

RESOLUTION NO. 15-07-13

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE TOWN OF PALM BEACH AND OTHER MUNICIPALITIES PERTAINING TO A LAWSUIT TO BE SERVED UPON FLORIDA PUBLIC UTILITIES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park ("Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, Chapter 163, Florida Statutes authorizes public agencies to enter into Interlocal agreements; and

WHEREAS, the Town has determined that it is in the best interest of the Town to join eight other Palm Beach County municipalities as Plaintiffs in a lawsuit against Florida Public Utilities (FPU); and

WHEREAS, counsel for the Town of Palm Beach is acting as the lead attorney for the Plaintiffs in their lawsuit against Florida Public Utilities; and

WHEREAS, the lawsuit alleges that FPU has unilaterally and in violation of the municipalities' Franchise Ordinances determined that it may unilaterally assign customers to different rate classes which result in reduced franchise fees be paid by FPU to the municipalities; and

WHEREAS, if the Plaintiffs prevail in the lawsuit the Town of Lake Park would receive an increase in franchise fees of between \$7,000 and \$10,000 per year.

WHEREAS, the Town of Lake Park's contribution toward attorney fees for the lawsuit would be approximately \$100.00.

NOW, THEREFORE, BE IT RESOLVED by the Town Commission of the Town of Lake Park, Florida:

SECTION 1. The "whereas" clauses are incorporated herein as true and correct and are hereby made a specific part of this Resolution.

SECTION 2. The Town Commission hereby authorizes and directs the Mayor to execute the Interlocal Agreement.

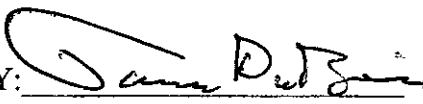
SECTION 3. This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was offered by Commissioner O'Rourke, who moved its adoption. The motion was seconded by Commissioner Flaherty and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR JAMES DUBOIS	<u> / </u>	<u> — </u>
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u> / </u>	<u> — </u>
COMMISSIONER ERIN FLAHERTY	<u> / </u>	<u> — </u>
COMMISSIONER MICHAEL O'ROURKE	<u> / </u>	<u> — </u>
COMMISSIONER KATHLEEN RAPOZA	<u> / </u>	<u> — </u>

The Town Commission thereupon declared the foregoing Resolution NO. 15-07-13 duly passed and adopted this 3 day of July, 2013.

TOWN OF LAKE PARK, FLORIDA


BY: 
JAMES DUBOIS
MAYOR

ATTEST:


VIVIAN MENDEZ
TOWN CLERK



Approved as to form and legal sufficiency:

BY: 
THOMAS BAIRD
TOWN ATTORNEY

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.

TOWN OF PALM BEACH, a Municipal
Corporation of the State of Florida

Plaintiff,

vs.

FLORIDA PUBLIC UTILITIES COMPANY,

Defendant.

COMPLAINT

Plaintiffs, the TOWN OF PALM BEACH ("Palm Beach"), the CITY OF ATLANTIS ("Atlantis"), the CITY OF BOCA RATON ("Boca Raton"), the CITY OF DELRAY BEACH ("Delray Beach"), the TOWN OF GULF STREAM ("Gulf Stream"), the TOWN OF LAKE PARK ("Lake Park"), and the CITY OF WEST PALM BEACH ("West Palm Beach"), each such Plaintiff being a municipal corporation and a political subdivision of the State of Florida, by and through their undersigned counsel, hereby sue Defendant, FLORIDA PUBLIC UTILITIES COMPANY ("FPUC"), and allege as follows:

1. This is an action for damages for breach of contract in an amount that exceeds \$15,000 and for declaratory relief.
2. This Court has jurisdiction over this claim for breach of contract and declaratory relief pursuant to sections 26.012(2)(a) and 86.011, Florida Statutes.

3. The Plaintiffs in this action are the TOWN OF PALM BEACH ("Palm Beach"), the CITY OF ATLANTIS ("Atlantis"), the CITY OF BOCA RATON ("Boca Raton"), the CITY OF DELRAY BEACH ("Delray Beach"), the TOWN OF GULF STREAM ("Gulf Stream"), the TOWN OF LAKE PARK ("Lake Park"), and the CITY OF WEST PALM BEACH ("West Palm Beach"). Each of the Plaintiffs is a municipal corporation, duly organized and existing under the laws of the State of Florida, and each Plaintiff is a political subdivision of the State of Florida with the power and authority to bring this action. These Florida municipalities are collectively referred to herein as the "Plaintiff Municipalities," or simply as the "Municipalities."

4. FPUC is a natural gas utility company providing gas service and gas transportation service to customers in Broward, Marion, Martin, Palm Beach, Seminole, and Volusia counties.

5. FPUC is headquartered in West Palm Beach, Florida.

6. Venue is proper in Palm Beach County, Florida because it is where the cause of action arose and because it is where FPUC is headquartered.

7. All conditions precedent to this civil action have been performed, waived or otherwise occurred.

FACTUAL ALLEGATIONS

8. This action arises under certain ordinances of each of the respective Plaintiff Municipalities, specifically their ordinances embodying franchise agreements with Defendant FPUC through which FPUC uses the Plaintiff Municipalities' rights of way for the purpose of supplying natural gas service to customers located in each of the Municipalities, and pursuant to which FPUC is obligated to pay franchise fees to each of

the Plaintiff Municipalities. These ordinances are referred to herein as the "Gas Franchise Agreements," or simply as the "Agreements." The respective Agreements are listed below, and copies of each of these Gas Franchise Agreements are included in Exhibit A to this Complaint.

- a. City of Atlantis Ordinance No. 230, adopted on July 24, 1991 and accepted by FPUC on July 24, 1991, with an effective date of August 1, 1991.
- b. City of Boca Raton Ordinance No. 4149, adopted on February 22, 1994 and accepted by FPUC on March 10, 1994, with an effective date of April 1, 1994.
- c. City of Delray Beach Ordinance No. 32-90, adopted on August 14, 1990 and accepted by FPUC on August 23, 1990, with an effective date of September 1, 1990.
- d. Town of Gulf Stream Ordinance No. _____, adopted on _____ and accepted by FPUC on _____, with an effective date of _____, and amended by an Agreement dated December 1, 1997.
[STILL NEED GULF STREAM'S ORDINANCE AND FPUC'S ACCEPTANCE; HAVE THEIR AGREEMENT, WHICH IS DATED 12/1/1997]
- e. Town of Lake Park Ordinance No. 14-2009, adopted on October 21, 2009 having been accepted by FPUC on October 7, 2009, with an effective date of November 1, 2009.

- f. Town of Palm Beach Ordinance No. 93-10, adopted on April 13, 1993 and accepted by FPUC on May 5, 1993, with an effective date of June 1, 1993.
- g. City of West Palm Beach Ordinance No. 2319-89, adopted on September 18, 1989 and accepted by FPUC on or about October 1, , 1989, with an effective date of October 1, 1989. [I CAN USE THE FOREGOING LANGUAGE, BUT IT WOULD BE BETTER TO HAVE WPB'S FINAL ACCEPTED AGREEMENT OR FPUC'S ACCEPTANCE LETTER]

9. By virtue of FPUC's acceptance, each of the Gas Franchise Agreements between the Municipalities and FPUC is a contract.

10. The Gas Franchise Agreements gave FPUC the right, privilege, and authority to construct and maintain its gas pipelines and other facilities in the streets, alleys, and public places within the corporate boundaries of the Municipalities for the purpose of supplying natural gas (including manufactured gas) customers within the respective Municipalities.

11. Under the Gas Franchise Agreement, FPUC was obligated to pay to each of the Plaintiff Municipalities a Franchise Fee in accord with the following:

... a tax equal to the amount by which six (6) per cent of the amount of its revenues from the sale of gas to residential and general service commercial customers, less charge-off for uncollectible accounts and adjustments, within the corporate limits of the Town of Palm Beach for the twelve (12) calendar months preceding the applicable anniversary date, shall exceed the amount of any other taxes, licenses, or other impositions levied or imposed by the Town of Palm Beach against Florida Public Utilities Company's property, business or operations for the tax year preceding the beginning of the applicable tax year, and previously paid by grantee to grantor. (the "Franchise Fee") (emphasis added).

The quoted language is from Section 7 of the Gas Franchise Agreement between the Town of Palm Beach and FPUC as a representative example. The wording varies

slightly among the Plaintiffs' specific franchise agreements, but the substantive provisions are identical.

12. The Franchise Fee required under the Gas Franchise Agreements was to be paid by FPUC to each of the Municipalities once a year.

13. The Gas Franchise Agreements were (are) to remain in effect for thirty (30) years from their respective effective dates. Pursuant to the Gas Franchise Agreements and normal practice, FPUC charged its residential and general service customers for the Franchise Fees and remitted the Franchise Fees to each of the Municipalities.

14. FPUC's Franchise Fee payments fluctuated somewhat over the years, but beginning in 2009, the Plaintiff Municipalities noticed generally significant reductions in the amount of Franchise Fees received from FPUC. A summary of the Franchise Fee payment/remittance history for the Plaintiff Municipalities follows. (Exhibit B presents complete franchise fee payment information for FPUC's natural gas operations to the Plaintiffs, and to another Florida municipality, the City of Riviera Beach, which is not a plaintiff in this action.)

- a. For the 12-month period ending July 31, 2008, FPUC paid Atlantis a Franchise Fee of \$9,248.46, and for the 12-month period ending July 31, 2009, FPUC paid Atlantis a Franchise Fee in the amount of \$11,083.67. However, for the 12-month period ending July 31, 2011, FPUC only paid Atlantis a Franchise Fee of \$5,871.69, and for the corresponding "franchise year" ending on July 31, 2012, FPUC only paid Atlantis a Franchise Fee of \$8,083.57.

- b. For the 12-month period ending March 31, 2008, FPUC paid Boca Raton a Franchise Fee of \$196,962.00, and for the 12-month period ending March 31, 2009, FPUC paid Boca Raton a Franchise Fee of \$237,500.00. However, for the 12-month period ending March 31, 2011, FPUC only paid Boca Raton a Franchise Fee of \$142,400.00, and for the corresponding "franchise year" ending on March 31, 2012, FPUC only paid Boca Raton a Franchise Fee of \$169,200.00.
- c. For the 12-month period ending August 31, 2008, FPUC paid Delray Beach a Franchise Fee of \$85,516.11, and for the 12-month period ending August 31, 2009, FPUC paid Delray Beach a Franchise Fee of \$100,217.55. However, for the 12-month period ending August 31, 2011, FPUC only paid Delray Beach a Franchise Fee of \$74,245.91, and for the corresponding "franchise year" ending on August 31, 2012, FPUC only paid Delray Beach a Franchise Fee of \$61,086.36.
- d. For the 12-month "franchise year" ending on the anniversary date of the Gulf Stream-FPU Gas Franchise Agreement in, 2008, FPUC paid Gulf Stream a Franchise Fee of \$5,481.00, and for the comparable period in 2009, FPUC paid Gulf Stream a Franchise Fee of \$6,748.00. However, for the corresponding "franchise years" of 2011 and 2012, FPUC only paid Gulf Stream Franchise Fees of \$946.00 and \$2,549.00, respectively.
- e. For the 12-month period ending October 31, 2008, FPUC paid Lake Park a Franchise Fee of \$2,420.00, and for the 12-month period ending September 30, 2009, FPUC paid Lake Park a Franchise Fee of \$715.00.

For the corresponding "franchise years" of 2011 and 2012, FPUC paid Lake Park Franchise Fees of \$6,483.00 and \$3,031.00, respectively.

f. For the 12-month period ending May 31, 2008, FPUC paid Palm Beach a Franchise Fee in an amount of \$230,046.12, and for the 12-month period ending May 31, 2009, FPUC paid Palm Beach a Franchise Fee in the amount of \$229,065.84. However, for the 12-month period ending May 31, 2011, FPUC only paid Palm Beach a Franchise Fee of \$144,418.28, and for the same "franchise year" ending on May 31, 2012, FPUC only paid Palm Beach a Franchise Fee of \$139,727.35.

g. For the 12-month period ending September 30, 2008, FPUC paid West Palm Beach a Franchise Fee of \$131,301.00, and for the 12-month period ending September 30, 2009, FPUC paid West Palm Beach a Franchise Fee of \$237,134.00. However, for the corresponding "franchise years" of 2011 and 2012, FPUC only paid West Palm Beach Franchise Fees of \$96,872.00 and \$133,843.00, respectively.

15. From the foregoing, it is apparent that, for all but Lake Park, the Franchise Fees remitted by FPUC to each of the Plaintiff Municipalities were significantly less in 2011 and 2012 than they were in 2008 and 2009. For example, the Franchise Fees remitted to the Town of Palm Beach and to the City of Boca Raton declined by approximately 30 percent between the 2008 and 2009 franchise years and the 2011 and 2012 franchise years. This led the Municipalities to investigate the cause or causes of these declines. The Municipalities' investigations revealed the following.

16. In or around June 2009, FPUC unilaterally reclassified significant numbers of FPUC's customers located within the Municipalities from a rate classification known as General Service ("GS") into a rate classification known as Large Volume Service ("LVS"). As one example, based on a review of FPUC's billing records for customers located in Palm Beach, in or around June 2009, FPUC unilaterally reclassified more than 50 of FPUC's customers located within Palm Beach from the GS rate class into the LVS rate class.

17. The GS and LVS classification labels are created and used solely by FPUC.

18. FPUC's LVS classification had been in existence as early as 1991.

19. FPUC historically collected the applicable Franchise Fee from customers in the GS class and remitted the Franchise Fees thus collected to the Plaintiff Municipalities, along with the Franchise Fees collected from Residential customers.

20. After unilaterally reclassifying numerous customers into the LVS rate classification in or around June 2009, FPUC unilaterally exempted those customers from the Franchise Fee and thus ceased remitting Franchise Fees previously collected from these customers to the Plaintiff Municipalities.

21. The Gas Franchise Agreements apply by their terms to revenue generated from the sale of gas to all "residential and general service commercial customers in the Town." No exception is made for either residential or general service commercial customers based on the volume of gas used.

22. The customers reclassified by FPUC include hotels, restaurants, and other general service commercial businesses located within the Town. Such customers are

commonly understood to be "general service commercial customers," and it was and remains the intent and understanding of each of the Plaintiff Municipalities that such customers were included within the meaning of "general service commercial customers" as that term is used in the Gas Franchise Agreements. Indeed, FPUC had performed its duties under the Gas Franchise Agreements by collecting and remitting to the Municipalities the Franchise Fee from the subsequently transferred customers for many years preceding June 2009. Neither the commercial nature of these customers' business activities nor the basic purposes for which they used gas purchased from FPUC changed as the volume of gas that they used grew over the years, and accordingly, there was no lawful basis for FPUC to unilaterally reclassify the status of such customers so as to cease collecting the Franchise Fee from them.

23. FPUC's tariff (Second Revised Sheet No. 8) defines "Commercial Service" as

service to Customers engaged in selling, warehousing, or distributing a commodity, in some business activity or in a profession, or in some form of economic or social activity (offices, stores, clubs, hotels, etc.) and for purposes that do not come directly under another classification of service.

24. The Gas Franchise Agreements also provide that FPUC may reduce the amount of the Franchise Fee that would otherwise be due by the amount of "any other taxes, licenses, or other impositions levied or imposed by" each of the Plaintiff Municipalities. The deductions claimed and applied by FPUC over the years included deductions for ad valorem property taxes paid by FPUC to each of the Municipalities.

25. The amounts thus deducted by FPUC are summarized in Exhibit C to this Complaint. For example, for the franchise year ending on May 31, 2010, FPUC deducted \$6,493.98 from its Franchise Fee payment to the Town of Palm Beach, and

for the franchise year ending on March 31, 2012, FPUC deducted \$12,569.91 from its Franchise Fee payment to the City of Boca Raton.

COUNT I – BREACH OF CONTRACT – FRANCHISE FEE CALCULATIONS

26. The Town realleges the allegations contained in paragraphs 1 through 23 as though fully set forth herein.

27. The customers unilaterally reclassified by FPUC as LVS customers are “general service commercial customers” as set forth in the Gas Franchise Agreements. As a result, the revenue generated from the LVS customers must be included when calculating the Franchise Fee. Moreover, based on the definition of “Commercial Service” set forth in FPUC’s official tariff, the Municipalities believe that FPUC’s practice of exempting Large Volume Service customers from paying the Franchise Fee has generally been incorrect and inconsistent with the Plaintiff Municipalities’ understanding and intent, in that, on information and belief, the vast majority of such customers are entities such as the restaurants, hotels, and other commercial business establishments that FPUC reclassified from GS to LVS in 2009. The Municipalities believe that the correct distinction, as contemplated by the plain language of the Gas Franchise Agreements, should be between general service commercial customers who use gas in the course of “selling, warehousing, or distributing a commodity, in some business activity or in a profession, or in some form of economic or social activity (offices, stores, clubs, hotels, etc.)” and other, “large volume service” customers who use the gas that they purchase for other purposes, e.g., for industrial, streetlighting, or area lighting applications.

28. By exempting the revenue generated by LVS customers (including both those customers transferred from GS to LVS in June 2009, and those LVS customers whose usage is in fact "Commercial Service" usage as opposed to industrial or lighting usage) in the Plaintiff Municipalities from the Franchise Fee, FPUC has breached the Gas Franchise Agreements.

29. The Plaintiff Municipalities have been damaged in the amount of the underpaid Franchise Fees by varying amounts, ranging from relatively small amounts in Municipalities with few customers to hundreds of thousands of dollars in the larger cities and towns. Further discovery will be necessary to calculate the total amounts of damages claimed by each of the Plaintiff Municipalities.

WHEREFORE, the Plaintiff Municipalities demand judgment against FPUC for damages, interest and costs, and pray this Court to grant any other relief that the Court deems just and proper.

COUNT II – DECLARATORY RELIEF – FRANCHISE FEE CALCULATIONS

30. The Plaintiff Municipalities reallege the allegations contained in paragraphs 1 through 23 as though fully set forth herein. The Municipalities are in doubt regarding their rights, status and legal relations under the Gas Franchise Agreements and accordingly, the Municipalities seek declaratory relief pursuant to Section 86.011, et seq., Florida Statutes.

31. At least one of the Plaintiff Municipalities, the Town of Palm Beach, has informed FPUC that it objects to FPUC's practice of exempting **all** LVS customers from the Franchise Fee. The Municipalities contend that the nature of a customer's usage of

gas that it purchases, and not the volume of gas that it purchases, determines whether it is a general service customer. Thus, a hotel, office, store, club, or other business engaged in selling or distributing a commodity, is a general service commercial customer whose usage is subject to paying the franchise fee pursuant to the Gas Franchise Agreements, regardless of the customer's usage level. The Municipalities would agree that customers whose usage is for a bona fide industrial purpose (and for lighting usage) would properly be exempted from paying the franchise fee.

32. FPUC contends that LVS customers do not constitute "general service commercial customers" under the Gas Franchise Agreements and are thus not subject to the Franchise Fee.

33. There is a bona fide, actual, present, and practical need for a declaration regarding the parties' rights under the Gas Franchise Agreements.

34. The declaration sought concerns a present ascertained or ascertainable state of facts or present controversy regarding these disputes.

35. The declaration is necessary for the parties to be certain of their respective rights and obligations under the Gas Franchise Agreements.

36. The parties have an actual present adverse and antagonistic interest in the subject matter of these declarations.

37. The relief being sought is not merely the giving of legal advice or answers to questions propounded by curiosity.

38. The Plaintiff Municipalities reserve the right to seek supplemental relief, including, but not limited to, damages and injunctive relief, upon the Court's declaration.

39. The Plaintiff Municipalities are entitled to recover their reasonable costs if successful in this action pursuant to section 86.081, Florida Statutes.

WHEREFORE, the Plaintiff Municipalities demand a judgment declaring that:

A. Any and all customers classified by FPUC as Large Volume Service customers, whose usage is for purposes associated with business activities, professions, or economic or social activities, such as those activities normally carried on in selling, warehousing, or distributing commodities, or in operating offices, stores, clubs, hotels, and the like, are "general service commercial customers" under the Gas Franchise Agreement, and their revenue must be included by FPUC when calculating and remitting the Franchise Fee;

B. FPUC is in violation of its implied duties of good faith and fair dealing; and,

C. The Plaintiff Municipalities are entitled to recover their costs pursuant to section 86.081, Florida Statutes.

COUNT III – DECLARATORY RELIEF – PROPERTY TAX DEDUCTIONS

40. The Plaintiff Municipalities reallege the allegations contained in paragraphs 1 through 25 as though fully set forth herein. The Plaintiff Municipalities are in doubt regarding their rights, status and legal relations under the Gas Franchise Agreements and seek declaratory relief pursuant to section 86.011, et seq., Florida Statutes.

41. The Municipalities believe and contend that FPUC's practice of deducting the amount of property taxes paid from the franchise fee amounts remitted to each of the Plaintiff Municipalities is unlawful, in that this deduction of property taxes from the franchise fee (franchise tax) due pursuant to the Gas Franchise Agreements constitutes

an unlawful tax exemption that none of the Municipalities' governing commissions or councils, sitting in earlier years between 1989 and 1997 , did not have the power to grant. See City of Hollywood, Florida v. Florida Power & Light Co., 624 So. 2d 285 (Fla. 4th DCA, 1993). At least one of the Plaintiff Municipalities, the Town of Palm Beach, has informed FPUC that it objects to FPUC's practice of deducting property taxes from the franchise fee payments that it remits to the Town and has demanded that FPUC henceforth pay the Town the full amount of franchise fees due, based on the calculation of six percent of all residential and general service commercial revenues with no deduction of property taxes paid.

42. There is a bona fide, actual, present, and practical need for a declaration regarding the parties' rights under the Gas Franchise Agreements.

43. The declaration sought concerns a present ascertained or ascertainable state of facts or present controversy regarding these disputes.

44. The declaration is necessary for the parties to be certain of their respective rights and obligations under the Gas Franchise Agreements.

45. The parties have an actual, present, adverse and antagonistic interest in the subject matter of these declarations.

46. The relief being sought is not merely the giving of legal advice or answers to questions propounded by curiosity.

47. The Plaintiff Municipalities reserve the right to seek supplemental relief, including, but not limited to, damages and injunctive relief, upon the Court's declaration.

48. The Plaintiff Municipalities are entitled to recover their reasonable costs if successful in this action pursuant to section 86.081, Florida Statutes.

WHEREFORE, the Plaintiff Municipalities demand a judgment declaring that:

A. The annual franchise fee payments made by FPUC to each of the Plaintiff Municipalities may not lawfully be reduced by the amount of property taxes and any other ad valorem assessments paid by FPUC, and that FPUC must hereafter pay franchise fees accordingly, i.e., without any offset for property taxes or other ad valorem assessments paid.

B. The Plaintiff Municipalities are entitled to recover their costs pursuant to section 86.081, Florida Statutes.

DEMAND FOR JURY TRIAL

The Plaintiff Municipalities demand a jury trial on all issues to which they are so entitled.

JONES, FOSTER, JOHNSTON & STUBBS, P.A.
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**INTERLOCAL AGREEMENT TO JOINTLY PURSUE A COMPLAINT AGAINST
FLORIDA PUBLIC UTILITIES CORPORATION (FPUC) FOR PAYMENT OF
FRANCHISE FEES**

Dated the _____th day of _____, 2013

By, Between, and Among

The City of Atlantis, Florida
The City of Boca Raton, Florida
The City of Delray Beach, Florida
The Town of Greenacres, Florida
The Town of Gulf Stream, Florida
The Town of Lake Park, Florida
The Town of Palm Beach, Florida
The City of West Palm Beach, Florida

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**INTERLOCAL AGREEMENT TO JOINTLY PURSUE A COMPLAINT AGAINST
FLORIDA PUBLIC UTILITIES COMPANY (FPUC) FOR PAYMENT OF
CORRECT FRANCHISE FEES**

This Interlocal Agreement to Jointly Pursue a Complaint Against Florida Public Utilities Company for Payment of Correct Franchise Fees, dated as of the ____th day of _____, 2013 ("Agreement"), is entered into by, between, and among the following:

The City of Atlantis, Florida
The City of Boca Raton, Florida
The City of Delray Beach, Florida
The City of Greenacres, Florida
The Town of Gulf Stream, Florida
The Town of Lake Park, Florida
The Town of Palm Beach, Florida
The City of West Palm Beach, Florida

The foregoing entities are collectively referred to herein as the "Parties" or as the "Local Governments," and each may also be referred to individually as a "Party" or as a "Local Government." For purposes of entering into transactions pursuant to this Agreement, the Local Governments agree to do so in the name of the Florida Local Governments Consortium for Proper Franchise Fees (hereinafter referred to as the "Governments Franchise Fee Consortium" or simply as the "Consortium").

The purpose of the Agreement is to provide a means, pursuant to Chapter 163, Florida Statutes, for the Local Governments to mutually support claims for payment of the correct and proper franchise fees due from FPUC to each of the Parties to this Agreement pursuant to the franchise agreements between FPUC and each of the Local Governments relating to FPUC's provision of retail natural gas services within each Local Government's corporate limits. The activities contemplated by this Interlocal Agreement include, without limitation, participating (a) as named plaintiffs in a civil complaint seeking damages for underpaid franchise fees in the past and declaratory relief that would require FPUC to pay the correct and proper franchise

fees in the future; (b) in negotiations with FPUC for the payment of proper franchise fees; (c) in negotiations with FPUC for new franchise agreements that would clarify and resolve all issues arising under the existing franchise agreements; (d) in any other relevant proceedings and activities before any court, tribunal, regulatory agency, or other governmental entity having jurisdiction; and (e) in any other related activities in furtherance of the Local Governments' goals of ensuring that they receive the correct and proper franchise fees from FPUC.

RECITALS

WHEREAS, each Party to this Agreement is a political subdivision of the State of Florida, each having the police power and each committed to exercising that power in the interests of the public health, safety, and welfare; and

WHEREAS, each of the Local Governments has adopted an ordinance embodying a franchise agreement with Florida Public Utilities Company relating to FPUC's provision of retail natural gas utility service to customers located within each Local Government's corporate limits; and

WHEREAS, franchise fee revenues are an important source of funding for the operations of and services provided by each Local Government; and

WHEREAS, it is critical that franchise fee payments be correctly and properly calculated and remitted to the Local Governments so that they can fulfill their obligations to their citizens without having to raise taxes or resort to other funding means; and

WHEREAS, the Local Governments to this Interlocal Agreement, based on research and analysis of the franchise fee revenues received from FPUC and of the franchise agreements pursuant to which those franchise fees are calculated, have come to believe that FPUC has not correctly and properly calculated and remitted the correct amount of franchise fees due to the Local Governments; and

WHEREAS, the Local Governments wish to enter into this Interlocal Agreement for the purpose of jointly funding

efforts to recover franchise fees that they should have received and to ensure that all franchise fees are properly calculated and remitted in the future, and also to provide a vehicle for the purpose of participating, as provided for herein, in relevant legal proceedings and other activities consistent with the Local Governments' goals, provided specifically, however, that no individual Local Government shall be limited by this Agreement to participating in any such activities only through this Agreement, it being the intent of all Local Governments that any individual Local Government shall be free to participate in any such proceedings to promote its own interests as it deems appropriate;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants set forth in this Agreement, the mutuality and mutual value of which is hereby acknowledged by each Party to this Agreement, the Parties do hereby agree as follows.

TERMS OF AGREEMENT

Article 1 - Definitions

1.1 "Consortium" or "Florida Local Governments Consortium for Proper Franchise Fees" or "Governments Franchise Fee Consortium" shall mean the Parties to this Interlocal Agreement, acting collectively.

1.2 "Gas Franchise Agreements" means those ordinances and related agreements between each of the Local Governments and Florida Public Utilities Company embodying each Government's agreement with FPUC regarding the grant of a franchise and the payment of franchise fees relating to FPUC's provision of retail natural gas service within the Local Government's corporate limits.

1.3 "Law Firm" or "Law Firms" means either or both of Jones, Foster, Johnston & Stubbs, P.A., Post Office Box 3475, West Palm Beach, Florida 33402-3475, and Gardner Bist Wiener Wadsworth Bowden Bush Dee LaVia & Wright, P.A., 1300 Thomaswood Drive, Tallahassee, Florida 32308.

1.4 "Legal Services Agreement" means a written agreement engaging the Law Firm to perform certain legal services in furtherance of this Agreement, including, without limitation, preparing and filing the complaint against FPUC contemplated by this Interlocal Agreement, negotiating with FPUC to resolve the issues raised in the complaint on behalf of the Parties to this Interlocal Agreement, and any other services that the Parties agree to engage either or both of the Law Firms to perform in furtherance of the purposes of this Agreement. Copies of the Legal Services Agreements with each Law Firm are attached to this Agreement as Appendix 1.

Article 2 - Purpose and Authorized Activities

2.1 The purpose of the Agreement is to provide a means, pursuant to Chapter 163, Florida Statutes, for the Local Governments to mutually support claims for payment of the correct and proper franchise fees due from FPUC to each of the Parties to this Agreement pursuant to the franchise agreements between FPUC and each of the Local Governments relating to FPUC's provision of retail natural gas services within each Local Government's corporate limits.

2.2 Specific activities that may be undertaken by the Parties pursuant to this Agreement, pursuant to the decision-making provisions set forth in Article 4 below and further subject to each Party's right to terminate its participation in this Agreement set forth in Section 3.1 hereof, may include, without limitation, the following:

- a. Participating as named plaintiffs in a civil complaint seeking damages for under-paid franchise fees in the past and declaratory relief that would require FPUC to pay the correct and proper franchise fees in the future;
- b. Participating in negotiations with FPUC for the payment of proper franchise fees;
- c. Participating in negotiations with FPUC for new franchise agreements that would clarify and

resolve all issues arising under the existing franchise agreements;

- d. Participating in any relevant proceedings and activities before any court, tribunal, regulatory agency, or other governmental entity having jurisdiction; and
- e. Participating in any other related activities in furtherance of the Local Governments' goals of ensuring that they receive the correct and proper franchise fees from FPUC.
- f. Participating in defending any action that may be brought against either the Consortium or any of the Local Governments individually as a result of the activities of the Consortium in seeking proper franchise fee payments as contemplated by this Agreement. (For clarity, this subsection shall not be construed to require any individual Party to participate financially in defending any action of the type referenced above, but rather, this subsection is intended to identify such possible proceedings as being of the type that the Parties may decide to engage in, pursuant to the decision-making provisions set forth in Article 4 below.)

2.3 Authorization to enter into the Legal Services Agreement is granted by all of the Local Governments upon the execution of this Agreement. For purposes of this Agreement, as of _____, 2013, the Local Governments recognize, understand, and agree that the only costs to be shared under the Interlocal Agreement are the costs associated with the Legal Services Agreements, including the proposed budget attached thereto.

2.4 The Local Governments agree that this Agreement shall provide the legal vehicle and framework for the Law Firms hired pursuant to the Legal Services Agreement to provide additional services in connection with future activities pursuant to this Agreement, i.e., activities beyond those expressly identified herein. The Parties contemplate and intend, however, that any such further activities shall be subject to the shared-funding

provisions of this Agreement only upon the written execution of a written "memorandum of understanding and authorization" or similar document by each Local Government electing to participate in such activities on a shared-funding basis.

2.5 The Parties specifically agree that this Agreement shall be construed such that no individual Local Government shall be limited by this Agreement to participating in any such activities only through this Agreement, and that it is the intent of all Parties to this Agreement that any individual Party (Local Government) shall be free to participate in any proceedings before any tribunal, court, executive agency, legislative or quasi-legislative body, or any other government agency, to promote its own interests as it deems appropriate.

2.6 The Parties hereby authorize the Town of Palm Beach to enter into the Legal Services Agreements with the Law Firms on behalf of the Consortium and the Parties to this Agreement, and pursuant to the shared-funding provisions of this Agreement.

Article 3 - Duration, Term, and Termination

3.1 This Agreement shall be effective as between all of the Parties as of the _____ day of _____, 2013, and shall continue in effect until there remains at most only one (1) Local Government that has not submitted a Notice of Termination of Participation in this Agreement as provided in Section 3.2.

3.2 Termination of a Party's participation in this Agreement shall be effected by the Party submitting a written Notice of Termination to each other Party. Termination shall not relieve a Party of the obligation to provide any funds that it has committed to provide, and termination shall not entitle a Party to a refund of any amounts paid in, except as provided in Section 10.3 below.

Article 4 - Organization

4.1 The Florida Local Governments Consortium for Proper Franchise Fees shall be an organization, whether incorporated or not, organized and existing for the purposes set forth in this Interlocal Agreement.

4.2 It is the desire and intent of the Parties that decisions made under this Agreement shall be by consensus. However, if a consensus is not fully achievable in any particular instance, then decisions with respect to matters and activities for which any of the Parties have contributed, or agreed to contribute, funding support shall be made by the affirmative vote of at least three-fifths of all of the Parties to this Agreement that have agreed to participate in funding the activity with respect to which the decision is being made.

4.3 It is the desire and intent of the Parties that decisions made under this Agreement, relating to matters and issues other than activities for which the Parties have contributed funding support, shall also be made by consensus of those Parties who have contributed funding pursuant to this Agreement, as follows. If, in a particular instance involving a matter, issue, or activity for which the Parties have not contributed, or agreed to contribute, funding support, a consensus is not fully achievable, then decisions regarding such issues or matters shall be made by the affirmative vote of three-fifths of all of the Parties to this Agreement that have contributed funding toward any activity of the Consortium pursuant to this Agreement within two years preceding the date on which the decision is being made, providing that such Parties have not terminated their participation in this Agreement pursuant to Section 3.2 above.

4.4 If the Parties decide to form a corporate entity to carry out the purposes of this Agreement, they hereby agree that the Bylaws of such corporate entity shall reflect the decision rules set forth in Sections 4.2 and 4.3 above.

Article 5 - Manner of Funding; Initial Funding; Funding
Subsequent Activities

5.1 Funding for the litigation and negotiation activities contemplated by this Agreement shall be made by direct contributions by each Party to the Town of Palm Beach, which the Parties agree shall be the entity having responsibility to make disbursements.

5.2 Having considered the proposed budget submitted by the Law Firms, the Parties agree that the initial budget for the activities contemplated by this Interlocal Agreement shall be \$115,000. Each Party's share is set forth in Appendix 2 to this Agreement. Each Party to this Agreement further agrees to pay its share of the fees and costs, as shown in Appendix 2, to the Town of Palm Beach within 20 days following each Party's execution of this Agreement, or within such other time as is reasonable and practicable for a Party under its particular circumstances.

Article 6 - Manner of Disbursements

6.1 Disbursements made directly on behalf of the Consortium shall be made by checks drawn on the accounts of the Town of Palm Beach, which may include designated sub-accounts for the Consortium, or on accounts of any Party authorized to receive and disburse funds pursuant to this Agreement on behalf of the Parties.

Article 7 - Method of Allocating Cost Responsibility

7.1 Funding shall be shared by the Local Governments participating in the Florida Local Governments Consortium for Proper Franchise Fees as set forth in Appendix 2.

7.2 For each future activity (i.e., any activity beyond the initial scope of activities and legal services contemplated by this Agreement and by the budget appended to the Legal Services Agreements) undertaken by the Parties pursuant to this Agreement, each Party may elect to participate or not participate in funding the activity. For those Parties that elect to participate in funding any such future activity, the following shall be a non-binding guide to determining each Party's share of the funding (cost) of the activity: each Party's share shall be

computed as the total agreed-upon funding level for the activity multiplied by a factor calculated by dividing (a) the Party's 2009 FPUC franchise fee revenue by (b) the sum of the 2009 FPUC franchise fee revenues of all participating Parties.

7.3 Unless otherwise agreed by the participating Parties, funding for future activities shall be made via direct contributions by each Party participating in any such activity to either the Town of Palm Beach, or to either or both of the Law Firms, if applicable, or to any other entity that the Parties may designate to be the recipient of such contributions and disburser of funds. Funding for specific activities may be made in any other manner mutually agreed upon by the Parties participating in funding such activity, provided that any such other funding method shall be incorporated in a written "memorandum of understanding and authorization" or similar document executed by all Parties participating in such activity.

Article 8 - Manner of Employing, Engaging, Compensating, and Discharging Necessary Personnel and Firms, Including Purchasing Services and Entering Into Contracts

8.1 The Parties, acting through the Consortium, shall engage the Law Firms pursuant to an appropriate written letter or agreement memorializing the terms of that engagement, such as or similar to the Legal Services Agreements.

8.2 The Parties designate Thomas G. Bradford, Deputy Town Manager for the Town of Palm Beach, as their authorized agent for purposes of signing any agreements authorized by the Local Governments, including, without limitation, the Legal Services Agreements pursuant to this Interlocal Agreement and any future authorizations granted by the Parties.

8.3 The Law Firms and any other necessary providers of contract services shall be engaged by written agreement in the name of the Consortium. To the extent authorized pursuant to the shared-funding provisions of this

Agreement, payments to the Law Firms shall be made directly by the Town of Palm Beach.

Article 9 - Additional Parties

9.1 Additional Parties. Any Florida municipality or Florida local government having the power to enter into interlocal agreements such as this Agreement may, subject to the provisions of this Agreement, join in the efforts and activities provided for by this Agreement. Any municipality or local government joining in these efforts after the initial execution of the Agreement shall be known as an "Additional Party." In general, recognizing the benefit that the contemplated efforts to obtain fair and appropriate franchise fee revenues from FPUC will provide to all affected local governments, the initial Parties to this Agreement support and encourage the participation of Additional Parties.

9.2 Funding Contributions by Additional Parties. Any Additional Party joining this Agreement after its initial execution shall pay a share of the cost of the initial phase of the effort contemplated by this Interlocal Agreement calculated pursuant to the formula set forth in Section 7.2 above. Payment shall be made in accordance with Sections 5.1 and 5.2 above. The Parties agree that any funds received from Additional Parties shall be held by the Town of Palm Beach, as provided for in Section 5.2, subject to the provision of Section 10.3 that any undisbursed funds remaining at the conclusion of the efforts supported by this Interlocal Agreement shall be refunded to all Parties on a pro rata basis.

Article 10 - Provision for Return of Any Surplus Funds
to Participating Parties

10.1 Once a Party has committed in writing to participate in the Florida Local Governments Consortium for Proper Franchise Fees, its payment shall be made to the Town of Palm Beach within twenty (20) days following the Party's execution of this Agreement. Except as provided in this Article 10, no part of any such payment shall be

refundable, including if and when the Local Government withdraws from the Consortium.

10.2 Once a Party has committed in writing to participate in any other activity of the Consortium, its payment shall be made to the Town of Palm Beach (in the case of an agreement to fund activities by a Law Firm), to one of the Law Firms, or to another entity as designated in writing by the Parties, forthwith. Except as provided in this Article 10, no part of any such payment shall be refundable, including if and when the Local Government withdraws from the Consortium.

10.3 If there are undisbursed funds remaining in connection with any activity authorized by the Parties at the conclusion of such activity, and after all invoices and costs have been duly paid, then any such undisbursed funds shall be refunded by the entity then in possession of such funds (e.g., the Town of Palm Beach in the case of funds held by the Town of Palm Beach in connection with anticipated payments to the Law Firm) to each Local Government that contributed funds to such activity, pro rata, according to the percentage that each respective Local Government contributed to the total amount of funds contributed toward the shared funding support of such activity.

Article 11 - Reserved for Future Use

Article 12 - Reserved for Future Use

Article 13 - Indemnification; Manner of Responding to Any Claims for Liability; Insuring Against Such Liability

13.1 Indemnification. Each Party shall be liable for its own actions and negligence. To the extent permitted by law, each Party shall indemnify, defend, and hold harmless the other Parties against any actions, claims, or damages arising out of the Party's negligence of actions. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section

768.28, Florida Statutes, nor shall it be construed to constitute an agreement by any Party to indemnify any other Party for such other Party's negligent, willful, or intentional acts or omissions.

13.2 Responding to Claims for Liability. Each Party shall respond on its own behalf for any claims involving its own actions and negligence. If a claim is made against the Consortium or against all Parties together, then the Parties shall first meet to discuss and negotiate among themselves as to how best to respond to any such claims and as to how to fund any expenses associated with such response. If the Parties do not reach another agreement as to funding any response to a claim made against the Consortium or against all Parties together, then the Parties shall make any relevant decisions pursuant to the decision-making provisions of Sections 4.2 or 4.3 above, as either section may be applicable in a particular instance.

13.3 Survival of Obligations. This Article 13 shall survive the termination of this Agreement. Any other term, condition, covenant, or obligation that requires the performance by a Party, relative to its obligations under this Article 13, subsequent to the termination of this Agreement shall remain enforceable against such Party subsequent to such termination.

Article 14 - Dispute Resolution

14.1 Resolution Of Disputes Relative to Parties' Payment Obligations to Support the Joint Efforts Contemplated In This Agreement. In the event that any dispute, controversy or claim relating to the Parties' payment obligations arising out of or relating to this Agreement or relating to the breach, termination or validity thereof should arise between the Parties (a "Dispute"), the Party or Parties asserting the existence of a Dispute shall deliver to the other Parties a written notice identifying the disputed issue. The Parties shall first meet, through designated representatives having authority to resolve any such Dispute, for the purpose of resolving such Dispute informally. In such meetings and exchanges, a Party shall have the right to designate as

confidential any information that such Party offers. No confidential information exchanged in such meetings for the purpose of resolving a dispute may be used by a Party in litigation against another Party or Parties. In the event that the Dispute cannot be resolved informally, then any Party may initiate binding arbitration proceedings, which shall be conducted in accordance with the then-current American Arbitration Association's ("AAA") Large, Complex Commercial Rules or other mutually agreed upon procedures. Each Party that participates in arbitration proceedings pursuant to this Agreement shall bear its own attorneys' fees and costs, and all other costs incurred by such Party, in connection with the arbitration.

14.2 Resolution of All Other Disputes. In the event that any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof should arise between the Parties (a "Dispute"), the Party or Parties asserting the existence of a Dispute shall deliver to the other Parties a written notice identifying the disputed issue. The Parties shall first meet, through designated representatives having authority to resolve any such Dispute, for the purpose of resolving such Dispute informally. In such meetings and exchanges, a Party shall have the right to designate as confidential any information that such Party offers. No confidential information exchanged in such meetings for the purpose of resolving a dispute may be used by a Party in litigation against another Party or Parties. In the event that the Dispute cannot be resolved informally, then any Party may initiate binding arbitration proceedings, which shall be conducted in accordance with the then-current American Arbitration Association's ("AAA") Large, Complex Commercial Rules or other mutually agreed upon procedures. Each Party that participates in arbitration proceedings pursuant to this Agreement shall bear its own attorneys' fees and costs, and all other costs incurred by such Party, in connection with the arbitration.

14.3 It is the Parties' intent that any arbitration proceedings conducted under this Agreement be held in Palm Beach County, Florida, or in another location that is mutually acceptable to all Parties involved in the arbitration proceedings.

Article 15 - Accountability for Funds; Audit

15.1 Accounting. Each entity that receives funds from the participating Local Governments in furtherance of the activities contemplated by this Agreement, including, without limitation, the Town of Palm Beach and the Law Firms, as applicable, shall be accountable for the prudent handling of funds received and for disbursing funds only for authorized purposes pursuant to this Agreement. Each such entity shall, upon completion of its duties with respect to such funds received, provide an unaudited accounting of receipts of such funds and expenditures made from such funds. Such unaudited accounting shall be of the type and scope that such entity normally prepares for its own internal records of such transactions, and such accounting may, if practicable, be accomplished simply by the respective entity's furnishing copies of its accounting records and bank statements with the receipts and expenditures indicated.

15.2 Audit. Any Party may, at its sole expense, have an audit of the receipts and expenditures pursuant to this Agreement conducted by a Certified Public Accounting firm licensed to practice in the State of Florida.

Article 16 - Representations and Warranties

16.1 By the signature of its authorized representative below, each Local Government confirms, represents, and warrants to all other Parties to this Agreement that it has the requisite approval of its governing council, commission, board, or other governing body to enter into this Agreement, and that the person signing on behalf of each Local Government is duly authorized to bind the Local Government to all of the terms, provisions, and conditions of this Agreement.

Article 17 - Miscellaneous Provisions

17.1 Entire Agreement. This Agreement is intended by the Parties as the final expression of their agreement, is intended also as a complete and exhaustive statement of their agreement with respect to the subject matter contained herein, and supersedes any previous agreements or understandings between the Parties.

17.2 Severability. If any term or provision of this Agreement should be held by any court or other authority of competent jurisdiction to be invalid, void, unenforceable or against public policy, the remainder of this Agreement will remain in full force and effect and will in no way be adversely affected; provided, however, that the severance of such term or provision does not render the performance of a Party's material obligations pursuant to this Agreement impracticable or impossible.

17.3 Amendments. This Agreement shall only be modified or amended by a written agreement, which may include a memorandum of understanding and authorization as contemplated in Sections 2.4 and 7.3 above, duly signed by the persons authorized to sign agreements on behalf of each respective Party. Any such amendments to this Agreement shall be identified appropriately so as to avoid any confusion.

17.4 Counterparts. This Agreement may be executed in two (2) or more counterparts, all of which will be considered one and the same Agreement and each of which will be deemed an original.

17.5 Notices. All notices or other communications to be given or made hereunder shall be in writing, shall be addressed for the attention of the Persons indicated on the attached Appendix 3, and shall be delivered personally or sent by a nationally recognized overnight courier service or facsimile.

17.6 Force Majeure Events. A "Force Majeure Event" shall mean an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers. Such events or circumstances may include, but are not limited

to: actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including, but not limited to, arson and vandalism), epidemics, explosions and fires not resulting from the negligence or lack of due diligence on the part of the affected Party, hurricanes, floods, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). Other than the obligation to pay money, which shall not be suspended in or due to a Force Majeure Event, no Party shall be liable to any other Party or Parties for any failure or delay in performance of any obligation under this Agreement due to the occurrence of a Force Majeure Event. Whenever a Force Majeure Event occurs, the Parties shall, as quickly as possible and to the extent consistent with the affected Party's or Parties' best commercially reasonable efforts, eliminate or cure the cause of the Force Majeure Event and resume performance in full compliance with this Agreement.

17.7 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without reference to its conflict of laws rules or any principles that would trigger the application of any other law. The Parties agree that any arbitration proceedings conducted under this Agreement shall be held in Palm Beach County, Florida, or in another location that is mutually acceptable to all Parties involved in the arbitration proceedings.

17.8 Assignment. It is expressly understood and agreed that this Agreement is made by, between, and among the Parties who have executed the Agreement. No Party shall have the right to assign any rights, duties, benefits, or other interests that it may have pursuant to this Agreement without the express written consent of all other Parties to the Agreement.

17.9 Survival. The provisions of Article 1 (Definitions), Article 13 (Indemnification; Manner of Responding to Claims for Liability and Insuring Against Liability), Section 14 (Resolution of Disputes), and this

Article 17 (Miscellaneous Provisions), together with any other provisions of this Agreement relating to the handling of confidential information, shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

[SIGNATURE BLOCKS - EACH PARTY PLEASE PROVIDE]

APPENDIX 1

**LEGAL SERVICES AGREEMENTS BETWEEN THE FLORIDA LOCAL
GOVERNMENTS CONSORTIUM FOR PROPER FRANCHISE FEES AND THE
LAW FIRMS**

APPENDIX 2

FUNDING SHARES FOR EACH PARTY IN SUPPORT OF INITIAL
LITIGATION AND NEGOTIATION EFFORTS OF THE FLORIDA LOCAL
GOVERNMENTS CONSORTIUM FOR PROPER FRANCHISE FEES

Local Government

Funding Share

The City of Atlantis, Florida
The City of Boca Raton, Florida
The City of Delray Beach, Florida
The City of Greenacres, Florida
The Town of Gulf Stream, Florida
The Town of Lake Park, Florida
The Town of Palm Beach, Florida
The City of West Palm Beach, Florida

APPENDIX 3

PARTIES AND NOTICE INFORMATION FOR PARTIES TO THAT CERTAIN
INTERLOCAL AGREEMENT TO JOINTLY PURSUE A COMPLAINT AGAINST
FLORIDA PUBLIC UTILITIES CORPORATION (FPUC) FOR PAYMENT OF
FRANCHISE FEES,

Dated the _____th day of _____, 2013,

By, Between, and Among

The City of Atlantis, Florida

The City of Boca Raton, Florida

The City of Delray Beach, Florida

The City of Greenacres, Florida

The Town of Gulf Stream, Florida

The Town of Lake Park, Florida

The Town of Palm Beach, Florida

The City of West Palm Beach, Florida

FPUC Franchise Fee Discussion

Municipal Franchise Fee Revenue for FY2009 and
Legal Fee Allocation

Municipality	Franchise Fee Revenue	% of Total	Legal Fee Allocation
Atlantis	\$11,083.67	1.2%	\$1,411.16
Boca Raton	237,500.00	26.3%	30,238.24
Delray Beach	100,217.55	11.1%	12,759.59
Green Acres	34,105.54	3.8%	4,342.28
Gulf Stream	6,748.00	0.7%	859.15
Lake Park	715.00	0.1%	91.03
Palm Beach	229,065.84	25.4%	29,164.42
Riviera Beach	46,674.00	5.2%	5,942.48
West Palm Beach	237,134.00	26.3%	30,191.64
Total	\$903,243.60	100.0%	\$115,000.00

**FPUC Lawsuit
2009 Franchise Fee Data**

Municipality	2009	
	Franchise Fee	Legal Fees
Atlantis	11,083.67	1.2% 1,411.16
Boca Raton	237,500.00	26.3% 30,238.24
Delray Beach	100,217.55	11.1% 12,759.59
Green Acres	34,105.54	3.8% 4,342.28
Gulf Stream	6,748.00	0.7% 859.15
Lake Park	715.00	0.1% 91.03
Palm Beach	229,065.84	25.4% 29,164.42
Riviera Beach	46,674.00	5.2% 5,942.48
West Palm Beach	237,134.00	26.3% 30,191.64
Total	903,243.60	115,000.00

Municipality	2008 Franchise Fee	2009 Franchise Fee	2010 Franchise Fee	2011 Franchise Fee	2012 Franchise Fee
Palm Beach	230,046.12	229,065.84	159,992.91	144,218.48	139,727.35
Gulf Stream	5,481.00	6,748.00	2,343.00	946.00	2,549.00
Green Acres	38,177.56	34,105.54	23,077.69	24,895.96	21,410.34
West Palm Beach	131,301.00	237,134.00	109,355.00	96,872.00	133,843.00
Riviera Beach	35,391.00	46,674.00	35,013.00	5,575.00	15,822.00
Delray Beach	85,516.11	100,217.55	50,364.41	74,245.91	61,086.36
Lake Park	2,420.00	715.00	11,515.00	6,483.00	3,031.00
Atlantis	9,248.46	11,083.67	4,777.75	5,871.69	8,083.57
Boca Raton	196,962.00	237,500.00	83,900.00	142,400.00	169,200.00
Total	734,543.25	903,243.60	480,338.76	501,508.04	554,752.62

John C. Randolph
Attorney
561-650-0458
Fax: 561-650-5300
jrandolph@jonesfoster.com

May 29, 2013

Joevany Rigor
Chesapeake Utilities Corporation
909 Silver Lake Boulevard
Dover, Delaware 19904

Re: Florida Public Utilities Company
Franchise Fees Payable to the Town of Palm Beach
Our File No. 13156.354

Dear Mr. Rigor:

As you know, I am the Town Attorney for the Town of Palm Beach. I have previously communicated with you, Matt Dewey and Cheryl Martin regarding certain issues relating to your Company's franchise fee payments to the Town. I write today to clarify one issue and to call to your attention an additional issue that the Town believes require resolution as between your Company and the Town.

The issue to be clarified relates to the revenue basis upon which Florida Public Utilities calculates the franchise fees to be paid to the town. As we have previously communicated to you and to other FPU personnel, the Town believes that FPU's unilateral changing of customers from its General Service rate schedules (GS-1 and GS-2) to its Large Volume Service (LVS) rate schedule, and FPU's subsequently ceasing to collect and remit franchise fees to the Town based on such customers' usage, is contrary to the meaning and intent of the franchise agreement between FPU and the Town.

The clarifying point is this: the Town believes that it is the character of the service provided, and not the volume of the natural gas service purchased, that should determine whether the customer's revenues are subject to the franchise fee required under our franchise agreement. For example, the Town does not believe that the service received by a restaurant, hotel, or condominium changes from being that of a "general service commercial customer," as that term is used in the franchise agreement, to being something else if the customer's usage increases. FPU's tariff expressly defines Commercial Service as "service to Customers engaged in selling, warehousing, or distributing a commodity, in some business activity or in a profession, or in some form of economic or social activity (offices, stores, clubs, hotels, etc.) and for purposes that do not come directly under another classification of service," and the Town believes that the majority, but not all, of the usage by LVS customers that FPU excludes from the franchise fee payment falls within exactly the scope of such service. The Town does recognize that natural gas service provided for lighting purposes (e.g., street lighting area or ornamental lighting applications) and for

Joevany Rigor
May 29, 2013
Page 2

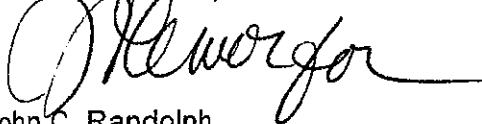
industrial purposes would be outside the scope of commercial service to which the franchise fee should apply. Accordingly, the Town requests that FPU henceforth compute the franchise fees due to the Town on the basis of the nature of the customer's usage, and not based on volume. Again, the Town agrees that natural gas service for lighting and industrial purposes is properly excluded from the franchise fee calculations.

The additional issue that has come to the Town's attention relates to FPU's deducting property taxes and other ad valorem assessments paid from the amount of franchise fees otherwise due and payable to the Town. As you may be aware, some years ago, Florida Power & Light Company ("FPL") changed the terms of its standard franchise agreements, which theretofore had included exactly the same offset, i.e., for property taxes paid, but FPL has since changed the standard terms of its franchise agreements to eliminate this property tax offset. To the best of the Town's knowledge, this change was precipitated by certain litigation between FPL and the City of Hollywood, City of Hollywood v. Florida Power & Light Co., 624 So. 2d 285 (Fla. 3rd DCA 1993). In the litigation, Hollywood sued FPL for a declaratory judgment on the claim that the property tax offset in FPL's standard franchise agreement constituted an illegal and unconstitutional tax exemption that the earlier Hollywood City Commission did not have the authority to grant. The trial court originally granted FPL's motion to dismiss, but that ruling was reversed by the Third District Court of Appeal, after which the parties settled their dispute by entering into a new franchise agreement that did not include the property tax offset/deduction provision. The Town of Palm Beach believes that this same principle applies here just as it did in the Hollywood-FPL case, and accordingly, the Town objects to FPU's deduction of property taxes in computing franchise fees due to the Town and requests that FPU cease this practice forthwith.

I would appreciate hearing from you within twenty (20) days in response to the Town's requests as set forth in this letter.

Sincerely,

JONES, FOSTER, JOHNSTON & STUBBS, P.A.



John C. Randolph
JCR/ssm

cc: Thomas G. Bradford, Deputy Town Manager
Jane Struder, Finance Director

Vivian Mendez

From: Dale Sugerman
Sent: Wednesday, October 09, 2013 8:47 PM
To: Vivian Mendez
Subject: FW: FPUC Complaint; Recalculated Fees based upon Boca Raton Decision Not to Participate in the Complaint
Attachments: FPUC Franchise fee data.pdf
Importance: High

*We will not go to
Comm mtg w/ this
but info them
in an email
10/10/13*

Vivian-

It looks like Boca Raton is not going to participate in the FPUC lawsuit. Therefore, our share of the cost of pursuing the case has gone up slightly. I know that you have been waiting to find out when this case will be going forward. Let's review where things stands for a few minutes before the end of the week and we'll figure out whether or not this item needs to go back to the Town Commission.

Thanks,

Dale

From: TBradford@TownofPalmBeach.com [<mailto:TBradford@TownofPalmBeach.com>]
Sent: Wednesday, October 09, 2013 5:25 PM
To: mthornton@atlantisfl.gov; bthrasher@gulf-stream.org; Dale Sugerman; boydd@mydelraybeach.com; msias@wpb.org; dmiller@wpb.org; Blake Rane; oconner@mydelraybeach.com; pyburn@mydelraybeach.com; Abby@corbettandwhite.com; Wataallah@ci.greenacres.fl.us; JMcInnis@ci.greenacres.fl.us; thughes@ci.greenacres.fl.us
Cc: JSkittone@TownofPalmBeach.com; jrandolph@jones-foster.com; Schef@gbwlegal.com; joconnor@jonesfoster.com
Subject: FPUC Complaint; Recalculated Fees based upon Boca Raton Decision Not to Participate in the Complaint
Importance: High

All:

The Boca Raton City Council voted to not participate in the Complaint/Interlocal Agreement at their meeting last night. Based on this exit from the process, all of our cost shares have increased. The revised numbers appear in the attached PDF. I suspect many of us will have to go back before our governing boards for an additional funding authorization. This includes Palm Beach. However, before you do go back for additional funding it pays to ensure you know everyone is still in before committing to a new higher dollar figure.

Please review the numbers and let me know what you want to do. For example, do any of you think we need to conduct a conference call or hold a meeting in light of the Boca Raton exit? Alternatively, do you think the additional funding will not be any problem? Let me know your thinking so that we can plan accordingly. Thanks.

Thomas G. Bradford
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FPUC Lawsuit

2009 Franchise Fee Data

	2009		Legal Fees
Municipality	Franchise Fee		
Atlantis	11,083.67	1.8%	2,058.93
Boca Raton	-	0.0%	-
Delray Beach	100,217.55	16.2%	18,616.68
Green Acres	34,105.54	5.5%	6,335.53
Gulf Stream	6,748.00	1.1%	1,253.53
Lake Park	715.00	0.1%	132.82
Palm Beach	229,065.84	37.0%	42,551.87
West Palm Beach	237,134.00	38.3%	44,050.64
Total	619,069.60	100.0%	115,000.00

Municipality	2008 Franchise Fee	2009 Franchise Fee	2010 Franchise Fee	2011 Franchise Fee	2012 Franchise Fee	2009 vs. 2012	Cumulative Loss Since 2009
Palm Beach	230,046.12	229,065.84	159,992.91	144,218.48	139,727.35	89,338.49	243,258.78
Gulf Stream	5,481.00	6,748.00	2,343.00	946.00	2,549.00	4,199.00	14,406.00
Green Acres	38,177.56	34,105.54	23,077.69	24,895.96	21,410.34	12,695.20	32,932.63
West Palm Beach	131,301.00	237,134.00	109,355.00	96,872.00	133,843.00	103,291.00	371,332.00
Riviera Beach	35,391.00	46,674.00	35,013.00	5,575.00	15,822.00	30,852.00	83,612.00
Delray Beach	85,516.11	100,217.55	50,364.41	74,245.91	61,086.36	39,131.19	114,955.97
Lake Park	2,420.00	715.00	11,515.00	6,483.00	3,031.00	(2,316.00)	(18,884.00)
Atlantis	9,248.46	11,083.67	4,777.75	5,871.69	8,083.57	3,000.10	14,518.00
Boca Raton	196,962.00	237,500.00	83,900.00	142,400.00	169,200.00	68,300.00	317,000.00
Total	734,543.25	903,243.60	480,338.76	501,508.04	554,752.62	348,490.98	1,173,131.38