

MINUTES OF A REGULAR MEETING OF THE FORT PIERCE UTILITIES AUTHORITY, TUESDAY, APRIL 6, 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 David Recor, Ex-Officio Member/City Manager.

Others present: William G. Thiess, Director of Utilities; Rupert N. Koblegard, III, FPUA Attorney; Nina Hurtubise, Director of Finance; Thomas W. Richards, Director Electric and Gas Systems; Levette Dixon, Communications Manager; and Nancy Dallaire, Risk Manager.

The meeting was called to order by Chairman Summerhays.

The Invocation was given by Robert Coleman, Goodwill Presbyterian Church

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 16, 2010.
2. RFP No. 5981, Commercial Energy Audits – Request authorization to approve the award of contracts to the following three contractors: Fox Energy Specialists, Houston, Texas (office in Boca Raton); Steel Design Associations, Fort Pierce; and M.W. Patrick Jr., Fort Pierce. Funding will come from outside agencies concerned with energy conservation or customers requesting services.
3. Bid No. 5990 (Piggyback City of Venice Bid No. 2895), Antiscalant (A-102 Plus) - Request authorization to piggyback City of Venice Bid No. 2895, for Antiscalant (A-102 Plus), with American Water Chemicals, Inc., Tampa, Florida, in the amount of \$0.64 per lb, for a total not to exceed \$29,440.00, annually.
4. Approval of budget transfer of \$90,000 from 2009 funds from the Midway Road - Turnpike to 25th Street project to the North 25th Street – Orange Avenue to Avenue Q project.
5. Approval of budget transfer in the amount of \$150,000 from account 501 to account 508 to facilitate the replacement and upgrade of poles acquired from AT&T.

A letter was received from Tammy Ware complimenting Eddie Keane and Richard Spears from the Electric T&D Department for their professional, courteous, and prompt service in a recent service call to her home.

Mr. Summerhays said that it is always good to hear that our employees are being polite.

Mr. Thiess presented the agenda item to for the Board to approve staff's position that the Charter language excludes the PCA and PGA from gross income and send a letter to the City Commission stating the FPUA position and the rate impact of pursuing the inclusion. He said that we have about beat this to death by talking about it for quite some time now. Mr. Thiess said that Attorney Koblegard researched the records and found some of the letters that were written at the time that the language had been crafted and Mr. Koblegard's letter is attached to this agenda item. It is clear from the quotes pulled out from those letters what the intention was of the people that were drafting the language that the PCA and PGA was not be included. Mr. Thiess said that we had our independent auditor, Jim Hartley, state on the record at the last meeting that it is not to be included in the distribution calculation. He said that he would like to point out, on the record for our customers, and to get it out there so that everyone knows what is going on, the rate is composed of two components. The first is the base rate of \$46.32 and that is what we use to run the utility. That is the only money that we use here to run the business within the City of Fort Pierce and St. Lucie County. Also in the rate is about \$49.55, which is the power costs component of the base rate. That was in there from day one when the Charter was created and those two components are the rates that are in the rate resolutions and tariff sheets. Those are referenceable numbers as the rate and the same rate that the Charter refers to. Mr. Thiess said that it is interesting to note that when the 6% gross revenue transfer number was developed, it was developed with probably working towards a number based on the rate and the wholesale power component of the rate, but they are using both of those components when they came up with the 6% number. He said that we have been paying the 6% on the \$49.52 of the total pass through power costs that is in the base rate. This is a total pass through and we do not put a nickel in our pocket, but we are still paying 6% towards the distribution on that. It is the same on the gas where we have \$0.33 per 100 cubic foot assessment in the fuel costs that is included in the fuel bill and the 6% distribution is paid on that as well and is about \$54,235 a year. We are paying on the \$49.52 for the electric wholesale costs in the base rate and it is about \$1,597,083 a year on the pass through costs. Mr. Thiess said that if we assume that we are going to change the Charter or interpret the language to mean that we also include the power cost adjustment (PCA) that is another \$48 now on the 1,000 kilowatt-hours (kWh), which would certainly be some significant revenue for the City. We would be talking about \$1.6 million in revenue for the City by including that where the PCA is today and that could change as that comes down or goes up. Based on the FY 08-09 records, it would be \$1.6 million in additional revenue, but the cost of that would be \$2.91 per 1,000 kWh for each electric customer. Similarly on the gas side, if we include the purchased gas adjustment (PGA) in the calculations, which is linked together with the PCA in the Charter, what you do with one, you do with the other, which is another \$0.49 per 13 cubic feet (CCF), which is the average use for our residential customers. That would be another \$62,282, which would go to the City in the distribution. Mr. Thiess said that it would create a significant amount of additional cash flow for the City, but also it would be at a big cost to our customers. He said what staff is asking the Board to do is give some consensus that we are all on the same page as far as what the Charter is

stating and to draft a letter to the City stating these facts and asking that the City Commission not pursue this any further. Mr. Thiess said that he worked with the Chairman on drafting a letter and it is ready to sign upon Board approval.

Mayor Benton said as a follow up to this, he sat down with Mr. Thiess and requested that he compile this letter with the facts so that the City Commission would see the numbers. He said the City Commission had a lengthy discussion last night and some of these numbers were brought up, but his discussions with Mr. Koblegard, Mr. Thiess, the City Manager, and the City Attorney they had several meetings trying to solve several issues that are dividing the two Boards. Mayor Benton said that he spoke with Buck Bryan the other day asking him his opinion. He was looking for a mediator possibly Mr. Bryan, but Mr. Bryan said he had a close relationship with both organizations and would not feel comfortable and made some suggestions. Mayor Benton said that what he is going to try and do, which the City Commission agreed and he hopes this Board agrees, is that Mr. Koblegard and Mr. Schwerer sit down and come up with some possible mediators that can be brought in to resolve the four or five issues that have become a difference between the two Boards. He said that since he sits on the two Boards, we have to resolve these issues. They are going to look for somebody that both attorneys can agree on and hopefully this can be resolved in a different fashion than we have attempted in the last few months. Mayor Benton said that with both attorneys sitting down at the table, they both present a pretty good argument.

Mr. Thiess said that where this agenda item is coming from is that he and Mayor had some discussions on this and he wrote this agenda item at the Mayor's request. They were thinking that maybe the City Commission and this Board could work out this one without mediation because the City's position is fairly weak and FPUA's is very strong. The end result is that they would be putting it on the customers. It is not going to hurt our business because the rate revenue is the only place that we get our funds. We are hoping if this letter goes to the City Commission, we can drop this issue before we get to mediation.

Mayor Benton said that he would agree. He said there was some discussion with one Commissioner last night about changing the language in the Charter so it is more legible. There are three paragraphs where one leads you to believe one thing and when you read the second and third paragraph, there is some gray area. If the language is changed we would know what it meant. Mayor Benton said that this discussion came up in 1994 when the City was in financial dire straits when they doubled the millage rate. He said now that times are tough it comes up again. Hopefully we can we can resolve this so that it does not come up in the future.

Mr. Thiess said that it might be easier if this Board and the City Commission agree on the way the language is written and the way it was intended, it might be easier to adopt that in the form of a resolution instead of trying to change the Charter. Changing the Charter language is much more difficult than doing it in some other fashion.

Mayor Benton said that is why the mediator would resolve these four or five issues that are between these two Boards.

Mr. Koblegard said that he agrees with the Mayor. He said that a retired circuit judge would be fine and there are a number of those that do that. A mediator or arbitrator, usually mediation is trying to bring people to the middle of something. Mr. Koblegard said that he thinks a non-binding arbitration where a judge would review the facts and make a ruling that is not necessary binding, but would be persuasive. He said that on the transfer, he understands the 6% is also something that needs to go to some type of arbitration and that would be a good thing from the FPUA standpoint. It should not be binding. The decision should not bind FPUA.

Mr. Perri said that Mr. Koblegard answered his question. He was wondering if it was going to be binding arbitration and he is not in favor of binding arbitration.

Mr. Summerhays said that we need a motion to adopt this letter that everybody has in front of them. He said that he would be delighted to sign it, if it passes this Board.

A motion was made by Mayor Benton, seconded by Mr. Perri, and unanimously carried to approve staff's position that the Charter language excludes the PCA and PGA from gross income and send a letter to the City Commission stating the FPUA position and the rate impact of pursuing the inclusion.

Mrs. Nina Hurtubise, Finance Director, presented the residential rate comparisons for the month of February 2010 compiled by both the Florida Municipal Electric Association and staff. She said on the 1,000 kWh comparison, FPUA has come down a notch to 5th, which is down one from last month, partially as a result of the \$2 reduction in the PCA that was voted in the month of February down to \$48. Between January and February, nine utilities have increased their bills and nine utilities decreased their bills. The significant ones are Williston with an increase of \$30.20 that followed a decrease of \$20.80 in January. Green Cove Springs increased \$15.96 following a decrease of \$9.27 last month. Starke had an increase of \$13.67 following a decrease of \$15.73. Mrs. Hurtubise said these are some pretty wild swings in the rates. She said there was one significant decrease by Bushnell by \$12.50 and they did not have a decrease or an increase the month before. On the 2,500 kWh comparisons, it looks even better than the 1,000 kWh comparisons, with FPUA being sixth. We were third last month, so we have dropped three positions. Relatively speaking, we said our rates are coming down and they did come down. On our local utilities, compiled by staff, the only change from January is the \$2 decrease in our PCA. Port St. Lucie, SLC Utilities, and Vero Beach have the same figures they had in January. This is for information only and no action is required by the Board.

Mr. Perri said that he understands that we may be looking at a decrease for next month possibly.

Mrs. Hurtubise said that is very possible. She said we will be bringing the regular monthly power cost adjustment information item next month. We do not have the information from FMPA yet so it is a little soon to tell. It has been looking very good the

last couple of months. Whatever FMPA has done to change their planning or how they do their predictions, they are doing it better than they have done before. We are getting a little bit more comfortable with their predictions. Mrs. Hurtubise said that we only have about three month's history and by the end of this week, we should have our fourth month. She said based on that information, we are projecting it out through the end of December to take a look at what the PCA is going to be at least through the end of December and we will recommend any changes in the PCA. The last we spoke, we had anticipated that there would have to be an increase in October so that is why we want to project out beyond the next six months. We are already half way through the fiscal year. We need to look out at least a year and give the Board all the facts we can come up with based on the projections that we have.

Mr. Drummond said that Mrs. Hurtubise indicated that she would be getting that information this Friday, so is it next month or the next meeting that it will come before the Board?

Mrs. Hurtubise said that it is the next meeting. The conference call is Thursday afternoon, but then we have to have time to get the information to the consultant to do the projections. She said that last month we did not have a lot of time to get all that in, but at least we will have a couple of days to get the agenda item done.

Mr. Thiess said that the first reading of the Lien Ordinance passed the City Commission last night. The second reading is going on the Commission agenda for May 17th.

Mr. Thiess said that PCA survey results are summarized and were handed out to the Board before the meeting. He said that is the sum of all the results as of about one day ago. We still have some information dribbling in, but it will not change the statistics that much. We had a fairly overwhelming majority on the survey that was sent out say that they preferred the PCA be maintained as even as possible throughout the year. That was about 59% of what was turned in. Mr. Thiess said we entered in all the comments that were written on their forms and we are still accumulating those. He said if we get any more comments significantly different than what you are seeing, we will send you an update. This survey was at Mayor Benton's request about two months ago. We will have the second survey on the preference for Board meeting time, whether we go to some evening meetings, that will go out in this month's billing cycle. We expect to bring those back to you in about thirty days so we can gather the information.

Mr. Thiess said that we are getting close on the County issuing the notice to proceed on the Avenue Q project. He said that all the obstacles of the project have been overcome, we have the required number of participants, and we meet the low middle income requirements of the CDBG Grant Program. Where we are right now, the agreement and all the documents have been sent to the contractor for execution. They have requested the shop drawings, which will be reviewed in our engineering department, and it is anticipated that the notice to proceed will probably issued in about thirty days or less.

Mr. Thiess said he has had some inquiries about the update photos for the Board and that will be scheduled after tax season, probably sometime in May. We will give the Board notice to set up the photos before our Board meeting.

Mr. Koblegard said that back in the fall he brought before the Board a notice that was received that the Evan's property was going to try declare a water district up in the northwest section of the county and the southwest section, basically to get in the water business. He said, with the Board's permission, we filed an objection to both permit applications. We have since met with the county a couple of times to get their feel for it because they filed an objection also. In fact, we just adopted their objection. Mr. Koblegard said that up in the northwest section, the property overlaps in Okeechobee County and into Indian River County. He said it is way out there. In the southwest section, the property overlaps into Martin County, Okeechobee County, Port St. Lucie and St. Lucie. Mr. Koblegard said that we really do not have a dog in the fight now that we see more about it. He said that the County is going to go ahead and continue with their objections. They basically said that it would be nice if we stayed in, but we do not have to be. Our only right to even be in the hearing process is because of our Bulk Water Agreement with the County. It is hard to anticipate that it could cover areas that far to the west in any reasonable time frame as far as the expense for FPUA's concern. Mr. Koblegard said that the matter was going quietly for a while and has started to heat up now. The lawyers are preparing the case and it would be expensive for us to stay in. He said that the County is trying to stay at a lower level to keep their expenses down. He does not see a legitimate basis for us to stay in at this point. It does not hurt anything for us to step down. Mr. Koblegard said that Mr. Thiess agrees with him that there is no sense in incurring the expense. He said it is not what he would do, but reacting to what they would do. It would take a lot of FPUA staff time and his time to do that. We would not be very persuasive because of our limited impact upon the situation and he would suggest that the Board consider passing a motion now that we withdraw our objection and let the matter go on between the other parties that have more interest than we would have.

A motion was made by Mr. Drummond, seconded by Mrs. Cully, and unanimously carried to withdraw FPUA's objection to the permit applications.

Mayor Benton said that he was in Tallahassee a couple of weeks ago and said his discussions about the Public Service Commission (PSC) coming in and overseeing the public utilities, the atmosphere appeared to him that there was a lot of support. He said the Sunshine Law does not affect those folks in Tallahassee so a lot of times when they get in session, somebody has presented them maybe together and they seem pretty well informed and they were in support of it. Mayor Benton said that it would not surprise him if it passes.

Mr. Summerhays said that was the thing that was going to drag municipal utilities in under the PSC.

Mayor Benton said that he believes Fort Meade got their attention and they also understood the hedge funds.

Mr. Summerhays asked if this was the utilities or the organizations like FMPA that they are attempting to drag in.

Mayor Benton said he thinks it is the organizations like FMPA. He said in Indian River County they are looking at a referendum or some language that would have them buy power from FPL. His understanding is that they got out of their contract with FMPA and are buying their power from Orlando. When there are enough signatures to put something on the ballot, it will be the test case to see how that works. It has the attention of a lot of people in Tallahassee on what is going on in Indian River County.

Mr. Thiess said that we did get a report on that at the last FMPA Business Model Working Group meeting. The counsel up there said it easily passed in the subcommittee in a 5 to 2 vote. They believe it will be more difficult to pass the full committee and it is not a slam dunk as it appeared at the subcommittee level.

Mr. Perri asked if the City was going to split the \$90,000 on the FDOT delay claim settlement.

Mayor Benton said that is one of the five issues that we are going to ask the mediator to take a look at because there is an issue on a piece of property that FPUA sold that both parties are claiming ownership to.

Mr. Thiess said that, for the record, as we move forward to that process, we need to separate each and every one of those issues and not tie one to the other. The TECO easement issue needs to be considered totally separate from the FDOT settlement issue. They need to be decided on their own merits and not trade one for the other.

Mayor Benton said that is why they are going to have a mediator to resolve this.

Mr. Perri said that last night at the City Commission meeting in regard to the liens on these properties, is there a way we can get a count on how many of these unpaid bills are from foreclosed properties? He said he thinks it would go a long way in getting the City to lighten up on that.

Mr. Thiess said that we have started looking into that and our Customer Service department has started doing some queries and talking to the ITS department. He said from what he understands it is not as easy as doing a simple query on our data. We will have to go into it account by account, but we can probably get into it without going into each and every account. We will try to come up with some kind of definition of those numbers.

Mr. Perri said that he thinks that would go a long way. As Mr. Perona said last night, we have to run it like a business and collect our bad debts and we should not be hampered by not being able to place liens on properties of that nature.

There being no further business, the meeting was adjourned.

ATTEST:

SECRETARY

CHAIRMAN