

MINUTES OF A SPECIAL MEETING OF THE FORT PIERCE UTILITIES AUTHORITY, TUESDAY, JANUARY 24, 2012, 4:00 P.M., CITY COMMISSION CHAMBERS.

Members Present: Chairman, Pamela K. Cully; Vice Chairman, Michael A. Perri, Jr.; Secretary, Darrell Drummond; Mayor Robert J. Benton III; and David Recor, Ex-Officio Member/ City Manager.

Excused Absence: Deputy Secretary, Daniel M. Delulio

Others present: William G. Thiess, Director of Utilities; Rupert N. Koblegard, III, FPUA Attorney; Nina B. Hurtubise, Director of Finance; William E. Baldwin, Director of Electric & Gas Systems; Nancy A. Dallaire, Risk Manager; Evelyn I. Walker, Director of Shared Services; and Levette Dixon, Communications Manager.

The meeting was called to order by Chairman Cully.

The *Pledge of Allegiance* was recited.

The roll was called and a quorum declared.

Mr. Thiess said we are approaching the conclusion of a 3-month process with regard to the rate restructuring and he introduced Mitch Owens of RBC Capital Markets as FPUA's Financial Advisor. He said Mr. Owens is going to give the Board an update on how we got to this point today and where we go from this point forward.

Mitch Owens of RBC Capital Markets said he is the financial advisor for the Fort Pierce Utilities Authority. He said we had meetings back in the fall and this Board authorized RBC to proceed to negotiate with the municipal bond insurers Ambac and Assured Guaranty who were standing in lieu of bond holders and they can approve changes to the necessary bond documents that the Board approved in order to allow them to move forward to create a distribution methodology that would create an additional distribution to the City. At that time, it was discussed the difficulty of going back to the insured companies, especially Ambac because of the fact they are in bankruptcy and the difficulty they are having with getting comfortable with any kind of changes. Mr. Owens said they felt fairly comfortable that Assured Guaranty would get back with them quickly and they went to them and basically had an agreement or consent within 30-45 days. Ambac, they were still negotiating with them quite frankly as he was driving in here. It was indicated that it would probably be a minimum of 60 or more like a 90-day process and then based on the final agreement or terms we might exceed that a little bit. He is here to tell the Board they have worked very diligently and have spent a lot of time and effort doing this. Mr. Owens said he would like to give Bill and Nina and their staffs a lot of credit because once we got to the initial part and moving through that, there was additional information only they could provide in conjunction with PRMG, FPUA's rate consultant, and pulling up that information to give comfort to the insurer companies. He said bottom line is that the Board has a resolution in front of them today and it outlines how we got here. We

went through protracted negotiations with mainly Ambac Assurance Company. Their initial response was thank you, but we do not want to do this and do not think it is in the bond holders' best interest. After spending a great deal of time showing them what this could be and that it would not at all be detrimental to the bond holders and in fact it could potentially benefit bond holders and that power rate projections and such were indicative that they would not have a negative effect on FPUA, they consented to come back to us. They basically came back with a half of dozen requests as to how to change the language, which we narrowed down to three requests. The first one was that FPUA is required by the bond documents to fund a debt service reserve and that could be funded with cash or with a debt service surety policy. It has been more economical because FPUA cannot earn any money on reserves right now and historically it was more economical to go ahead and buy a surety with a one-time upfront fee. FPUA has a surety on their Ambac bond issues. Ambac is now requesting that we fund that debt service reserve with cash and that amount was part of our negotiations and how we fund it was the other part of the negotiations. We have gotten them to agree that FPUA will fund that debt service reserve fund requirement over a 5-year period and it will be funded to the level of debt service in 2017 where we have a drop in dept service from approximately \$7.6 million to \$4.8 million. It will be the lower of that amount using an approximate amount of \$4.8 million. We would have to fund that over the next five years and that is one of their requests. The second request was that we include what they would call a Liquidity Covenant and it is a requirement that FPUA has a certain amount of cash on hand. They wanted us to have a minimal amount of cash on hand. Where we are today is a very good number of almost 90-100 days and they have agreed to allow us to have a minimum funding requirement of 45 days cash on hand. From indication of similar related requests this is a very low number. FPUA's policy has been to never go below 60 days and Mr. Owens does not believe FPUA would ever reach that. The third item Ambac requested as part of their consent was that FPUA get the rating agencies Standard & Poor's and Fitch to give them a written assurance that the current bond ratings of FPUA, A- and A, would not be downgraded. We were concerned about that particular requirement and objected to it simply because of two reasons. Mr. Owens is not overly concerned that the resolution requirements would put us in jeopardy nor, based on the information we received from staff and from the information we received from PRMG, that FPUA will not be agreeing to these covenants. You are not going to be jeopardizing FPUA's ability to function and not going to be put into a position to raise rates immediately and not within their existing plan. What we were concerned about is that it is not a usual procedure for the rating agencies to give that confirmation. This week after we finalized the bond resolution the Board has today, it was sent to the rating agencies, they came back just as he said and they did not want to do it; Standard & Poor's said they would not do it. We have gone back to them and said we are not going to be able to get that confirmation. The reason for it is they only will look at it during their rate surveillance or if they are doing a new issue for FPUA or a request is sent for them to do it. The bottom line is Mr. Owens has talked to Fitch and they just recently upgraded or did their surveillance and indicated they feel they can have us a reaffirmation of that rating by next week, which is basically reaffirming our rate with them. Standard & Poors says they cannot guarantee when we could have it or when we would come up on their re-rating cycle or their review cycle. We went back to Ambac and indicated to them that we would not be able to get that to them. They verbalized to him if that was the case and if he indicates that to them in an email or letter tomorrow, they would proceed with a consent.

Bottom line is we have negotiated three changes to FPUA's bond resolution that would allow for FPUA to make the agreed upon changes that would ultimately allow for the annual distribution that is in accordance with what the City and FPUA have agreed to. If the Board passes this resolution, we will have consents from both of the insurers in lieu of the bond holders to allow us to do that. It would take effect after FPUA pays the consent fee, which would be within the next five days. Mr. Owens said that is a short synopsis and he would be happy to answer any questions or elaborate on anything. He said once again he wanted to pay Staff a lot of credit because they spent a lot of time with Mr. Owens and bond counsel and it was very much a joint effort to get where we needed to be.

Mr. Drummond said there was some discussion about the bond being downgraded and a requirement that we would have to increase the cash if it was.

Mr. Owens said maybe that is two different questions. The downgrade issue was discussed when we had the joint meeting and we discussed going back to the effects of what possibly, potentially might happen. That would be if FPUA was not able to prove or continue to show that they are on sound financial footing and it had basically been operated and managed properly. A review of FPUA by the rating agencies happens on a frequency of once or twice every three years. You will always be vulnerable to a downgrade or a potential upgrade if everything is in the right position. We had addressed the concerns early on that it was one of the potential issues if we went back in and changed the bond resolution requirements. We were not sure whether or not we would be able to maintain our ratings. The bottom line is that even though Standard & Poor's is not willing to give us anything written, the three types of changes that we are asking the Board to look at 1) putting together a finite methodology for the annual distribution 2) funding a debt service reserve fund requirement with cash instead of a surety from a bankrupt company, and 3) setting a minimum cash on hand liquidity are all positive things. Mr. Owens said, in his opinion, that should not lead to any potential downgrade. Once again, their reviews are all historical and based on what your projected revenue streams are and what you are looking at. It is a snapshot in time, but it is not like this one document is going to be the key issue to make that determination on their part.

Mr. Thiess said when he was talking with Mitch earlier, the other thing he ran by Standard & Poor's is the cash out of the additional transfer going to the City that amount being roughly \$1 million a year and they asked if that was all. It was not a major issue to them. Of all the actions that were taken here, the cash out, the liquidity covenant, funding the debt service reserve, those do not appear to be an issue with Standard & Pools. The only problem is they are not in the practice of writing those letters. They have not done a surveillance recently enough to write the letter in any kind of timely fashion.

Mr. Perri said Mr. Owens stated we have a verbal agreement and we will have a signed agreement and Mr. Perri asked if this will not go into effect until we have a signed agreement. He asked if he understood it correctly.

Mr. Thiess said this will not go into effect until we satisfy both Ambac and Assured. At this point, it appears that Assured is squared away; they have signed the consent form and are done

once they get their check for their fee. With Ambac, we still have to finish up the discussion that started today about if they are okay with not requiring the Standard & Poor's letter that the bond rating will not go down. We have not completed that discussion because we did not have all the players available.

Mr. Owens said he feels comfortable because they have already agreed to that and what they need tomorrow is a written request or affirmation that this is what the Board voted on, to take that out. We have to pay their consent fee and then we have their consent.

Mr. Perri asked if then we get a written consent in hand.

Mr. Owens said we actually already have written consents in hand, but they are held in escrow by the attorneys until the Board takes action and they get their fees paid. If we do not pay them, they do not give us their consent.

Mr. Perri said I thought you said we already had it in hand.

Mr. Owens said it is in escrow.

Mr. Perri said so we do not have it in hand.

Mr. Owens said no, but as soon as the Board takes action tonight, if you do, we will get it.

Mr. Perri said his question is if something happens that we do not get it in hand, not in escrow, does this still go through.

Mr. Koblegard said if you look at Paragraph C on page 3 of the resolution that covers us, it says "Subject to receipt of the written consents of Ambac and Assured, Section 3.03(B)(5) of the Original Resolution is hereby amended and restated to read as follow" and that is all the amendments to the bonds from that point on. Unless we have written consents from Ambac and Assured, there is no amendment to the current bond. Mr. Koblegard said that is the way he understands it and what we have agreed to.

Mr. Thiess said he does not have anything else unless the Board has questions. He said we intended to bring the entire package with both the letters from Fitch and Standards & Poor's, but obviously that changed at the last minute. There does not appear to be an issue; they do not take issue with anything we are doing; they just cannot write a letter on a short notice. They have started their surveillance and we sent some things to them in December. Standard & Poor's has started their surveillance of us and presumably they would follow up and head toward the affirmation of the rating. Mr. Thiess said this is not the only thing they look at when they do the surveillance. They look at everything from top to bottom. It is an entirely clean look at us since the last time they looked at us. There are no guarantees and all indications are that what we are doing here would not adversely affect that rating.

Mrs. Cully said that nothing will go into effect until after we have signed this resolution and we pay the consent fees.

Mr. Owens said that is correct and then we will have the consents in hand and as Mr. Koblegard indicated nothing takes place until we get those consents.

Mr. Koblegard said the agreement with the City to fund additional funds into the transfer is contingent upon this also.

Mrs. Cully asked Mr. Koblegard to repeat what he said.

Mr. Koblegard said our agreement to increase the payment to the City by the transfer of the PCA is contingent upon this too. Nothing happens. It will all fall in place with these consents.

Mr. Drummond referred to the sheet that was handed out before the meeting about the costs of rate restructuring and asked if the amount encapsules all the cost to the Utility for this restructuring.

Mr. Thiess said that should capture everything. The difference between this and the earlier estimate is this is \$140,392 and the original estimate was \$121,505. The Bond Counsel fee is estimated to be lower than what was originally projected. The Municipal Bond Insurer Fees were originally projected at \$45,000 and it is going to be \$35,000, so that is lower. RBC's fee is \$25,000 compared to the projected \$27,000 and there may be some minor expenses. The three that increased are the FPUA attorney and a good part of that \$18,000 was spent on doing the research for the City Ordinance, probably $\frac{3}{4}$ of it. A small portion of that was for the bond work, but it was all thrown together because it is all related. The cost of supplemental mailing to customers was not on the earlier estimate. At the time we gave the other estimate we did not know if we were going to get it in the bill insert or if we had to do a separate mail out. The timing did not allow us to do the bill insert and we had to do a separate mail-out, so that number was not available at the time we made the earlier estimate. That is an additional \$8,000. The third one that increased is PRMG's fee. We estimated them at \$7,074 and it is \$12,962. That is looking at doing forward projections of the rates and a lot of that work will already be in place when we do our rate sufficiency analysis. So it is not something that is just for this effort; it will also be used in our rate sufficiency analysis going forward. The difference in this and the projected estimate is about \$21,000.

Mr. Koblegard said on the Bryant Miller & Olive bill from 8/29 to 9/30/2011 for \$22,431 it had a lot to do with the issue with the City and the amendment to our Charter. He said it was discussed with the Board previously that he may have them help him look at that and the Board did okay that. That really should not be a part of this even though it is a part of the overall bill.

Mrs. Cully said the overall projection of cost to get this completed is approximately \$140,400.

Mr. Thiess said that is correct.

Mr. Drummond said he just wants to be sure it is on record that the requirements that were set out by the bond holders do not increase the costs of the utility at all.

Mr. Thiess said that of the \$4.8 million for funding the debt service reserve, the first \$1.8 million is going to come out of two reserve funds that are over funded right now; the emergency fund and the renewal and replacement fund. Between those two reserves there is \$1.8 million that is over funded. The first payments into the debt service reserve fund will come out of that \$1.8 million. In addition to that we are going to need another \$3 million to get to the \$4.8 million. If you pay it over a period of 5 years, that is \$600,000 a year that will go from unrestricted cash into a restricted reserve.

Mr. Drummond said so we have those dollars on hand and are just going to shift them over. We are not going to collect that \$600,000 from the ratepayers.

Mr. Thiess said that is correct, it is not a rate impact at all. It is coming from unrestricted reserve to restricted reserve.

A motion was made by Mr. Drummond and seconded by Mayor Benton to approve Resolution No. U.A. 2012-01 – A Resolution of the Fort Pierce Utilities Authority of the City of Fort Pierce, Florida (The “Authority”) amending Resolution No. 85-29, as Amended; and providing an effective date. Those voting in favor of the motion were: Mr. Drummond, Mayor Benton, and Mrs. Cully. Those opposed: Mr. Perri.

There being no further business, the meeting was adjourned.

ATTEST:

SECRETARY

CHAIRMAN