



Memorandum

August 19, 2011

To: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Tracy Carroll
Councilmember Craig Fletcher
Councilmember Brian Heady

From: Barry Moline, Executive Director

Subject: FMEA's Response to FPL's June 7, 2011, Reply to FMEA's Issue Paper on Issues to Consider in the Proposed Sale of the Vero Beach Electric Utility

I have examined FPL's reply to our May 27 Issue Paper, as well as FPL presentations, websites and quotes from various newspaper articles. After careful review, my original conclusions are confirmed. The proposed sale to FPL of the Vero Beach Electric Utility is a bad deal for the citizens of Vero Beach.

My conclusions remain the same:

- FPL's rates are currently lower, but over time, the rates of both utilities are comparable.
- When outages occur, the lights of FPL customers are out much longer – two-and-a-half hours longer – than those of Vero Beach Electric Utility's customers.
- When hurricanes hit, FPL customers wait longer to have their power restored. If the Vero Beach Electric Utility is sold to FPL, customers of the City of Vero Beach will never be a priority for immediate restoration, as they are today.
- The proposed sale to FPL will cause the City's general fund to be more than \$3 million short annually, leading to major cuts in City operations, such as the Police, Parks and Public Works Departments.

By nearly every measure this is a bad business deal. FPL has lower rates *right now*, but FPL's rates are going to be increasing in the near future due to nuclear costs and a planned rate increase. The Vero Beach Electric Utility rates were higher a few years ago, but they've dropped significantly, and now the utility is the 7th lowest of all 55 electric utilities in Florida.

By every other measure, and on every other issue, the facts clearly support keeping the utility and solving the inside-outside governance issue.

What I don't understand is: Why would the citizens of Vero Beach seriously consider such a bad business deal? Vero Beach is populated by some of the most business-savvy people in Florida. This deal is like selling your house – in mint condition – for what's left on the mortgage, then not having enough money from the sale to pay the rent on the replacement house, having no control of the rental house you're living in, because it's owned by a landlord who has shown it does not listen to its tenants and lets the rental house deteriorate. This proposed sale just doesn't come close to making sense.

Even more disconcerting is FPL believes it can sell this bad deal with nothing more than excessive public relations. By repeating the same mantra over and over – “we have lower rates” – they've been able to deflect attention from their inferior reliability, inferior hurricane response, and the fact that they have made an embarrassingly low offer to Vero Beach. FPL seems to be saying “Hey, look at this shiny penny while we grab your electric utility from under your nose.”

In its response to FMEA's letter of May 27, FPL claimed that FMEA has a “vested financial interest in disrupting the potential sale of the City's electric utility.” Let me clarify for you, as I did in my first letter: FMEA simply wants this important decision – one that will affect generations in Vero Beach to come – to be based on facts, and not politics or misleading FPL PR. The expression, “Don't buy a pig in a poke,” means don't buy something without a full and complete investigation. The City of South Daytona is in the process of buying FPL's assets and examining creating a municipal electric utility. They've taken five years to study the issue and negotiate. Likewise, Vero Beach City leaders should carefully examine this sale so everyone understands every impact of this decision about whether or not to sell these important assets.

Interestingly, FPL has done a good job of slowing down the decision-making process in South Daytona. Five years and counting. FPL has refused to negotiate a sale price, as required by their franchise contract with South Daytona. Instead of negotiating in good faith in accordance with the plain language of the contract, FPL forced the decision into court. When FPL doesn't like a court's decision, they usually appeal. Now that the City has decided to purchase the electric assets from FPL and issued an RFP for operation and maintenance, FPL has threatened further legal action. In Vero Beach, FPL is taking the opposite approach. They want the process speeded up as fast as possible, even recommending that a transactional attorney be hired so the negotiations are fast-tracked. Why is FPL concerned about hiding the facts in Vero Beach and rushing the process so the community doesn't have adequate time to contemplate this important decision? I'll tell you why: Because it's a bad deal for Vero Beach and FPL doesn't want the facts of this bad deal exposed.

There are other reasons why FPL wants to rush the decision in Vero Beach. First, because it's a bad financial deal for the citizens of Vero Beach, the faster a deal is made, the less opportunity exists to uncover just how bad a deal it is. Smoke, mirrors and sleight-of-hand is all FPL has right now. FPL tried the same strategy in Homestead in 2002. When the bad deal was uncovered, city officials had no other choice but to say no to FPL. Second, FPL is touting its low rates as the sole reason for Vero Beach to sellout. But the longer the Vero Beach community takes to gather

facts, the truth about FPL's future rates will be exposed. FPL's nuclear costs are rising, and will add about \$30 per month to customer bills in the coming years. Furthermore, in 2012 FPL will be asking the PSC for a rate increase. When that request is made, all the news will be about FPL's rate increase. Their rate increase is the last news FPL wants everyone to see when they're trying to take over the Vero Beach utility.

FMEA has no interest, as FPL claims, in disrupting the sale of the Vero Beach Electric Utility. What we want is for the decision to be made with full disclosure. All cards on the table. All facts known. All impacts understood.

In this memo I recap the major points of our Issue Paper, and I add two new points:

- FPL does not adequately respond to its customers, resulting in the City of South Daytona's Recent Vote to CREATE a Municipal Electric Utility, and
- Ideas for the Vero Beach City Council to consider in negotiating with FPL.

FPL does not adequately respond to its customers, resulting in the City of South Daytona's Recent Vote to CREATE a Municipal Electric Utility

I described this briefly in my May 27 Issue Paper, but I did not include the direct evidence. In FPL's response, they talked about their modern customer call center and a few awards it has received.

On July 19, the City of South Daytona elected officials voted 4-1 to buy FPL's poles and wires within their city limits and create a municipal electric utility. Why? There are two basic reasons: 1) FPL's dismal hurricane restoration in their City, and 2) leaning poles that the City has repeatedly asked FPL to fix, which have consistently been ignored by FPL.

In response to the hurricanes that created outages and significant electric utility damage in South Daytona in 2004 and 2005, the City was nevertheless a low priority for restoration by FPL. Even more frustrating to citizens was that FPL used the Daytona Speedway as a staging area for hundreds of lineworkers. Each day, while the City of South Daytona had no power, dozens of bucket trucks sped past the City to higher priority FPL cities. South Daytona officials resolved then to do what they could to fight for their citizens, and provide faster restoration and better service in the future.

The second, and ongoing frustration experienced by the City of South Daytona are their requests to FPL to straighten out leaning poles around town. The poles are functional, but the City is concerned about aesthetics and economic development. The leaning FPL poles make South Daytona look bad. They want the poles straightened. That was in 2004. This is 2011. The poles are still not straightened.

This is an important issue. Look around the Vero Beach Electric System. It looks good. There are lots of underground wires, and the above ground poles and wires are straight and look good aesthetically. **If the Vero Beach Electric Utility is sold to FPL, this is the best it will ever look.** FPL's business model does not include aesthetics as a criterion for maintaining its electric system. The evidence is not only clear, it is overwhelming. See for yourself.

On the following pages are photographs from the City of South Daytona as well as other random locations around FPL's service area. The proof is extensive. If the following existed in Vero Beach, and a customer requested to straighten a leaning pole, the Vero Beach Electric Utility would fix it within a week, or maybe the next day. Not seven years (and counting). These photos provide you a unique opportunity to see the future – what the City of Vero Beach might look like if FPL is your electric utility.

Photos from the FPL electric system in South Daytona and elsewhere.



FPL leaning power poles
Ridgeway Blvd.
City of South Daytona



FPL leaning poles, Ridgeway Blvd.
City of South Daytona



FPL leaning power poles
Ridgeway Blvd.
City of South Daytona



FPL leaning power poles
Ridgeway Blvd.
City of South Daytona



FPL leaning street light
Anastasia Dr.
City of South Daytona



FPL leaning power poles
Jog Rd. at Pipers Glen
City of Boynton Beach



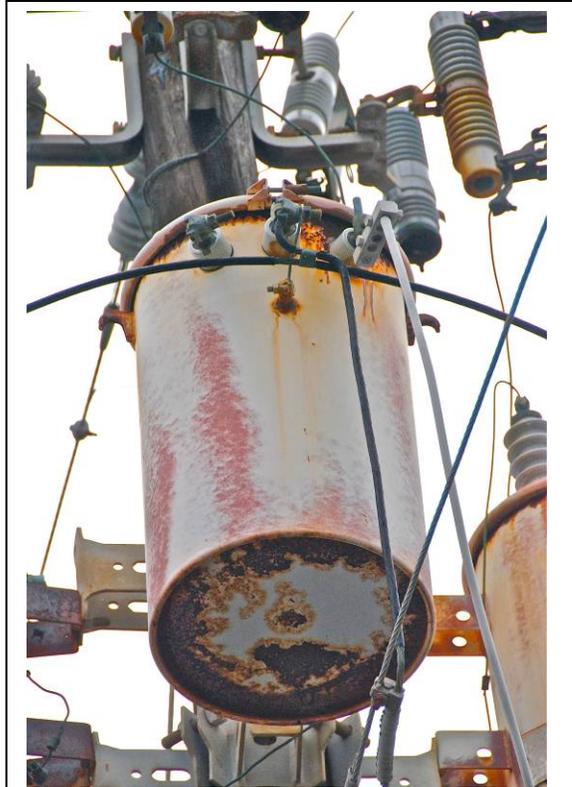
FPL leaning power poles
Jog Rd. at Flavor Pict
City of Boynton Beach



FPL leaning power poles
Southern Blvd. & Flying Cow Rd.



FPL pole-top transformers
Ridgeway Blvd.
City of South Daytona



FPL transformer close-up
Ridgeway Blvd.
City of South Daytona



FPL pole with vegetation
Ridgeway Blvd. & Ridge St.
City of South Daytona

Photos from the Vero Beach Electric System.



Vero Beach Electric System
Highway 60



Vero Beach Electric System, 12th St.



Undergrounded Street
Vero Beach Electric System

The following is a summary that presents the original issues FMEA raised in our May 27 Issue Paper and how, even after FPL's June 7 response, the issues have not been disputed. FPL's response shows a pattern of distortion and suggests a general strategy of telling only the part of the story that puts FPL in a positive light.

1. Revenue impacts to the City of Vero Beach

- Because FPL's offer price is so low, little or no funds will remain for the City of Vero Beach after FPL's low offer is used to pay off utility debts.
- The City's general fund will be at least \$3.4 million short annually.

FPL Response

FPL stated in its initial Letter of Intent it plans to offer the City "\$100 million less offsets." While that specific number was removed from the final LOI, FPL has confirmed this offer in Amy Brunjes' presentation to the City of May 2, 2011, and strongly affirms this offer on its website, stating "We have determined that a purchase price of \$100 million would fairly compensate the City for its electric system, allow the City to pay off its current debt associated with the electric system and allow the customers in Vero Beach to enjoy the same low electric rate that FPL customers currently receive while not negatively impacting FPL's existing customers throughout our service territory."

FPL does not dispute that the City of Vero Beach will likely receive little or no cash from this transaction, and may even owe millions of dollars to complete such a transaction.

FMEA Comment

Two issues are raised here. First, confirmation of FPL's low-ball offer. Second, the rationale for the offer "while not negatively impacting FPL's existing customers throughout our service territory."

FPL doesn't want to offer the actual value of the City's electric system because if it did, it would have to pay the difference from its profits, which it is unlikely to do. Thus, FPL must convince the citizens of Vero Beach that simply paying off the debt, and not paying fair market value, is the best option. In my opinion, this is not a respectful offer, but rather, a slap in the face to the citizens of Vero Beach.

2. Tax implications to the citizens of Vero Beach of a sale of the electric utility

- Vero Beach property taxes are low, at 1.9367 mills per thousand in valuation.
- To replace a \$3.4 million annual revenue shortfall, property taxes would need to rise by 0.94 mills, about a 50% increase.

FPL Response

FPL clarifies what it estimates it will pay in property taxes to three governmental jurisdictions as a result of Vero Beach operations. The funds identified, even adding a 6% franchise fee, are clearly insufficient for the City of Vero Beach to operate without drastic reductions to police and other City services such parks and public works.

FPL states in its June 7 response that its payments “should offset substantially or in total the City’s annual revenue transfer.”

FMEA Comment

First, FPL clarifies that its payments will be insufficient for the City to continue its General Fund operations as it has in the past.

Second, by stating that payments will “substantially” offset the City’s annual transfer, FPL shows that it simply has no interest in the City’s finances or its inability to provide basic services if such a deal is transacted.

FPL does not dispute FMEA’s estimate of a \$3.4 million annual shortfall, nor does it dispute the necessity of a property tax increase to replace these lost revenues.

Finally, using deflection to direct attention from the real issue, FPL expands the discussion to tax impacts of other jurisdictions to avoid having to admit its payment to the City of Vero Beach will be inadequate for the city to continue normal operations without major cuts in basic services.

3. Electric rate comparison – historical, current and estimate of future

- The rate difference between FPL and Vero Beach Electric Utility is 13%.
- The Vero Beach Electric Utility's rates dropped 32% since 2009.
- FPL's rates are going to rise in 2013.
- FPL's rates will rise further – and likely above the Vero Beach Electric Utility – when \$13-19 billion in nuclear energy investment are automatically imposed on FPL's ratepayers.
- Vero Beach's rates may be rising by 5-10% in the next 18 months, depending on costs from its power supplier, OUC.
- FMEA predicts that FPL's rates will conservatively rise 5-25%, and possibly higher, considering a base rate increase in 2013 and significant rate increases for future nuclear cost recovery.
- FPL rates have risen \$0.53 per 1,200 kWh to pay for \$319 million in nuclear costs so far. FPL estimates total nuclear costs of \$13-19 billion. Using that payment ratio, costs would rise by \$28.24 per month to pay for a \$17 billion nuclear investment by FPL. This is not precise ratemaking; however FPL refuses to provide an estimate for the rate impact of its future investment in nuclear energy. While FPL might prefer the public be kept in the dark about the rate increases that are coming, the result is with FPL's silence we must make a reasonable estimate of possible increases.

FPL Response

FPL spends 1.5 pages discussing how rates are set and how efficient FPL's power plants are. FPL avoids discussion of its upcoming rate increase.

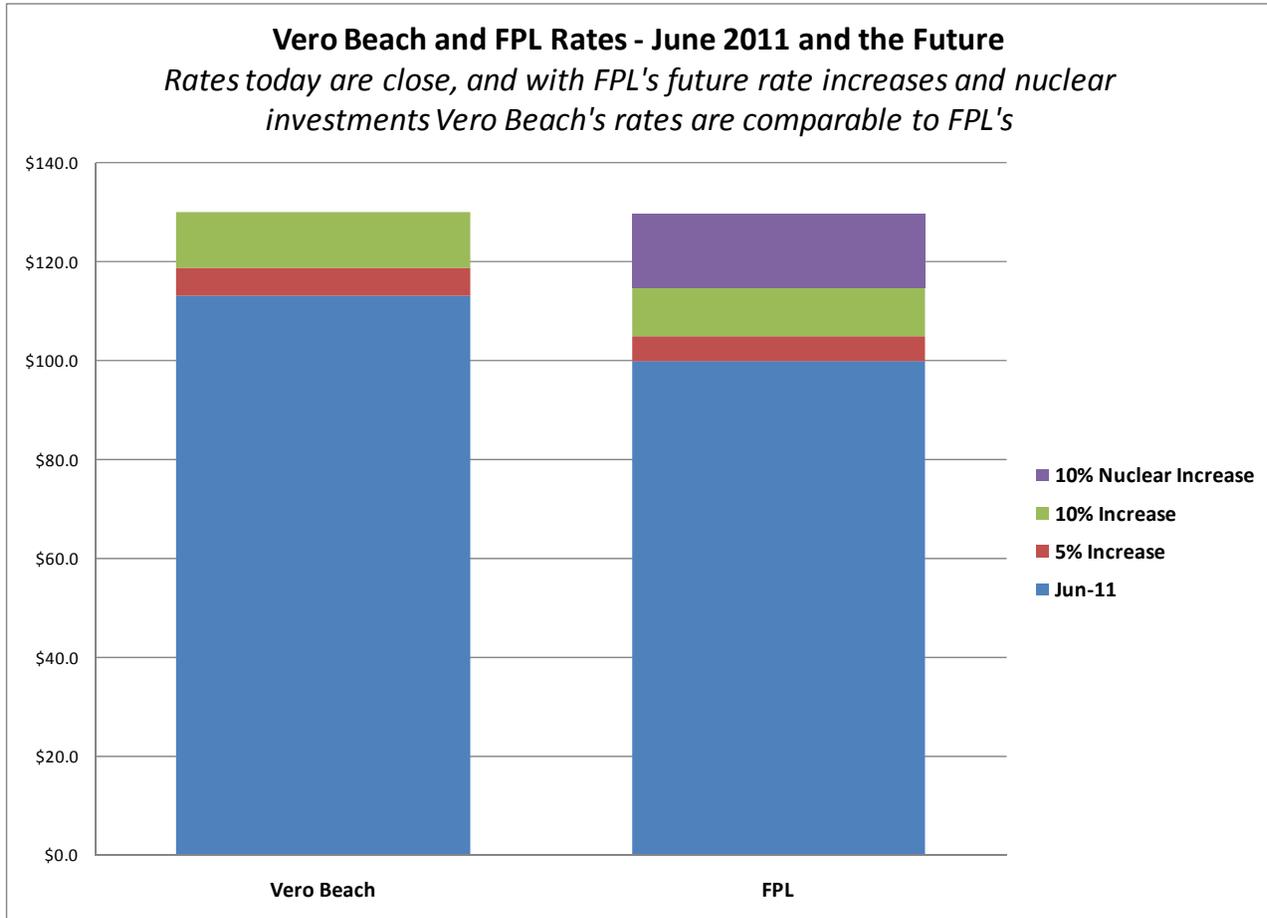
FMEA Comment

FPL's response is gobbledygook. This is a good example of the spin FPL puts on its answers when the private company wants to avoid telling the whole truth. Here is the truth: On June 9 the Sun Sentinel published an article after FPL President Armando Olivera spoke to the newspaper's editorial board. He said FPL will request a modest base rate increase early next year (2012).

FMEA announced FPL's rate increase in our letter to Vero Beach officials of May 27. Why is it that Ms. Rauch had no idea of such an increase in her letter of June 7, when her boss announced it two days later? This exchange shows that FPL is being cagey with information. FPL is a mammoth, private corporation, which only divulges information when it chooses to.

It is not an open records organization like the City of Vero Beach Electric Utility. FPL withholds information and divulges it only when it benefits FPL.

It appears to me that a 13% difference in rates is not compelling enough to convince the citizens of Vero Beach to give up outstanding reliability and fast storm restoration, while funding their local government. Also, considering that FPL's rates will definitely be rising within the next few years, it's reasonable to assume that Vero Beach's rates may be lower than FPL in the near future.



4. Reliability comparison of the City of Vero Beach Electric Utility versus FPL

- Both Vero Beach and FPL have good overall electric reliability.
- FPL has extremely poor reliability for a particular measure, L-Bar. FPL is willing to accept many customers experiencing extremely lengthy outages, of 3 hours and 20 minutes, on average.
- The Vero Beach Electric Utility has outstanding reliability overall, and has no such problem with lengthy outages for individual customers as FPL does.
- If the Vero Beach Electric Utility is sold to FPL, Vero Beach citizens should expect lengthy outages.
- The reason that the Vero Beach Electric Utility has better reliability than FPL is because the City has dedicated crews to Vero Beach only. They simply arrive faster and restore power faster. This is an advantage of owning and controlling a local municipal electric utility.

FPL Response

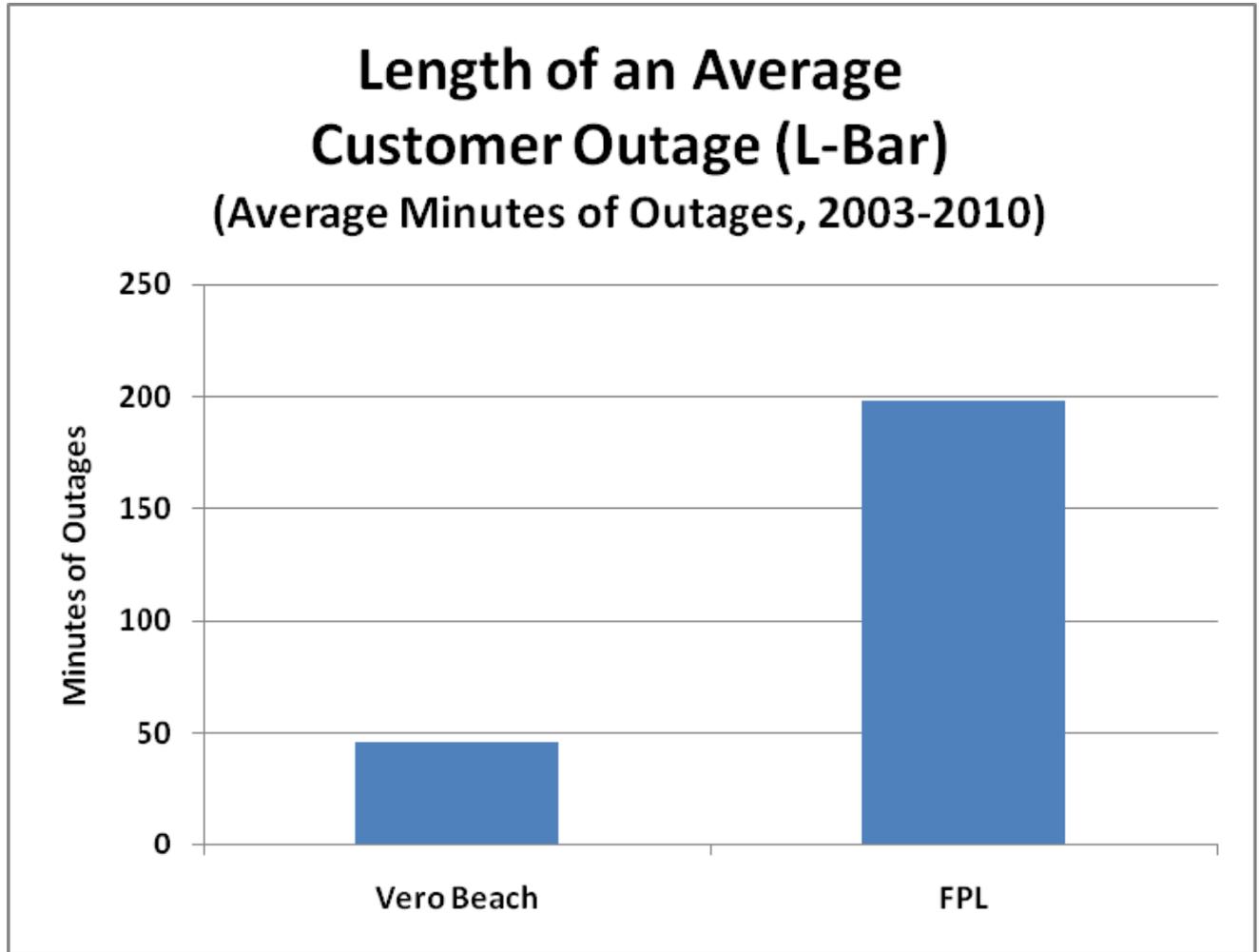
FPL uses limited information to show that for three reliability indices, SAIDI, SAIFI and CAIDI, FPL and the Vero Beach Electric Utility are close. FMEA used more complete and accurate data to show conclusively that the Vero Beach Electric Utility has better reliability across the board.

Furthermore, FPL dismisses the reliability measure L-Bar, for which it has a dismal reliability record, as not “a significant indicator of a utility’s reliability.”

FMEA Comment

If L-Bar is not a significant indicator of reliability, why does the Florida Public Service commission require the data be reported annually from every investor-owned utility?

Most likely, FPL would like to avoid discussing its L-Bar performance because it is dismal, and has been for years. A large L-Bar shows that FPL leaves individual customers without power for, on average, 3 hours and 20 minutes. FPL would like to avoid discussing this fact, but it is a fact nevertheless. This is a strong indication of the kind of service the citizens of Vero Beach can expect if the City sells its electric assets to FPL.



5. Comparison of hurricane restoration, City of Vero Beach versus FPL

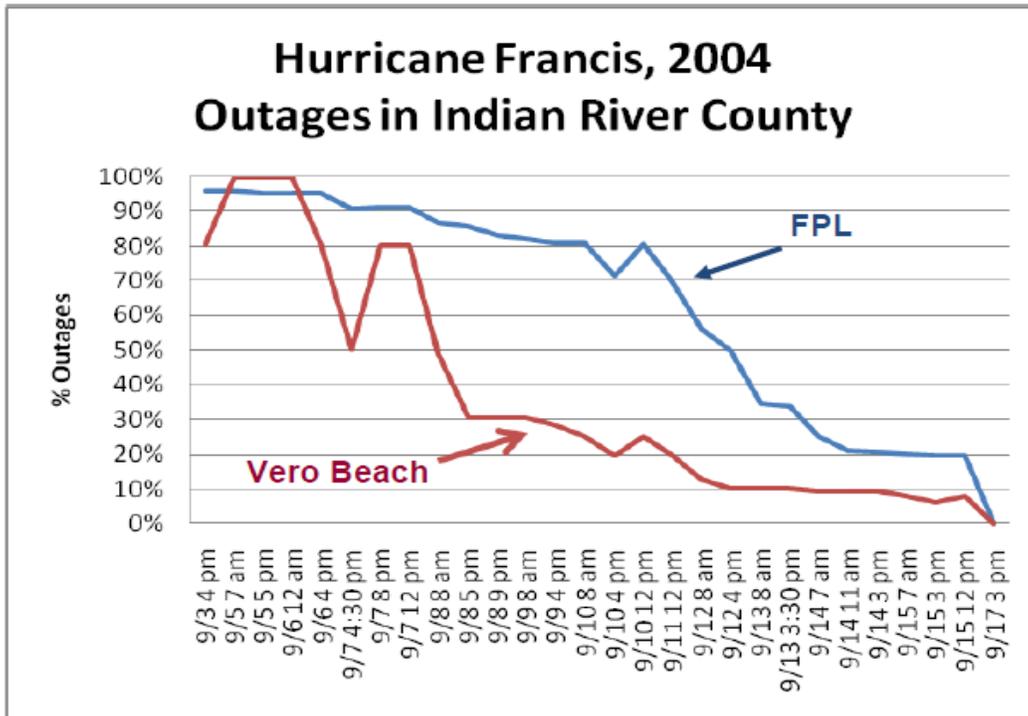
- In a direct comparison, FPL’s hurricane restoration in Indian River County is significantly slower than the Vero Beach Electric Utility.
- The reason Vero Beach is faster at storm restoration is because it has local municipal electric crews dedicated to Vero Beach, and not pulled away to other cities.

FPL Response

FPL claims that the data shown is deceptive. FPL offers a lengthy excuse about why its hurricane response is slow in one area.

FMEA Comment

FPL does not dispute the data, which shows more FPL customers without power for a longer period of time in Indian River County than Vero Beach customers during multiple storms. I fully agree that hurricanes and tropical storms impact utilities differently. The point I make is with its own dedicated municipal electric utility, the City of Vero Beach will always have immediate and priority local attention in response to any storm or hurricane. FPL cannot dispute this. As customers of FPL, the City of Vero Beach will never be a priority for immediate restoration for every storm as it is now with the Vero Beach Electric Utility.



6. Regulation differences between the City of Vero Beach and FPL

- FPL is regulated by the Florida Public Service Commission in Tallahassee, 400 miles away. Input of individual customers is minimized or rarely heard.
- The Vero Beach Electric Utility is regulated by the local City Council. Customers have frequent opportunities to address local regulators.
- If the City of Vero Beach decides to keep its valuable electric utility assets, it must address the fact that 61% of the customers are outside city limits and do not vote for the City Council. One acceptable option is to create a representative utility authority.

FPL Response

FPL states that municipal “regulation” of rates does not provide protection, as evidenced by the fact that customers of municipal electric utilities pay higher bills than customers of FPL.

FPL claims the PSC is a “disinterested third party.”

FMEA Comment

FPL’s response shows that it has minimal understanding of how cities work. Cities are communities that provide the services local people desire. In order to deliver these services, cities need funds. Cities with municipal electric utilities have the option of funding their community programs with revenue from the utility. In exchange, they generally have low property taxes.

Furthermore, when FPL doesn’t like the regulation it receives from the PSC, it makes enormous campaign contributions to influence the choosing of its regulators. In a recent embarrassing episode, several newspapers divulged that FPL was secretly involved in relieving two PSC commissioners of their duties when their terms expired. Because of FPL’s influence, they were not reconfirmed for a second term, a common occurrence.

7. The role of the Public Service Commission in reviewing the sale

- The purpose of the PSC's review has nothing to do with protecting the City of Vero Beach or its citizens, and the PSC will not take a position on whether the City of Vero Beach is receiving a fair price for the assets it is selling.

FPL Response

FPL cites a PSC Order from the sale of the Sebring electric assets that the PSC has the responsibility to make sure rates are fair and reasonable for all utility customers, even though they are not directly involved in the proceedings at hand.

FMEA Comment

FPL is wrong.

I would be surprised if the statements included in FPL's June 7 response to the Mayor were approved by FPL's legal department.

FPL wrote "As the PSC observed in a similar situation..." First, FPL is referring to PSC staff observation and comment, not the Florida Administrative Code (see below). Second, Sebring and Vero Beach are not similar situations, which is well understood by FPL.

Florida Administrative Code 25-9.044, Change of Ownership, is silent on customer protection. I would hope to believe FPL knows this: the PSC will not even consider the impact of a sale until AFTER a sale has taken place. That's a fact, and everyone promoting this proposed sale needs to stop saying that the PSC will look out for the best interests of the customers of the Vero Beach Electric Utility. When anyone says the PSC will protect the citizens of Vero Beach in this proposed transaction, or even review the sale before it takes place, they are either misinformed, or not telling the truth.

Advice for Negotiating with FPL

If the City of Vero Beach chooses to sell its electric utility, it should negotiate for favorable terms. The Vero Beach Electric Utility is in outstanding shape. Its above-ground transmission and distribution system has been mostly rebuilt in the past decade as the result of hurricanes, and 57% of its system is underground, compared with only 37% of FPL's system being underground. This would indicate the Vero Beach Electric Utility should be highly valued. Its power plant is located in a transmission-constrained corridor along the east coast of Florida, and even FPL must admit it will likely not dismantle the plant anytime soon, but rather, operate it to provide power to the region for many years to come. Furthermore, the plant was recently refurbished and is in excellent condition. The reliability of the Vero Beach Electric Utility is high and after a period of high rates, compared to FPL, they are now reasonable and among the lowest in Florida. The Vero Beach Electric Utility is the 7th lowest-cost utility of all 55 retail electric utilities in Florida.

In order to maintain the high standards customers of the Vero Beach Electric Utility expect, I suggest the following be included in any negotiation for sale of the electric utility.

For the following terms, identify severe financial penalties if these performance measures are not met:

- a) Freeze rates at FPL's 2011 prices for 5 years.
- b) Reliability records for the City of Vero Beach shall be maintained and published annually, including SAIDI, CAIDI, MAIFI, and L-Bar.
- c) Reliability measures for the City of Vero Beach shall be better than the best 10% of all retail electric utilities in Florida.
- d) Require that all tree trimming be conducted on a three-year cycle in the City of Vero Beach for transmission, distribution feeders and neighborhood laterals.
- e) The percentage of undergrounding in the distribution system shall never fall below its current level. If it does, FPL shall achieve the same level of undergrounding by paying for it completely and in-full, whether it involves new construction or conversion of overhead to underground.
- f) Every 90 days FPL shall report to Vero Beach a list of all leaning and problem poles and streetlights in the City that have been identified by citizens and city officials, and the status of their repair.
- g) In signing a multi-year franchise agreement, preserve the right to purchase the City of Vero Beach electric distribution system at 10-year intervals using a specific formula: Initial cost less depreciation, with no stranded cost or other costs whatsoever. (Initial cost would be the payment made by FPL to Vero Beach for the electric system, minus the cost of the power plant, plus any materials replaced.) If FPL refuses to agree to this item, such refusal will indicate the extent to which FPL disregards Vero Beach's

interests. Contracts should benefit both parties. If FPL has confidence in its performance, it will gladly include the option for the City of Vero Beach to repurchase its electric system within City limits. If not, perhaps FPL is afraid of being accountable to its customers for its performance.

- h) Provide an annual report on the profits earned by FPL from the City of Vero Beach customers.
- i) FPL shall pay for 50% of all undergrounding requests within the City of Vero Beach.

I am available to discuss the paper on the phone or in person. Thank you for the opportunity to share this analysis, and I look forward to discussing this second issue paper with you.

Please contact me at:

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