

AGENDA ITEM 2-a

MINUTES OF REGULAR MEETING OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, HELD MONDAY, APRIL 16, 2007, AT 6:00 P.M., AT 200 CANAL STREET, NEW SMYRNA BEACH, FLORIDA

Chairman Para requested Commissioner Allen to lead in an invocation and Commissioner Diesen to lead in the Pledge of Allegiance.

Chairman Para then asked for roll call to be taken with all of the Commissioners present as follows:

Commissioner William E. Hall
Chairman Kevin J. Para
Commissioner Richard L. Spangler
Commissioner Walter Allen III
Commissioner Jeanne K. Diesen

Others in attendance were as follows: R. Rodi, General Manager/ CEO; R. Mitchum, Director of Electric Operations; T. Beyrle, Director of System Ops. & Generation; J. White, Director of Engineering; D. Hoover, Director of Water/ Wastewater; C. Montgomery, Director of I.T.; P. Perez, Director of H.R., E. Mahle, Public Information Manager; D. Simmons, Executive Asst./Recording Secretary; B. Preston, Interim U.C. Legal Counsel; Melanie Stawicki-Azam, Reporter for the NEWS JOURNAL; Richard T. Wagner, Southeastern Investment Securities; Peter Dame, Akermann, Senterfitt & Edison, P.A.; Jerry Johnson, developer/Venetian Bay of NSB, LLC; Derek Wainscott, DMW Consulting; Steve Garthe, Esq., representative of Smith, Hood, Perkins; Peter Heebner, Esq., representing Venetian Palms, Inc.; and Bob Tolley, and an unidentified man, members of the public.

(1) Agenda Changes, Additions and Deletions:

Mr. Rodi stated Mr. Chairman, I think its just due rearranging the agenda, we had an item on the agenda that was 2-g. and it became item 8-a., so I'm asking that we pick it up there.

Chairman Para stated the new 8-a. didn't make it as 2-g., ended up being 8-a., which we've gone through.

(2) Approval of Consent Items:

Commissioner Hall then made a motion to approve the consent items as follows: items 2-a. Minutes of UC Workshop Meeting Held 3-12-07, 2-b. Minutes of Special UC Meeting held 3-12-07, and 2-c. Minutes of Regular UC Meeting Held 3-19-07, approve all minutes as submitted; item 2-d. Exceleron Software, Inc. – Settlement Agreement and Release – L. Klinkenberg, approve the Settlement Agreement and Release as submitted and authorize the Director of Finance to execute on behalf of the Commission; item 2-e. Amendment No. 1 to Developer's Agreement for New Smyrna RV Park, approve as submitted and authorize the General Manager/CEO to execute the document; and item 2-f. Developer's Agreement and Addendum – Volusia County School Board, approved the agreement and addendum as submitted and authorize the General Manager/CEO to execute these documents. Commissioner Allen seconded this motion and it passed unanimously on a roll call vote.

(3) Public Participation:

(3-a) Peter B. Heebner, Esquire – Request for Consideration of Modifications to Developer’s Agreement:

Chairman Para stated to Mr. Heebner, you’re requesting for consideration of modification to the developer’s agreement and we’ve got within our packet of information your comments, so please proceed sir.

Mr. Heebner stated thank you, my name is Peter Heebner, with the firm of Heebner, Baggett and Upchurch, 523 North Halifax, Daytona Beach, Florida, representing Venetian Palms, one of the developers west of I-95. We apologize for the late filing of these things, we did not learn of the staff comments until about five minutes of 5:00 p.m. on Friday. We tried to react to those because we didn’t know what the staff’s comments were going to be. We have also learned that there have been a number of meetings which would have an impact on the developer’s agreement and for that, in the potential, the infrastructure fee structure itself. It’s pretty difficult for us to make business judgments under these circumstances, we don’t know exactly what those discussions are nor do we know what the outcome might be. Therefore what we’ve asked to accommodate our needs so we can make a proper business judgment, we understand that under 8-d. I believe it is, of which these matters are going to be discussed with the staff and the Commission, we ask if our item could be deferred till then and see if we still want to pursue the approval of our development agreement or perhaps wait for 30 days until the negotiations and a document can be completed. So we respectfully request that this item be deferred until those discussions take place so we can make some business judgments as to whether we want to go forward tonight on our developer’s agreement or wait 30 days until these negotiations have come to fruition.

Chairman Para stated now are you asking to participate in item 8-d. or would you like your item as you presented here just referred down to that section or create a new section.

Mr. Heebner stated correct, we would like to hear the discussion first, we may ask to be removed from the agenda until your next one, or we may based on the discussion, to ask that our discussions on our agreement, go forward this evening, but after 8-d.

Chairman Para stated I guess I’ll leave that up to my colleagues and see what ya’ll would like to do.

Commissioner Diesen stated I move that we move it down. Commissioner Hall stated I second it and the motion passed unanimously on a roll call vote.

(3-b) City of NSB Golf Advisory Board Members – Request for Reuse Water Distribution Priorities:

Chairman Para asked if there was someone to speak here tonight about this. Okay, I guess it will stand on its face; would you like to speak to it Mr. Rodi.

(3-b) City of NSB Golf Advisory Board Members – Request for Reuse Water Distribution Priorities (cont.):

Mr. Rodi stated the only information that I have, and you have as much information as I do, is we received a copy of a letter asking that there be priority given to the City golf course with respect to reuse water. The previous policy of this Commission has been to equitably distribute the available reuse water based upon the needs that were prevailing at the time. I think this past summer we demonstrated that, we diverted a substantial amount of water for the golf course that was being redone and I think what we have coming up now is, even Venetian Bay has an inordinate need for reuse water with the new golf course there. So we would propose that we leave the policy as it is but additionally I would just like to point out that the key to this is developing our alternate water sourcing plan which we have discussed before and I think we have a workable plan and I think that's the long term answer.

Chairman Para commented I hear you.

Commissioner Hall then asked if we're allowed to ask questions.

Chairman Para stated please do.

Commissioner Hall stated at the last meeting with the City Commission I think some City Commissioner asked Mr. Hoover if we were dumping reclaimed water into the river and the answer was yes. Daytona Beach does that also and I would suspect that other cities that have reclaimed water do so. Currently we have four golf courses within the city limits of New Smyrna Beach.

Mr. Rodi interjected about to.

Commissioner Hall reiterated about to, the fourth is about to come on line, and it will require a lot of water like the other three. The New Smyrna Beach is the oldest golf course, now I'm biased because I live on it. However, because we had a dry summer and all those mounds of dirt stood out there because they couldn't get enough rain, they had to use the reclaimed water. Every homeowner on Fairway Drive and Fairway Avenue raised cane, I got more phone calls and more comments when I was walking my dog for my wife from people who live on the golf course because the wind was blowing out of the southeast and it blew sand into the houses. In fact Mr. Tolley lives on Fairway Drive, his house turned brown and its yellow, a yellow house that turned brown. I went to clean the front of my house which is, I'm not sure what color it is, it's not grey, some, what color is that Mr. Tolley, taupe or something, and I've never seen so much dirt in all my life. So I hope that our plan is really equitable and I'm not a member of the Golf Advisory Board, I do belong to the Country Club but not a member of the Golf Advisory Board. If we have reclaimed water Mr. Hoover, that's being dumped into the river, how soon is it going to be that we're going to be able to spread that out to other areas of the city.

Mr. Hoover stated let me clarify that to you because when I made that statement we were in a fairly wet January and February which is historically the lowest time of demand for reclaimed water. For the last month we've been back off the river, we do a running twelve month average,

(3-b) City of NSB Golf Advisory Board Members – Request for Reuse Water Distribution Priorities (cont.):

and for the last twelve months since we had that new pond in operation, which is a 13 acre pond, we've only had an average of around 100,000 gallons a day across the whole year. Where a year and a half ago we averaged about a million and half into the river per day, so we're down to much less than 10% of that now and I'd say probably except for those two cold months of the year when demand is very low, you won't see us using the river, we'll be storing in that shed out there and having 26 million gallons of useful storage to help supply more demand in the summer. An extended drought though as you say, all bets are off, it's just going to be difficult to get it out there.

Commissioner Hall stated and in all fairness to everybody the municipal golf course, up until the last three rains, the greens were hard because of the windy conditions, you put a ball on it instead of going three feet it would go thirty feet, the balls wouldn't bite into the fairway, or the greens. I think there's more to this than what meets the eye in this letter frankly, which is happening I'm sure at Turnbull Bay and at Hidden Lakes and it will happen at Venetian Bay during times like this.

Commissioner Diesen stated we need to talk about water and another issue at another time because you're lucky there's any water, in South Florida they're pulling back permits for golf courses, so be happy with what you've got.

Commissioner Hall stated well I am.

Mr. Hoover stated as Mr. Rodi says, we need to get the alternative water source plan proceeding forward. We are now seeking grants, have a consultant working on writing up grant applications for us, so we can have some more water available as the new customers come on in the western area, and those customers will be investing in the infrastructure for that so we have to be in readiness for that.

Chairman Para stated just as a follow up because you brought it up Mr. Hoover, please don't slip away quite yet, is there any incentive or any reason, is it 100,000 gallons per day, that's 365 a year, so does that work out to about 3.6 million a year.

Mr. Hoover stated no, it was actually if you have two months with pretty heavy river outfall divided by 365 it comes down to around 100,000 gallons.

Chairman Para stated per day.

Mr. Hoover stated per day, where as before we were averaging close to 1.5 million across the whole year, so we're less than 10% of that now and it's just very difficult when the pond tops out and there's a lot of rain, which there was pretty significant rains this January and February.

Chairman Para stated rather than it flowing into the river, I guess to press the point a bit further, is there not an agreement that we can have with one of these courses to soak the course as

(3-b) City of NSB Golf Advisory Board Members – Request for Reuse Water Distribution Priorities (cont.):

opposed to soaking the river.

Mr. Hoover stated well we try to top off all their ponds, we split up everything we can with remote telemetric units we can tell exactly what their high level is and we top everybody off when our pond is topped off and the sewage keeps coming...

Chairman Para interjected good answer.

Mr. Hoover stated you've got to for the outfall and everybody has to have that as a last resort.

Chairman Para stated all right so it's not a question of them turning their sprinklers on at night a few more times, it's a question of you filling their ponds up and that reservoir.

Mr. Hoover stated we have now about 600 residential users and they don't readjust their timers so they're the only ones using it at those really wet seasons. So, again as Mr. Rodi says, equitably sharing it with all the customers, especially those we depend on year round, is the wisest thing.

Chairman Para stated I tend to support that, yes.

Mr. Rodi stated if I may, a couple of comments. The dust on the homes was due to the golf course being redone, they were moving a lot of dirt, and you'll see the same thing wherever there's golf course construction. I personally spoke with Daytona Beach about the water that's going into the river there, just looking for other sources because it was suggested that might be a future source for us. They do not expect to have water going into the river any more, they are embarking upon an aggressive reuse program. Further, they may have to inject the water near the ocean side in order to stop the infiltration of sea water into their aquifer area. From our perspective with another golf course coming on line and more and more demand, we see the opportunity for water going into the river diminishing very quickly. Nevertheless, we must, during the times where there's an abundant rainfall, harvest water, store it, and that's part of our plan. And also have the capability to convert it to potable water supply, and so that is underway right now and it's going to take awhile to develop that plan. But our first approach right now is we are drilling potable wells out there in the area of our I-95 property and working through some very technical issues at the moment so that our current focus is on the potable wells to increase our CUP allowance which has been granted, therefore that's a reality for our well draw downs. Then right behind that we're working on the irrigation, which is the largest consumer.

Chairman Para thanked Mr. Rodi for his comments and Mr. Hoover for answering those questions.

Mr. Hoover stated one last facet of that for the golf courses and the large commercial customers we have is that we've always strongly recommended them to have back up plans of their own. Some of the golf courses have the ability to transfer water from adjacent stormwater ponds into

(3-b) City of NSB Golf Advisory Board Members – Request for Reuse Water Distribution Priorities (cont.):

their reclaimed ponds when reclaim becomes tight. They also might have surficial wells like the Sportsplex, and some of them even have some deeper wells for use as a last resort.

Chairman Para asked if there were any further questions or comments.

Commissioner Spangler stated yes, quoting you Mr. Hoover to Derek Wainscott about another golf course, as far as our, you know 90% of what we were losing we're not losing and that's part of our ongoing program, but we're really talking about what we're going to do right now for the City golf course and do they have the right to take water from everybody else, and that's sort of the issue here. But quoting you, you're saying among other things, about squeezing more water out of customers and all that, you're saying our goal operationally when reuse supplies are stressed to very high system wide demand, which is dry conditions and high temperatures in the normal growing season, is to provide the residents water, then ration the rest available to ponds as evenly as possible. Now that's the policy that we're using right now and that tells me that our policy now is that the residents are coming first and if we're going to prioritize to any particular golf course, whether the City golf course is a more worthy golf course than say Mr. Johnson's golf course, then we're still going to have to say where is it going to have to come from. So the only way we can get water for the golf courses is take it away from the residences. Now if someone wants to come up with a proposal whereby we cut back residential water use and send that off to some golf courses, that's the only place it's going to come from. I don't think we're willing to cut back on residential use as a priority, we're going to do everything we can but I'm not in favor of prioritizing any particular golf course, even the City's course, over residential demand.

Mr. Hoover stated agreed, and the fact is the residents are on the pipe systems that serve the large users so anything that you would try to do to have them conserve it would be an honor system at best. And I think they're doing what they can just to use the bare minimum to get by, I think they're all being good stewards.

Chairman Para confirmed there was no further participation at this time and then closed public participation.

(4) General Manager's Report

(4-a) Financial Status February 2007:

Ms. Klinkenberg addressed the Commission and stated for the month ending February 2007 our change in net assets is \$214,000 for the combined system. Our forecast reports reflect a \$2.8 million year to date favorable variance as compared to budget. In your financial statement packets that you received for February you should notice a significant difference, we've included some graphs in there. That's an attempt to provide you with more summarized information, for ease of interpretation and decision making. She stated I'm open to suggestions, if anybody has any further ideas they would like to see in the financials, please let her know.

(4-a) Financial Status February 2007 (cont.):

Ms. Klinkenberg then offered to answer any questions. There were no questions at this point.

(4-b) Report on Staff Workshop Meeting Regarding Infrastructure:

Mr. White addressed the Commission and stated we scheduled and held a couple of staff workshop meetings following the Joint Commission Meeting, I believe it was March 12th, as a direction from the Commission. Since then there have been summary records of those meetings that I think everyone has received and they were kind of extensive so I won't go into a blow by blow or play by play issue. The first meeting (3-27-07) was basically, essentially a technical review of a proposal document submitted by the legal staff of the partnership or group of developers, were most of the developers west of I-95. The review discussed that document pretty much in its entirety, all those items that related to technical issues in a direct or indirect way. About a week later, on April 6th, we held a second technical meeting at which Derek Wainscott and Randy Hudak representing Venetian Bay development, accompanied by Mr. Johnson presented the framework of a proposal, an agreement by which the developers in the west area, the major developers would either construct or pay for the infrastructure for all the utilities projects out there. The overall frame of that now includes I believe 24 projects, something like three which have been constructed, seven, these numbers aren't exact I'd have to refer to notes, about seven which they're proposing to construct, and the remainder to fund by the infrastructure fee. Work is continuing on finalizing that agreement and Counselor Preston is the primary contact working on that agreement at this point in time. We've had a second technical submittal from the engineers for the Venetian Bay group and I and my staff are reviewing that now and we asked for a little more clarification and information and we'll be finishing going through that in the next few days. That analysis basically is a computer model of the distribution system from the Water Treatment Plant to the west zones. He asked if there were any questions.

Chairman Para stated so in your opinion, you believe that these two meetings were productive.

Mr. White stated phenomenally so, amazingly so when you look at what really happened. In a broad brush way we've come to a framework of agreement that is pretty nearly ready to consummate which would result in an infrastructure contribution by that group of businessmen to the Utilities Commission totaling a value of over \$28 million which in the processes of the past, a major part, all, a huge part, significant part of which would have been shouldered by the ratepayers of the operations side; I think that's very significant.

Chairman Para asked if anyone had any questions of Mr. White.

Commissioner Spangler stated I don't have any questions but I have some comments about a meeting that occurred prior to those two meetings (sic, in between those two meetings) and in light of the fact that we're hearing this going phenomenally well I'd like to comment when Mr. White's finished, about the meeting that I attended.

Chairman Para stated no further questions of Mr. White, Commissioner Spangler please proceed.

(4-b) Report on Staff Workshop Meeting Regarding Infrastructure (cont.):

Commissioner Spangler stated on Monday the 2nd of April, I attended a meeting with Mr. Rodi and Mr. Preston, Mr. Cullis, and Mr. Johnson, and the purpose of that meeting was to talk about the present market and the fact that the market and the build out rate has significantly changed. It was a very frank, and agreeable, and friendly meeting and everybody was very straightforward, there was none of the legal ramifications and all of that posturing; none of that was there. The sense of the meeting was we're all in the same boat together, let's just work together and work this out. They came to us, I felt, with a deal. The deal is because the market is slowed considerably they wanted to find a way so they wouldn't have to put so much cash right up front, well in advance of when they're going to deliver their product. The problem that they have is our ERU payments are required right up front whereas the capacity fees are required closer to when they build out. So what they wanted to propose to us was they would take over the construction of the infrastructure that the ERU units were suppose to be paying for. They would pay for them themselves in return for an adjustment in the up front payments they were going to make. It seemed to me that this allowed them to have to not put up a lot of cash, as much cash, in front for something that may not happen for three, four, or five years, and the deal was not that they wanted that, we could understand why they want that, but the deal that we're interested in as a Commission is what were they offering in return. Basically what they were offering in return was to relieve us not only of a lot of the responsibility, physical responsibility, they were willing to build the infrastructure the way that we said it should be built, to the specifications that we wanted, and the negotiations that are going on now are to determine how much of it is necessary now, when will it be necessary and what costs are they not going to take that will be due now. So basically the deal is they're saying to us if you will let us front less money, we will take on the construction and the costs of virtually the entire infrastructure, we will build it as needed, and you will not, after you get your ERU cash up front, be stuck with the inflation of a year or two or however long it takes from the time we get the money until we actually build it. So they're basically going to, as they said simply in the beginning, relieve us of the risk of inflation, they're going to relieve us of the risk of building an infrastructure and maybe nobody comes to us, they're going to assume all of those risks and we're going to allow them to put up less money up front and all the negotiations that are going on now, that are going on along phenomenally well, are about how much do we need to build now and how much of it are they not going to build and will they still have to kick up money for. That's my impression of what's going on, the whole discussion got down to one of the timing and of the cost, and if that's going well then I think we're all going to have a really good agreement. If I'm wrong on any of that part, I'm sure Mr. Rodi or Mr. Preston or someone will tell me, but that's my sense of the meeting. They came to us with a good valid agreement for a good valid reason and negotiations are going well.

Commissioner Diesen asked Mr. Johnson if he concurred.

Mr. Johnson stated yes, Commissioner Diesen, I believe that Commissioner Spangler said that very well. There has been cooperation and we're trying to work through everything so that again there is no burden to any taxpayer that we will put in the lines that we need for the western development as a response to everyone agreeing as to when they are needed. I don't think we had any argument with the staff about what was needed, I think the only question that was ever

(4-b) Report on Staff Workshop Meeting Regarding Infrastructure (cont.):

there was a question about on the reclaimed, whether that should be stored in lakes or stored in a tank and the engineers and staff are going to resolve which is the best way to go. Basically it was said, just as the Commissioner said, that we are willing to go ahead, put up the infrastructure on a time frame as agreed upon, and we will pay the ERU fees that we do not do; like we do not do electricity and a few other things, drill wells and that type of thing, but we will pay our fair share of those. I think that's exactly what we agreed to and we certainly appreciate the staff and their philosophy and attitude, it's been a pleasure with everybody working together; again I thank them.

Mr. Preston stated I'd like to say a couple of things. One of them is I think it's important to highlight as far as the Commission is concerned that one of the benefits of this agreement is also cost efficiency. I think that is something that is, not only benefits us as a Commission in terms of installation of the infrastructure, but also benefits any and all other developers who may be developing the west area in addition to the Venetian Bay and Jim Cullis' projects; so I want to highlight that. Secondly, Steve Garthe, the attorney of Smith, Hood, and Perkins, has put together a proposed memorial of that discussion and we're in the process, I'm in the process now of reviewing that and we will fine tune that where it needs to be and hopefully bring that back to you next meeting.

Mr. Rodi stated I would just like to add one other component to this. All of our conversations are still within the confines of the developer's agreement and the addendum. As you may recall when we first embarked upon this we weren't quite sure what kind of financing would be used, we talked about CDD's or other ways of doing this, we weren't locked into any particular way, but we were trying to draw the separation between new development and existing system. I think that's part of the reason, and I just wanted to express why we removed that one item from the consent agenda and then put it in for further discussion, is that there are many different relationships and needs by different developers at different times, so what we are attempting to do is develop a master payment agreement that would in essence be an addendum to the addendum of the developer's agreement. This way the wording will be worked out between legal counsel and it will also allow for, for example, there's been a transition in property that Mr. Rubin had formerly owned. That person or that entity is not a signatory or potential signatory to this agreement, so there are a number of items that have to be addressed and I just used that one as a specific in that the equitable amount for that development when it should eventually occur, needs to be borne by that developer at that time. So with that I just wanted to provide a little bit more clarification, thank you.

Chairman Para stated I'd just like to thank Mr. Johnson. I worked with him and many of his people when we were, we speaking of Commissioner Diesen and I on the Planning and Zoning, and we developed with The Johnson Group and some other folks the new urban design. It was a patient process, it was a productive process in this community and the development community owes a debt of gratitude to this gentleman and his staff, they're very competent. And I knew as we were seeing things coming over the bow over the last couple of months that we would get to this point. Commissioner Spangler thank you for stepping in and providing reason and just ear to a good conversation and that's always the best way for us to proceed with one another in a

(4-b) Report on Staff Workshop Meeting Regarding Infrastructure (cont.):

community, and we'll leave those lawyers aside for a minute. So thank you and with that if that concludes our work, and Mr. White thank you, for your hard work and I'll trust you continue that.

(5) Commission Counsel's Report:

Mr. Preston stated I have no report other than it's been a busy month.

Chairman Para then asked is somebody suing us. I know its coming up in the telecommunications thing, I got an email and I read the email and it was something about some appellate court, Mr. Rodi you sent the email to us.

Mr. Preston stated we haven't received any service of process of any suits so that's new to me.

Chairman Para added it looked like Mr. Gummey had prepared it.

Mr. Rodi stated what that is about, we have a communications tower and we had discussed in the past that that communication tower was not ready for commercial use. There were many things wrong with it, the most serious of which was the catwalk that is at the 190 ft. level, was ready to fall down. The second serious consequence was the ground grid that is used to dissipate lightning strikes and prevent electronic equipment from failing was not and never has been correct. So as a result, you approved repairs but unbeknownst to us there was an action taken against the City, so Counselor Gummey had asked that I provide an affidavit saying that we said we were going to repair these things, we're in the process of doing it, and we are doing it. The catwalk is now repaired so that people can work under it, and the ground grid is now being repaired as we speak.

Commissioner Diesen interjected its guarded right.

Mr. Rodi stated yes, and so once we finish that then our intent is to notify some of the commercial people that this is available to them. Counselor Preston will be busy again with another commercial agreement that we will have to embark upon for each of these clients. And they additionally will have to provide for their own storage facility for their electronic equipment and emergency generation. We will bring these to you assuming that there will be some who will want to take advantage of it, but that is all underway.

Chairman Para stated so I guess that I misunderstood along the way, I thought it was our policy not to allow other people to station themselves on that tower.

Mr. Rodi stated no, it was inside the building, we were debating what we were going to do with the interior of that, and if we were to put them in there, then we would have to provide the emergency generation and access issues. That will become our eventual storage area for our own electronic gear and take it out of this building because it's so susceptible to hurricane damage.

(5) Commission Counsel's Report (cont.):

Chairman Para stated so it looks like you're advocating, or potentially advocating at some point that we put out a request for proposal for people who would like to potentially site there and provide their own infrastructure and protection there of the same. Okay, I think I understand it now, thanks.

Commissioner Diesen commented it brings us money, we like revenue streams.

Chairman Para stated yes, we like for there to be a return.

(6) Committee Meeting Reports:

Chairman Para asked Commissioner Spangler if he had an update.

Commissioner Spangler stated no update on that.

Chairman Para stated one thing I would like, I was going to ask during comments from Commissioners, is there any way that I could get an electronic copy of Commissioner Allen and Commissioner Spangler, your report that you had provided thus far. That would be helpful to me, I like looking that stuff over again, I got the hard copies. (Electronic copies were provided.)

(7) Old Business

(7-a) Consideration of Tabled Item – Declaration of Official Intent for Reimbursement of Expenditures from Bonds/Notes:

Ms. Klinkenberg stated as you know this item was tabled last month when we were talking about it probably because of not enough information. So I've asked Peter Dame of our bond counsel to be here and Toby Wagner, our financial advisor, so they can help clarify and help us to understand exactly what the resolution is.

Chairman Para stated okay and at this point I'll turn the questions over to Commissioner Diesen, because you're the one that got to a point on this.

Commissioner Diesen stated I wanted to know why and why now. Why is it so urgent that we do this now when we haven't even..., so proceed.

Mr. Peter Dame addressed the Commission and stated good question and let me see if I can answer that. I'm with the law firm of Akerman Senterfitt and we represent the Utilities Commission in the structuring of a plan to fund your capital requirements. As we come up with a plan to fund those capital requirements, and you've approved a capital budget, we need to come up with a plan. There are several steps we're going to have to go through, this is the smallest of the first steps. As you fund your capital plan, and you haven't fully decided in what fiscal year we're going to fund those, but we're going to have three sources of funds we're basically going to fund those out of. This resolution is designed to give you some flexibility to

(7-a) Consideration of Tabled Item – Declaration of Official Intent for Reimbursement of Expenditures from Bonds/Notes (cont.):

decide which pot of funds the monies come out of to fund particular expenditures. You're going to fund part of that plan out of your ongoing revenues, you're going to fund part of it, we expect, out of your R&R (Renewal and Replacement) Fund which is revenues from past years or from this year as you deposit into R&R Fund, and you're going to fund some of it out of debt.

Mr. Dame stated part of my job as a bond lawyer is to deal with state law and part of it is to deal with tax law, this goes to the tax law aspects of it. Under the Federal tax law, if you do issue debt, to the extent you do issue debt we want it to be such that the interest on that debt is tax exempt because that's your lowest borrowing cost and the more of your expenditures that are going to be financed with debt we can get into the tax exempt debt pot the lower your financing costs. Under the tax code, and that's why this is here, if you're going to finance capital expenditures out of tax exempt bond proceeds you either have to make those expenditures after you do the borrowing or if you paid for those expenditures before you did the borrowing you have to adopt a declaration of intent. So what this does, what we've done here, is this allows us as we're developing our financing plan, if you have expenditures that you are making now for items that when we finalize the financing plan we want to treat as funded under the tax exempt bonds, this allows us to do it. If we don't do this, then monies that we spend today, if we spend them out of the R&R Fund or we spend them out of cash revenues, that will be the source of funds to which we have to allocate those expenditures and there's no ability to reimburse ourselves, and reimburse ourselves is the key word on the tax code, to reimburse ourselves for those expenditures out of tax exempt bond proceeds; long explanation. What we're trying to do here is to give ourselves flexibility so when you do adopt the financing plan and decide how you're going to finance the capital expenditures, you have the option, not the requirement but the option to fund those expenditures out of tax exempt bond proceeds rather than having to leave them in the R&R or the Revenue Fund pot. Long explanation for a short question, and added hit me again and I'll see if I can answer.

Commissioner Diesen stated well okay, I understand if the money comes out of R&R, and I understand what you're saying about the tax exempt but I just don't understand why we're doing it now when we're not to the point, we don't have a plan in place. I guess you're saying if we go ahead and just take something out of R&R that we normally would take out of R&R anyway, then if we go to the bond market we can say we'll reimburse that out of the bond fund even though we would have taken it out of R&R anyway; is that what you're saying?

Mr. Dame stated the question is at the end of the day, how much of your capital plan do you want to finance out of these three pots, and if our financing plan takes us awhile and we start to spend money now that we really would rather have not out of current cash or out of R&R, but we'd really rather be able to pay for that over a period of years which is what the debt does of course. Then what we're saying is yes, we can reallocate any expenditure we made now to a different pot and be able to allocate that to a tax exempt bond use and essentially finance that over a period of years. Now if you get to the point where it's time to borrow the money, it is time to issue the debt, and you decide no, we don't want to do that, don't do it. You still have the option, we're giving ourselves the option to do that at a future time. That's why if you look

(7-a) Consideration of Tabled Item – Declaration of Official Intent for Reimbursement of Expenditures from Bonds/Notes (cont.):

at this declaration it's got \$40 million there of debt in it, not because we expect to issue \$40 million of debt but because if we're going to do declaration, under the IRS rules, we have to say one what we're going to spend the money for and we've done that, and two, what the maximum amount of debt, tax exempt debt, we might issue is, so we've used the high number to give us the most flexibility. If that's a number we're not comfortable with, we can lower that number and we can use a smaller number. But to the extent we use a smaller number in there, we give up a little bit of flexibility down the road to finance something with tax exempt bonds.

Mr. Preston stated on my review of the declaration, and while Mr. Dame is still standing so he can correct me, it really just provides us flexibility and makes no commitment, we make no commitment regarding how we finance anything for that matter. It gives us the flexibility to go beyond I think it's a 60 day period of look back to operating costs. I see no down side at all, only simply a provision for us to be flexible when we do decide and do plan for financing of debt, how we do so and what we can use to finance that debt so we don't commit to a use of any one of the three pots.

Mr. Dame stated and that is correct, as Mr. Wagner mentioned to me, we're not committing ourselves here to issue debt, we're not committing either way.

Commissioner Diesen stated good, because there's no way you're getting a yes out of me to commit me to any thing here for \$40 million.

Mr. Dame stated obviously not, because we don't have a plan yet, we don't have a plan yet and we're not asking you to make any decision.

Commissioner Diesen stated thank you, you made my point.

Commissioner Spangler commented I think she's saying lead us not into temptation.

Commissioner Diesen stated and \$40 million certainly is a temptation, so okay.

Chairman Para thanked Mr. Dame and then stated to Ms. Klinkenberg, I think this is what, scenarios and strategies so that at some point in time should we come with a priority through Mr. Rodi and through staff, that you have equipped us with an avenue to travel that is already pre-laid and preset so that we're not scrambling at that point to try to find those proceeds.

Commissioner Diesen stated well, it's so you can spend it ahead of time and repeat yourself.

Mr. Rodi stated if you look at what we've done, we have some substantial reinvestment to make in existing systems and for example, the 20" low pressure line and new pumps on both ends of that line, and we have the reserve tank that's needed at Third Avenue on beachside. There are significant amounts of money that we will have to fund and frankly what we've been doing is trying to analyze when we really need to spend those dollars. Frankly also, what Mr. White is

(7-a) Consideration of Tabled Item – Declaration of Official Intent for Reimbursement of Expenditures from Bonds/Notes (cont.):

doing, we had a very honorable proposal from the western developers on one occasion to increase pipe size. Well, we have to do the load flow studies to find out if we do that if it accelerates then on a hydraulic basis the need for the tank for the fire flows on the beachside, that's kind of the consequence, or does it cause us to move up our schedule for putting in the 20" line. So the whole idea here is trying to time the use of money appropriately so that we're effective with it and if we have to start, for example, on the engineering design to do these things then our sequence would be that we would come to you and say here's the sequence we want we want to go through. The first step will be engineering design which is a significant amount of money just in and of itself, so we might start using R&R funds and then when we fund the project by going out for however we do it, then we would want to have that engineering cost be part of that project. So that's the kinds of things, to make it a little more tangible.

Chairman Para stated and I think what you're saying Commissioner Diesen is that, and what we've gleaned here, is when we spend it out of the R&R Fund then we reimburse ourselves.

Commissioner Diesen stated for a project that we are in fact going to bond for, we can go back and we repair those.

Chairman Para stated and if I'm getting this, it makes it more profitable or I should say less expensive for us to do that.

Commissioner Diesen stated yes, because it's non-taxable.

Chairman Para added cheaper money.

Commissioner Diesen stated I just didn't want to see us getting into some, I'm not signing anything off that gives away any power over money.

Chairman Para stated I think we're all in agreement with you on that.

Mrs. Klinkenberg stated I have no desire to borrow any more money than we absolutely positively have to.

Commissioner Diesen commented and there's a long process, we don't get to say if we get to borrow it anyway, we go across the street.

Mr. Rodi and Mrs. Klinkenberg concurred with that statement.

Commissioner Diesen stated I didn't want to raise any warning flags either. After a couple of comments, Commissioner Diesen concluded by saying that satisfies me.

(7-a) Consideration of Tabled Item – Declaration of Official Intent for Reimbursement of Expenditures from Bonds/Notes (cont.):

Commissioner Diesen then made a motion to approve the Declaration of Official Intent for Reimbursement (attached to agenda item) and authorize the Director of Finance to execute on behalf of the Utilities Commission. Commissioner Hall seconded the motion and it passed unanimously on a roll call vote.

(7-b) Update RE: Removal of Deteriorated Tree – 200 Canal Street:

Mr. Rodi confirmed Mr. Markos was not in attendance and then proceeded to state to the Commissioners, I think if you looked at the information in your packet, there's been a series of evolving steps that we're going through. We included some pictures of showing the tree before we trimmed it back for purposes of not having the branches fall below should we have heavy winds like we had just this past weekend. The pictures showed that the branches that we trimmed were hollow, the only thing that showed on the outside was just the bark, and we're told by the expert that the City first recommended that we really need to remove this tree and remove it now because the expectation is that the core of it, even though it's a historic tree, is all rotted out on the inside. So since that time a State of Florida forestry service person came over and looked at the tree and said the tree needs to come down and probably it is in this state because of aggressive pruning practices. Now I have trouble understanding that, but the pictures we included were previous removals of limbs long before the U.C. occupied this building. And there isn't an indication that this was the cause but regardless, so then the next step is someone from Volusia County was here looking at the tree, and where I am with it is I'm concerned. It looks healthy, it has a lot of vegetation that is out there right now which is a lot of weight in the wind and we still need to go before the City Commission to have the removal of this as a historic tree. What we would propose is to put plantings there, not another tree that's going to grow up to be that size with the constraints of asphalt in a parking area, but have something more in keeping with the parking lot area, that would provide a more pleasant view; so that's what we're proposing to do with it. We would like permission to move forward with this again.

Chairman Para asked if there were any questions.

Commissioner Diesen commented I think we ought to have a ceremony for the tree, it's been there since I was a kid.

Commissioner Spangler then made a motion to continue with the process as depicted in the agenda item for the deteriorated tree removal request to the City Commission for formal consideration. Commissioner Allen seconded this motion and it passed unanimously on a roll call vote.

(7-c) Status of RFI/RFP Generation/Water Update:

Mr. Beyrle addressed the Commission and stated we've had in the last month a couple of very good meetings with Steve Stein of R.W. Beck, with Mr. Rodi and myself and Mr. Stein, and then one with just Mr. Stein and myself at their offices. We're basically refining the RFP process,

(7-c) Status of RFI/RFP Generation/Water Update (cont.):

what details we want in there, what specifics we want on our renewable generation project here in this area. His recommendation is at this point to go straight to an RFP process based on the fact that the renewable technologies that are available are well known to all of us and there are quite a few RFP's out or coming out in the very near future for just this type of generation product. So rather than go out and gather information and then put an RFP together asking what for what we want, we've got a list of things that are acceptable and not acceptable to us as far as availability, as far as renewable technologies, and as far as location. Then we'll supply numbers as far as how many megawatts we expect to get, how much availability and then at that point we can go out for the RFP process. Another reason, one of the things he recommended is not to rush into this because we really get one shot at this and we want to make sure that the requirements we're putting in our RFP give us a desirable technology, give us the availability we need to meet our needs, and also based on any new CO2 legislation that may be coming out, we want to protect ourselves to retain any rights we may want to keep in the CO2 market or based on any legislation that's coming out. So we expect by early summer to have the RFP out to the interested parties for generation to come on line within a couple of years after that.

Commissioner Diesen asked is this going to have a menu that they can pick and choose, if they choose to do all of the above or part of the above or...

Mr. Beyrle stated yes. We have some acceptable and some not acceptable technologies that we would look at and we also have a range of sizes. If someone wants to supply the whole, say 40 MW's or however much we request or if we can maybe take different technologies and get different amounts, we'll have that option as well.

Commissioner Diesen stated and if there is a water component.

Mr. Beyrle stated there is, actually in the RFP there is some consideration given to other utilities such as water. If they can provide water as a byproduct, that will be given consideration, we put that in there.

Commissioner Diesen stated and you say as far as timeline, you expect it to hit the street...

Mr. Beyrle answered early summer.

Commissioner Diesen stated we're talking by June 15th.

Mr. Beyrle answered I think so.

Commissioner Diesen stated and what would be the time frame, have you gotten that far that they've suggested what, 60, 90, 120 days for reply; since you're going to RFP immediately.

Mr. Beyrle stated they haven't, we'll probably give ourselves somewhere in the 60 to 120 days; 60 days to come back and then do the process; they haven't laid out the exact time schedule yet.

(7-c) Status of RFI/RFP Generation/Water Update (cont.):

Commissioner Diesen stated but we're getting there, we're close.

Mr. Beyrle stated yes.

Commissioner Spangler stated when will we get to see them, your selection list and your reasons.

Commissioner Diesen stated we'll have to approve it before it goes.

Mr. Beyrle stated I'm guessing any short listing will have to come back before the Commission.

Commissioner Spangler stated right and if we make a quick decision then you can send them out.

Mr. Beyrle stated no matter what we go with it's going to take a couple years before anything's going to be online.

Commissioner Diesen stated but you're going to show us a draft of the RFP before it hits the street.

Mr. Beyrle stated yes.

Commissioner Spangler stated right, that's what I'm really talking about, and that will come...

Mr. Beyrle stated at the May or June meetings I would guess.

Chairman Para stated okay, because I can't talk to anybody reasonably, and I'm throwing this out for suggestion, not to be hatcheted, this in light of the Supreme Court decision that was handed down just the other day, and I've been following not only the information Mr. Rodi provided, but lots of other information; MPR did a wonderful job last weekend or weekend before from "On Living On Earth" and several other sources. I think this would be a great opportunity as a substantive conversation with our friends across the street, the elected leaders of the community, because this is huge. I think personally I believe that this decision is probably one of the most significant decisions that this court has handed down for the last 100 years. It's significant and it will affect not only our generation but future generations and what we do now will have a dramatic effect on our future and our future of our children. I think, not to build it up too much, but I think the significance of it, not to get too many cooks in the kitchen, and that's why I preferenced this conversation, is would it be appropriate to get the reasoned judgment of all parties because this is a journey we're taking together and we would like some front end. Not messing you (Mr. Beyrle) up because I know you know your stuff really well, and Mr. Rodi you know your stuff, at the same time I would like to understand a little bit more about the process as the process now has begun and is traveling along. And certainly I'd like to be a part of or participant in the input, just to throw ideas out there. What do you all think of that?

(7-c) Status of RFI/RFP Generation/Water Update (cont.):

Mr. Rodi stated my suggestion is, like most other very difficult decisions we go through, to have it be a step-wise approach, because right now you don't have any reference points. Mr. Beyrle and I have some reference points as to what we think should be included in the RFP and part of what Mr. Beyrle responded to you about was well what's going to be in it and when we get to the draft form that's when you take a look at it. I think noting the potential impacts of CO2 payments for releases, that's why I felt so strongly about waiting until the EPA vs. Massachusetts decision came out, it was a profound decision not on just the merits of the case but the implications for the future, and it raises issues that everyone on this Commission has talked about previously about sustainable lifestyle, sustainable energy, and it starts to swing the pendulum toward renewable energy and you know there's just a phenomenal amount of activity going on now at the State level and the Federal level. So from our standpoint the timing of this needs to move forward but we don't want something as important as this to become politicized; that would not be good. But from a standpoint of obtaining valuable insight with differing views, that's very valuable, and where that boundary is, we don't know.

Commissioner Diesen stated well that's why we employed R.W. Beck.

Mr. Rodi stated yes, that's correct.

Commissioner Diesen added they're the experts.

Mr. Rodi stated they have the acumen to deal with the breadth of this issue but even they right now are starting to deal with new possibilities that weren't there just a short while ago.

Commissioner Diesen stated so when it comes back to us as a draft, then I think, if I'm hearing the Chairman, you would like it presented probably at a Commission meeting, a City Commission meeting.

Mr. Rodi stated yes, maybe what we'll have is a joint workshop that would allow the public to participate as well because what happens with this is there are so many valid views and they depend upon what the overall policy direction is. For example, we don't have any policy commitment on the City's aspects to deal with energy efficient buildings, or conservation requirements with regards to plantings and new developments. As you know, from the previous information, there are a lot of tentacles that go to this and we have one part of it, but the majority of this whole effort really resides more with the City side than it does with us for the long term. So as you well know it's very complicated and I don't want to keep running on here because there's some other important items to go through but our next step is to bring you something so you can understand the scope of what it is we're trying to deal with and then from there we can decide what that next effective step ought to be.

Chairman Para stated yes, and I guess where I was trying to get us to was the point where when is it a natural process to bring the two bodies together because it is, and I'm pretty open handed with my thoughts, I don't see our colleagues or our elected officials taking unfair political advantage of different things, this isn't a political issue, this is apolitical, this is a part of our

(7-c) Status of RFI/RFP Generation/Water Update (cont.):

future. So with that it's appropriate to bring their leadership along with our and I have high expectations for Commissioner Spangler's ultimate report because I do believe exactly what you're saying Mr. Rodi, that much of the conservation side needs to be under girded and supported from the City's side in order for it to be successful.

Mr. Rodi stated I need to lob one more thing in there because what I've understood this Commission to do is to charge staff with moving toward the large concept of demand side management and conservation and efficiency. And part of what we're starting to do now is address that issue, Mr. Beyrle will have a new position that's in his budget that is a compliment to this RFP and basically its premise is that there is enough in the way of efficiency gains to offset future peak demands, I mean that's the fundamental of this. It's there for the taking once but after its achieved there isn't any more that's there and it deals with an ongoing support system to have that efficiency maintained with all new buildings and facilities. So that in order to accomplish that then we have to have adequate measurement systems, we don't have a lot of the support mechanisms in place and a lot of this falls upon the engineering and the operating elements to develop these support evaluation methods to use.

Chairman Para stated I think with regard of our policy we've given you all a lot of latitude to work with and with that comes great expectations, so we'll look forward to future things that are good.

Commissioner Allen stated question, the RFI/RFP, is that when you're looking long term out, is there anything for the short term in there.

Mr. Rodi stated no.

Mr. Beyrle stated no, this is for the generation and the renewable.

Commissioner Allen stated you haven't approached the short term yet.

Mr. Beyrle stated actually we're, through a lot of my talks with some of the other utilities out there, pricing in the long term for a lot of utilities as far as offers for power supply is difficult. Once you get out past the 2011 time frame, they're having a hard time making any kinds of offers in the long term. We're good through the end of 2008 right now and what we're looking for right now actually is in the short term, the 2009 to 2011, just through informal talks with other suppliers. So when this comes, when we see what we're getting back on this, we'll have a better handle on what our needs are going to be going forward out, say 2011, 2012, based on what we're able to get out of this offer.

Mr. Rodi stated our strategy assumption is for the immediate short term, two to three years out, coupled with the RFP, the timing is to sequence these. And again with the CO2 ruling, there's already a great deal of confusion about long term pricing so what we're seeing already is the industry starting to react to it as far as long term commitments.

(7-c) Status of RFI/RFP Generation/Water Update (cont.):

Chairman Para commented I read the lecture from Florida Power & Light. He then thanked Mr. Beyrle and Mr. Rodi.

(8) New Business

(8-a) Developer's Agreement and Addendum – The Palms:

After Mr. Heebner approached the podium, Chairman Para commented Mr. White goes first.

Mr. White addressed the Commission and stated this agreement and addendum is the other side of 3-a. that was on the agenda above, public participation. Again this is the infrastructure agreement addendum to The Palms development, it represents a development of 1,056 housing units equivalent, and the staff is recommending to authorize the CEO to execute. With the amount of discussion that's gone into this in recent hours days and weeks I don't want to belabor any particular point but I'd be really glad to address any questions you may have.

Chairman Para confirmed with the Commissioners there were no questions for Mr. White at this point, and then recognized Mr. Heebner to speak.

Mr. Heebner addressed the Commission and commented sorry for that intrusion, and then stated his name and representation again. He said we are encouraged by what we have heard today, we have not been in the loop as to what these discussion are, we're disappointed in that because we have a very strong interest in how this document ultimately is drafted. You may also recall as part of our consideration today is we have some abiding concerns about the language and the way it interfaced with other developers. We would ask then that we be deferred or table this matter for 30 days until your next meeting. However, we would like to caveat that by requesting strongly that ourselves, our engineers, be and participate, we want to be helpful, and we want to make this work for you and for us. We want to be responsible but we want to participate in these discussions and these negotiations so that the language of this document that you're going to ask us to sign in 30 days, we participate in that process, it's the only business like way to do it, it's the only way that allows us to be sure that we make good business judgments with you. So we would request that for both Mr. Johnson's counsel and Mr. Preston, so that we participate fully, we'll be as helpful as we possibly can be, that's our goal. He reiterated so we request that the matter be tabled until your next regular meeting.

Chairman Para then stated all right, what's the wisdom up here, anyone would like to comment.

Mr. Rodi stated this is one of the reasons why your item was removed from consent. I think what is evolving, and I refer to it as a master payment agreement for those parties that are signatory to this agreement, and what we're trying to do is build a flexible document that would relate to the varying needs, both north and south of S.R. 44 and west of I-95. The technical considerations I think have been well represented already from a standpoint of supply for that whole area. What we're trying to do now is take the documents so that whatever relationships there may be amongst the parties, the U.C. isn't particularly interested in dealing with those

(8-a) Developer's Agreement and Addendum – The Palms (cont.):

relationships but we are interested in having the overall infrastructure. So I think what has been proposed to us will allow everyone to work within the framework that they're working with and allow for the infrastructure to be built in a timely and cost effective manner. So previous conversations that have occurred that I've become aware of, we've tried to incorporate everyone's interest honorably in this. What we're doing now is trying to provide the words that reflect the higher level understanding and then we have a document that we can begin to work with. At that point I think you would be able to review it if you're going to be a signatory party. We also would have LandMar be a signatory party, there are several others, and depending upon the scope, then the provisions that would benefit the signatory parties would be listed and then everyone understands the relationship issues. I'm trying to talk over this a little bit without getting too detailed but I think everyone may be following me at this stage.

Mr. Heebner stated we have a common goal so that is not the issue, it's just really the ability to participate in the process so that when it comes down to signing we understand the document that you're requesting us to sign and we're prepared to write the check; all of which ought to make you happy.

Chairman Para asked so I can understand, Mr. Heebner what process, you keep referring to you were not included in the process; what's the rub.

Mr. Heebner stated well we understand there have been some negotiations and a document submitted back and forth and some issues with the Engineering Department and we would just like to participate in that so we have certain issues about the document, we have concerns about it and Mr. Preston and I have talked about it on a number of occasions. So we would just like to participate in those negotiations and discussions prior to being asked to execute the document, that's all.

Mr. Rodi asked to give some comment here, one, we're concerned that there not be double payments, that's why we're trying to list projects and who's paying for what, and on a higher level. But when Counselor Hood stood before us he was representing the western developers and the names of the developments were on that document so that what we have reacted to is one, we had public meetings to talk about the technical aspect. That was the very first thing Counselor Hood recommended, that we within 30 days have public meetings, we did that. He didn't necessarily say public meetings, I made them public meetings, and we went through the technical aspects. Then within that context what we were trying to do was then start to formulate this overall agreement that all of the listed developments would participate in. That's sort of where we're coming right now is trying to craft words that relate to the actual infrastructure projects that would be there, so we're at that stage.

Mr. Heebner reiterated we really want to be helpful in that process so that we all have a clear understanding when we get ready to sign the document, we're prepared to do that. We would simply like to have notice of these meetings so that we can participate to the extent we feel appropriate.

(8-a) Developer's Agreement and Addendum – The Palms (cont.):

Chairman Para commented there were two public meetings that took place, were you not notified of those two meetings.

Mr. Heebner stated we were unaware of them.

Mr. Rodi stated they were put on the website...

Mr. Heebner stated that may be, we were just unaware that they were taking place.

Chairman Para stated were you here, I believe you were here when Counselor Hood made his presentation.

Mr. Heebner stated I was here, yes.

Chairman Para yes, and during that time you were aware that we were going to have these two meetings, right.

Mr. Heebner stated I was not, there were meetings held but as I understand we did not get notice of the actual meetings themselves. We'll be glad to participate, we just want to do so in the future so that we can be helpful in the process and be ready to sign in 30 days.

Chairman Para stated all right I'm done and then checked with the other Commissioners.

Commissioner Spangler stated I think, the counsel, various counsels, were one of the things that was very important to them was that the discussions be all inclusive and not just be a couple of things with everything else left out and so they were very, I think Mr. Morris in particular mentioned the fact that we wanted to address everything, and everyone was pushing for a short time frame. I think we set time parameters of 30 days, 30 days, and 15 days, or something like that, and I know that one of your interests is time, right.

Mr. Heebner stated correct.

Commissioner Spangler stated all I can say to you about that is the time is everybody's interest and if you postpone for 30 days, I think that it will be a lot further down the track and my understanding of what's going on is most of the meetings and negotiations have been technical and referring to the model which everyone is in agreement on, and they're just trying to say okay this is what we're going to need and when. The other part is what the attorneys are drafting now, so had you had engineers at those two meetings that have already happened, that Mr. White referred to, then you would have been fully participant in that part of it, and the attorneys are working individually and you might talk to them about the rest, the other aspects, how they're going to put it on paper.

Mr. Heebner stated precisely.

(8-a) Developer's Agreement and Addendum – The Palms (cont.):

Commissioner Spangler stated right, but the meetings that you missed basically were technical and engineering wise and I don't know that you would want, I think one attorney made a remark about electricity, something we only know when we touch it.

Mr. Heebner stated I'm certainly not complaining about not going to the technical meetings, but we simply would like to participate, primarily in the drafting the document to the extent that we need to; we just want to be helpful and move the process forward.

Chairman Para stated I certainly understand but I support staff in that where do we cut the line, when they put it on the website and they notice it in accordance to our standard policy.

Mr. Rodi stated I think that maybe we're at the next phase and I don't know if there were other comments. Mr. Johnson wants to say something too.

Mr. Johnson stated their engineer I believe was at all the technical meetings that you had, is that correct Mr. Wainscott. He confirmed they did attend the meetings and in addition to that I did talk to them, one of the partners, after our meeting and went over what took place with that as well.

Mr. Preston then stated I think we're very premature, we're premature in a lot of areas, one of them being who are signatories to what agreement. I don't know what the agreement will even look like, it has been proposed to me and I received it at the end of last week, Mr. Garthe put that together. Our discussions were limited in scope in terms of the offers made by two developers in particular. As I vision this agreement, I see it as an agreement where we as the Utilities Commission, and I used this analogy as a wagon wheel, we are the center of the wagon wheel in dealing with the various entities that are west of town in particular, and where the other spokes may benefit by an agreement that we enter into with several of the other spokes of that wheel, it's to their benefit. At this point I don't anticipate many signatories necessarily to that type of an agreement, I see you (The Palms) as a beneficiary, or another developer as a beneficiary to the agreement simply speaking because of the efficiency in the operation and development. So at this point it's a little confusing to me to engage additional parties where there really is, its almost a bilateral agreement or discussion at this point, still to the benefit of the other developers inasmuch as if an agreement is entered into which is cost effective to the point where other developers in the other areas may benefit by lesser determination of the ERU charge for example or if paid, then any kind of true up at some point. But I think it's premature at this point to look at the engagement of a broad group where I think the relationship is more of the center spoke to wheel.

Mr. Heebner stated well I can't dispute that I think, my only concern is we're just now sure quite what was going on and the fact is if we, if there is a master payment agreement that we are going to be asked to execute and write our check, we simply want to participate in the process of that development of that agreement, if that's what is going on, and if that is we would just like to be helpful in the process; that's our only...

(8-a) Developer's Agreement and Addendum – The Palms (cont.):

Mr. Preston stated and I will say publicly you have been helpful and I hope historically I have proven to you that I have an open line of communication with you and that as we develop this agreement I will continue to do so that you're kept informed as we proceed.

Mr. Heebner stated we appreciate that and we would like to ask again to be tabled until your next meeting.

Chairman Para then asked what is the pleasure of this group?

Mr. Rodi interjected deferred or tabled.

Mr. Heebner stated I'm not sure how your rules work, normally if you're tabled you automatically appear on the next agenda as a practical matter so we asked to be tabled. Now the agreement may look different that's on the table now but we'd like to be tabled so we're automatically on your agenda for the next meeting.

Commissioner Diesen stated I move that we table this item, table it because it will come up on our next regular meeting. Commissioner Spangler stated I second that and the motion passed unanimously on a roll call vote.

(8-b) Modification to Fuel and Purchased Power Cost Adjustment Clause (FPPCAC):

Mr. Beyrle addressed the Commission and stated as you probably all know I think you're all copied now on the energy cost adjustment clause document at the end of each month, you see what our fuel costs and what our revenues were for that month and you can see that we've been over recovering since we increased our fuel adjustment back in November. Mostly due to the mild winter that we had, we've had very consistent sales and our costs have not been that high so we're over recovering at a faster pace than expected. We still have some of the still issues going forward this summer, transmission issues, the uncertainty with the hurricane season and with what oil prices are going to do, but we feel confident at this time based on looking out twelve months and based on some purchases we've made for the summer that we can reduce the fuel adjustment cost at this time down to \$41.70 per 1,000 kWh.

Commissioner Diesen stated and we're not going to come back at our next true-up. That's my only concern because I'm looking out there and I'm seeing every other utility jacking it up big time on the fuel and purchased power so I know we've had a lot of folks looking at a second time at their bills, and as you say we've had a very mild winter, but I just want to kind of...

Mr. Beyrle stated this is based on a fairly conservative estimate for the next twelve months. I didn't bite off more than I thought we could handle.

Commissioner Spangler stated and you also have a pretty good idea of what we're going to pay for that power for the next twelve months.

(8-b) Modification to Fuel and Purchased Power Cost Adjustment Clause (FPPCAC) (cont.):

Mr. Beyrle commented I hope so.

Mr. Rodi stated I'd like to make a comment because this reflects the swings that different utilities are involved in. We ended up in the position because we did not raise rates when the fuel costs for generating electricity were just through the roof and part of the reason was gasoline prices were \$3.00 or more a gallon. And of course we paid for all of that high cost power and then the timing was we started to recollect that payment that we made and now we're in the position rather than just leaving it as it is with gasoline prices now up at \$3.00 a gallon again, that we don't see the reason to maintain the high level that we were at because we have recovered. So we're trying to share with our customers and take part of that risk because we really don't know what will happen but we think we have, at least with all things being equal, we have this as an opportunity to help and that's why we're moving forward with it at this time.

Chairman Para stated further discussion, then, is there a motion?

Commissioner Diesen stated you've got a public participant down there.

Chairman Para stated it's up to you to the Commissioners, if you want then we'll allow it.

Mr. Tolley addressed the Commission and stated I know I may catch a lot of flack on this one but I'd strongly recommend leaving it just where it is. I concur with Commissioner Diesen, we can let it go out a little bit more and you can always give, I don't want to use the word rebate, but I think the worse thing to do right now is to lower this, one shot gets fired over there in the straight, we're back up again, then what are we going to do, go back down again. So I think everybody's kind of budgeted this item in their budgets, they already know what its impacting them each month. My personal opinion is why don't we just wait a little bit more, try and get through the summer and see what the summer brings, because we may get very quickly cut off if we get an active hurricane season; which they're predicting. So I just think it's the wrong time to be giving the rebate right now or cutting the rate.

Chairman Para thanked Mr. Tolley and confirmed there was no further public participation.

Commissioner Allen stated having looked at this, I don't see a problem with it, as a matter of fact I would have been, and me personally, I would have been a little more aggressive. I think its fair looking at some numbers and just knowing where the energy was last year. When you look at when we brought this fuel adjustment into play and this Commission caught a lot of flack for it but when you look at how long the under recovery went on, it was more than just a one year period, it was over two and half, basically two and a half, almost three years that those reserves ended up building there that we were carrying that brunt. And with making the move when we did, with the mild winter, and we were able to recoup and the way this looks right now I think it will still continue to come back in, especially as Mr. Beyrle has done his work in looking a year out, for a twelve month period, not just the summer. I think it's a fair value and its something they can work with in the operating end but it does not alleviate them from being prudent in their daily managing of the resources. When we look and we think about summer time on the peaks is

(8-b) Modification to Fuel and Purchased Power Cost Adjustment Clause (FPPCAC) (cont.):

where those men as they sit at the desks over there on a daily basis, as they manage those resources and look for economical resources, is where they earn their keep. So I'm for seeing this come in and we look and think about a 2.8% decrease in the average residential bill of 1,000 kWh, when you actually look at the actual decrease, when you look at the fuel component side, it was a 7.9% reduction in the fuel adjustment side. He concluded by saying that's all I have to say.

Chairman Para thanked Commissioner Allen and added given your background I think that's a pretty high recommendation. I too agree this is a value added component of this Commission in its responsive nature and Mr. Beyrle to credit to you and your staff for being this responsive and proactive because that is the value of municipal governed utility companies. This is a wonderful example of that, that we give immediate relief to the residents as opposed to the IPO's, some of the other companies that don't do that. He then asked if there was a motion.

Commissioner Allen stated I make a motion that we approve the modification of decreasing the fuel adjustment (approving decrease to the fuel and purchased power cost adjustment clause from the current \$45.29 per 1,000 kWh to \$41.70 per 1,000 kWh, effective with the first billing cycle in May, 2007). Commissioner Spangler stated I second that motion, and have a comment to make.

Commissioner Spangler stated my comment would be that I understand where Mr. Tolley's coming from and the forces that can impact the price of power in the future, we can only speculate as to what may happen and we can't really govern our rates based on speculation of big events. So basically what we're trying to do is we're trying to be helpful under the present circumstances.

Chairman Para commented give some relief back to the people, good deal. He then stated no further discussion, call the roll.

Commissioner Hall stated I have a question, effective with the first billing cycle in May, 2007, to go how long?

Mr. Rodi answered twelve months.

Commissioner Hall stated having dealt with the cost of diesel for school buses over a period of a number of years, that's just tough for me to swallow Mr. Beyrle. I trust you but having come from another area of government where it's volatile, I'm just not sure if I can go along with this. I mean I'd love to because it would reduce my bill too but I'm just not sure if we ought to go twelve months. I would probably go with a shorter time period.

Mr. Beyrle stated we're not precluded from, this is based on a twelve month projection, but the way our tariff is written for our fuel adjustment we can revisit it. When we went to the \$45.29 in November that was based on a twelve month projection.

(8-b) Modification to Fuel and Purchased Power Cost Adjustment Clause (FPPCAC) (cont.):

Commissioner Diesen stated but this is only six months isn't it, this is only a six month true up right now.

Mr. Beyrle stated since we had our last fuel adjustment.

Commissioner Hall stated yes, I think I asked at that meeting if we were absolutely certain that this is what it was going to be and the answer was yes, and now we're coming back with let's lower it. I understand, frankly, I agree with Commissioner Spangler.

Chairman Para commented don't look a gift horse in the mouth.

Commissioner Hall stated but having experienced a different reality in the past I'm just concerned about it.

Mr. Rodi confirmed and stated we are still at the what, \$2 million not recovered yet, so the forecasting includes recovering that \$2 million over the next twelve month period. It isn't that we've recovered all of the \$4.7 million we were in arrears. So what we were trying to do was look at the current status of what energy costs are collectively and bringing it down a notch for the next twelve months and we're not precluded, as Mr. Beyrle said, if there is some other event we can change it again. Under our tariff if there is some major issue, and we considered the recovery that we have achieved over this six months as major enough to try and share that with the community. As we move forward, if there is an event in the Gulf, talking about the Gulf of Mexico, if there is something else that does occur, the Commission can take it back up again, but the forecast is to have this remain in effect to recover the balance of the \$2 million and then at that point we can leave it the same, or lower it again; we'll have some ability then to deal with it again.

Commissioner Hall stated I understand where you're coming from, and I will vote for this, but with the understanding that we need to send some information out to our customers in the next billing cycle or something.

Commissioner Diesen stated yes, we don't want to get into a situation where we're just bouncing around and that use to happen because I think it was done quarterly.

Mr. Rodi stated yes.

Commissioner Diesen stated and then you have just mass confusion and that's what I don't want, I don't want to send one message and then go oh, hey we found \$4.7 million because that really...

Mr. Rodi stated and I need to comment on that because every utility goes up and down and the IOU's do it all the time. This is despite the sophistication of large organizations, I believe I'm correct when I say that FPL's hedging program lost \$250 million, so they are very capable of dealing with this and when I see an organization of that size not be able to cope with fuel

(8-b) Modification to Fuel and Purchased Power Cost Adjustment Clause (FPPCAC) (cont.):

adjustments for whatever reason, you know I can't give the assurances that I'd like to give that this is a dialed in science and you can just plug it in and you get the answer you want; it just doesn't happen.

Commissioner Diesen stated but you're pretty confident that we're okay to do this based on the information that you have.

Mr. Rodi stated right.

Commissioner Diesen added for the next twelve months.

Mr. Rodi stated yes, and if the war heats up again, I mean or, I don't think that's the what ifs, I would hope that doesn't happen to any of us.

Commissioner Allen stated we can play with what ifs but you know I wouldn't be surprised next year this time we come back and we're looking at another reduction.

Mr. Rodi stated well, I hope so. He stated I didn't expect to run in to this, I expected this kind of discussion when we raised it.

Chairman Para stated let the record reflect I am okay with it.

Commissioner Spangler stated I think we all know why we need to do this and you know it's not going to make or break anybody out there but it's kind of a good news that people need to have right now, however, whatever their big financial impact may be on their pocketbook of the \$3.59, it's good news and people need to have some right now; that's why we're going to do that.

Chairman Para stated yes, confirmed there was no further discussion, and asked for roll to be called on the previous motion.

Commissioner Allen's previous motion then passed unanimously on a roll call vote.

(8-c) Major User Reclaimed Water Delivery Agreement – Venetian Bay:

Mr. White addressed the Commission and stated this agreement is a function of our regulatory compliance, its ruled under our CUP that we have major user agreements as part of our overall water use plan and conservation plan and that we have a way of managing through agreements our large water users who have the potential, just as one user, to swing an operation the size of our utility. This is the agreement model that has been used for our existing major users. I believe Counselor Preston has reviewed this and he may have a comment on it. Some of the wording developed in this sounded as though it was endeavoring to get rid of excess water and at the last time we wrote one of these, that's where we were, that's not where we are now really. We are fluttering up and down that line which is our capacity produced but this is one of those

(8-c) Major User Reclaimed Water Delivery Agreement – Venetian Bay (cont.):

agreements that allows us to manage that use and that resource and fulfills our CUP obligation to do so.

Mr. Preston stated I have reviewed it and I saw nothing legally that caused great concern, it also deals with the property rights, easement rights as well. So it looks comprehensive and I agree with staff in the recommendation for approval.

Chairman Para asked if there were questions of staff.

Commissioner Diesen stated I guess to ask staff, Mr. Johnson's in agreement with it since it's Venetian Bay, correct. Mr. Johnson visually indicated yes.

Commissioner Spangler made a motion to approve the Major User Reclaimed Water Delivery Agreement for Venetian Bay and authorize the General Manager/CEO to execute this document. Commissioners Allen and Hall seconded this motion. Chairman Para commented I call it Commissioner Allen.

There being no further discussion, Commissioner Spangler's motion then passed unanimously on a roll call vote.

(8-d) Interim Approval of Developer Agreements – Venetian Bay of NSB, LLC:

Mr. White addressed the Commission again and stated this item specifically is Developer Agreements for Venetian Bay Phase 2, Unit 1, Venetian Bay Phase 2, Unit 2, and the Venetian Bay Golf Club. These are portions of the Phase 2 project at Venetian Bay that are under construction, that are nearing the point by which they need to make some active decisions in their operations. The first involves 78 residential unit equivalents, the second 91, and the third is the Club, which will be 12.6 units. Staff's recommendation for an interim approval giving the activity in the processes that are ongoing with the other major parts of the overall project out there.

Chairman Para thanked Mr. White and asked if there were any questions for Mr. White or staff. There being none, he asked if there was a motion.

Commissioner Diesen made a motion to approve staff's recommendation for an interim approval of the three developer agreements (Venetian Bay Phase 2, Unit 1, Venetian Bay Phase 2, Unit 2, and Venetian Bay Golf Club) pending final approval of the master payment/infrastructure agreement for zone one. Commissioner Hall seconded this motion and it passed unanimously on a roll call vote.

(9) Possible Other Business – Time for Commissioners:

Chairman Para then stated staff we'll let you go first.

(9) Possible Other Business – Time for Commissioners (cont.):

Mr. Rodi stated we'll probably be doing the tree reseeded this weekend coming up, we've had some rain, so that's if you see the helicopter flying around over the U.C. property, I-95. What we are doing is reseeded the burned areas and we're trying to help the wetlands come back; that's what that is about.

Mr. Rodi stated we received a proposal from FPL on the 230 KV substation and we are reviewing that at this point. There's some other deliberation points that we'll have to go through but that is moving forward, we'll probably be back here with the proposal after counsel has a chance to review it too, maybe at the next meeting, nothing of a great surprise there.

Mr. Rodi stated I think I sent you an email that Counselor Preston had received a request from the Bethune Beach Homeowners Association to underground the sub-transmission lines and the distribution, the overhead distribution system there. Currently staff is looking at the estimating process to go through that proposal on that would be 100% reimbursement, I don't know what payment methodology, maybe a special taxing district or something of that nature, but we're in the very early stages of that. He concluded by saying that's all I have.

Commission Allen stated I just would like to express my appreciation for Ms. Mahle and OUC and their Energy Conservation seminars that they've done, the last one went very well. I attended and there was a lot of interaction so it was really good, informative to the folks who came out and maybe somewhere in the near future we can be able to do some more of that as it catches on looking at conservation on the customers' side. Then also, City Commissioner Plaskett expressed her appreciation for us being able to partner and being able to do that to help our customers.

Commissioner Diesen stated I just want to thank Mr. Rodi for your interim information pieces that you've been sending out to us, I appreciate that.

Chairman Para stated one quick thing, we've checked most of what I had, on the information requests that for instance us Commissioners do, and I thought previously we had an understanding but could we really nail it down. If I ask for something to get transmitted to the Commissioners, my name be put on it, that there be no mystery as to who made the request.

Mr. Rodi stated generally, Counselor if I may, usually information requests are anonymous and requests to divulge the requesting party are normally not granted unless its agreed to by all of the parties ahead of time.

Mr. Preston stated that's correct.

Mr. Rodi stated that's why I've been careful in that someone doesn't need to say who they are, if they want information, that's why I did that.

Mr. Preston stated its not required to name yourself if you have a request.

(9) Possible Other Business – Time for Commissioners (cont.):

Chairman Para stated I guess because we're public service people, in the Florida sunshine, whatever we do we don't have any anonymity.

Mr. Rodi stated I was just making a technical point, to reveal the requestor's name is protected under the law.

Chairman Para stated but from our standpoint as Commissioners.

Mr. Rodi stated if you all say that's what you want, then I'm fine with that.

Chairman Para stated is there any Commissioner who has an objection to that.

Commissioner Diesen stated to Chairman Para, explain yourself, who are you referring specifically.

Chairman Para stated there was in the past, I think Commissioner Hall had made a request for information and it came through to me that Commissioner Hall had made a request for information and then I had recently made a request for information and it came through, not that its important, it's just consistently and alignment. That's all I'm saying, is if we ask for public documents or information to be circulated that the Commissioner, and there was a question once that I had asked, Commissioner Spangler had asked for some information and I didn't know who it was that was asking. Not that it mattered a lot but it was important to know to me that this Commissioner or that Commissioner is asking for this information, so unless...

Mr. Preston stated I'm not sure that you can contract away or agree away your legal right to request documents and remain anonymous for that in this body. You can do so in your request individually.

Commissioner Spangler interjected we can voluntarily.

Mr. Preston stated correct.

Commissioner Spangler stated right. I have one comment about the Sunshine Law too, I don't know how many people in the back of the room can hear anything that we say but all City Boards and Commissions meet here and this sound system is terrible and if they can't hear us, are we violating the Sunshine Law.

Chairman Para commented if a tree falls in the woods.

Commissioner Spangler stated otherwise we're obligated to have a sound system that allows everybody in the room, all the public, to hear every word that we say under the Sunshine Law and I suspect that's not the case; just a comment.

(9) Possible Other Business – Time for Commissioners (cont.):

Chairman Para then confirmed there were no further comments and stated then we'll stand in adjournment.

Commissioner Diesen stated well I don't want to contract away my right to remain anonymous if I request something then.

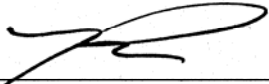
Chairman Para stated okay.

Mr. Rodi stated just to make it clear, we will convey the information, whatever's requested, we will convey the information.

Chairman Para stated right and for those that will be speak up, we'll just let it be at will, so in that it kind of died, I thought that would be what we'll do; so for me I'll stand public.

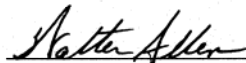
There being no further business to come before the Commission, Chairman Para stated we'll stand at adjournment; Chairman Para closed the regular U.C. meeting at 7:44 p.m.

APPROVED:



CHAIRMAN

ATTEST:



SECRETARY-TREASURER

These minutes were formally approved by the Utilities Commission at their May 21, 2007 meeting.