

[ANNOTATED VERSION]*

*[*NEAR VERBATIM / DETAILED VERSION POSTED ON UCNSB WEBSITE – UCNSB.ORG]*

MINUTES OF A REGULAR MEETING OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, HELD MONDAY, NOVEMBER 22, 2021, AT 3:00 P.M., AT 200 CANAL STREET, NEW SMYRNA BEACH, FLORIDA
(NOTE – THIS REGULAR U.C. MEETING WAS HELD ON-SITE)

Chairman Davenport opened the Regular U.C. Meeting. Commissioner Smith led in the Pledge of Allegiance and Commissioner Conrad provided the invocation.

Safety Message by Vernon Steele – Electric T&D Safety Improvements:

Mr. Vernon Steele, the Director of Electric Operations, provided the safety message regarding Electric T&D Safety Improvements. He provided a presentation depicting recent safety improvements completed within the Electric Department relating to prevention of slips, trips, and falls, sprains and strains and increasing hazards recognition.

After conclusion of the presentation, Chairman Davenport inquired if there was any type of incentive for employees who come up with ideas for safety.

Mr. Steele responded that was a great idea and that's something we've been discussing. You know maybe a competition or some kind of recognition program. We don't have that now but it's something we've been discussing in our department, as well as in the safety department.

Chairman Davenport also commented on a tools demonstration during the FMEA/ FMPA Annual conference – very supportive of the industry; may be a good resource as needed.

Commissioner Kelly also expressed support of the employee incentive idea.

Roll Call:

Chairman Davenport then requested roll call and a majority of the U.C. Commissioners were in attendance as follows:

Commissioner Richard Hawes (Absent)
Commissioner Lawrence Kelly, Jr.
Commissioner James Smith
Commissioner Lillian Conrad
Chairman James Davenport

Others in attendance were as follows: J. Bunch, General Manager/CEO; E. Chavez, Director, Finance/ CFO; J. Couillard, Director, Engineering; M. Travers; System Ops. Supervisor; B. Keehn, Director, Information Technology; S. Heil, Water Production Supervisor/ Interim Water Resources Director; B. Beck, Director, Central Services; V. Steele, Director, Electric Operations; John McMurray, Director, Strategic Programs; Laquavius Green; Help Desk Technician; M. Spellers, Sr. Help Desk Technician; D. Simmons, Exec. Mgr./ Recording Secretary; General Counsel Thomas Cloud Esquire – Gray| Robinson Attorneys at Law; FMPA Representatives - Rich Popp, Treasurer/Risk Director and Gloria Reyes, Asst. Treasurer/ Investments; John Moss, Lisa Martin, Chuck and Corrine Morant (803 Schoolway Avenue, NSB); all members of the public in attendance on site.

(1) Agenda Changes, Additions and Deletions:

Chairman Davenport stated next, any agenda changes, additions, or deletions Mr. Bunch?

Mr. Bunch stated Chairman I have none from my portion. Mr. Cloud did you have an item that you wanted to add on your portion?

Mr. Cloud stated yes sir. There is one of these 5G pole attachment agreements which it was discovered by staff had been sort of floating around, they're actually using it. They signed it but we haven't, and I was going to bring that up under my part of the agenda. Or you can, if you want, you can add it to the consent agenda, it's your call. And I'm happy to discuss it at the time of my agenda.

Mr. Bunch stated because we're introducing it now, I might suggest that we do the former and cover it under your portion and give folks a chance to ask as they haven't seen it.

Mr. Cloud stated yes, I'd be happy to do that. This add-on item was placed under Section 5. General Counsel's Report.

(2) Public Participation:

Chairman Davenport then stated public participation. We have one person that would like to speak today, Chuck Morant from 803 Schoolway Avenue, New Smyrna Beach. It's an electrical service issue he'd like to talk to us about today Commission. Go ahead Mr. Morant, if you would introduce yourself for the record, please sir, step up.

Mr. Morant stated sure, good afternoon Commissioners. My name is Chuck Morant. I live at 803 Schoolway Avenue in New Smyrna Beach, Florida. And I'm here with my wife Corrine. We're here today after speaking with Mr. Davenport by phone about an electrical problem that occurred at our house on the 23rd of August and the subsequent decision that was made by the Utilities Commission regarding this incident. We emailed each of the Commissioners on August 27th about this but never received a reply. First of all we'd like to let you know that everyone we contacted by phone or came in contact with, in person at the Utilities Commission, were very professional and the service we received was outstanding. The line crew that responded to this incident was very knowledgeable and quickly fixed the electrical problem. The final resolution is our complaint.

Mr. Morant then explained the incident in detail and requested consideration from the Commissioners regarding reimbursement of a \$250 electrician bill due to partial power experienced at his residence. This request had been denied by U.C. staff due to limits of liability.

After substantial discussion and consideration, including U.C. staff and General Counsel, the U.C. Commissioners upheld the reimbursement denial.

Commission Actions:

Commissioner Kelly made a motion to make an exception to policy and pay the \$250 electrician bill, as a one-time motion on this specific matter.

(2) Public Participation (cont.):

Commission Actions (cont.):

Commissioner Smith seconded the motion for discussion.

After discussion, Commissioner Kelly withdrew his initial motion.

Commissioner Smith made a motion to compensate for 50% of the electrician's bill - \$125, to split the difference and have it as a credit on the utility bill.

Chairman Davenport seconded this new motion.

After further discussion, Chairman Davenport withdrew his second to the motion.

Commissioner Smith's motion then failed due to the lack of a second.

In conclusion, as stated above, the Commission ultimately upheld the denial of reimbursement of Mr. Morant's electrician bill in the amount of \$250 due to limits of liability.

(3) Approval of Consent Items:

Commission Action:

Chairman Davenport confirmed the Commissioners did not want any consent items pulled from the consent agenda for discussion.

Commissioner Smith stated I move for approval, the consent agenda; specifically a motion to approve the consent items – item 3-a. Minutes of Regular U.C. Meeting Held 10-26-21, annotated version, approve as submitted; item 3-b. Granted and Accepted Third Party Utility Easement (Jefferson St. Parking Lot – City of NSB), ratify the acceptance of this third party granted utility easement – granted for the Jefferson Street Parking Lot (611 Jefferson St.) from the City of New Smyrna Beach; item 3-c. Project Approval – Lift Station No. 10 Improvements Project, approve this project and total project budget of \$1,760,972., including professional engineering services by Tetra Tech, Inc. in the amount of \$304,972. and authorize the General Manager/CEO or his designee to execute all documents associated with this project; and item 3-d. Contract Renewal – Cogsdale Annual Software Renewal, Extended Maintenance and Support Services Contract, approve renewal of software, extended maintenance and support services for the U.C.'s Financial Management, Customer Information, and Billing Systems, in accordance with attached sole source procurement, authorization of the expenditure of \$209,129.46 to Cogsdale Corporation and for the General Manager/CEO or his designee to execute the documents associated with this matter.

Commissioners Conrad and Kelly simultaneously stated second.

Chairman Davenport requested and a roll call vote was then taken on the motion.

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

(4) General Manager's Report:

Mr. Bunch stated there were a couple items under the General Manager's Report section this month. Indicated we'll do the normal financial status report, I'll ask Mr. Chavez to come up and then behind that Ms. Beck will give a presentation on electrification. Before Mr. Chavez speaks, I'm just going to mention that because this is the first month in the new fiscal year, we're not going to present the key performance index, KPI's, we're going to hold off and do those quarterly.

(4-a) Financial Status – October 2021:

Mr. Chavez presented and discussed his presentation, entitled October 2021 Financial Performance, and Wholesale Power Transaction Policy and Investment Policy Revisions and KPI's for October 2021.

For the financial portion, Mr. Chavez stated the U.C. had a change in net assets of approximately \$1.6 million, driven by increased revenue – usage and volumes, and lower purchased power and operating expenses. Assets were \$1.4 million greater than October 2020. Capital expenditures were approximately \$1.3 million for the month - \$0.6 million in major projects and \$0.7 million in annual projects. Operating income was \$1.4 million and \$1.3 million greater versus October 2020. Capital contributions were \$0.2 million (cash), \$0.1 million higher than prior year.

For the Wholesale Purchased Power Policy, Mr. Chavez then presented and discussed the framework for this policy, approval levels and associated transactions – what is permitted and what is prohibited. Stated in essence this policy is formalizing what we're already doing. Had a consultant to review our process of purchasing power and making sure that the U.C. has the right internal controls around it. Stated this expense at \$24.6 million, with total annual budget revenue top-line of \$66.5 million, purchased power is 37% of our total budget. So it's substantial, it is the single largest line item on our expenses.

Mr. Bunch pointed out this policy and the next one (Investment Policy), along with the management and governance guidelines resolution approved during the last fiscal year, were developed for added transparency and clarity. To provide governance on how all this works and as a reference or understanding for now and going forward.

Commission Action:

Commissioner Conrad stated I would make a motion to accept that policy as presented; specifically a motion to approve the Wholesale Power Transaction Policy and proposed Resolution No. 2021-12 as submitted; resolution and policy effective immediately upon passage. *(listed on agenda as New Business item 7-a.)*

Commissioner Kelly stated I second it.

Chairman Davenport stated okay, we have a motion on the floor and confirmed with each Commissioner no further discussion desired and requested a roll call vote on the motion.

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

(4-a) Financial Status – October 2021 (cont.):

For the Revised (Updated) Investment Policy, Mr. Chavez first explained the U.C. got a bond rating, did a new Master Bond agreement, and then did a rate study and implemented new rates, effective 10-1-21. The other item pending to be revised and updated was the U.C.'s Investment Policy.

Mr. Chavez then presented and discussed the history and updates of the current Investment Policy, and for the proposed new policy, the associated securities selections, next steps associated with establishing a custodial account for investment funds and an appropriate benchmark against which the U.C.'s portfolio performance will be compared on a regular basis. Also explained utilization of FMPA (Florida Municipal Power Agency) as an agent to provide investment management assistance to the U.C.

Mr. Bunch explained FMPA would be treating this service to the U.C. as a project, any member can have any number of projects. If the number of hours in any project exceeds 120 then we pay their costs for labor, but they did not expect this to exceed that. But let's say it takes 200 hours, we would then pay 80 hours times their labor rate, which wouldn't be more than a handful of \$1,000 dollars and it would still be very reasonable. Also confirmed dues to FMPA, paid through FMEA, were approximately \$43,000 annually.

FMPA's Assistant Treasurer/Investments, Ms. Reyes, addressed the Commission per Mr. Bunch's request, and stated FMPA currently manages about \$500 million in their portfolio. Additionally explained their investments were diversified per project and per investment type. FMPA benchmarks against .29% and so far in the last year to two years have actually beat that benchmark. (For comparison purposes, Mr. Chavez had stated within his presentation the U.C. had a total of about \$90 million and only a small portion of those funds would be placed in the custodial account to be invested in a different manner. Getting approval for the revised Investment Policy first and then will come back with the determination of the custodial fund amount.)

Chairman Davenport confirmed Commissioner Conrad had also worked on updating this policy for the Commission.

Commissioner Conrad stated I talked with the external auditors, I've talked with FMPA, I've talked with Mr. Chavez. We've gone through the files two or three times, and I think they've done an excellent job of presentation and preparation and a lot of thought has gone into this. And I, of course, am not an investment guru, I am more of a control and process person and I feel like all my questions were very satisfactorily answered. And I feel like having our external on board as well is very important to us and so I feel comfortable that they're well aware of this policy and they've worked with FMPA in the past as well.

Commission Action:

After further discussion, Commissioner Conrad then made the motion to approve; specifically to approve the updated/revised UCNSB Investment Policy and proposed Resolution No. 2021-13 as submitted. Resolution and policy effective immediately upon passage. *(listed on agenda as New Business item 7-b.)*

(4-a) Financial Status – October 2021 (cont.):

Commission Action (cont.):

Commissioner Kelly seconded the motion.

Chairman Davenport confirmed there was no discussion desired on this motion and then requested a vote to be taken.

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

Mr. Bunch then stated thank you to Mr. Chavez and to FMPA representatives for coming over from Orlando and participating in the development of this policy. Honestly puts this in the hands of professionals who do this full time and allows Mr. Chavez to focus on the financials. So thanks again, Ms. Reyes and Mr. Popp.

(4-b) Presentation: Electrification Overview and UCNSB's Approach:

Mr. Bunch introduced Ms. Britney Beck to talk about EV's and Electrification.

Ms. Beck provided a presentation entitled "Electrification and the U.C.'s Approach". She presented and discussed this informational presentation explaining the meaning of the term electrification, the U.C.'s associated considerations within Fleet, EV public charging infrastructure and facilities as a grid approach or smart building management systems. Also provided associated statistics and facts. Pointed out the U.C.'s existing vehicle fleet is 8% light-duty, 89% medium to heavy-duty, and 3% EV's. Also discussed current and upcoming challenges and barriers for widespread electrification – potential regulations and economic models. Concluded the presentation by explaining a feasibility study will be performed in 2022 to support the U.C.'s determinations surrounding these challenges and also the possibilities of electrification. She also indicated that future Commission updates on this subject matter will be forthcoming.

Commissioner Smith mentioned, also should be under consideration, at Lake Nona a German company* has designed a commuter plane that runs on electricity and Correct Craft, which builds Ski Nautique, is planning within ten years that their boats will be electric.

(*Lilium Lake Nona Vertiport)

Commissioner Kelly then confirmed that most of the car manufacturers' goal is to have at least 50% of their production fully electric by 2025; by 2030 for some.

(5) Commission Counsel's Report – General Counsel:

(5-a) Interlocal Agreement with the City of New Smyrna Beach – Related to Management of Utility Property Title:

Mr. Cloud indicated to Commissioners there were three items included in the agenda package for this item - one is sort of a narrative of things that occurred. The second is a letter that this board sent in the summer of 2020 to the City Commission. And the third is a proposed agreement, an interlocal agreement, under the interlocal agreement statute, regarding property

(5-a) Interlocal Agreement with the City of New Smyrna Beach – Related to Management of Utility Property Title (cont.):

title management. There are six entities in Florida that are managed, including this one, that are managed with what I'll call a board separate from a City Commission. And historically that has been a board made up of business people, and probably the oldest one would be the Orlando Utilities Commission. Often times the creation of such a board has been sort of the quid pro quo, in order for the local government to be permitted by its local citizenry to get into the utility business. Each of these six entities deal with title to property differently, we're all different, and it has as much to do with the historical formation of those utilities as anything else. For example, OUC has to have the consent of the City of Orlando before selling property because Orlando originally bought the system following a purchase option arbitration in the 1920's. It's the oldest documented municipalization in Florida. And your first counsel, Mr. Jack Bolt, aptly named I would say, and a former I believe Marine Corp fighter pilot from World War II. Mr. Bolt rendered a two-page opinion, sort of perfunctory if I do say so myself, to the City. The City raised the question about how title was held, and Mr. Bolt said well, we hold it as Utilities Commission, City of New Smyrna Beach and that is sufficient to comply with the Charter's admonition that title be held in the name of the City. Now the importance of that opinion is it actually permitted this body to issue revenue bonds and that has had a massively beneficial impact on the City of New Smyrna Beach. Why, because our rating and Mr. Chavez can tell you this, has benefitted the City's rating. Not just in the last 2020 revenue bond issue but going all the way back. This is not unusual, OUC's revenue bond rating has a beneficial impact on the City of Orlando's and the same with Ft. Pierce, the same with KUA and the City of Kissimmee and so forth. So it's a fairly important thing because being able to issue bonds separate from the City has all sorts of benefits in the financial market.

Mr. Cloud continued, so this has been a perennial policy issue, goes back to the beginning of the Commission. It's come up in 1980, it came up in 1985 when they amended the Charter, it came up in 2005, 2008 and then of course in the summer of 2020 when we really weren't expecting it to come up and it came up as a little bit of a surprise. I got a phone call from the City Attorney, Carrie Avallone, saying the Charter Commission is starting to look at this and of course she had, you know we had privately talked. She's asked me questions about this since she became City Attorney and I openly shared with her everything that I have. And I don't know how else to have a relationship with our City Attorney. So the latest change, which there was a change that was proposed in the summer of 2020 to the Charter, did not come from the City Attorney or the City staff or the Charter Commission. Because Mr. Bunch and I spoke with the Charter Commission and they didn't come forth with a recommendation. It actually came from the City Commission. And so a number of us, including members of this board addressed the City Commission about this. The concerns that were expressed were, well the way its stated is confusing to some or what about the Canal Street property, the building we're sitting in right now, what happens to that if the Utilities Commission decides that they want to sell it. And then what about the property that the City held prior to 1967 when the Utilities Commission was formed. And what about all that surplus property west of Interstate 95; those were the questions that were raised.

Mr. Cloud continued, and I think the simplest way to put our position is the Charter is not broke, please don't fix it and that you don't really need to amend the Charter, but you can enter into an interlocal agreement under section 163.01(1) to clarify any confusion that may exist about any of these properties. And we made a representation to the City Commission that if

(5-a) Interlocal Agreement with the City of New Smyrna Beach – Related to Management of Utility Property Title (cont.):

they would permit this to happen that we would follow through on it and we did. We have dealt with the issues like selling off the pre-1967 City lands which was dealt with an agreement, Mrs. Simmons can tell you, long ago, really is a part of the Charter. And we've kept a list of that, I'm not sure the City had it, but Mrs. Simmons found it and sent it over to them. You know, I don't know that the Commission will ever sell this building, I really don't because it's hard for me to judge when there will be a need for additional office space. I'm not the best person to judge that, there's a gentleman sitting down there at the other end of the dais who is, but I haven't heard any discussion of that issue in any of the meetings. But there is a big concern about that, there's been some discussion from time to time about a hotel being in this building, perhaps because people have seen that there's a hotel in the old OUC building in downtown Orlando. I don't know, this is not something that I've lost a lot of sleep about. But in the agreement, we have provided a right of first refusal option with value to be set by two appraisers should the Commission decide that this building, it no longer meets any of the needs of the Commission. It's hard for me to imagine that happening but you know I'm not the final arbiter of that, you are. And with regard to the selling off of the lands west of I-95, the agreement provides, much as your bonds do, that you would have to have a surplus determination in your current definition of surplus before transferring any of those lands. Again, based on the optimization study that's been performed and what I've heard from your Engineering Department, it's not likely you're going to be selling any of those lands to some big developer or to anyone. Because you're going to need them for your own operations in the future, including operations that may involve joint facilities with the City. There are none that are currently pending. I know there was some talk of a transportation facility, but I think that's sort of on the back burner right now. But these are things that do not, really don't affect how we manage things that are covered under this agreement. And there's an acknowledgement in the agreement that we hold title in trust for our customers. I think that's really important because ultimately, we're the facilities, whatever facilities might be sold, other than those facilities the City originally owned before we set up shop as a utility, the funds, whatever money is made from that is held in trust for our customers. It's not held in trust for any one of us, it's held in trust for the people that we provide service to, as it should be. So the City has agreed to this, they have adopted it at their last meeting and all of your staff, and your General Counsel strongly recommend that you approve this agreement.

Commission Action:

Commissioner Smith stated I make a motion we approve the Interlocal Agreement, specifically to approve the Interlocal Agreement Between the City of New Smyrna Beach and Utilities Commission, City of New Smyrna Beach, Florida, for disposal of lands – specifically for the U.C.'s "800 acres" – Western Utilities Complex and 200 Canal Street. Is that what you need to happen?

Commissioner Conrad commented if that's what you want; second.

Chairman Davenport said okay, we have a motion on the floor and a second for approval of the Interlocal Agreement. Correct?

Mr. Cloud stated yes sir.

(5-a) Interlocal Agreement with the City of New Smyrna Beach – Related to Management of Utility Property Title (cont.):

Chairman Davenport stated discussion?

Commissioner Smith commended all involved in the development of this agreement - what an excellent job you've done.

After a few comments regarding input and support for this agreement, Chairman Davenport confirmed no further discussion was desired and requested Mrs. Simmons to call the roll.

Commissioner Smith's prior motion then passed unanimously on a roll call vote.

(Note – This Interlocal Agreement was approved by the City Commission on 11-16-21, item 7.A, with a majority vote – 3 to 1 in favor (one City Commissioner was absent). The term of this agreement is thirty (30) years.)

ADD-ON (5-b) Pole Attachment Licensing Agreement Between U.C. and Level 3 Communications, LLC:

Mr. Cloud then stated the final item I have, it was brought to my attention today by your Chief Engineer that there's an agreement that's sort of been sitting out there. It's actually been signed by the communications company, Level 3 Communications, LLC, for a joint use - not a joint use, I apologize, an attachment of 5G small wireless. It's not a joint use facility like AT&T. It is consistent with the AT&T agreement. It was held up last year during the legislative session and I, you know I think we lost track of it and it's been passed out. It follows our typical form, and it has the same kind of protocol within it so that staff can review this appropriately. And I would ask that you pass a motion to approve this agreement for execution.

Commission Action:

Commissioner Conrad stated I'll make that motion; specifically a motion to approve the Pole Attachment Licensing Agreement Between U.C. and Level 3 Communications, LLC, as submitted and with copies provided at this meeting.

(Note – Level 3 Communications LLC selected the 5-Yr. Fixed Cost option on this agreement. Due to that term length, this is pending City approval of the pole attachment licensing agreement form.)

Commissioners Kelly and Smith simultaneously stated second.

Chairman Davenport stated the motion has been seconded by Commissioner Kelly; discussion? There being no further discussion, requested a roll call to be taken on the motion.

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

(6) Old Business:

There were no Old Business items for consideration.

(7) New Business:

Mr. Bunch made a few comments regarding today's public participation. Indicated he thought Mr. Morant did a really nice job of presenting his case and that the Commission demonstrated a nice fair approach to considering his request. There wasn't a process that says this is how you do it, but hopefully Mr. Morant felt their case was justly heard. And while they may not have agreed with the outcome, I believe what you decided on was the right thing to do. After a few more comments, concluded that in this case, truthfully, the Commission was not at fault and we do see a lot of things like this. But I want to commend you on giving Mr. Morant the time and place to vet his request, I think you did a nice job.

After a few additional comments among Commissioners, Mr. Bunch added on the other hand had we been at fault, Ms. Beck, everybody's name he mentioned along the way, at some point along the way somebody would have said yes, we wronged this customer, they should be compensated. And you would have heard that from us as well. Mr. Morant honestly believed in the case that he was presenting, so I respect him for coming forward and hopefully he felt like the process served.

(7-a) Wholesale Power Transaction Policy (Governance) – Proposed U.C. Resolution No. 2021-12:

This item, policy and resolution (No. 2021-12) was approved above within Mr. Chavez' presentation for agenda item 4-a. Financial Status – October 2021. Commissioner Conrad made the motion, Commissioner Kelly seconded the motion, which then passed unanimously on a roll call vote.

(7-b) Revised (Updated) Investment Policy (Governance) – Proposed U.C. Resolution No. 2021-13:

This item, policy and resolution (No. 2021-13) was approved above within Mr. Chavez' presentation for agenda item 4-a. Financial Status – October 2021. Commissioner Conrad made the motion, Commissioner Kelly seconded the motion, which then passed unanimously on a roll call vote.

(8) Possible Other Business – Time for Commissioners:

Commissioner Smith commended U.C. staff for their reports and thanked FMPA representatives for attending this meeting, adding really appreciated FMPA and the consulting they're going to be providing for the Commission.

Commissioner Kelly then commented in connection with the public participation today, he appreciated staff for digging in deeper on things, excellent staff. Also added Mr. Morant gave a nice compliment to all staff involved.

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

Commissioner Conrad commended Mr. Bunch and staff for the procedures and updates to procedures; some hadn't been touched in 15, 20, 25 years. Leadership within the organization is building processes and if something changes or someone leaves, there are now processes in place that have been updated with a plan to review and update periodically at a reasonable period of time in the future. Stated she was grateful to be on a board and with an organization that does that.

Chairman Davenport indicated he was being contacted more since he became Chairman and also commended staff regarding the reports and presentations and the way matters are being explained – night and day difference from when he started on the board. Concluded his statements by wishing all a happy and safe holiday season.

There being no further business to come before the Commission, Chairman Davenport adjourned this meeting. The Regular U.C. Meeting closed at 4:56 p.m.

APPROVED:

ATTEST:



CHAIRMAN



SECRETARY-TREASURER

These minutes were formally approved by the Utilities Commission at their January 24 , 2022 meeting.