MINUTES OF A REGULAR MEETING OF THE FORT PIERCE UTILITIES AUTHORITY, TUESDAY, AUGUST 16, 2011, 4:00 P.M., CITY COMMISSION CHAMBERS.

Members Present: Chairman, Darrell Drummond; Vice Chairman, Pamela K. Cully; Secretary, Michael A. Perri, Jr.; Deputy Secretary, Robert W. Summerhays, Jr.; and Anne Satterlee, Ex-Officio Member/Acting City Manager.

Others present: William G. Thiess, Director of Utilities; Rupert N. Koblegard, III, FPUA Attorney; Nina Hurtubise, Director of Finance; and Eve Walker, Director of Shared Services.

The meeting was called to order by Chairman Drummond.

Invocation by Father John Liebler of St. Andrews Episcopal Academy.

The *Pledge of Allegiance* was recited.

The roll was called and a quorum declared.

Mr. Drummond requested that we add excusing Mayor Benton from this meeting to the Consent Agenda and asked if the Staff or Board Members have any item they would like to remove from the Consent Agenda. *(No items were removed.)*

<u>A motion was made by Mr. Summerhays, seconded by Mrs. Cully, and unanimously carried to approve the items listed on the Consent Agenda:</u>

1. Approval of the Minutes of the Regular Meeting of August 2, 2011.

2. Bid No. 6050 – Electric Meters – Approval to accept the lowest and best responsive responsible bid from HD Supply Utilities, Orlando, FL, for electric meters in the amount of $49.75 each, for a total not to exceed $38,208 annually.

3. Bid No. 6059 – Water Meters – Approval to accept the lowest and best evaluated responsive responsible bid from Sunstate Meter & Supply, Newberry, FL, for water meters in the amount of $38.70 each, for a total not to exceed $27,864 annually.

4. Excuse Mayor Robert J. Benton III from this meeting.

Nina Hurtubise, Director of Finance, presented the Quarterly Financial Operating Results for June 2011. She said we have a year-to-date increase in Net Assets of $549,000 which is the result of having paid the City Distribution so our increase in Net Assets is a little bit anemic this time of year. As well, that is a $1.7 million decrease from 2010 and the reason it is a decrease is wholly the result of the $2.3 million decrease in Capital Contributions. That is about half of what the contributions were this time last year. Clearly, we have had very little development going on, which is what our Capital Contributions relate to. We still have our good cash position and even though we are giving back, it is a very gradual process. Our Unit Sales are pretty much the same as what we discussed a couple of weeks ago for the eight months ending May, but this is for nine months ending June. The slide is incorrect. Electric is down about 3%, but up 2% from 2009; water is up 3.4% and also up 5% from 2009; and wastewater is down 2% and down 4.6% from 2009. Ms. Hurtubise said the reason why water is up and wastewater is down, seems like that should not be, but it is because wastewater is generally charged base on water sales. We have had an increase in water sales where there is no wastewater on the other side, it does not return into our wastewater system. We have had an increase in irrigation because of the drought, again water that is being sold that is not going back into our wastewater system. Any residence that consumes more than 10,000 gallons, they do not get billed for that. Natural gas is down 1%, but it is up 2% from 2009. For Operating Revenues the PCA and PGA have been pulled out because it throws this analysis off. Electric is down 3.6% and that is the great majority of our revenue. Our electric revenues are down even in spite of the decrease in the PCA. Water is up 2%, wastewater is up 2%, and natural gas is down 1.6%. Ms. Hurtubise said previously that wastewater's Units Billed was dropping and the wastewater Operating Revenues are going up, which is an opposite relationship. That is a result of our Other Operating Revenues being up 162% and is generally guaranteed revenue charges, developments that did not go, and charges to the developer because they have not hooked up after they pay their capital improvement charges. Operating Revenue is down 9% company-wide, but that is a result of the PCA and the PGA. Operating Income and Debt Service for the rolling 12 months operating income is down 4%, but the Debt Service Coverage is still a very healthy 2.71. The biggest changes year-to-date this year versus the year-to date last year is our Operating Income is actually up and the reason it was down is because of what was spoken about earlier because of the Contributed Capital. Based on our operations, our Operating Income is up about $650,000. Ms. Hurtubise said maintenance contracts are a new one on the list and she wanted to give credit to some of the departments that have contributed to the decrease in maintenance contracts. She said the Water Distribution Department, Water Reclamation Facility, and Wastewater Collection are working really hard to cut back on costs and are successfully doing so. The downside that she does not like to talk about, but will mention briefly is our employee health insurance claims have increased in 2011 and that contributed to a large increase in employee's insurance. It is not a result of increased premiums or increase in benefits; it is simply a result of claims. FPUA is self insured and we have had quite a few very good years and received the benefits of that, but it appears it has come to an end and we hope to get back on track shortly. The only other large item that is actually up from last year is interest on our bonds, that is up about $200,000. This is an information only item, no action required by the Board.

Ms. Hurtubise presented the Rate Comparison for the month of June 2011. She said this is the June comparison of the municipal utilities prepared by the Florida Municipal Electric Association. The 1,000 kWh graph shows that FPUA is in the same relative position it was last month in the 16th position. It is important to note that at $125.84, FPUA is below the ARP average, which is $126.49. Since May, five utilities have increased their bills and seven have decreased their bills, but not a single one of them was notable. Ms. Hurtubise said she usually talks about everything that is either $10 plus or $10 minus and there was not a single one. Things seem to be leveling out for everyone. On the 2,500 kWh comparison, FPUA is now 15th from the right and that is up two positions from last month, but we are still very much in the middle of pack and not at the top as we have been in months pasts. Our June comparison of the residential water and wastewater rates is compiled by Staff for Fort Pierce, Port St. Lucie, St. Lucie County Utilities, and Vero Beach. There really was not much change from May's comparison, but there was a small decrease in FPL's fuel adjustment and there was a small increase in FPL's base or non-fuel rate. It netted a $0.18 or $0.19 increase in the FPL bill this particular month. The numbers displayed show that FPUA is about ½ of 1% higher than St. Lucie County Utilities and as we were last month about 7% higher than Port St. Lucie, and 16% higher than Vero Beach. Ms. Hurtubise said she continues to expect to see and electric, water, and wastewater increase in Vero Beach, but they are just going to make her wait. This is an information only item and no action is required of the Board.

Ms. Hurtubise presented the status report on Electric Power Cost Adjustment for July 2011. She is real happy to present this item because it keeps getting better and this was a wonderful surprise. For the month of July, the cost of power purchased from FMPA was billed to FPUA at the rate of $79.33 for 1,000 kWh. That was a surprise. It was a decrease of $6.67 as compared to June and that is not just All Requirements Power (ARP), it is also nuclear power which is generally less expensive than the ARP. Where FPUA stands and Mr. Perri commented on it last month and indeed for the month of July, we under recovered only $57,000. We expected to under recover much more, so our over recovery is approximately $2 million as of July 31. Ms. Hurtubise said the 50% confidence levels show generally the projections that FMPA is making are higher than what actually comes about and that is a good thing. She said they are projecting higher than what it is actually turning out to be so that our projections are very conservative. The table displayed shows where we have been with our over and under recovery and it is pretty much all over the board. What is shown and what we are anticipating is that our over collection is going to go back up, but come the end of next year it is going to dip down quite low. The good news where last month we were talking about the need for a substantially higher increase, as of now it looks like if we were to do a onetime increase in the PCA on October 1, we would need to increase it $4 to $38 on October 1st. If we kept it level, based on the current projections, we would end up being under recovered at the end of the year and we will keep watching that every month. Ms. Hurtubise said the other alternative, which is a different alternative than what she has presented in the last two presentations, is if we were to raise it $2.25 in October and in January, that would still only bring up the PCA to $38.50 for the remainder of the year. That is only $4.50 higher than what it is now. Based on the projections and as they keep coming down as they get closer to us, we can be optimistic and it may even get better. There are a number of variables and the things that we were anticipating that were going to cost FMPA more at this time of the year, those things have indeed kicked in. Those higher costs are out there, but because of the stable cost of natural gas, that is the large part and a very helpful and main reason why the costs have not been higher. There is a presentation after this one that is going to temper this all a little bit. In the mean time it is looking very good for 2012. We have asked FMPA to start presenting to us 2013 and trying to go out that next year since we are running out of months in 2011. The further we go out, the less reliable the projections are, but we want to get an idea from their perspective as to what they expect the power cost to go a year from now. This is an information only item and staff is not recommending any kind of change in the PCA at this time. We will continue to monitor the costs each month.

Mrs. Cully said we have no idea of what is going to happen in a year, but if we use the alternative thought that Ms. Hurtubise had on the $2.25 increase in October and January going out to the September 2012, would the under recovery be more or about the same.

Ms. Hurtubise said it is about the same and the way the consultant works it is to try and get it close to zero at the end of the fiscal year. That is generally the goal so it is showing a little bit of an under collection and we just want to get it close to zero. It is very hard to get it exact. The benefit to the $2.25 increases and hence the reason those are spaced out is because there may be changes in the facts and circumstances and we can change our plans. It is wonderful to not see the increase on October 1 that might otherwise be necessary. If the price of natural gas goes through the roof, this is all for naught.

Mr. Perri said he could not see the figures on the left and requested Ms. Hurtubise shrink it down.

Mr. Drummond said he is with Mr. Perri and looking forward to seeing it continue to shrink.

Mr. Thiess said Mr. Richards will be presenting some of the highlights on the recent Moody's Investors Service downgrading in a couple of FMPA projects.

Tom Richards, Director of Electric and Gas Systems, presented the Moody's Investor Service reports regarding FMPA bond downgrades by Moody's Investors Service. He said he brings this report, not because he is an expert with this, but because he wanted to bring some facts for the Board to think about and discuss. He does not know if he can reflect accurately what exactly happened here in terms of why it happened. Mr. Richards said Moody Investor Services, which is one of the three bond rating agencies, has apparently changed their criteria recently going through some of their municipal bonds, which are free of federal taxes and in a class of their own. Those include bonds such as FMPA and FPUA. This is not talking about FPUA's rating being downgraded, but he wanted to be sure everyone knew we are a municipal bond issuer. What has happened is Moody's has downgraded the All Requirements Project (ARP) bonds from A1 to A2. The Board had these reports emailed to them so they can see the details and they speak for themselves. There were four projects they reported on and two of them have remained unchanged; that was the Stanton and the Stanton II projects. One other project, the Tri-City project was downgraded from A1 to A2 and that is a small project with only three cities to purchase a little bit of Stanton. That project is pretty stable and frankly has no financing needs and the downgrading will probably have no effect on it. It does have a big effect on the

ARP. Mr. Richards said we are not talking about small potatoes here, the ARP revenue bonds that are covered by this rating come out to $1.1 billion, so this is a big deal. FMPA does carry a rating from Fitch Rating, one of the three firms and it is an A+ and that was affirmed June 17, 2011 and they are not rated by Standard and Poor's. Mr. Richards said he did not want to misquote what they say, he is going to read the summary of Moody's discussion about the ARP bonds and why they downgraded. "The rating downgrade reflects increased concerns about the weighted average credit quality of the project participants, which is currently A2, when considered together with a relatively weak competitive position for the project, less than optimal liquidity, and the generally weaker state of the Florida economy compared to historical periods." Mr. Richards said he believes what they are saying in general, which could be argued, is the weighted average credit quality of the 14 members of the ARP is not good enough. The published report says the member's credit ratings, the 14 members' cities range from Aa3 to what they estimate to be Baa1. We are not sure who they estimated at that and are trying to find out a little bit more about the various members' bond ratings. Mr. Richards does not have that information today. He can talk about what Fort Pierce's is, but does not know about the rest. They talk about the weak competitive position of the Project and we know the ARP rates are high and we are working on getting them lower. The committee was a bit surprised and has had the discussion at the FMPA Executive Committee and several times have put policy in place where they maintain 60 days cash on hand. That is why the rates go up and down so much because as liquidity cash requirements change during the year, season to season, we give the cash back when they need it and when they do not need it, we ask for it back again. That is why the rates change because when they maintain that position apparently that makes Moody's uncomfortable. Moody's is one of three agencies to rate these and people do listen to Moody's. We cannot do anything about the weaker state of the Florida economy compared to other states. You might ask what FPUA's rating is in comparison. We have an A+ rating by Fitch that was affirmed in July and we also have an older rating of A- rating by Standards and Poor's (S & P) issued when we did our bond issue in 2009. That is what we call an "underlying" rating and that bond issue in 2009 was insured by Assured Guarranty Corporation and S & P rates those bonds at AA+ because they are insured. With the three rating agencies, S & P and Fitch use the same standards and each agency will say their ratings are not exactly the same, but for all practical purposes investors are looking at these and say they are the equivalent ratings. Moody's uses the large A, small a and then 1, 2, or 3 instead of the +'s and -'s. FMPA's ARP was downgraded from A1, which is kind of equivalent to an A+, to an A2, which is sort of a straight A. These are certainly investment grade bonds and there is a cost involved every time you go down the ladder a little bit. Mr. Richards said Barclays Capital was in FMPA's office on the day that Moody's was calling them to get ready to downgrade them. This downgrade came as a surprise to Barclays. They consider Public Power Utilities and their bonds to have strong ratings, good credit profiles, and almost all have investment grade ratings, which means BBB or above. They do mention that Moody's has recently proposed adjustment to three financial metrics and Mr. Richards is not sure which three those are. He believes the average credit rating is one and possibly the cash or the liquidity position is the other and he is not sure what the other one is. They have their own preparatory metrics they use and do not share with anybody and we have to guess what their logic is. They do talk about several actions being taken by other public power agencies which are listed so the Board can see that FMPA was not singled out for action. Some cities and power systems had favorable actions, which means they had upgrades. This is from the August 9 Barclays summary, MJMEUC is the Missouri Joint Municipal Electric Utility Commission and is a state-wide Joint Action Agency that was formed specifically to take power in a particular unit. The PPGA is Public Power Generation Agency of Nebraska. SMUD is Sacramento Municipal Utility District and is a big one. Mr. Richards said there were some adverse actions taken, which is code word for downgrades. Kansas City Board of Public Utility was on both lists and may have had some bond issues upgraded and some downgraded. Downgrades include Orlando Utilities Commission, Municipal Electric Authority of Georgia, Santee Cooper is a big South Carolina agency, Tennessee Valley Authority is a quasi federal agency, and Turlock Irrigation District is in California. FMPA has calculated the immediate costs of this downgrade that will flow through their power costs that come to us, the bills that Ms. Hurtubise shows the Board. They do have lines of credit with various agencies and banks and those all have facility fees or carrying costs just to own that line of credit. Those will go up by $500,000 a year based on this downgrade and that effects the rates we see by $0.085 per MWh. Also, with these lines of credit and if the credit is used there is an interest base that is assessed and that will be 2/10% higher based on the downgrade. One of those is being used to post collateral for hedges right now and that will increase the costs by $270,000. The new costs right away out the gate are about $750,000 and that will add about $0.13 to the All Requirements rate. The other interest cost would be if those credit lines are being used. They are not being used right now and not anticipated to be used. Mr. Richards said Moody's report says the ARP has strong contracts. It is interesting that the ARP participants have a weighted average rating of approximately A2, but the top five are rated A1. The top five facilities, they are talking about the size of the participants and not necessarily the best ones: Ocala; Kissimmee Utility Authority; Beaches Energy, which is Jacksonville Beach; Keys Energy, which is Key West; and Fort Pierce are the 5th highest ones. The average for those five is A1 and they are responsible for approximately 78% of the Project participation. Even though the top five are average A1 and they are responsible for better than ¾ of the Project, Moody's has taken the position that the average should be A2 and that is what they have said. They count that as a positive because they are still in the A category. More strength is that FMPA does have the autonomy to raise rates if it needs to or lower rates to fit the costs. They like the risk management program even though it is relatively limited and they do claim they have a diverse fuel mix and multiple units that give a lot of diversity. Challenges according to Moody's are variability in fuel which includes gas and coal and can do two things. It can strain the liquidity issue, which is if they have to post collateral and is less of an issue than it used to be with the current hedging program. Certainly it adds to competitive pricing pressures if the rates have to go up. For one reason or another Moody's thinks having 24% of your debt in variable rate mode even though it has been synthetically fixed with swaps is not good enough. Mr. Richards said he differs with that himself, but that is their opinion. They do mention that members looking at CROD caused some difficulties looking at the future and that would point to Fort Pierce among others. More challenges from Moody's are economic recovery in Florida and we cannot do much about that. In fact we cannot do much about the uncertainty about timing and costs of any regulations that may come along related to carbon emissions. We may be better off not knowing. Many FMPA members have a large sizeable transfer from electric funded general funds and that can often contribute to their members having high rates. He knew the

Board would ask this question on who is transferring what and this is the answer. This study was just done so it was real timely to take a look at it. The five largest cities Beaches 4.1%, Fort Pierce 4.0%, Keys Energy 0.4% and they have a requirement to transfer $200,000 to the city no matter what every year. KUA is 4.9% and Ocala is 4.7% with the average is about 4.7%. Ours shows up at 4% because we do not transfer to the City based on the PCA, which is a good part of the bill right now. Moody's said the rating can be improved by an improved credit quality of project participants and we would all strive for that. It could be raised by improvement of overall liquidity and we would be glad to take direction or instructions from the Board regarding that because the only way to raise liquidity at FMPA is for them to charge it to their members to collect it. That would mean their rates would go up for a short period of time to keep a pot of money there to sustained moderation of cost of power. The last one we cannot do much about except keep talking to your congressmen or senators about carbon regulations that may come down the road. Moody's also said the ratings could be lowered again if there was a degradation in the quality of the participants credit rating or if the liquidity shows up to be weaker or more stressed than they see now, and cost pressures to make management reluctant to exercise their rate raising powers for political reasons. Those are all comments by Moody's. That is the conclusion of the presentation and Mr. Richards said he would be glad to hear any input or questions the Board may have which could be taken back to others that know more than him that could answer them.

Mr. Perri asked if the rate increase Mr. Richards was talking about $0.08 and $0.13, does the $0.13 include the first rate increase he talked about.

Mr. Richards said the $0.13 is the total and would flow through the rates as a cost. He said the $0.13 is per megawatt hour.

Ms. Cully asked if there has been any response from FMPA regarding this report to the City.

Mr. Richards said they are still analyzing it. Moody's did give them a copy of the report to look at a day ahead of time and swore them to secrecy. There was a rate phone call organized for the All Requirements Project that day and they adjourned the meeting and said they were sworn to secrecy. The meeting was recessed until 4:00 that afternoon and it still was not made public until the next day. FMPA had a chance to talk about it and had a glaring error corrected. Basically, Moody's does not entertain debate on their ratings. If FPUA would like a more thorough analysis done, it can be done to improve our selves as an organization.

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Ms. Hurtubise presented for approval Resolution 2011-09 and Banking Services Agreements with Seacoast National Bank. She said the resolution will change our banking services to go with Seacoast National Bank by piggybacking the City's bid that was done back in November. It was awarded in January. The City did an evaluation of four local banks, which included TD Bank, PNC Bank, Wells Fargo, and Seacoast. Seacoast came out head and shoulders above the rest. Ms. Hurtubise said since Riverside had been taken over by TD Bank, staff has been attempting to negotiate a new contract with TD Bank, to no avail. She was originally told that

TD Bank would honor the Riverside Contract, but it never worked out that way. We have been working on it and just did not get anywhere with it and it is time to move on. The City is very satisfied with the local service of Seacoast and they are home based in Stuart. We look forward to a very good relationship with Seacoast. It was amazing on how to try and put the contracts together with one bank versus the other. It was so very different and we were able to make changes to the Seacoast contract and the big bank of TD really was not able to make any accommodations for FPUA that would incorporate the terms of the contract we had with Riverside Bank.

<u>A motion was made by Mr. Perri, seconded by Mr. Summerhays, and unanimously carried to approve Resolution 2011-09 and Banking Services Agreements with Seacoast National Bank.</u>

Mr. Thiess said we will be receiving the Power Services report on CROD. A draft was sent by email and the final report should arrive tomorrow. A pdf copy of it will be emailed to the Board as soon as we receive it. A workshop has been scheduled Friday, August 26 at 8:30 at the Energy Service Center for the Power Services personnel to present their report. We are hoping to have a capsule summary of everything we have to date. Mr. Thiess said it is his understanding there may be some minor revisions to the Harrington report as well. He said hopefully this workshop will bring the process to an end and that no more workshops will be required.

Mr. Koblegard said the week before last he receive a letter from Attorney Rob Schwerer in relation to whether or not our Charter can be amended by ordinance by majority vote by the City Commission or whether or not it would require a referendum to change the Charter on two points. One of the points is to increase the 6% of gross that we pay to the City from funds today and also the alternative they are thinking would be to redefine the Charter to include the power cost adjustment in the gross of which we would pay the 6%. Mr. Schwerer asked Mr. Koblegard to look into it and that his research appeared to show a referendum may not be required and he wanted Mr. Koblegard's thoughts. Mr. Koblegard said he spoke to Mr. Thiess about it and he has seen an email and something in the newspaper about it being in discussion with the City and FPUA and he wanted to tell the Board generally what he has come up with so far. Mr. Koblegard said he does not believe there is any Attorney General or a case out there that clearly defines whether or not a referendum would be required to change an item in our Charter such as the 6% or defining what the actual gross income is. There is no case law that he can see that really says that has to be referendum or that it can be by a simple ordinance passed by the City Commission. Chapter 166 of the Statute does specify certain requirements where a referendum is required to change certain provisions of the Charter, but that does not necessarily mean those are the only things that require referendum. Mr. Koblegard said he believes it is open-ended and this is an issue that is not specifically covered by that Statute. He went back and did some research on some history of how it came about in the first place. This was discussed with the Board before and back in 1993 the Utility Authority and the City started discussions between the two about amending the Charter to change from the percentage of our net income to a percentage of a gross amount to the transfer amount. There were issues about how the net income was determined and both sides decided it would be simpler to go with a gross figure because it was easier to arrive at and it could not be manipulated. John Brennan the City Attorney and Buck Bryan the UA Attorney were commissioned to draft the new language to put it in an ordinance to amend the Charter. At first, there were discussions about it may not require a referendum, but it appears from the file Mr. Koblegard reviewed so far is that as it went along the decision was made that it would require a referendum and it did. Also, one of the important things is that the Utility Authority Board voted to approve it along with the City Commission. It was not just something that the City Commission could decide by referendum. At that point, both Boards felt that it took approval of both entities. One of the reasons for that is if you look at the Charter, the language is clear and says "the Utility Authority is given the exclusive power to manage our own affairs. The City Commission by our Charter reserves three areas to them; they have oversight on their rates; they have oversight on their budget; they appoint members of this Board". Outside of that we are free to make our own decisions. If we look at the ordinance that was passed by referendum in 1994, it was J117 and it says in the preamble of the caption "….the Utility Authority shall have the power and authority …….. and that the UA shall at the option of the City Commission of the City of Fort Pierce transfer up to 6% of its gross revenues". If you look at the body of the actual amended Charter, it states "each year a sum equal to 6% of the gross revenues from the preceding fiscal year shall be transferred to the City unless the City Commission by majority vote agrees to accept a lesser percentage." Mr. Koblegard said that twice in that Ordinance it says the City Commission on its own can agree to take anywhere from 0% to 6%. The City Commission cannot require FPUA to pay over 6% by ordinance. He said since it was passed by a referendum the first time that is a pretty clear implication that it needs to get passed by a referendum a second time. The City Commission cannot on their own revise the FPUA Charter and increase the 6% or add the PCA onto our gross income to increase the actual amount the 6% would be paid on. Mr. Koblegard has talked briefly with retired City Attorney John Brennan and talked to the retired FPUA Attorney Buck Bryan and from an initial discussion, they are both of the opinion that yes a referendum would be required the same as before. Where do we go from here? Mr. Koblegard called Jody Finklea of Fred Bryant's office (FMPA counsel) and asked his thoughts and if there was a firm he would recommend that dealt with municipal law. He gave the name of a firm out of South Florida and Mr. Koblegard had these discussions with them. There are 55 attorneys in their firm and they are prepared to help us if we want to call upon them to try to resolve this issue. They feel strongly this is an issue that would require a referendum and by referendum our Charter can be amended whether our Board approves it or not. If the City Commission going forward does present at one of their meetings an ordinance to amend our Charter and it is approved by a majority, we are then left with a decision do we accept it or do we not. There is a provision called a Declaratory Decree that we could, if the Board decides to, require the Circuit Court here in Fort Pierce to make that final determination. In other words, we do not have to accept the City's decision if we do not want to. We can ask a court to interpret it and make the final decision for both the City and the Utility Authority. Mr. Koblegard said those are some of the options of where we can go and that is where he is in his research and what he tried to dig out from history. He does feel if this is going to come about, it will require a referendum. How the City decides, we do not know as yet.

Mr. Drummond said Mr. Koblegard indicated in 1993 when the City Commission and the Utility Board did agree to the change to the 6% that both Boards took formal action.

Mr. Koblegard said that is correct.

Mr. Drummond said in this particular instance, if indeed the City wants to go forward with a referendum, would it again require this Board to formally take action as well.

Mr. Koblegard said he does not know if the City would agree with his position on that, but from history that is what happened before. He would certainly believe that would be appropriate and would be done a second time. That is the question we do not have the answer to and we can ask a court to decide if it came to that.

Mr. Drummond said he is guessing that we are going to hold a position until the City takes some action.

Mr. Koblegard said he wants to respond to Mr. Schwerer since he did write the letter, but he did not want to do that until he completes as much research as possible and gather some of these facts. He has FPUA's file from back in 1993 and 1994, but does not have the City's and has made a request of the City to get a copy of their files so he can review the other side also to piece it together the best we can. He does not have their file yet and the Utilities' file was so thick. The City's file is probably the same, but it is important to see what is in there.

Mr. Drummond asked if Mr. Koblegard was going to require anything from this Board prior to responding to the City.

Mr. Koblegard said the only thing he would respond to Mr. Schwerer his thoughts legally to what it would be. As far as policy decisions, this Board will be called upon to make that decision. He is not sure of the time frame on this as to how fast it is moving from the City's standpoint. As far as whether it can be presented back to this Board at the next meeting or if he needs to respond sooner, he will have to wait and see how it goes. He would be happy to circulate a letter to all the Board members once it is drafted.

Mr. Perri said that Mr. Koblegard did a very good job in covering that and thanked him. He requested Mr. Koblegard to continue his research with FPUA's best interest in mind
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Mr. Koblegard said we had a customer, Arch Aluminum that filed for bankruptcy the first part of this year. They paid FPUA their last three months in the regular course of business about $3,000/month for a total of approximately $10,000 for their power. The attorneys for the bankruptcy are saying those were preference payments and that we have to give the money back and put it in the pot. Mr. Koblegard said he does not do bankruptcy law and it is a very specialized field. They have their own court in South Florida. He spoke to Mr. Thiess about finding someone that would represent FPUA and there is a firm that was recommended in Fort

Lauderdale. The attorney's name is Jason Slatkin and Mr. Koblegard sent him our file and requested him to look at it. Mr. Slatkin believes we are on very strong ground and almost to the point that this action filed against FPUA might very well require them to pay the fees because we should prevail. He wants to have an engagement letter and is asking for a $2,500 retainer and will bill against that at $250/hour. Mr. Koblegard said he thinks it is well worth retaining that firm to handle this case and he wanted to present it to the Board. He said an item can be decided by the Board and does not have to be on the agenda as long as it is a public meeting, which this is. It should have been on the agenda, but he got caught short last week and did not get it there in time. Mr. Koblegard is asking the Board to give him the approval to have the Chairman sign the Engagement Letter to represent us in this bankruptcy.

Mr. Perri asked what the total amount is.

Mr. Koblegard said it is a little over $10,000, right around $11,000. They paid us and they want us to give back and we should not have to do it. It is very clearly not a preference payment; it was payments made in the regular course of business, which is exempt from that.

Mr. Drummond asked if it is being left open-ended or going to the extent of the $2,500.

Mr. Koblegard said it will be by the hour. Mr. Slatkin has given his best guess as to what it would be and he thinks the retainer would more than cover it. Hopefully we would get it back.

Mr. Drummond asked if it were above $2,500, would it come back to this Board.

Mr. Koblegard said no, the Engagement Letter will say that we have engaged him to represent FPUA to resolve this claim. He is asking for $2,500 retainer and will bill us $250/hour from the beginning to the end.

Mr. Drummond said that clearly we have an exposure and is concerned about exceeding that. He does recognize that it might be precedent setting and is in agreement that we need to be sure that we engage someone to defend us.

Mr. Summerhays said the Director of Utilities has the authority to pay up to $25,000.

Mr. Drummond said he is just curious and not comfortable making it a blank check. He would like it to stop at some point.

Mr. Koblegard said he will ask Mr. Slatkin when he exceeds the $2,500 to let him know and he will bring that back up to the Board. That would be ten hours of work on his part and these usually are pretty cut and dry.

Mr. Perri asked if he thinks we will prevail and we would recover his fee.

Mr. Koblegard said Mr. Slatkin thinks we are in a very strong position to where it should not cost us anything. He is not sure because he does not know anything about bankruptcy. He believes the return of our fee would come ahead of some of the other creditors.

<u>Mr. Perri made a motion to direct Mr. Koblegard to create the Engagement Letter; it was seconded by Mrs. Cully and unanimously approved.</u>

Mr. Drummond said he was at the Commission Meeting last night for his presentation to the City Commission and FPUA's budget has been tabled until their first regular scheduled meeting in September. His understanding is that the 30 days has started counting last night.

Ms. Satterlee said that would be at the September 6th City Commission Meeting.

Mr. Perri said he has some concern about the King Plant site and the contaminates that are supposed to be there and whether or not we are going to be responsible if there are any over charges or not. It looks like the company that is doing it is taking their time and going to extract all that money that is allocated for that project and maybe even more money. It looks like FPUA may be on the hook for that money. Mr. Perri would like to know how we can combat that situation.

Mr. Thiess said there was a $600,000 grant once the cleanup started that was coming from federal funds through the Treasure Coast Regional Planning Council (TCRPC). We entered into an Interlocal Agreement with FPRA and the City of Fort Pierce, a three-party agreement, to get the grant funding. The City had to transfer the property to FPRA because the parties that were involved with the contamination could not be recipients of the grant funds. FPRA is the cleanup entity. The $600,000 in our estimation is more than enough to clean up the site and could probably do it twice for that in our estimation. FPUA was involved in it with John Tompeck being our lead person on the King Plant demolition and the cleanup. He was riding herd on the cleanup up until at some point we were more or less cut loose from that responsibility. Mr. Tompeck made some very good decisions and forced the issue with DEP on some of the things they were trying to get us to do, like sample Moore's Creek. His input was very valuable in the early part of the project as far as limiting our liability. At some point the FPRA took over the administration of the project and actually the contractor is working for TCRPC and is doing the work for the FPRA. FPUA at this time is sitting on the sidelines and watching everything that we see. We get communication every now and again from John Ward's office and the last memo that was with the attached email that was sent to Mr. Perri this afternoon was related to some charges that were in a different category than they were originally, but probably still covered in the $600,000. They have a long way to go to burn through $600,000. The Interlocal Agreement does say if the costs exceed $600,000, FPUA is on the hook. Unless this thing gets really crazy as far as delays or milking the contract it would not exceed the $600,000. We are trying to stay in the communication loop. We have called meetings with John Ward's office and the representative with TCRPC that is administering the contract to express our concerns about delays or what the contractor is doing. Mr. Thiess said we will continue to do that as we move forward if we see problems. At this point, we do not have any direct control over the contractor or anything happening on the site. We can interject our thoughts, but do not have any direct control.

Mr. Perri asked who has direct control.

Mr. Thiess said he believes it would be the contract administration of the TCRPC. The TCRPC writes the checks and approves the invoices and the FRPA is the agency receiving the work effort, but not really involved in the contract. Administration of the contract is TCRPC and they have assured us they have worked with this contractor before and they will get us good results. All we can do from this point forward is to watch it and be included in the communications and if we see a problem, raise our hand and jump in there or schedule a meeting. It should be enough funds to clean it up and we do not like to be in the position of being on the hook and not in control and that is where we are right now.

Mr. Perri said he does not like that position either. He sees some activity down there today, like they moved a drill rig in there and are marking out some spots to drill some holes and take some core samples. Mr. Perri said he knows from experience these things can drag out for a long time and they can milk it for the amount of money that has been allocated plus and it is the plus he is worried about.

Mr. Thiess said the 2nd Street cleanupfinally got a clean bill of health from DEP after ten years of cleanup. They can develop a life of their own.

Mr. Perri said we will have to wait and see, but it is just not a comfortable position to be in.

Mrs. Cully asked Mr. Thiess if there is any way we can look at the dollar amount as it goes up to see where they are with it.

Mr. Thiess said he is sure we can get in the communication loop for payment approvals and processing.

Mrs. Cully said if we could find out where the dollar amount is right now.

Mr. Thiess said he will make sure we are in that loop on payments and get with John Ward's office to be sure we are copied with that correspondence.

Mr. Summerhays said that since it would not be fair for him to start a war and then leave, he has decided not to make comments.

Mr. Perri said we will finish the war if Mr. Summerhays starts it.

There being no further business, the meeting was adjourned.

ATTEST:

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SECRETARY	CHAIRMAN