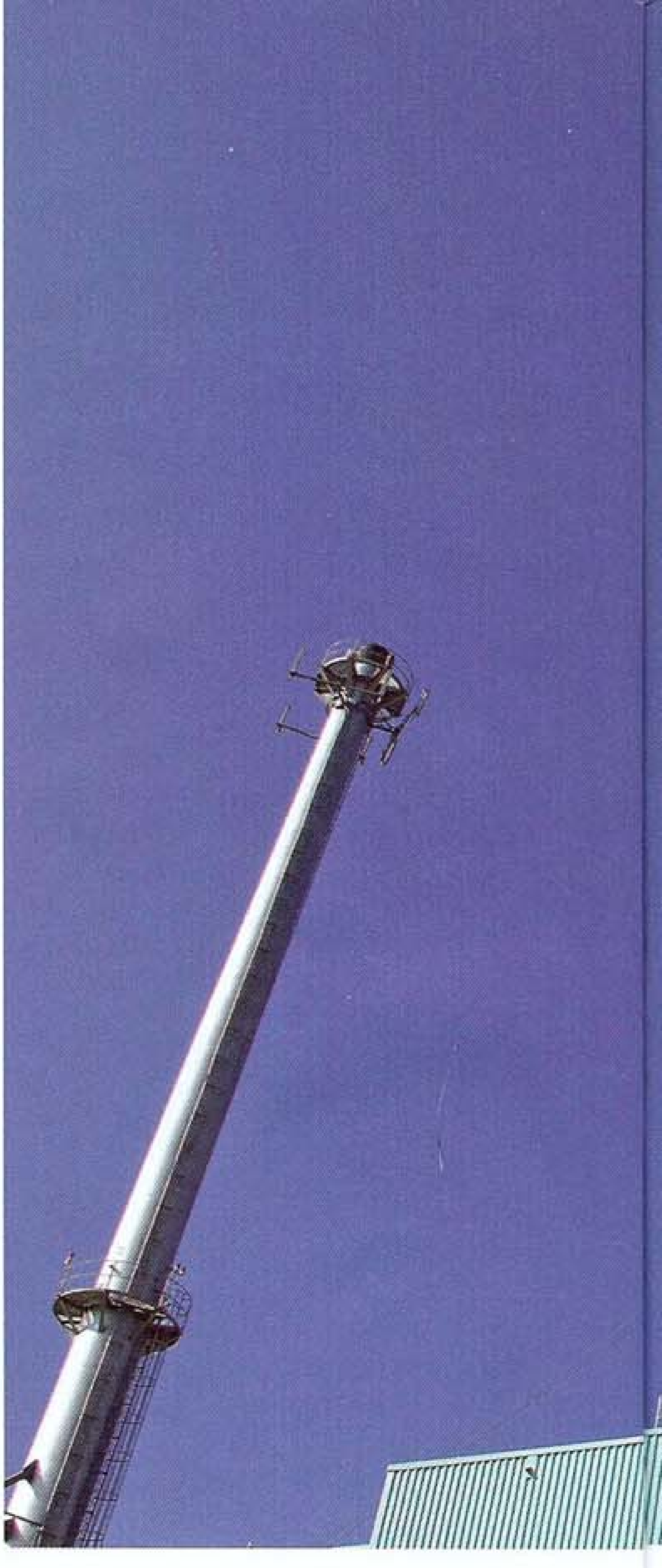
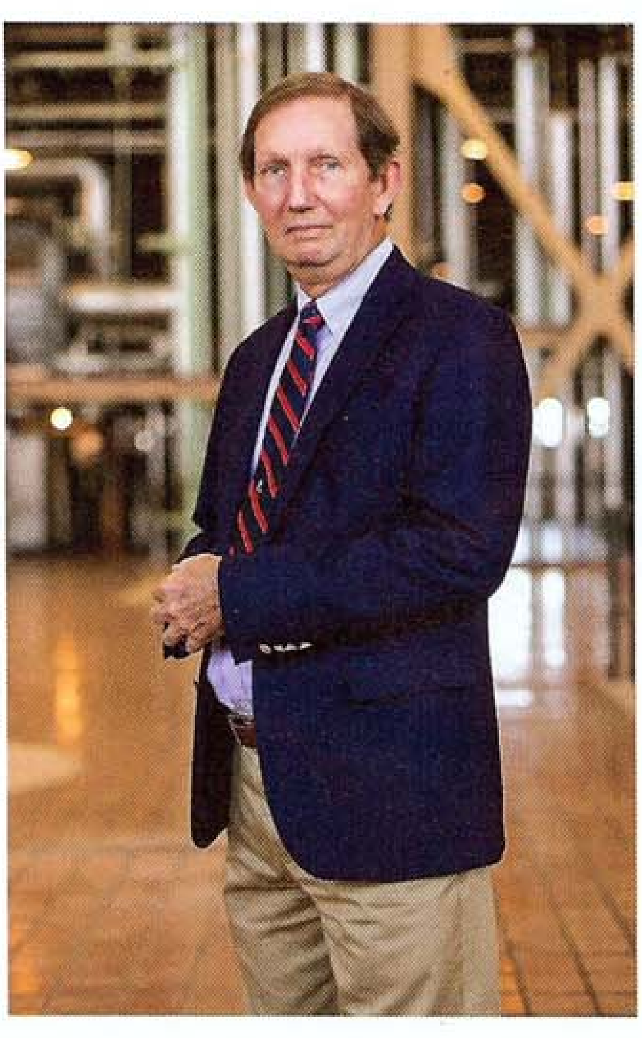
By Mike Vogel

A Surge in Interest

For the first time since 1992, a Florida municipal utility may go into private hands. And it's not the only municipal in the state that has explored a sale.





Vero Beach Mayor Craig Fletcher argues that selling "Big Blue" will allow the city to plug a $30-million pension hole.

Pulling up to the city-owned electric plant on the Indian River waterfront, an unsentimental Craig Fletcher reminisces about the power plant called "Big Blue." "I was just out of high school when they put this No. 1 tower up there," says Fletcher, a 1960 graduate of Vero Beach High.

Nowadays, Fletcher is the city's mayor, a mayor on a mission: Sell the city-owned electric utility to NextEra Energy's Florida Power & Light and see Big Blue leveled. "All anyone ever says is, 'You'll never make it — you'll never make it happen. You'll never get there,' " Fletcher says.

They have reason for skepticism. Selling a city-owned electric utility is all but unprec-

photographs: Scott Wiseman

edented in Florida. And it may stay that way; Vero's proposed sale to FPL is far from a done deal.

But the idea of selling city-owned utilities has become a live wire in Florida in the last year as similar proposals were discussed in Jacksonville, Lakeland, Lake Worth and Fort Pierce. In every case, a potential buyer would be FPL.

The company says it's just responding to demand for its low rates, but Barry Moline, executive director of the municipal trade association, the Florida Municipal Electric Association, worries about what he sees as a power grab. "I think this is a huge threat to our very existence," he says.

In Florida, 34 municipalities from the Panhandle to Key West own their own electric utilities. Jacksonville, at 420,000 customers, is the state's largest and the seventh-largest muni utility nationally. Vero Beach, at 34,000 customers, "a tiny bump in the road," as Fletcher says, is 90th nationally.

Cities got into the electric business, generally early in the 20th century, for various reasons: Some took over a failing private entity; others were so small that no entrepreneur saw opportunity, or they were so far in the hinterlands that no company wanted the expense of extending service. Orlando started with a private company, but when the company didn't want to invest to keep up with the city's growth, voters — in a referendum that saw about 600 voters turn out — approved a takeover in 1922. Muni ownership nationally peaked in 1923 at 3,066. Some 1,500 went into private hands in the next four years.

All together, Florida's 34 municipals do $4 billion in business annually and have 1.3 million customers — less than a third of FPL's customer count. Munis have a lobbying group, the Florida Municipal Electric Association (FMEA), and, since 1978, a power generation association, the similar-sounding Florida Municipal Power Agency (FMPA). Through FMPA,

Vero Beach's "Big Blue" power plant is more than 50 years old and costly to maintain, Mayor Craig Fletcher says. The facility provides only 1% of Vero's load.

30 munis reach for economies of scale by making varying degrees of investments in power plants. Munis also buy power directly from one another or from privately held, investor-owned utilities in Florida and Georgia.

What's remarkable about the muni field is its stability. Nationally, there are 2,006 public power utilities, a number that's held fairly constant for years, according to the American Public Power Association. In Florida, no muni has gone into private hands since Sebring in 1992 — a special case in which the city got into financial trouble because of the utility's debt. TECO bought Sebring's three power plants, and Progress Energy bought its customer transmission and distribution network.

City council member Jay Kramer wanted more bidders for the system.

Meanwhile, Winter Park went the other direction, opting not to extend its franchise agreement with a predecessor to Progress Energy. The city took title in 2005. South Daytona leaders last year looked to follow Winter Park and create a city-owned utility until voters — after FPL spent $480,000 opposing the idea — shot the idea down in November.

The flurry of interest in selling, then, is unusual. It has several drivers. In Vero, Big Blue is past age 50, costly to maintain and of little use, Fletcher says. It provides only 1% of the city's load — the rest comes via Orlando Utilities and others. Per agreements with Orlando, however, the Vero plant must be on call to serve as a "peaking" plant, an industry term for a plant fired up only to meet peak power demands. Some days, units at the plant, staffed 24 hours a day, are started only to conduct government regulatory air quality tests, Fletcher says.

Meanwhile, like many cities nationally, Vero's city employee pension plan is underfunded — to the tune of more than $30 million. "It so happens in this time and space, one can solve the other," Fletcher argues. Money from selling the utility can plug the pension gap; future liabilities would be avoided by moving new employees to a 401(k)-like defined contribution plan.

Also motivating the sale is proponents' belief that government shouldn't be in the electric business. "Smaller-government-is-better is a huge portion of what we're trying to do," Fletcher says.

But the main attraction for voters is rates. Some Florida munis have rates that beat investor-owned utilities. But others don't compare as favorably, especially against FPL, which thanks to a heavy share of low-cost natural gas in its generation portfolio can claim the lowest bills in the state for a residential user who consumes 1,000 kilowatt-hours per month, a typical measure.

Comparing rates, it should be said, is a contentious business. Who's cheapest depends on type of user — residential, commercial, industrial — and how much power is consumed. "Be careful what you look at," says Nicholas Guarriello, FMPA general manager and CEO. "They have low rates. We have low rates. It goes back and forth." However, he volunteers, "I'll tell you overall Power & Light is doing a good job" on rates.

Indeed, before November's city council election, FPL blanketed Vero with direct mail advertisements showing its monthly rate of $94.62 for a typical customer compared to $124.52 in Vero, where the ultimate power source is more dependent on coal, a fuel source under costly regulation.

Moline, of the muni electric trade group, argues that FPL's rates won't stay low. FPL's base rate indeed is increasing this year, but FPL says its overall rate will go down thanks to lower costs. Additionally, Moline argues FPL's ads misleadingly ignore the 6% franchise fee that would be tacked onto Vero bills once a sale goes through, making FPL's

photographs: Scott Wiseman

rate advantage less favorable.

To Moline, the FPL ad blitz is just one tactic in a larger campaign. "FPL has an aggressive and direct strategy to take over as many municipal electric utilities as it can while its rates are artificially low," Moline says. Vero City Council member Jay Kramer agrees: "Vero Beach is just the first domino to fall. You're going to start seeing it more and more."

There's no such strategy, says Pam Rauch, FPL's vice president for development and external affairs. Rauch says FPL has just been responding to locals interested in getting FPL's low rates. "We believe it's a win-win," Rauch say, bringing Vero lower rates while not negatively affecting existing FPL rate payers.

Utilities in Florida are chasing growth as they struggle with excess capacity caused by slower real estate development and empty houses not demanding power. Additionally, customers are using less energy. Usage by FPL customers began falling before the recession and intensified through 2009 before moderating. In 2011, FPL saw a 2% drop in average customer usage, which translated into $107 million less in revenue.

While the Vero utility's 34,000 customers are a smidgen compared to FPL's 4.6 million, acquiring them would represent the biggest annual gain for FPL since 2007.

But picking up any more cities looks unlikely. In Lakeland, three businessmen, Publix Vice Chairman Barney Barnett, economic developer Steve Scruggs and investor Brian Philpot, pitched the idea of changing the city charter to make it easier to sell the utility. (The charter has

The idea of selling municipal utilities has been raised in Jacksonville, Lakeland, Lake Worth and Fort Pierce In each case, FPL was talked of as a buyer.

No More 'Birch Rods'

Attorney Thomas Cloud represented seven municipalities that fought to have purchase options included in their power company agreements.

If Vero Beach voters decide to sell their utility to Florida Power & Light, it likely means selling it for all time.

Traditionally, cities cut an exclusive "franchise agreement" with a company like FPL to provide service to its citizens. The agreements would include a "purchase option." That part of the contract allowed the city, if it didn't renew the franchise agreement later, to buy the poles, lines and other power distribution gear that the utility had installed on the city's rights of way.

Purchase options once were standard because they gave cities leverage against utilities: Serve us well or we'll buy you out. Indeed, Franklin Roosevelt, while a presidential candidate, once likened the option to a birch rod in the cupboard — an alternative when a scolding wouldn't do.

That contract clause has led to major blowups in Florida, however, as investor-owned utilities have pushed for it to go the way of the dodo. FPL and Progress Energy won't include the purchase option when they renew franchise agreements. TECO spokeswoman Cherie Jacobs says TECO "in general" doesn't include purchase options. Gulf Power spokesman Jeff Rogers says some of its franchise agreements have a purchase option. FPL says purchase options no longer are required by state law and cities can still form their own systems by taking over a utility's property through condemnation.

Most Florida cities have acquiesced. However, in what Thomas A. Cloud, an attorney with GrayRobinson in Orlando, described in a *Stetson Law Review* article in 2006 as a "franchise rebellion," 10 cities fought back by considering launching their own utilities. Two wound up signing the agreements the utilities wanted. Of the remaining eight, Winter Park formed its own utility and the other seven, whom Cloud represented, all won new purchase options in their agreements.

Utilities have pressed ahead with obliterating the option. The latest fight came to a head in November in South Daytona. In 1978, the city granted FPL the exclusive right for 30 years to serve its citizens — and use city property to do so. The agreement included an option that allowed South Daytona to buy FPL's equipment at the end of the term for cost minus depreciation.

When the agreement came up in 2008 for renewal, FPL offered its standard franchise agreement, without the purchase option. South Daytona balked, and after years of fighting in and out of court, moved to exercise its option. FPL put $480,000 into a political group that demanded a referendum on the city forming its own utility and campaigned against the acquisition. FPL says it wanted voters to have the information necessary to make an informed decision. Voters in November shot down the acquisition. The city and FPL are again negotiating.

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