

JOINT UTILITIES/FINANCE COMMISSION MINUTES

Wednesday, August 30, 2017 – 9:00 A.M.

City Hall, Council Chambers, Vero Beach, Florida

PRESENT: Utilities Commission: Chairman/Indian River Shores Representative, Robert Auwaerter; Vice Chairman, J. Rock Tonkel; Members: Chuck Mechling, John Smith, Jane Burton, Mark Mucher and Alternate Member #1, George Baczynski **Finance Commission:** Chairman, Glen Brovont; Vice Chairman, Randy Old; Members: Peter Gorry, Kathryn Barton and Ryan Bass **Also Present:** City Manager, James O'Connor; Finance Director, Cindy Lawson and Deputy City Clerk, Sherri Philo

Utilities Commission Excused Absences: Herb Whittall and Judy Orcutt

Finance Commission Excused Absences: Victor DeMattia and Daniel Stump

1. CALL TO ORDER

Mr. Auwaerter called today's meeting to order at 9:00 a.m. He stated that the purpose of today's meeting is to review the terms of the full sale of the City's Electric Utility to Florida Power and Light (FPL) and to make whatever recommendations the Commissions feel is appropriate to the City Council. He explained that this is a Joint Utilities/Finance Commission meeting for efficiency purposes, however each Commission will vote on their own and can either make motions or not. He reported that he and Mr. Brovont will be Co-Chairing today's meeting.

At this time the Deputy Clerk performed the roll call.

2. PUBLIC COMMENT

Mr. Auwaerter asked that anyone speaking under Public Comment to try to limit their comments to three (3) minutes.

Mr. Layne Sykes, Councilmember, said that he was glad to see today's meeting taking place. He said that he is adamantly in favor of this deal. He felt that for far too long there have been a lot of road blocks. He said it is time to get this done. He appreciated the Commission's diligence in reviewing the deal. He is looking forward to completing this deal in a sufficient manner. He said that he could not say enough about this offer. He mentioned at the last City Council meeting that along with everything else that comes with this deal, is the ability to finally access the money in the Utility, an extra \$25 million on top of the generous offer that FPL has presented. He said that is a huge win for the City of Vero Beach and with proper management it will help them grow in the future. He hoped that they will take that into consideration.

Mr. Brian Heady said that he served on the City Council and one (1) of the things that he was successful at was brokering a resolution by the City Council to stop the three (3) minute limitations on citizens during Commission meetings. He said unless they have some legislative act that they can point to then they are still under the provisions that they don't cut citizens off. He said the sale of the Utility really dates back to the 1970's where at the very last minute they were stopped by a regulatory authority. In the meantime, the taxpayers and ratepayers have spent millions of dollars and that has continued for a very long time. He said that at a recent meeting Mr. Sykes stated that there have been no other offers. Mr. Heady said that is not true. He said there has been a restriction on other offers where the City has signed an agreement not to negotiate with anyone else. He said that is kind of like someone saying to him that they are going to sell their house and the only one they were going to take an offer from was him (Mr. Heady) and were going to accept whatever offer he gives. He said the City Council and the current Mayor have continued to stifle citizen input and have not allowed all the facts to come out in what amounts to criminal conspiracy to unload valuable City taxpayer, resident owned property. He said that Mr. Sykes refers to the generous offer, but he thought at one (1) point they were told that the Electric Utility was worth some \$300 million, not the \$30 million they are now set to receive. He said it is not a generous offer. He said it is a very good deal for FPL and he is all for them getting good deals, but he is not for FPL being able to come into their community and take assets of the community without paying fair market value. He said the City has consistently been on a path that sells the Electric Utility at less than fair market value and it gets worse than that by giving away the proceeds to other entities and the citizens of Vero Beach wind up getting virtually nothing by the time they finish. He said that when he served on the City Council the head of the Utility at that time showed him the numbers and the facts and the reality was that the cheapest electric they could have would be to turn the City's generators on. He said that didn't happen. Instead what they did was bring in a new City Manager who decommissioned the Power Plant. He said in the deal from FPL back in 2009/2010, FPL was going to decommission the Plant. He said the taxpayers and ratepayers have paid for this. He said this City was in a position where if a hurricane hit they could turn the Power Plant on. Thanks to the current City Council, the past couple City Councils, and the current City Manager they can't turn anything on because it doesn't exist anymore. He said in the FPL offer back then, FPL was going to decommission the Plant and tear it down. Instead, the new plan is to have the taxpayers pay for it. Over the course of several years now in FPL wanting to purchase the Electric Utility, they have upgraded the Electric Utility. He said the ratepayers were told that they have to do the upgrades and they have spent millions and millions of dollars to give FPL a better equipped Electric Utility, which has been done at the ratepayer's and taxpayer's expense.

Mr. Auwaerter asked Mr. Heady to please finish his comments over the next minute as he has been speaking for over five (5) minutes.

Mr. Heady asked Mr. Auwaerter if he knows of any legislative change. Mr. Auwaerter felt that the point of public comment is not to filibuster... Mr. Heady said that he is not trying to

filibuster. He said that he is talking to them about the Electric Utility and what has happened over the course of several years and that takes more than three (3) minutes.

Mr. Heady continued stating what he started to say before being interrupted is that if you were selling your house, you wouldn't have someone come in and count the number of two-by-fours, the nails, etc. He said this has been going on and on and on. If FPL really wanted to purchase the Electric Utility, they could come in and tell the City they were going to give them \$200 million and they could take over, which they could take over the first of the month. He said that he explained at a Council meeting how this could happen and Councilmember Howle's only answer was that he didn't know where the keys were.

Mr. Auwaerter asked Mr. Heady to please finish up. Mr. Heady said that he was trying to do that.

Mr. Auwaerter asked Mr. Heady to do it in the next minute. He said there are other people who would like to speak.

Mr. Heady said it's amazing how few people are present. He doubted that there were a number of people who are going to speak at such length. He said the Commission members asked for this job, to be advisors. He said they can't advise if they don't listen to all the input. He said they clearly don't want to do that and the City Council doesn't want to do that. This has been nothing less than a criminal conspiracy to defraud the taxpayers and they are all part of it if they refuse to listen to the input from citizens.

Mr. Auwaerter thanked Mr. Heady for his comments. He asked if there was anyone else wishing to speak.

Mr. Heady asked if he was telling him that he needs to sit down. Mr. Auwaerter said yes sir. He said that he gave him (Mr. Heady) over eight (8) minutes. He asked if there was anyone else wishing to speak.

Mr. Gorry said to clarify about other buyers, some years ago when he was Chairman of the Finance Commission he was approached by an executive of another utility company who wanted to make an offer. He said because of the aforementioned prohibition, he explained to him that there was no need to make an offer because the City was prohibited under the agreement. He just wanted to clarify that there was an inquiry from another utility.

Mr. Heady said there are other utilities that would be interested in coming in. If they were going to benefit the taxpayers and ratepayers then those kinds of offers should be listened to. But, the City Council has tied their hands by agreeing to LOI's and agreements with FPL where the City

said they would not allow or entertain and prohibited any official from speaking to anyone. He said this is an insane way to try to get rid of a valuable asset. He said the other thing ...

Mr. Auwaerter said sir ... Mr. Heady said that he is just responding to what Mr. Gorry said.

Mr. Gorry said that he was just making a statement.

Mr. Auwaerter told Mr. Heady that it is not his right to respond.

Mr. Heady said Mr. Gorry was referring to things that he said as citizen input.

Mr. Auwaerter said it was a general comment. He asked Mr. Heady to please sit down and give the gentleman ...

Mr. Heady said you're (Mr. Auwaerter) from Indian River Shores (IRS). You are not from Vero Beach so you really don't give a hoot about the citizens of Vero Beach. You care more about IRS and there has been a problem with them in this community where they have had entities from outside the community come in and try to do things that have essentially destroyed many aspects of the community that they loved and have moved here for. He said a long time ago, Mr. Ken Daige said, and he thought Mr. Daige was crazy at the time, but Mr. Daige said that these entities were trying to destroy the City brick by brick. Mr. Heady felt that Mr. Daige was right. He said they have continued to do it and been allowed to do it and it is just wrong.

Mr. Joseph Guffanti said that he spoke with one of them before the meeting was called to order and it is true that all 19 cities have to sign off on the sale and everything they do here this morning and whatever happens is superfluous if one (1) of the cities doesn't sign off. He said to evaluate a system as to what it is worth; they look at what the revenues will be and what the profits will be. He said if the Commissions were going to do anything they should determine what the revenues are going to be for FPL and what FPL's profits are going to be. He said that will tell them what it is worth to FPL, not what it is worth to the City. He said that is what they should do. That will tell them what it is worth to FPL.

Mr. Lange Sykes said year after year they continue to hear the same red herring arguments about the sale of the Utility. He was thankful and surprised at the resilience of FPL to stick with them. He said there are no other qualified buyers. That is absolutely absurd. He said the only qualified buyer is the one (1) that brought an offer to the City. He said it is an incredible offer. He said that he doesn't know why they can't continue to remember that there is a third party doing a valuation of the Electric Utility separate from the City and from FPL. It is the State that is doing it and they have to justify the cost that is being paid for the Electric Utility. So for anyone who is concerned, there is a third party valuable being done for this Utility and if it doesn't go well then

FPL can't purchase it. He said let's keep that in mind and work towards getting this sale completed. He thanked FPL for sticking with the City.

3. REVIEW THE TERMS OF THE FULL SALE OF THE CITY OF VERO BEACH ELECTRIC UTILITY TO FLORIDA POWER AND LIGHT (FPL)

Mr. Auwaerter said it is important that they look at not only what the City might be getting in terms of the sale, but also the risk involved in continuing in the Electric Utility business. He said that he spoke before the City Council on May 16, 2017 highlighting his concerns as an individual, not as a member of the Commission, regarding the risk the City would take on if they continue to stay in the Electric Utility business. He said the Electric Utility business is changing. It used to be that if the utility was run well operationally, the Public Service Commission (PSC) or the Public Utility Commission (PUC) of the State would give them a good rate of return. Those days are over. The Electric Utility industry is in a complete state of flux. It is not only here in the United States, but around the world. It really involves what he calls two (2) related factors, which are slowing electric demand and excess traditional power generation capacity. He said in terms of slowing electric demand, on a continuous basis the electric appliances are becoming more and more efficient. It used to be that the Electric Utility industry would be estimating from the 1970's through 2000 at roughly about a 2% compound annual growth rate in kilowatt sales. That has dramatically slowed over time. On top of that what has taken place is that there is a surplus of power generated from coal, natural gas, and nuclear power. So, what they are seeing in the prices that those independent power producers can generate their charge is going down and it all has to do with renewables and they are seeing that in Indian River County. He said FPL is in the process of installing two (2) 74.5 megawatt solar power units west of I-95. FMPA's Coal Plants have run over \$100 a megawatt hour and their best Plants, which are the All Requirement Project (ARP) Plants that are powered by natural gas, were roughly about \$65 a megawatt hour last year. The Nuclear Power Plant ran in the high 70's. He said they recently asked for bids for solar power and at a recent FMPA meeting he asked what bids they received and he was told that one (1) of their bids was \$40 per megawatt hour. He said that is distorting the entire power industry and big electric utilities are struggling with this. He said renewable are not only being built on large Solar Power Plants, but on smaller operations. He said the last thing is that the cost of battery capacity per kilowatt hour is going down. He asked the Commission members to think about first on the risk side to what extent that they might start to lose some of their best customers. Their top 10 customers based on the Comprehensive Annual Financial Report (CAFR), which represents ten and a half percent of the City's revenues. That they think about what would happen if they lose some or all of these large customers. He said the game in electric utilities is that they have fixed costs, such as the transmission lines, the distribution lines, the meters, etc., and they have to spread those fixed costs over a revenue base. If they lose these big customers that means that they would get into a spiral where they would start to have a situation where the small customers would have to pay higher and higher rates and the customers who can escape will and they would get into this downward negative cycle where

they would be trying to cover these fixed costs over a smaller and smaller rate base. The City is a small Electric Utility and does not have the size and scale that other utilities have, such as FPL has. He said that is what he worries about and is something they have to think about. He felt that gets lost a little bit in discussion in that there are some people who have raised concerns about the sale, but he felt they were looking at the business on a static basis and not looking at what it might be 5, 10, or 15 years from now.

Mr. Mucher supported Mr. Auwaerter's concerns about the risk. He said there has been a lot of discussion on the rates and the City's rates are higher. But to him, that is not the most important thing. He said more important than rates is reliability and their reliability has been good. But, at the same time if for some reason they have to stay in the utility business then they are going to have to invest tens of millions of dollars just to maintain a decent level of reliability. He would rather have power even if he would have to pay 10, 15, or 20% more in order to have power. Another thing is the ongoing risks of being in the electric business and most of those are unknown and most are uncontrollable. He supported the idea of getting out of the electric business with the biggest reason being long term risk. He said looking at it statically today is not the way to do it. He said the three (3) R's are risk, reliability, and rates.

Mr. Brovont said that he supports Mr. Auwaerter's analysis. He said that nuclear energy is collapsing all over this Country and many states are now facing shortage of power caused by the collapse of the nuclear Power Plants. The other thing that is occurring is they are going solar power on a smaller and smaller scale. Many homeowners are beginning to do that. He said it is really not economically feasible yet. They are all living on tax subsidies and many big companies are doing the same. But, those things are probably going to change too. The Federal Government is flat broke and this business of subsidizing big corporations to get solar power is probably a thing of the past. It may be more feasible at the homeowner level, but the big problem there is that it has an adverse affect on the Power Plant. He said that he has said for a long time that running the Power Plant is really not a City business. They don't have the expertise to do it. They have done a tremendous job up to this point and the Power Plant has fostered the growth of the City in that it was here when there was no other power. But, those days are gone. He could not do anything but support Mr. Auwaerter's analysis. They need to get out of the power business as quickly as they can and do it as expeditiously as they can with the right buyer. They have a buyer that doesn't need financing and that is worth a lot.

Mrs. Barton was happy that Mr. Auwaerter brought this up because she felt that every discussion has looked at this as a static situation that would never change and they all know that every industry changes and is brought with risks. She said the City can't sustain those risks, which she felt was the most important thing about the sale.

Mr. Brovont said that Mr. Auwaerter did an analysis of the cash flow and he did an analysis a few years ago. He said that he questioned what it was really worth so he did an analysis, which

on a cash flow basis, price of the sale, price of earnings and revenues and it compares favorably with FPL at \$185 million. The argument about how much money the City spent is not relevant. He said none of them would expect to sell their business at three (3) times their earnings just because they spent money on it. That is not the way it works. He said that he has looked at this and he thinks the price of \$185 million is correct.

Mr. Smith said that he agrees with the full sale and he agrees with Mr. Heady in that it keeps coming up and if they add the time and energy that has been spent by the City Council and the Commissions that is not going to go away if they don't sell the utility this time. It is going to keep coming up. He felt that Mr. Brovont was right in that if they want to sell something they have to see what the buyer is willing to pay. Not what they think they would like to get. He agrees completely with the full sale.

Mr. Old thought that in the past the management of the Utility was not as complicated as it is now. They made choices in the past when it was a lot easier that were bad choices. He felt it was going to get to be a lot harder for the City Council to run this. Unless they can think of some other way of managing it, it just doesn't make any sense for them to be in this business. It is too complicated for a City this size to be able to run it. He felt the idea of selling the whole thing was right and the price now is so much better than it was before that it makes sense.

Mr. Tonkel said if the condition's Mr. Auwaerter cited come true, which he felt the changes will occur it makes the valuation of the offer an even stronger case. He did not think there was any question that this represents an outstanding value of the Utility as it is and will probably look better as they proceed and the City is out of the business. He said that they appreciate FPL's offer and he clearly supports it.

Mrs. Burton said that she also supports the idea of a total sale. She said as a County resident and a ratepayer to the City, they are concerned as well on the risk going forward to those ratepayers outside the City. She said if they start losing those large customers they are going to be involved in the hits. She felt that they needed to look at that as well as the cost going forward to increase the technology, which is not cheap. She felt that now was the time to move.

Mr. Baczynski said the Utility generates a lot of income for the City and he was not hearing any discussion about how that income can be replaced when the Utility is sold. The fact is that if the Utility is sold the full amount that the Utility has been generating is going to have to be generated by the citizens of Vero Beach only because they are the only people the City could tax and that is probably one-third of the total base of the Utility System. While he hears their arguments for getting out of the Utility, they cannot forget there are two (2) sides and they need to have a plan that covers not just the sale of the Utility, but also recovery of revenues to keep the City whole. He felt not to discuss this would be very remiss. He said the City Council represents all the citizens of the City and they should be looking out for the interest of all the

residents of the City. He said selling this large cash contributor to the City finances without making any provisions for replacing it he felt was a dereliction of duty and they should be looking at that very carefully.

Mr. Gorry said that he did that at some length and with the loss of the revenues from the return on investment. He said one (1) way that could be partially retrieved was to have a franchise fee added to the revenues, such as the County now has. The second thing is that they could cut services or raise taxes. Those are the options. The last one (1) that is a potential revenue source is a stormwater utility. In his view, those are the options that the City Council is going to have to deal with as they move forward. He said they need a five-year plan once they receive a contract and understand what the total revenues less all the expenses are and how they are going to apportion what the proceeds are. He said when they have that clarified they can go forward with a five-year plan.

Mr. Brovont said that he is very concerned as well about losing \$5 million a year. He said that he worked through the City's budget and he can see how they can make it. He said they have nearly \$5 million in their pension programs. It wouldn't take the City long to fund some of the pension funds (referring to the \$30 million from FPL), which would free up cash flow for operating expenses. He said currently the City does not have enough money. Every year they struggle with the budget. He said they could raise taxes, but between doing some investment work on the pension plans in getting that resolved and work harder in funding the Other Post Employee Benefit (OPEB) Plan, they could make the numbers work. It may take some forecasted cash flow, tax increases, to keep the City moving. He thought that they could make it work. He said that he even looked at a partial sale and it looks to him that they could make it work both on a partial sale and a full sale. He said they might be better off with a partial sale, but that is another story. He said that doesn't eliminate the political problems and getting rid of the entire Utility. He said they are spending way to much time fighting with each other when they should be working together. He said the City management is convulsed with this Utility and has been for five (5) years at least.

Mr. Gorry said having a smaller utility is increasing the risk so any partial sale is counter intuitive to going to a full sale in his view. He said they have a facility that is built to serve 35,000 customers and they are paying fixed costs and are paying for infrastructure on those 35,000 customers. If they lose 10% of their customers they are stranding 10% of their fixed assets. The other piece is that the \$5 million is not only on the operating budget, but millions of dollars in infrastructure in the capital programs. He said again it is not only the operating cost, but critically is in the shortfall, which is more severe.

Mr. Brovont said that he would be happy to share his analysis and they can make their own judgment.

Mr. Old said they have not had a concentrated time to sit down and come up with a five-year plan and work through this.

Mr. Baczynski explained that what he was saying was that they need to look at the whole thing as a system. They can't optimize one (1) part of the system without doing something adverse to another part. They have to look at the system as a whole and optimize the system as a whole. They have talked about piece meal solutions, such as raising taxes, shaving numbers, etc. But, it all needs to be looked at as a whole because every little bit they take from one (1) is going to be taken from someplace else. They can't look at the final result unless they are totally aware of everything that is involved. Not just the sale. The sale is only one (1) part of it and it is the elephant in the room and it dominates everything they have been talking about. As far as he could see, no one has been thinking about what the sale would do to the City and the aspects of City life, such as recreation, maintenance, etc. All of these things have to be looked at as a whole.

Mr. Gorry said that he has done that, but he didn't want to get sidetracked until they know exactly what the total proceeds are going to be. Until they get a final contract of the sale and understand it, the Finance Commission have been directed by the City Council not to discuss any of these aspects and they have not spoken at all to what the issues are that Mr. Baczynski is addressing.

Mr. Baczynski said they can address them, but in the final analysis it is the City Council that has to answer the questions. He said they can propose suggestions and solutions, but until the City Council agrees to them in increments they are not going to happen.

Mr. Ryan said with all due respect, he has been on this Commission for almost a year and they all have been saying the exact same thing for a year and have never done any action to fulfill what they are saying. He said they can go based on what they have in front of them. Mr. Auwaerter's point, Mr. Brovont's point, Mr. Tonkel's point as to future technology costs, he follows that every day in the business he works in. It is real. They are not exclusive of one another. What Mr. Baczynski is saying and what Mr. Auwaerter is saying play together. So to present it as them being exclusive of one another is not accurate. They play together with one another. He said they can do this instead of saying it for a year and get this done or they can go off of what they know now.

Mrs. Barton said that she thinks they play together, but all she has heard is \$6 million until she is tired of hearing it. That is the static situation in that right now it contributes \$6 million and in the future they have no idea that it isn't going to be a net cost to them. The risk is what they really have to worry about, but they keep focusing on the \$6 million that can be made up. For that reason, she is very enthusiastic about a full sale, but she felt a partial sale keeps them in the

business, they still have the risk, and they have a smaller client base to absorb the risk. So she is very nervous about the partial sale.

Mr. Auwaerter felt there was more money in the sale than people realize.

Mr. Smith felt that discussing the two (2) together, what is going to be done with the money and whether or not they should sell, confuses the issue. He thought they were meeting today to discuss the terms of the sale. Not to talk about the City Council jurisdiction. He understands that is important, but to get into that during this meeting they are confusing the issue and they will have great difficulty in reaching a decision.

Mr. Gorry agreed. He said his takeaway was to give a status given the elements. The only thing that has changed in the LOI is the issue of the substation and the closing date. What he wants to hear is when it is reasonable for when the contract is to be signed given that there are still these issues.

Mr. Auwaerter said they are still in the process of the FMPA approvals. That is why it is fluid and in his opinion makes sense for both Commissions to be meeting today. If they wish they could put a motion in place, which they could state something like subject to these provision they would recommend that the City Council approve it or not approve it. He said they have to move along in the process because there are so many steps and any one (1) of them can derail the sale. He then referred to his model that he provided to the Commission members, FPL Purchase of Vero Beach Electric Utility (attached to the original minutes).

Mr. Tonkel said they have all reviewed the LOI. He asked the Commission members if the LOI addresses any issues they have with respect to the sale. He asked if they were comfortable with the terms enclosed in the LOI. He asked do they have any major differences in terms of what has been presented to the City Council to consider.

Mr. Gorry, Mr. Smith, and Mr. Brovont said they have some concerns.

Mr. Gorry said it is the trying to decouple the partial sale from the total sale. That is his issue. He is totally for the full sale.

Mr. Smith said that is his issue as well.

Mr. Mucher said if they have a full sale then the partial sale becomes mute so they don't need to address that. He said they were almost past the LOI and almost to a full sale contract. He didn't feel they needed to dwell on that.

Mr. Auwaerter did not think they do. But, they do have to address the price that the City is getting. He said the purpose of his model was to try to come up with some way to see if the price was reasonable. He then went over his model with the Commission members.

Mr. Gorry questioned the last page where it states under Cash Flow from FPL Sale, Prepaid Rent – Power Plant Substation Lease, \$10,000,000.

Mr. O'Connor said the \$10 million has not changed. The title has changed where instead of being rent it will be a payment made to the City, which equals the \$30 million that is in the LOI. As they go through this exercise these types of changes is what is delaying them from bringing a final contract to the City Council. They are having frequent meetings to make sure they are all on the same page and that the contract has all the components of the changing issues that have evolved over time. At the end of the day, his goal is to have the numbers stay the same.

Mr. Auwaerter asked would it be fair to say that in the ongoing discussions with FPL there have not been any discussions about changing any of the financial terms to the City to the worse.

Mr. O'Connor said that he can't say there hasn't been some discussion, but at the end of the day the same numbers will be in the contract. He feels very comfortable with that.

Mr. Ryan said then the only change to the LOI is rather than a lease contract it is payment to the City.

Mr. O'Connor said that is correct.

Mr. Tonkel asked aside from the major policy issue, which he thinks FPL and the City Council has to deal with in regards to a partial sale or a full sale, is there anything else in the LOI that they want to communicate with regards to the final agreement. He said that he hasn't found anything in his review of the LOI.

Mr. Brovont said FPL stated very adamantly that the partial sale remains in the contract. His response to that is if they are 95% into the full sale FPL keeping the partial sale in the contract strongly suggests to him that they (FPL) thinks there is a fair amount of risk in the deal yet. He felt they should all be aware of that. They do have 19 city members that have to vote and if anyone calculated the probabilities of 19 cities, that is small. He felt that was a risk that FPL wants as a back door to get something out of this after fighting with them for eight (8) years. The question that he comes up with is when would the partial sale be executed. Would it be when they put the contract in place or after the 19 cities have voted. He asked what is the transition and what are their costs.

Mr. O'Connor said it is not only FPL that wants the partial sale. The City Council made it clear that they support the partial sale, even before the full sale contract was being negotiated. The way the contract will be designed, hopefully, is that the full sale will be the primary. He said if something was to disrupt the full sale and it is determined that they cannot move forward for whatever reason, at that time they go into discussions on the terms and conditions of a partial sale. In the meantime, it is important to know that the partial sale is not something new.

Mrs. Burton said that she is in total support of the full sale. She said based on their discussions today that there are too many risks to know that they can sustain the kind of income that they have been making with the electric if they keep the Utility. She said changes are that they would be making less.

Mrs. Burton excused herself from today's meeting at 10:30 a.m.

Utilities:

Mr. Auwaerter handed out to the Commission members a copy of his motion that he was prepared to make (attached to the original minutes).

Mr. Auwaerter made a motion that the City of Vero Beach Utilities Commission recommends to the City of Vero Beach City Council that the Council finalize the contract for the full sale of the City's Electric Utility to Florida Power and Light using the financial framework as described in the Letter of Intent dated May 16, 2017 between the two (2) parties subject to the following two (2) provisions: 1) the final executed contract should incorporate Florida Power and Light's plan to dismantle the electric substation at its present location next to the defunct City of Vero Beach Power Plant and to build a new substation on the lot on the southwest corner of Indian River Boulevard and 17th Street in Vero Beach and 2) as a result of the full sale, the City of Vero Beach should have no actual ongoing or contingent liabilities arising from any post-closing Electric Utility operations. The City will retain certain pension obligations for transferred employees as described under Section 1.11 (a) in the above mentioned Letter of Intent. Mr. Mechling seconded the motion for discussion.

Mr. Mucher said that he didn't know how they could recommend that they finalize the contract when there isn't a contract.

Mr. Auwaerter said there is a contract that is currently being negotiated. The finalization is when it is signed.

Mr. Mucher said they will probably see that contract and they could make their recommendation at that time. He said that he cannot recommend a contract that he hasn't seen. He said that he is totally in favor of the deal.

Mr. Auwaerter said it is described in the LOI with those two (2) provisions.

Mr. Mucher asked isn't that superfluous. He asked what is the purpose. He asked does it clarify anything.

Mr. Auwaerter said there has been discussion that they want to be sure the City is completely out of the Electric Utility business. He said the intent of the City is not to have any trailing liabilities.

Mr. O'Connor said that is correct. He reported that has become a major point in negotiations, especially with FMPA and FPL. He said if something happens after the closing they are recommending that all parties have their own insurance and that there be no trail or tail connecting the City to the Utility. The analogy that he uses is that when they get to the closing table and everyone receives their check, he can look in the rear view mirror and the City is totally out of it.

Mr. Mucher asked once it is closed that is when FPL starts building the new substation. Therefore, the handover of customers doesn't take place at that point. He asked isn't the City conceivable in the electric business until the new substation is in operation.

Mr. O'Connor answered no. He explained that the City would give FPL the right to use the current substation until FPL's substation is completed.

Mr. Tonkel felt that Mr. Mucher makes a point that they should be at an advisory capacity for looking at all the provisions of the final negotiated contract.

Mr. Auwaerter felt that there would be hundreds of pages with a lot of property descriptions, etc. He said that the first provision was proposed by FPL and the second provision was from in his discussion with the City Attorney in that was an objective the City was trying to reach. He said to him that would be the biggest risk in the contract in having a tail of a liability. The objective is to get completely out of the sale, get the money laid out in the financial framework, and wipe their hands clean of the sale. That is what he was attempting to do. He said this process is going to start to move along pretty fast and the City Council is going to have to sign off on it. If they look at all the steps in terms of the 19 cities that have to sign off, rating agencies, bond trustees, etc. He said they have to rely upon the expertise of the City Manager and their legal firm. But, lay out what they put in the LOI, the financial framework, they want to get those monies and make sure that there isn't something that the taxpayers will be responsible for post-closing.

Mr. Tonkel felt that they were all in favor of it. It is the question of coming up with a way to make that affirmative statement to the City Council.

Mr. Mucher didn't think they needed to say anything except that they agree with the terms in the current status of the LOI with the modification of the substation, for example. He said that Mr. O'Connor reported that they should have a contract in October and they could hold a meeting at that point to see if there are any changes.

Mr. Auwaerter said his motion states that they recommend to the City Council that they finalize the contract. They were not stating that they agree to a contract because there isn't one. But, that they move forward to a final contract, that the Utilities Commission looked at it from the prospective of the price that is being paid, and the risk that the City of Vero Beach takes on if they continue to be in the Electric Utility business.

Mr. Mucher said it depends on the definition of finalize.

Mr. Tonkel felt the emphasis on finalize, unfortunately, he didn't think it expressed the view that they were clearly in favor of the deal.

Mr. Old asked do they want to state that they convert the LOI to the contract.

Mr. Gorry said this is a Utilities Commission motion.

Mr. Auwaerter said they will accept their advise.

Mr. Old suggested that they word it a little differently. He suggested that they change the wording *that they recommend they convert the LOI to a contract.*

Mr. Auwaerter amended his motion to take out the word “finalize” so it would state that they “convert the Letter of Intent to a contract.” Mr. Mechling seconded the amended motion.

Mr. Auwaerter said the amended motion is “The City of Vero Beach Utilities Commission recommends to the City of Vero Beach City Council that the Council convert the Letter of Intent to a contract for the full sale of the City’s Electric Utility to Florida Power and Light using the financial framework as described in the Letter of Intent dated May 16, 2017 between the two (2) parties subject to the following two (2) provisions, which will remain the same.”

Mr. Brovont suggested that they needed to talk about more than a full sale. He said they are talking about a full sale and a partial sale in the contract.

Mr. Mucher felt they would deal with a partial sale if and when that comes up.

Mr. Brovont said the City is finalizing a contract that covers the full and partial sale.

Mr. Smith said the motion only applies to the full sale.

Mr. Auwaerter asked if they should take the word "*full*" out.

Mr. Tonkel felt that they could express the preference for the full sale. If they are going to take out the word "*full*," they could express that the sentiment is their preference for a full sale.

Mr. Smith said the difficulty in that is that he would not approve recommending a partial sale because they have not looked at it. He is totally in favor of a full sale.

Mr. Brovont explained that FPL is looking for a contract that provides for a full sale and a partial sale. He said FPL has been pretty adamant that they were not going forward unless it is in the contract. He said the City Council has already conceptually approved that.

Mr. Smith said yes and without any advice from the Commissions.

Mr. Gorry added or any analysis.

Mr. Smith said it is almost like it's a cancellation prize. He questioned if there was some way they could separate the two.

Mrs. Barton said this is a motion of the Utilities Commission and when it comes to the Finance Commission and they want to present the same motion, she agrees in that she doesn't like the changes that were made. She said they don't make the final decision. She said they are recommending the full sale. They are not addressing the partial sale at all. She said it is simply a recommendation and they were never asked to look at the partial sale.

Mr. Auwaerter asked the Utilities Commission for their response in taking out the word "*full*" out and just have the word "*sale*."

Mr. Mucher thought they were recommending the full sale and the City Council is in the position where they are going to have to approve a contract that might include a partial sale. He said they all just heard from Mr. O'Connor on what a great deal the partial sale was. He thought that if and when they get to that they will discuss it. He said that he could go ahead with voting on the motion as it was amended and the way it currently stands. He said they basically talked in

favorable terms about the full sale and questionable terms about the partial sale. He felt that what they have done is recommend the full sale.

Mrs. Amy Brunjes, of FPL, wanted to clarify what is going to be presented to the City Council and in what format in order to assist the Commission with their motion. She reported that the goal is to have something before the City Council in early October. She said one (1) of the reasons, in addition to the incorporating some of the changes including the substation, is they wanted to give the City Council and the Commissions the opportunity to see the contract prior to the final vote. She said it will be voluminous like Mr. Auwaerter stated. It will have each item of the LOI with several detail pages attached. When it is presented and finalized it is going to be a contract for the full sale of the Utility and a provision in the contract is going to state that should a full sale not be executed that it would immediately revert to the partial sale that will have all the details of the partial sale and with the amount of \$30 million.

Mr. O'Connor noted that Section II of the LOI is very explicit about the partial sale. He explained that the LOI will outline the contract so the outline of the contract is going to be very close to the LOI.

Mrs. Brunjes said they are working towards the full sale and if the full sale is closed in October of 2018 as planned then the partial sale is mute. She said there is a lot of work being done in a very aggressive timeline. FMPA has presented them with a schedule of approvals and they have said that they expect all the approvals including the final vote of their Board, their Bond Trustees and their Bond holders at the very latest by February, 2018. She said that is very positive and very aggressive.

Mr. Tonkel felt the confusion arises over the fact that those terms are fixed and the City Council and the two (2) parties have basically come to an agreement on how they are going to proceed and how the sale will be, either A (full sale) or B (partial sale). He felt that the problem the Commission was having was that without knowing anything about the partial sale or the implications of a partial sale they are having difficulty bracing it, particularly when all the concerns have been expressed about a partial sale. What he is interested in is coming to some agreement about getting the City Council to proceed with the preferred and knowing FPL and the City has the right to conclude that contract. But, without the Commissions having sufficient basis to do that they are having a wordsmith problem.

Mr. O'Connor assured them that they don't need to motivate the City Council on the full sale. He felt the discussion that has taken place is to encourage the City Council that gives support to their decision making going forward. From his perspective the LOI is a policy of the City Council. They voted on it. He said the Finance Commission and the Utilities Commission can go through the breakdown and the analysis of the impact of the partial sale. That is an analysis that can be done anytime they want to do it. He said that from a financial standpoint, he did not

anticipate a negative impact. He noted that if they sell the IRS customers, it would not be that it is going to be a negative if they use the \$30 appropriately. He said they are going to have the same amount of money for the sale of 10% of their customers as they will have for the full sale.

Mr. Tonkel recommended the contract for the sale of the City Electric Utility as articulated in the LOI. He said that gives their support to the City Council on moving forward under the provisions of the LOI. He thought they already made their declaration on what is going into the contract and the Commissions might have an opportunity to review it if it comes to a partial sale. But, at this point he felt they wanted to encourage the additional steps that need to be taken to bring this to a conclusion.

Mr. Mechling agreed.

Mr. Brovont said that he is not on the Utilities Commission, but he would agree to that. He said the reality is that the City Council has already agreed on a full sale and a partial sale without any input from them.

Mr. Smith said that he would agree to that. He didn't like it, but he felt they should embrace it and move forward.

Mr. Auwaerter asked Mr. Tonkel what amendment to the motion was he suggesting.

Mr. Tonkel said *"that the City of Vero Beach Utilities Commission recommends to the City of Vero Beach City Council that the Council finalize the contract for the sale of the Electric Utility including the provisions as outlined in the Letter of Intent."*

Mr. Auwaerter said then he is basically saying to take out the word *"full."*

Mr. Mucher asked are they leaving in the word *"finalized."* He thought there were questions about that.

Mr. Auwaerter said to him finalize or convert the LOI to a contract was one in the same.

Mr. Mucher said as long as that is the meaning to the word *"finalize."*

Mr. Auwaerter said that is the way he views it because until they have a final contract there is not a contract.

Mr. Auwaerter amended the motion to state that *the City of Vero Beach Utilities Commission recommends the City of Vero Beach City Council that the Council finalize the contract for the sale of the City's Electric Utility to Florida Power and Light* with the rest of the motion remaining as is.

Mr. Tonkel added in accordance with the provisions of the LOI.

Mr. Auwaerter said they were using the financial framework as described in the Letter of Intent.

Mr. Mechling seconded that.

Mr. Smith said under condition 2), it states “*as a result of the full sale,*” which the word “*full*” should be removed.

Mr. Mucher said it should state “*in the case of a full sale.*”

Mr. Auwaerter amended the motion from “*as a result of the full sale*” to “*in the case of the full sale.*” Mr. Mechling seconded the amended motion.

Mr. Baczynski said the LOI was signed by the Mayor. He asked what were they adding to the process.

Mr. Auwaerter felt that as a Commission of citizens who has developed some expertise in utilities that they have looked at it from a different perspective than possibly the City Council has and that they think they should move forward.

Mr. Glen Heron referred to Mr. Auwaerter’s model. He said it is as though looking at from FPL’s perspective in what would they be willing to pay and what their returns would be.

Mr. Auwaerter said that is correct.

Mr. Heran noted that Mr. Auwaerter was being very conservative in his model.

On a roll call vote the amended motion passed 5-1 with Mr. Baczynski voting no, Mr. Mucher yes, Mr. Smith yes, Mr. Mechling yes, Mr. Tonkel yes and Mr. Auwaerter yes.

The Utilities Commission adjourned their meeting at 11:13 a.m.

Finance:

Mr. Bass felt that Mr. Auwaerter did a tremendous job on his model and he appreciated the work that he put into it. He felt that it was very conservative in eyes of FPL. He felt that the Finance Commission could put a motion on the table as well. He said that he would like to make a few changes to the Utilities Commission’s motion.

Mr. Bass made a motion that the City of Vero Beach Finance Commission recommends to the City of Vero Beach City Council that the Council convert the terms of the Letter of Intent to a contract for the full sale of the City's Electric Utility to Florida Power and Light using the financial framework as described in the Letter of Intent dated May 16, 2017 between the two (2) parties subject to the following three (3) provisions: 1) the final executed contract should incorporate Florida Power and Light's plan to dismantle the electric substation at its present location next to the defunct City of Vero Beach Power Plant and to build a new substation on the lot on the southwest corner of Indian River Boulevard and 17th Street in Vero Beach, 2) in the case of a full sale, the City of Vero Beach should have no actual ongoing or contingent liabilities arising from any post-closing Electric Utility operations. The City will retain certain pension obligations for transferred employees as described under Section 1.11 (a) in the above mentioned Letter of Intent, and 3) under Section 1.3 (d) of the Letter of Intent the contract must reflect the \$10 million lease as a payment to the City of Vero Beach and not as a lease.

Mr. Gorry said that he absolutely disagrees if the partial sale is not removed because it has never been reviewed. He said that he has serious concerns on a number of issues. He noted that obviously a full sale is what everyone wants, but he doesn't want to have an automatic Russian roulette trigger.

Mr. Bass noted that his motion is slightly different than the Utilities Commission's motion because he took into account Mr. Gorry's opinion so he left in the word "*full*." He said they are at advisory capacity and they are making a suggestion to the City Council. It is very clear when they specify the words "full sale" what their recommendation is. He said that he is not an attorney, but the way he reads it, it is very clear.

Mr. Gorry asked that the partial sale is not included.

Mr. Bass said they were wordsmithing a bit, but the way he read the motion is what he would recommend making to the City Council.

Mrs. Barton agreed with leaving the word "full" in their motion, but she didn't know what it means within the financial framework as described. She asked is that a backdoor way of saying the partial sale is in there.

Mr. Gorry said that he was not saying that after a full review of all the data and how it affects rates, the future revenue stream to the City, etc. But, all of that has never been looked at and that is a problem for him.

Mr. Brovont said they were saying that they were recommending the full sale. He said the City Council has already made their decision.

Mr. Gorry said they may be wrong.

Mr. Brovont said they might be, but they have already done it. He said if the Commission feels strongly for a full sale, they can recommend a full sale. The City Council is going to do what they want.

Mr. Gorry said there is also an Election coming up.

Mr. Brovont said the contract is going to be very tight.

Mr. Gorry hoped that they get the full sale.

Mr. Brovont said that he was in agreement with Mr. Bass. He said the City Council made up their mind. He said they are all in agreement that there should be a full sale and not a partial sale. He did not have a problem with approving the motion as stated.

Mr. Old agreed.

Mr. Smith said what they were complaining about was not the details so much as the City Council going ahead with the contract without asking for advice. He asked why don't they state that they would prefer that the City Council obtain the advice of the appropriate Commissions. He felt that was the argument. Not the details in the contract.

Mr. Mucher thought a lot of the objection some of them are having on the partial sale was based on misinformation. Mr. Gorry talked about \$30 million could only go to certain areas and that won't affect fixed costs. Mr. Mucher said if they pay off the debt and pay off a big chunk of capital costs, that is going to greatly reduce fixed costs. He felt that most of their objections and the public's perception on bad aspects of a partial sale is based on misinformation.

Mr. Brovont said that he was not opposed to the partial sale either. He was opposed to not knowing how it was going to work. He said that he ran the operating numbers to see if the City could operate on it with the \$30 million and his answer was yes, they could make it work. He said in many ways they might be better off with a partial sale. He said that he could run the City financially on a partial sale. He said that Mr. O'Connor could run the City.

Mr. Bass asked Mr. Brovont if he wanted to add that to the motion.

Mr. Mucher said that would basically not be taking out the word "*full.*"

Mr. Gorry felt that the Finance Commission should have a meeting specifically on the issues that they were bringing up.

Mr. Old asked did they want to add to the motion that the Finance Commission would like to review it.

Mr. Bass said they were making a recommendation. The way he stated the motion is extremely clear and the word "*full*" covers exactly what Mr. Gorry is saying.

Mr. Brovont said they might be tying the City's hands a little bit by not covering the partial sale in their motion. He said that is a key point with FPL and they have been very clear about it since day one (1). He said everyone knew it and the City Council agreed to it. He felt they should cover that in their motion.

Mr. Mucher said they could have the partial sale analysis meeting tomorrow if they wanted to. He said that is another piece of misinformation in that they were still under a gag order, but they haven't been under a gag order since OUC agreed to the \$20 million.

Mr. Brovont said the reality is that they have been under a gag order.

Mr. Mucher said they could have the discussion on the partial sale if they want.

Mr. Gorry said the Utilities Commission has oversight for recommendations on electric, water, and solid waste. But not on operations of the General Fund, whether it is capital or expense. What he was trying to address with the partial sale is to do an analysis to see how it measures. He said it was always in the "context of a full sale." It was never only a partial sale forever and ever amen.

Mrs. Barton said they were never asked to make a recommendation on that so she didn't think they should throw that into their recommendation now. That is past history and they can't make a recommendation after the fact. Their meeting today is to consider the full sale and she felt they were all enthused about the full sale. She said Mr. Auwaerter's original motion addressed the full sale and it came out later to include the partial sale. She didn't know why the Finance Commission could not make a recommendation on the full sale. She said the City council has already decided and the Finance Commission cannot change that.

Mr. Tonkel said they have an external audience and they have other parties to this agreement and he felt it would be unwise to basically not support the City Council's action that they have taken in the terms and conditions of the LOI. If they have someone on the Finance Commission that opposes the motion and the majority carries the vote, the Utilities Commission and the Finance Commission would have endorsed the proceedings and the conclusions of the City Council. He

felt that they would understand from today's meeting, their discussions, and the future work that they will do, and what the preference is. He said to not take action and approve it and move forward was a serious strategic mistake.

Mr. Gorry disagreed.

Mr. Bass said that he totally agrees.

Mr. Bass read back the motion, which is that the City of Vero Beach Finance Commission recommends to the City of Vero Beach City Council that the Council convert the terms of the Letter of Intent to a contract for the full sale of the City's Electric Utility to Florida Power and Light using the financial framework as described in the Letter of Intent dated May 16, 2017 between the two (2) parties subject to the following three (3) provisions: 1) the final executed contract should incorporate Florida Power and Light's plan to dismantle the electric substation and its present location next to the defunct City of Vero Beach Power Plant and to build a new substation on the lot on the southwest corner of Indian River Boulevard and 17th Street in Vero Beach, 2) in the case of the full sale, the City of Vero Beach should have no actual ongoing or contingent liabilities arising from any post-closing Electric Utility operations. The City will retain certain pension obligations for transferred employees as described in Section 1.11 (a) in the above mentioned Letter of Intent and 3) Section 1.3 (d) must reflect in the contract the #10 million lease as a payment to the City of Vero Beach and not as a lease. Mr. Old seconded the motion.

Mr. Brovont asked that they take out "*full sale*" and just state "*sale*."

Mr. Bass felt that the motion states it both ways.

Mr. Brovont asked that they strike the word "*full*."

Mr. Bass amended the motion to just state "sale."

Mr. Mucher asked because they were discussing the substation, would they need to mention the change from \$20 million to \$30 million and the lack of a lease. He said they have the final section of the motion.

Mr. Bass said the final section of the motion addresses the LOI.

Mr. Mucher said the Letter of Intent has been modified.

Mr. Bass said in the LOI that they have currently states under Section 1.3 (d), "*a payment of \$10 million to the City of Vero Beach as prepaid rent to lease the Vero Beach Power Plant substation for a term of 99 years as further described in Section 1.5 below.*" He reported that has since been

scratched so what his motion is trying to achieve is to state that the contract must still reflect the \$10 million applied to the new property in the form of a payment, which Mr. O'Connor already covered earlier in today's meeting.

Mrs. Barton asked can she make a motion to put the word "*full*" back into their motion. She asked can they vote on two (2) motions.

The Deputy City Clerk explained that there is a motion and a second on the floor and there is an amended motion, but the amended motion has not been seconded.

Mr. Old said that he seconded the original motion with the word "full."

Mrs. Barton said the agenda said they were looking at a full sale and Mr. Auwaerter's original motion stated full sale. She asked what is wrong with them voting with the full sale first and if it doesn't pass then they could amend it.

Mr. Brovont said the LOI covers more than the full sale and the City has already moved forward.

Mrs. Barton said the agenda states that they were going to consider a full sale and most of them are really enthused about a full sale. She asked why can't they put a motion forward that shows their enthusiasm for the full sale.

Mr. Brovont felt that they should be supporting what the City has already done.

Mr. Bass said with the language that he changed to concert the words of the LOI to a contract that they are achieving both. He agreed with Mrs. Barton. He said they would be getting both things done.

Mr. Gorry said that he took an oath to the City of Vero Beach to do the very best that he could and to give the best advice he could on issues that would impact the finances of the City and he has done that. He said that he has done an extensive analysis on the partial sale and on the full sale. He said that he would not vote for anything other than a full sale. He would not vote on a rubber stamp to automatically have a partial sale. He would only vote for a motion that is for the full sale only.

Mr. Brovont said there is a motion on the floor.

The Deputy City Clerk reported that the amended motion died for lack of a second so they would be voting on the original motion.

Mr. Bass said they would be voting on the original motion.

Mr. Gorry said then the intent of the motion is for a full sale.

Mr. Bass read back the first part of the motion, “the City of Vero Beach Finance Commission recommends to the City of Vero Beach City Council that the Council convert the terms of the Letter of Intent to a contract for the full sale of the City’s Electric Utility to Florida Power and Light using the financial framework as described in the Letter of Intent dated May 16, 2017 between the two (2) parties subject to the following three (3) provisions.”

Mr. Gorry said that based on that language he interprets it that they were fully endorsing the full sale only.

On a roll call vote the motion passed 5-0 with Mr. Bass voting yes, Mrs. Barton yes, Mr. Gorry yes, Mr. Old yes, and Mr. Brovont yes.

4. ADJOURNMENT

Today’s meeting adjourned at 11:42 a.m.

/sp