursuant to s.  
 130 367.171(8), and in proceedings before the Florida Municipal

131 Power Agency. The Public Counsel shall have such powers as are  
 132 necessary to carry out the duties of his or her office,  
 133 including, but not limited to, the following specific powers:

134 (1) To recommend to the commission, ~~or~~ the counties, or  
 135 the Florida Municipal Power Agency, by petition, the  
 136 commencement of any proceeding or action or to appear, in the  
 137 name of the state or its citizens, in any proceeding or action  
 138 before the commission, ~~or~~ the counties, or the agency, and urge  
 139 therein any position which he or she deems to be in the public  
 140 interest, whether consistent or inconsistent with positions  
 141 previously adopted by the commission, ~~or~~ the counties, or the  
 142 agency, and utilize therein all forms of discovery available to  
 143 attorneys in civil actions generally, subject to protective  
 144 orders of the commission or the counties which shall be  
 145 reviewable by summary procedure in the circuit courts of this  
 146 state;

147 (2) To have access to and use of all files, records, and  
 148 data of the commission, ~~or~~ the counties, or the Florida  
 149 Municipal Power Agency available to any other attorney  
 150 representing parties in a proceeding before the commission, ~~or~~  
 151 the counties, or the agency;

152 (3) In any proceeding in which he or she has participated  
 153 as a party, to seek review of any determination, finding, or  
 154 order of the commission, ~~or~~ the counties, the Florida Municipal  
 155 Power Agency, or ~~of~~ any hearing examiner designated by the  
 156 commission, ~~or~~ the counties, or the agency, in the name of the

157 state or its citizens;

158 (4) To prepare and issue reports, recommendations, and  
 159 proposed orders to the commission, the Governor, and the  
 160 Legislature on any matter or subject within the jurisdiction of  
 161 the commission or the Florida Municipal Power Agency, and to  
 162 make such recommendations as he or she deems appropriate for  
 163 legislation relative to commission or agency procedures, rules,  
 164 jurisdiction, personnel, and functions; and

165 (5) To appear before other state agencies, federal  
 166 agencies, and state and federal courts in connection with  
 167 matters under the jurisdiction of the commission or the Florida  
 168 Municipal Power Agency, in the name of the state or its  
 169 citizens.

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171 As used in this section, the term "Florida Municipal Power  
 172 Agency" or "agency" has the same meaning as provided in s.  
 173 366.02.

174 Section 3. Subsection (1) of section 366.02, Florida  
 175 Statutes, is amended, and subsection (4) is added to that  
 176 section, to read:

177 366.02 Definitions.—As used in this chapter:

178 (1) "Public utility" means every person, corporation,  
 179 partnership, association, or other legal entity and their  
 180 lessees, trustees, or receivers supplying electricity or gas  
 181 (natural, manufactured, or similar gaseous substance) to or for  
 182 the public within this state, including the Florida Municipal

183 Power Agency. However, ~~but~~ the term "public utility" does not  
 184 include either a cooperative now or hereafter organized and  
 185 existing under the Rural Electric Cooperative Law of the state;  
 186 a municipality or any agency thereof; any dependent or  
 187 independent special natural gas district; any natural gas  
 188 transmission pipeline company making only sales or  
 189 transportation delivery of natural gas at wholesale and to  
 190 direct industrial consumers; any entity selling or arranging for  
 191 sales of natural gas which neither owns nor operates natural gas  
 192 transmission or distribution facilities within the state; or a  
 193 person supplying liquefied petroleum gas, in either liquid or  
 194 gaseous form, irrespective of the method of distribution or  
 195 delivery, or owning or operating facilities beyond the outlet of  
 196 a meter through which natural gas is supplied for compression  
 197 and delivery into motor vehicle fuel tanks or other  
 198 transportation containers, unless such person also supplies  
 199 electricity or manufactured or natural gas.

200 (4) "Florida Municipal Power Agency" means the legal  
 201 entity, or a successor entity, formed under s. 163.01 by  
 202 interlocal agreement among municipalities.

203 Section 4. Subsection (1) of section 366.04, Florida  
 204 Statutes, is amended to read:

205 366.04 Jurisdiction of commission.—

206 (1) In addition to its existing functions, the commission  
 207 shall have jurisdiction to regulate and supervise each public  
 208 utility with respect to its rates and service, except for the

209 Florida Municipal Power Agency; assumption by it of liabilities  
 210 or obligations as guarantor, endorser, or surety; and the  
 211 issuance and sale of its securities, except a security which is  
 212 a note or draft maturing not more than 1 year after the date of  
 213 such issuance and sale and aggregating (together with all other  
 214 then-outstanding notes and drafts of a maturity of 1 year or  
 215 less on which such public utility is liable) not more than 5  
 216 percent of the par value of the other securities of the public  
 217 utility then outstanding. In the case of securities having no  
 218 par value, the par value for the purpose of this section shall  
 219 be the fair market value as of the date of issue. The  
 220 commission, upon application by a public utility, may authorize  
 221 the utility to issue and sell securities of one or more  
 222 offerings, or of one or more types, over a period of up to 12  
 223 months; or, if the securities are notes or drafts maturing not  
 224 more than 1 year after the date of issuance and sale, the  
 225 commission, upon such application, may authorize the utility to  
 226 issue and sell such securities over a period of up to 24 months.  
 227 The commission may take final action to grant an application by  
 228 a public utility to issue and sell securities or to assume  
 229 liabilities or obligations after having given notice in the  
 230 Florida Administrative Register published at least 7 days in  
 231 advance of final agency action. In taking final action on such  
 232 application, the commission may deny authorization for the  
 233 issuance or sale of a security or assumption of a liability or  
 234 obligation if the security, liability, or obligation is for

235 nonutility purposes; and shall deny authorization for the  
 236 issuance or sale of a security or assumption of a liability or  
 237 obligation if the financial viability of the public utility is  
 238 adversely affected such that the public utility's ability to  
 239 provide reasonable service at reasonable rates is jeopardized.  
 240 Securities issued by a public utility or liabilities or  
 241 obligations assumed by a public utility as guarantor, endorser,  
 242 or surety pursuant to an order of the commission, which order is  
 243 certified by the clerk of the commission and which order  
 244 approves or authorizes the issuance and sale of such securities  
 245 or the assumption of such liabilities or obligations, shall not  
 246 be invalidated by a modification, repeal, or amendment to that  
 247 order or by a supplemental order; however, the commission's  
 248 approval of the issuance of securities or the assumption of  
 249 liabilities or obligations shall constitute approval only as to  
 250 the legality of the issue or assumption, and in no way shall it  
 251 be considered commission approval of the rates, service,  
 252 accounts, valuation, estimates, or determinations of cost or any  
 253 other such matter. The jurisdiction conferred upon the  
 254 commission shall be exclusive and superior to that of all other  
 255 boards, agencies, political subdivisions, municipalities, towns,  
 256 villages, or counties, and, in case of conflict therewith, all  
 257 lawful acts, orders, rules, and regulations of the commission  
 258 shall in each instance prevail.

259 Section 5. This act shall take effect July 1, 2016.