

MINUTES OF A REGULAR MEETING OF THE FORT PIERCE UTILITIES AUTHORITY, TUESDAY, MARCH 16, 2010, 4:00 P.M., CITY COMMISSION CHAMBERS.

Members Present: Chairman, Robert W. Summerhays, Jr.; Vice Chairman, Darrell Drummond; Secretary, Pamela K. Cully; Deputy Secretary, Michael A. Perri, Jr.; Mayor Robert J. Benton III, and Anne Satterlee, Acting City Manager.

Others present: William G. Thiess, Director of Utilities; Rupert N. Koblegard, III, FPUA Attorney; Nina Hurtubise, Director of Finance; Douglas W. Giel, Director of Shared Services; Timothy E. Perkins, Director of Water/Wastewater Systems; Thomas W. Richards, Director Electric and Gas Systems; Putnam Moreman, IV, Internal Auditor; and Samuel A. Barnes, Director of Procurement, City of Fort Pierce.

The meeting was called to order by Chairman Summerhays.

The Invocation was given by Craig Brewer, Electric T & D Superintendent.

The *Pledge of Allegiance* was recited.

The roll was called and a quorum declared.

A motion was made by Mr. Drummond, seconded by Mrs. Cully, and unanimously carried to approve the following items listed on the Consent Agenda:

1. Approval of the Minutes of the Regular Meeting of March 2, 2010.
2. Bid No. 5982, Lift Station No. 30 Replacement: Request authorization to accept the lowest responsive responsible bid from Melvin Bush Construction, Inc., Fort Pierce, Florida, in the amount not to exceed \$198,052.68.

Mr. Thiess said the information for the FDOT settlement on the delay claim on North 25th Street was presented to this Board previously with the history on the claim. He said that FPUA met with the City a couple of weeks ago and the general agreement that came out of the meeting is that the City should probably assume some responsibility for this claim. There were a lot of discussions in the meetings about protecting FPUA from costs associated with relocating those utilities in that strip and the City and the City Engineer were on board with that. It was mentioned numerous times in the minutes of the construction meeting; however, when the property was quit claimed to the FDOT, there was no mention in the quit claim resolution addressing that fact. If in the quit claim resolution, instead of the City saying that they did not have any interest in this property, had said they would quit claim this providing that FDOT accepts responsibility for the utility adjustments, we would have been covered. There seemed to be a consensus in the meeting with the City a few weeks ago that the City would share the \$90,000 with us. We have not had any hard discussion of whether it would be cash or trading off with something else. That still remains to be seen. As far as the decision of

whether to pay the \$90,000 today, which the Staff is recommending, or to not do it and go to litigation, Mr. Thiess said that he and Mr. Koblegard are firmly in agreement that it will not suit this Board or the City Commission to take this to litigation. He said the joint court costs between FPUA and the City could well surpass the \$90,000. We could probably countersue for the \$138,000 that we had in utility adjustments, but the likelihood of getting a favorable judgment on that is pretty slim. Considering the risks of going to litigation and the reward, it would be a big risk and small reward. Mr. Thiess said he believes it is in the best interest of FPUA to go ahead and settle this and work out an agreeable compromise with the City on how we might share that cost.

Mr. Koblegard said that Mr. Thiess covered everything and it is very clear from the record and from what they have learned at the time the City signed the quit claim deed, in the minutes specifically, they did not give us notice of that. We were not officially made aware of that and we never received the actual notice and it was done without our knowledge. He said that had we been made aware of it, it would not have occurred. There was a mix up for some reason. Mr. Koblegard said that going to court with FDOT without the City there in the case would be an act in futility. We would have to have the City there to see if the Judge agreed with us that the act of the City in giving the property to FDOT when we still had issues with that strip that is not a claim against FDOT, it is a claim involving the City. In other words, if we owed it, they should be the one to pay it. Mr. Koblegard said it is like Mr. Thiess said, the cost of litigating that would not suit FPUA or the City. He does not think we can get our money back from FDOT because of the quit claim deed that would have to come from the City. That would be going from one pocket to the other. We would be spending money doing it and as a practical matter it does not make sense. The \$90,000 is reasonable in light of what the original stated amount was. It could have been \$250,000 and they negotiated it down to \$183,000 and agreed to the \$90,000 and will let us split it up into two years. Mr. Koblegard said that is fair from FDOT standpoint. He said he would suggest that we do that. He said as Mr. Thiess has said, we have discussed it with the City of Fort Pierce and individually with some of the City Commissioners and he feels like there is a consensus there even if we have to appear before the City Commission to get help on paying a portion or somehow offsetting a portion of the \$90,000. As a business decision, that is the best way to go.

Mrs. Cully said she agrees that the Board should approve this settlement with FDOT. She said that Mr. Thiess spoke about having a meeting with the City members, City Manager and the Mayor, and he said that they agreed that they should probably take part in this payment. Mrs. Cully asked if we go ahead and settle this, how hard are we going to have to fight or will the City go along with what they said they would do and split this with us?

Mr. Thiess said that there is no agreement with the City Commissioners. He said that it takes three Commissioners to make that decision. In the meeting were Mayor Benton, myself, Mr. Koblegard, Mr. Recor and Mr. Schwerer. Mr. Thiess said that as they wound down the discussion on splitting the claim, Mr. Schwerer wanted to tie that to another issue, the TECO easement. There is agreement that they need to help out with this, but they want to look at the TECO easement. Mr. Koblegard is examining the

TECO easement, which we were paid \$54,000 for the easement for the TECO gas line that serves the power plant. Mr. Thiess said that the City's contention is that the money should have gone to the City. He said we are not quite finished with Mr. Koblegard's workup on that to see where he stands from a legal standpoint. Mr. Thiess said he personally believes that the two issues should be separate because they are different issues. He said we should look at each one on its own merits and not trade one for the other. If Mr. Koblegard is in agreement with the City Attorney, then we can do a swap. If there are good reasons why this Board should not give that \$54,000 to the City then we need to look at it on its own merits and not as a trading card to offset the \$45,000 that it would take to split this. There is a general agreement and it was tied in with another issue, maybe we can separate it. Mr. Thiess said he believes they can sit down with the City and work this out on a project or trading services.

Mr. Perri said that it is immaterial whether we work it out or not. We have to touch first base before we get to second base. He said he believes it is a mute point at this particular time and we need to get it over with and make the settlement and then take our best shot. Put our best pitcher in next inning.

A motion was made by Mayor Benton and seconded by Mr. Perri to approve the settlement of the FDOT delay claim on North 25th Street project for the mediated settlement of \$90,000 and authorize the Chairman or Vice Chairman and Secretary to sign the Settlement Agreement and Release.

Mr. Drummond said that he agrees with everything that has been said. He said he does not want to tie the settlement into this clause, but he does want to formerly ask that we ask the City to participate. Mr. Drummond said he does not want to make it a part of this motion, but he does want Staff to ask.

Mayor Benton said that he believes the City will be participating, but he does not know what the recommendation from the City Attorney will be when this request comes in front of him. He said he cannot say how the City Commission will act. Mayor Benton said he has exhausted hours of efforts trying to resolve this, not only in Tallahassee, but here at home. It will take a full City Commission to decide the matter. He said it is tough sitting on both boards. They had a joint meeting with the Attorneys, Mr. Thiess and the City Manager trying to resolve several issues that are dividing the two Boards and they did not make a lot of headway. Mayor Benton said he hopes they resolve them in the near future because it just keeps eating them up. It is very difficult when you are the guy that is sitting on both Boards and he hears it on both sides.

The roll was called and the above motion was unanimously approved.

Mrs. Nina Hurtubise presented the FY 2009 Comprehensive Annual Financial Report (CAFR). She said that we are at the conclusion of the production of our CAFR and there have been endless hours that have gone into producing this document. There is a huge amount of detail way beyond anything she intends to produce before this Board on a regular monthly basis. Mrs. Hurtubise said the report is broken up into three categories;

the introduction, the financial section which includes our independent auditor's report; and the statistics. She said that our independent CPA is here today to answer any questions that the Board may have at the conclusion of the presentation. We did receive an unqualified opinion as we have received in year's past. It also includes management's discussion and analysis, which gives a little bit more detail about what has been going on with FPUA this year, and the financial statements and notes the Board sees every month. The required supplementary information includes some things that we have not had in some year's past and includes the disclosure of our OPEB liability. There is information regarding our grants and compliance with the terms of those grants, also in regard to compliance with our bonds. The very last section is the statistical section and very much of that is a 10-year history of where we have been. Mrs. Hurtubise said that the most important thing that she would like to present today is her thanks to her staff for all the work they have put into it; our controller, Barbara Mika, our assistant controller, Mrs. Hurtubise's assistant, and the external auditors because they help every year and provide helpful hints. Also presented in the packet is this year's management letter and there was one comment this year that the Board will not see anything about next year. This report is presented to the Government Finance Officers Association every year and we have received an award for it since 1994. We have every expectation that we will again receive it this year. Mrs. Hurtubise said the financial statements have all been seen before and what is different in this presentation is there is a Statement of Cash Flows that will give an idea of where our cash has come from and gone to. She said another key piece of information is the calculation of the distribution to the City of Fort Pierce. One thing that was highlighted in regard to that calculation is that we speak of the distribution as 6% of gross revenues and there are certain adjustments that the Charter provides for. One of those items is our fuel adjustment charges for purchase power as well as purchased gas. It is a very large number this year of \$27,657,000, but she wants to highlight the fact that amount is subtracted from our gross revenue because it is a pass-through item. We do not make any profit on it, and therefore it is not subject to city distribution as it says in the Charter. The statistical section has a great deal of information for anybody that would like to know where the City has been in the last ten years. On the last page of the report is a list of our ten largest customers. The Fort Pierce Housing Authority has made its entrance to the top ten at number eight and Publix fell off from number ten. Mrs. Hurtubise said this is an information only item and no action is required by the Board. The amount of the calculation of the distribution is tied to this report and the distribution check will be presented to the City Commission on April 5th.

Mr. Perri asked if Mr. Hartley agrees with our statement that the PCA and PGA should be excluded from the City distribution calculation.

Mr. Jim Hartley of DiBartolomeo, McBee, Hartley & Barnes, PA., said that yes that is their conclusion.

Mrs. Hurtubise presented the January 2010 Financial Operating Results. She said since she did not want to go back through all the details of what had occurred back through September 30, we will talk about January instead and bring you more up to

date. The year to date increase in Net Assets is about \$2.8 million and that is a slight increase over December. We are continuing to see those increases in units billed as compared to 2009. We are seeing the improved cash position. The last three years in the electric system, we are showing a 6% increase over 2009, but it is still down 4% from 2008. Water is up 11% from 2009 and up 2% from 2008. Wastewater is up 4% from 2009, but still down 5% from 2008. Natural gas is flat as compared to last year and is down 2% from 2008. These are the units, not the dollars. The dollars that are generated from those unit sales reflect 1% increase in electric and the PCA is down for the first four months \$869,000. Mrs. Hurtubise said that our electric rate-generated revenue is up 6%. Water is up 8%, wastewater is up 3%, natural gas is down 2%, but because the PGA was down \$112,000, it is really up 7%. Overall, our Operating Revenue is up 2.75% companywide. She said our Debt Service Coverage continues to grow. For the 12 months ended January, it is 3.06, well above the 1.25 times that is required by our Bond Covenants. The 12 months Operating Income is also on the rise, relatively speaking. Mrs. Hurtubise said that what is different compared to last year is our Operating Revenue is up and our year-to-date Operating Expenses are down. She said the Operating Expenses are down, primarily because of the over statement of the Other Post Employment Benefits (OPEB) in last year, which were corrected at the very end of the year. When we do comparisons, those dollars are still in there. Until we get to the end of this year, we will still be looking at those comparisons. Purchases for Resale are down \$668,000, which is not very much relatively speaking, but anything that we do not have to pay out for purchased gas or purchased power, we will pass it along to our customers. Our employees insurance is down \$358,000 and we are very pleased to have good claims history. We are self insured so if we have a bad claims year, we feel it right away, but if we have a good claims year, we also feel it right away. Our interest expense is down \$434,000 and that will probably diminish through the year now that we have refinanced the pooled loans that were at an extremely low rate of interest up through December. Mrs. Hurtubise said that this is an information only item and requires no action from the Board.

Mrs. Hurtubise presented the status report on Electric Power Cost Adjustment (PCA) Over/Under Recovery for February 2010. She said that she is pleased to say that she has good news. The cost savings that FMPA has been promising us appears to be coming forth. The month of February we had an under collection of \$258,000 and we were expecting an under collection even larger this month. The over collection to date is about \$2 million. Mrs. Hurtubise said that we are at a breakeven point in terms of what our cost is versus what we are collecting. She said the reason we show the costs a little bit less in the under recovered is because our sales were lower than what we purchased in the month. There will always be tiny differences between what we purchase and what we sell. Mrs. Hurtubise presented the projection prepared by our rate consultant, Public Resources Management Group (PRMG). The first column shows where February began and ended with the \$258,000 difference. She said that last month they expected to eat up the over collection in about 2 ½ months, but that has moved out two more months till June. The reason for the difference this particular month was the costs were about \$1.2 million less than what we had projected. What we recovered from the customer, sales wise, was less than what we were projecting.

Overall, it is about \$1.1 million better than what we were expecting. Mrs. Hurtubise said that last month we were showing at the end of September an anticipated over recovery. If it is a negative number, it means they are over recovered from the customer and the positive is where the customer owes us. She said we were expecting about \$344,000 over recovery at the end of September and we are only showing \$522,000 over recovery. Mrs. Hurtubise said that projected rates that have been presented to us by FMPA are less through the month of May. The first four months, the projected amount that they expected to be billing us is less than what was originally projected. She said that June through September they plan to charge us more than what was originally projected or even projected last month. This will be right at the time that neither we nor our customers can afford to pay those higher rates, but that is what we expect to see in the future.

Mrs. Hurtubise said that another question that was asked of us, was how are FMPA's projections coming along? She said that prior to the last three months, when we were looking at their energy rate compared to what they were projecting, they were only projecting the energy rate. There are three components to power bill; energy, transmission, and demand. When we looked at the energy component consistently, their projections were far below what they actually ended up charging us and it was enough to drive someone that is trying to do a prediction nuts. However, since November, FMPA has changed the way they have been doing their projections. They have also designated an individual full time to do just this and it appears that they are doing a better job of projecting what the costs are going to be. What we are seeing, which is not a lot of history, but FMPA keeps quoting us based on this 50% confidence. Although in the month of November, they projected a rate of \$93.07, but it turned out to be \$109.36. This is the all in rate; this has a mix of all three components figured into it. This is the only significant under estimation that they have had in last three months. Mrs. Hurtubise said that she is starting to gain a little bit of confidence back. She said she will continue to bring it back every month so the Board can see where we are.

Mr. Summerhays said that when we relax, is when they are going to slap us up aside the head.

Mrs. Hurtubise said that hopefully when they hit us with a higher amount, we will be expecting it. She said that is what has been the most frustrating is that we would expect a reasonably low bill and it would turn out to be higher instead. A lot has to do with the cash requirements that FMPA requires. We are getting to the time of the year when they are going to need to collect more cash to pay for those higher bills in the summer. They projected three months out so we need to be prepared to start paying for those higher bills which is fine as long as we are expecting it. It is looking better and we will see what happens starting in May. This was an information only item.

Mr. Drummond asked if Mrs. Hurtubise is suggesting for the last couple of months that their 50% confidence level is coming in pretty close to where they are. He said the slide just before the one on the screen from our consultant is still projecting for the balance of the year using the 80% confidence level. Mr. Drummond asked at what point are we going to be comfortable at staff level to suggest that they are hitting that mark

sufficiently that we do not have to continue to hold on to the further downward adjustment for the PCA?

Mrs. Hurtubise said that we would like to see it to continue and it would be hard for her to say at what level of comfort. She said she would be inclined to want to hold whatever PCA we chose to set at. At this point we are at \$48 through to the end of the year. She would like to look through to the end of September. Right now we do not see a lot of change through the end of September, but she understands. Mrs. Hurtubise said that we will ask the consultant to do a 50% and see how much different it is.

Mr. Drummond said that his concern is that if we hold it where it is and they continue to be accurate, we will see the over recovery just increasing dramatically throughout these months that we have anticipated that it would be below. He said he would certainly want to pass that on versus waiting until the end of the year, if their calculations are correct.

Mrs. Hurtubise said that the higher bills tend to hit in the month of May and that is when they really start hitting hard. She said maybe at the next meeting the Board may want to consider some sort of a change.

Mr. Drummond said that he would certainly appreciate if we could look at their projections based on something less than the 80% so we can see where it is trending.

Mr. Summerhays said that he would rather hold off a little bit on dropping it and give it to our customers in the summer when they have the highest usage. We could give them a substantial drop to what they are paying as compared to last year.

Mr. Perri said that Mrs. Hurtubise said that she was going to watch this and track it and he asked her if she was going to extend the chart so they can see what it was from December 2009 and just add the months on.

Mrs. Hurtubise said that if they would like to continue to see the chart, she will continue to present it each month. She said that this is March and if a change had been made today, it would have been reflected in the April bills. The next meeting, any change that will be made would be reflected in the May bills.

Mrs. Hurtubise said that there had been some question as to the cost that has run through our power cost adjustment (PCA). She said that power costs are in the PCA. There are no costs associated with running our transmission and distribution system. It is simply the bills that we are paying to FMPA. There is absolutely nothing else included in these costs. Mrs. Hurtubise said that our external auditor can attest to that as well.

Mr. Thiess said that a little while back we showed the Board a figure of \$160,000 that was spent on water main repairs from weather related water main breaks. He said that Mayor Benton had raised the question if we could get FEMA to reimburse us for that

money. Mr. Thiess said that it is a legitimate storm-related expense. It has been pursued by the American Water Works Association utility council at the state and federal level. So far it has drawn a blank. There are no identifiable funds out there at this time where we could file for assistance to cover those breaks. It may change in the future, but now there are no options for that.

Mr. Thiess said that he handed out before the meeting the latest Avenue Q spreadsheet that summarizes the status for each of the properties. This has not changed from the last update given to the Board. There are still six non responsive residents and three that were responsive that came in and signed up for service, but they have not paid their deposit. The people that are handling the grant program on the County side have indicated that, if they exclude the six non responsive customers as being non responsive, they meet the percentage that is required for participation by the low to moderate income for the grant to proceed with the CDBG Grant requirements. Mr. Thiess said that the question was raised today regarding the other three people that came in and said yes they would sign up, but did not pay a deposit. What if they decided not to participate, wouldn't they be in the same category as the other six as far as the grant requirements are concerned? He said that the County was emailed today about those concerns and that it is not locked in until they put their deposit down or at least a down payment on their deposit. They could pay \$10 and then we could split the deposit out over however many months it takes to meet their finances. Mr. Thiess said that once that is done and we are pursuing that as quickly as we can, once we have at least a down payment on the deposit and a signed agreement for service with each customer, at that point we can issue a notice to proceed on the contract and the contract will be turned loose. He said the good news is that it looks like it is going to happen with a couple of little details to close up at the end, but we think we can do that pretty quickly and we will bring back an update at the next meeting.

Mr. Perri said that he wanted to express his pleasure of looking at the B2 Item for Lift Station No. 30 that a local person Melvin Bush Construction Company was the low bidder. He said he also liked the information that was provided as to how many bids were sent out, how many replies, and what the actual bid amount was for those that did reply. Mr. Perri said that he likes that format and would like it to continue.

Mr. Summerhays said that it is always good when we do a contract that is local.

Mayor Benton said that he had run out because Mr. Hartley had made a comment when Mr. Perri asked him to come up about the PCA being included in the transfer. He said that he was hoping that we would be drawing that to a conclusion today, but it appears Mr. Hartley made a comment, but is not willing to go into details since he has not been tasked with that yet. Mayor Benton said he is hoping FPUA or the City somehow will get their auditor to make an in-writing decision on this because it is another one of those issues that are between these two Boards that he would like to draw to a close as soon as possible. He said that Mr. Hartley was not willing to make a statement on it today other than what he said when he said no. Mayor Benton was hoping for an explanation.

Mr. Drummond said that would have to come from the City because they are the ones that hired the auditor.

Mayor Benton said that is right, but he thinks that they could make a decision from one side or the other and he thought a decision was going to be made.

Mr. Summerhays said that he does not think anybody on this Board has a question on that.

Mayor Benton said that he does not either, but he is trying to end this discussion because it has become an issue with the City. He said that he understands it, but he does not agree with the City side, but he was hoping we could draw it to a close as soon as possible.

Mr. Koblegard said that when we had our meeting with the City that was one of the four issues that was discussed. He said following that meeting, he decided to go back and check some of the history to see how that provision with the Charter was discussed back when the transfer went from a net figure to the gross of 6%. There was a study commissioned by James Powell at that time to see what other utilities did around the state. The majority of those make it clear that the transfer, when it is a gross, does not include fuel costs. He commissioned another group to do a study for them and they came back and made the same recommendation, set your percentage for what you think is fair based upon the income from the utility, but it should be exclusive of the fuel costs. Mr. Koblegard said he does not have the minutes yet, but at that meeting FPUA and the City both were sent back at staff level to come up with the final draft of the change to the Charter. He said he does not see the follow up of that in the agenda package, but it is very clear from the discussions earlier and the discussions of what should be included in the gross income figure. A review of other utilities and that report, the fuel costs the PCA costs are not to be included in the transfer figure. Mr. Koblegard said that historically that should be very clear if that comes up at a later time, if that is necessary.

Mayor Benton said that when that was looked into, it was at the time when the City was in a financial bind back in 1993 and we were looking at all the avenues and here we are again. He said he would like for it to be drawn to a close as quick as possible so they do not start looking to this. The longer it is out there the worse the situation gets.

Mr. Summerhays asked if anybody supports it beside the City's Financial Director.

Mayor Benton said that the City Commission has asked the attorney to look into it, but he thinks that they all agreed from the joint meeting that it should be left alone. He said he believes the City Commission is going to look for something in writing whether it is from the auditor or this information. Mayor Benton said that people from Mr. Koblegard's office and Mr. Hartley were in the City Clerk's office today and they spent about 2 ½ hours reviewing the paper work. Hopefully that would resolve it.

Mr. Drummond said that from a practical standpoint, given the fact that it is clearly a pass-through on this side, any change in that policy would ultimately be something that would be passed onto the rate payers because we in no way generate any revenues into the utilities as a result of PCA.

Mr. Koblegard said it would be an additional 6% onto the costs of fuel.

Mayor Benton said that was made loud and clear by himself, Mr. Thiess, and Mr. Koblegard to the City Commission at the workshop when this was discussed. He said that somehow it is going to be passed on to the people that are footing the bill whether it is the rate payer or the tax payer, it is all the same. Mayor Benton said that he wants to get it off the Commission's plate and he would have expected this to come from the attorney more than the finance director. He said he would like to shut it down as soon as possible.

Mr. Thiess asked if Mr. Hartley's statement on the record today helped close that with the City.

Mayor Benton said that he is comfortable, he just does not know whether that will be the case with Finance Director. He said he will find out because Ms. Satterlee will explain it to the City Manager tomorrow, but we will see where it goes.

Ms. Satterlee said that she will be happy to convey that to the City Manager tomorrow. She said the Finance Director was here earlier, but she left.

There being no further business, the meeting was adjourned.

ATTEST:

SECRETARY

CHAIRMAN