

MINUTES OF A REGULAR MEETING OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, HELD MONDAY, OCTOBER 20, 2008, AT 6:00 P.M., AT 200 CANAL STREET, NEW SMYRNA BEACH, FLORIDA

Chairman Allen opened the Regular UC Meeting and proceeded with an invocation and requested Commissioner Hall to lead in the Pledge of Allegiance immediately following. A roll call was taken and a majority of the Commissioners were in attendance as follows:

Commissioner Jeanne K. Diesen
Commissioner William E. Hall
Commissioner William H. Reynolds (Absent-Out of Town)
Commissioner Oscar Zeller
Chairman Walter Allen III

Others in attendance were as follows: R. Rodi, General Manager/ CEO; L. Klinkenberg, Director of Finance; R. Mitchum, Director of Electric Operations; T. Beyrle, Director of System Ops. & Generation; J. White, Director of Engineering; R. Lemoine, Director of I.T.; P. Di Chiara, Director of H.R.; B. Bilinski, Controller/Budget Supervisor; E. Fisher, Public Information Manager; D. Wood, Customer Service Manager; D. Zorge, Customer Service Supervisor; D. Simmons, Executive Asst./Recording Secretary; B. Preston, Interim U.C. Legal Counsel; Lynne Plaskett, City Commissioner; Randy Richenberg, Vice Mayor; M. Johnson, Reporter for DB News Journal; Bob Tolley and Richard Spangler (6:30 p.m.), members of the public.

(1) Agenda Changes, Additions and Deletions:

Chairman Allen then asked if there were any agenda changes, additions or deletions.

Mr. Rodi stated Mr. Chairman, when we get to the other business I have several items I'd just like to bring up.

Chairman Allen stated okay, under other business.

Mr. Rodi stated and there is one correction that's needed for the minutes, with regard to the meeting on 9-15 and it's on page four. In the item under 4-a., financial status, the audit that's beginning is fiscal year 2008, not 2009.

(2) Approval of Consent Items:

Chairman Allen stated then we go to the approval of consent items. We have six items on the consent agenda and asked if there were any questions or a motion to approve the consent items as they are listed.

Commissioner Zeller made a motion to approve the consent items, item 2-a. Minutes of Regular/Reorganizational UC Meeting Held 9-15-08, approve as submitted with the one correction on page four as stated above; item 2-b. Utilities Commission Meeting Schedule for 2009, approve as submitted; item 2-c. Sole Source Purchase – Bio-Solids Residuals – Pumping, Transporting and Unloading, approve and award purchase order no. P000008132 in the amount of \$210,000.00 to Shelley's Environmental Systems for pumping, transporting, and unloading bio-solids residuals to

(2) Approval of Consent Items (cont.):

FDEP approved land application sites, a sole source vendor per Sections 2-1(2) of the Purchasing Policies and Procedures Manual; item 2-d. Formal Approval of Non-Represented UC Employee General Wage Increase for FY2008-2009, formally approve a 2% general wage increase (GWI) for FY2008-2009 for non-represented UC employees, to become effective October 1, 2008 and authorization to adjust the associated wage schedules for this increase; item 2-e. Formal Approval of Represented UC Employee General Wage Increase and Acceptance of IBEW Reopener Ratification FY2008-2009, formally approve a 2% general wage increase (GWI) for represented UC employees and accept the FY2008-2009 IBEW Reopener Ratification as bargained between IBEW Local 2088 and the Utilities Commission for fiscal year 2008-2009, and item 2-f Suspension of Policy and Charges for Financing Air Conditioner Upgrades, approve suspension of the policy and charges for Financing Air Conditioner Upgrades until further notice. Commissioner Hall seconded the motion and it passed unanimously on a roll call vote.

(3) Public Participation:

Mr. Bob Tolley addressed the Commission and requested to the Chairman, with your approval, I would like to withhold my comments to a little later on, if that's okay.

Chairman Allen stated okay, and then confirmed there was no other public participation at this time.

(4) R. Rodi - General Manager's Report:

(4-a) Financial Status — PRELIMINARY September 2008:

Ms. Klinkenberg stated as you know we only released the preliminary numbers this quarter because we're at year end audit time. The preliminary numbers for September 30, 2008 is change in net assets of almost \$6.3 million for the combined system and our forecast reports reflect a \$1.6 million favorable year end balance. Those numbers will be adjusted, we still have some major audit entries, two of which are the accounts payable accrual, that's very large for the end of September, along with the payroll accrual; so that will dip into that \$1.6 million.

Ms. Klinkenberg stated and I wanted to let you know about the FEMA audit for the 2004 hurricanes, that's been completed. We're going to end up with an additional \$5,433.29 from FEMA, that's all three hurricanes. The funds will be paid to the City and then the City reimburses us because we filed together back then; we file separately now. We're just in the process of writing the P.W.'s for Tropical Storm Fay. She then offered to answer any questions.

There being no questions, Mr. Rodi stated I just have a comment. I would like to bring your attention to the fuel and purchased power expense item. You can see for fiscal year 2007 it amounted to a little over \$24 million and for fiscal year 2008 it's \$27.7 million. So there has been absorbed a \$3.7 million increase. On a positive note, I had sent to you earlier a copy of some correspondence that Mr. Beyrle had received from Progress Energy which is showing fuel costs going down, so that our last true up showed that we are moving into more favorable position to start to recover and there has been no increase in rate. So that risk is hopefully going to pay off for our customers as we move forward.

(4) R. Rodi - General Manager's Report (cont.):

Chairman Allen stated good and notably looking at the E.C.A.C, that a lot of that was due and came in around the summer time, because we were really recovering well and making progress and it was looking good until we hit the heat of the season, and added it impacts us with the way the market is.

(5) Commission Counsel's Report:

Chairman Allen then asked Mr. Preston if he had a report.

Mr. Preston stated he had no report at this time.

(6) Committee Meeting Reports

There were no committee meeting reports.

(7) Old Business

There were no old business items to consider.

(8) New Business

(8-a) Identity Theft and Prevention ("Red Flag") Policy:

Ms. Klinkenberg stated as we mentioned last month that we had to have this policy approved by November 1st to be in compliance. The Federal Trade Commission developed requirements whereby creditors were required to develop, implement, and write a program to detect, prevent, and mitigate identity theft. As a utility we're considered a creditor because we extend service in advance of their payment. So we drafted a policy with some procedures, and the procedures outlined in there are the ones we already have in place. We're going to look for more red flags as we move forward, and the red flags are really not safeguarding our website or our internet or IT status, it's really looking at someone who's trying to portray someone else and open an account in someone else's name. So we're watching for all of those items. Once you approve the policy, if you do, it will give us the authority to create the privacy committee and then the privacy committee will work forward to constantly monitor the progress of this and create necessary changes as everything evolves. And I mentioned it's not intended to address the computer network but I also wanted to let you know that our IT Department does have a very secure network, with a lot of controls in place, including firewalls, router access, which prevents the unauthorized access. And they do vulnerability assessments and upgrade it regularly by our IT personnel. Additionally, we only have very limited access to our system by heavily encrypted VPN's.

Mr. Rodi then added we have an access logger that shows who went on the system and whatever change was made.

Chairman Allen stated just one question I had for my clarity and thought process, as far as the committee, what is that committee makeup.

(8-a) Identity Theft and Prevention ("Red Flag") Policy (cont.):

Ms. Klinkenberg stated we selected, and at the recommendation of FMEA where we went to a training, we selected our Controller (Brian Bilinski) to be on the committee as well as our Senior Systems Analyst (Heddy Domingo) from our IT Department, Director of HR (Paula Di Chiara), the Customer Service Manager (Danielle Wood), and myself (Director of Finance).

Mr. Rodi added and there's an annual report that will come.

Chairman Allen then asked if there were any other questions in reference to this policy. There being none, he asked if there was a motion.

Commissioner Hall made a motion to approve the Identity Theft Detection and Prevention Policy as submitted. Commissioner Zeller seconded the motion and it passed unanimously on a roll call vote.

(9) Possible Other Business — Time for Commissioners:

Chairman Allen stated with no other new business, we'll go to possible other business, and then opened the floor to Mr. Rodi.

Mr. Rodi stated I had several items. Just to make you aware, we are continuing to move on our 20" water line project and as you recall there will be new pumps at both the Glencoe end and the Smith Street end. One of the indirect consequences of that action is that we have a number of employees that are located in a building at Smith Street that unfortunately is in the way of where the new pump house is going to be. That may sound simple but the consequences are that we will be relocating a number of those employees to the Water Treatment Plant at Glencoe, into what has been the records storage building. The domino effect is that we had to clean out the tunnel and so we could take some of the records from out there to use the building. And then we'll be using some of the windows from the old building, etc., and then we have to have restroom facilities and then that means; and it just goes on. Right now we have a fiber connection to the Smith Street location and we don't have a fiber to the Glencoe location, so that, for purposes of assignment. He stated what I see happening here is even though we'll be reusing existing facilities trying to make all that fit, we're going to spend, I think, quite a few dollars just to get the relocation in place. And this will be occurring over the next five to six months, we're starting on it now, we'll have some temporary facilities, and we'll just take it a step at a time. So if you hear about us moving, no we're not, we're relocating some employees for the water line project at Smith Street; so that's one item.

Mr. Rodi then stated along S.R. 44, if you have traversed that lately, near the entrance to north bound 1-95, you'll see a lot of pipe that's out in the road right-of-way. That is for the force main, there's a six inch force main for the Southeast Interchange. And that project is one that is finally underway now because of the easements that were granted by Gardens 207 and others. It will traverse north across S.R. 44, head to the east to Sugar Mill, then head north on Sugar Mill to the transmission right-of-way area where we'll have to have a special connection into that 30" force main there. So when you see the activity, it will be directionally bored so that the buffer will have very little disruption. That activity is underway and I thought I best make you aware of that.

Mr. Rodi stated I have been asked to participate in the Governor's Energy Commission meeting on the 10th of November (subsequently November 12th) with regard to our R&D project. I think at this

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

point it's advantageous for us to participate and I'll keep you posted as to exactly some of the nuances that will be going on. That is principally a renewable energy forum and we do have some ramifications of our participation with that, so I just wanted to make you aware.

Mr. Rodi stated and the last item, I wanted to make openly, make you and the public aware of, in the financial highlights in this month's General Manager's Report, I was pointing out some of the problems we're running into with our Enquesta system. First couple of months we're okay, recently what we've been told is the programmers, the S&S programmers, not any local staff, have found a bug in the system. They're not quite able to reconcile, fix that bug yet, so they're having to do a lot of extra reports, and Ms. Klinkenberg is having to hand calculate all kinds of things just to make sure it's accurate. We have a number of issues that I think are serious that we're working through with them. On the 28th of this month, the CEO from Harris Systems, which owns S&S, the head of S&S, and their CFO will be coming here to meet with us. Hopefully they will resolve some of the problems this week; we're optimistic but so far the performance on resolution has not happened well. As a backup we have some of our own staff beginning to prepare performance reports, the data's all accurate. Where we're running into problems are the reports that are supposed to be generated from this system. So what we're doing, between our own staff and looking to outside help, if we need to go to this step to write our own reports, we'll head there. So I'm not trying to push this thing aside, I'd like to thank the Customer Service Reps., they've been doing a lot of additional duty. Our financial part of the system is Great Plains, it's fine, but some of the interface then from these reports, from the base information, that is accurate. The reports that we're getting just don't tie out the way that we think they should. He stated so I just want to be straight up, it's not pretty but it's out there.

Chairman Allen stated the way I understand it the data has integrity, but it is getting the information the way you want it to be laid out so that you can understand it and make sure that it is a viable report, that somebody can sit down and look at.

Mr. Rodi stated that's right and added our auditors are working with us on this, they're being very helpful. He then asked Ms. Klinkenberg if he had stated things as I should.

Ms. Klinkenberg stated yes, we requested the auditor's assistance. She stated I've had Mr. Rodi involved, unfortunately a lot more than I think he wanted to be involved, but I wanted to be sure he was aware of what was going on. The auditors have helped us quite a bit and we're just still waiting to get the reports.

Commissioner Diesen then asked is it too late to stop payments on the checks?

Mr. Rodi stated we've held money.

Ms. Klinkenberg stated yes, two final payments we haven't paid yet.

Mr. Rodi stated the money is really the inconsequential part of this; we have to have a functional system. I think we finally have the attention of the top management of both the holding company and the subsidiary.

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

Commissioner Diesen stated I would hope, this wasn't a Beta system.

Mr. Rodi stated no, it was not, and it was referred to as one of the best systems there. The terror of some of this is our former system was experiencing some of the same problems, that's why we went down this road. And that particular software company has made new installations and those folks are having the same issues that we're having. It's a little difficult to understand why, but it's happening.

Ms. Klinkenberg stated one of the main issues that we have with S&S, one of the reporting, has to do with the sales tax. And kind of in their defense, Florida's sales tax and municipal taxes are different than any other state in the United States, so they've never done that before and that's where the difficulty is. They've calculated it correctly on the bills, but they can't seem to report on it.

Commissioner Diesen stated they knew that ahead of time didn't they.
Ms. Klinkenberg stated yes.

Mr. Rodi then stated so I wanted to convey that. There are a couple of other sensitive issues that are going on and I don't know if you will choose to talk about them now or not.

Chairman Allen stated I'm open to talk about anything.

Mr. Rodi stated okay, I think this is critical and I'll bring it up because the UC had a serious need to secure our outfall and the related equipment on the AOB site. We can't relocate the outfall, it has to stay there, I mean from a permit standpoint. No new ones or modifications will be permitted in the future. And with, as you well know, the City's intent to have a vote, a referendum vote, on the disposition of that property, we felt it was absolute critical to move forward with an easement. During the meeting for which we requested that easement be granted, there were some exceptionally serious statements that were made that really, and they weren't just casual statements about interpretations of what something meant or didn't mean. But from my perspective it created an impasse which is going to make it almost untenable for all of the interests involved. Essentially, and I think it's important to quote this, I had asked Ms. Simmons to do a near verbatim transcription, so I think most of the words that I'm going to read are important. But excerpted from this, there were statements made by our City Attorney, who I might add is a Charter Officer and his duties require him to provide legal interpretations, one of the statements made is "there is no such legal entity as the Utilities Commission, City of New Smyrna Beach". And another part of the same paragraph, "and there is no legal entity Utilities Commission, City of New Smyrna Beach, and so this is nullity", I think referring to the easement, "it is of no legal effect, it's invalid, and it's contrary to the Charter".

Mr. Rodi stated so, a little bit confusing, and as you go through the excerpt there's another reference near the end about there's no such thing as the Utilities Commission. As I thought through this afterwards, and this is why I'm bringing it up now, we have some daily matters that we have to take care of and we have substantive matters that we have to take care of. If there's no such thing as the Utilities Commission, then we have questions about our bonds, we have questions about the loan

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

that was just approved, we just had a budget approved, payments that are made, and future projects, for example, our R&D Project, our alternate water supply. So I think this is really a very, very serious matter and I just cannot take it as casual because it was presented as an opinion for the City Commission to act upon. The fortunate thing was our easement was granted, the easement I think was recorded was it not, Counselor.

Mr. Preston stated it was sent for recording today.

Mr. Rodi stated okay, so from that standpoint it's moved on, but it was also stated in this meeting that that particular easement means nothing, it will have to be done again presuming the sale of the property. I think it also poses some serious questions about this Commission being able to carry forward its responsibilities under the Charter, so I'm referring to the U.C.'s Charter. So as you can see it's quite a conundrum, but I've taken it quite seriously so that's why I'm bringing it up here. Part of the reason why I'm bringing it up here is one of the requests I'll make of you is I'd like to, because this happened, I'd like to hire some additional outside counsel. I don't know where it's going, I don't know what the intent is. He concluded by stating so that's the bottom line for me.

Chairman Allen stated okay and then asked if there were any comments.

Commissioner Zeller then asked Vice Mayor Richenberg if he could put him on the spot, why is Mr. Gummey saying these things.

Vice Mayor Richenberg stated that's a big question to ask me, I mean do you have an hour.

Commissioner Zeller stated I think this Commission has worked real hard to get along with the City and the City's worked real hard to get along with us, and this is kind of a bombshell.

Vice Mayor Richenberg stated yes, it sure is, and I was stunned at the meeting when it came up and I was stunned by the City Attorney's response to a request for the easement because to me what harm could it possibly do to the City to grant this easement. That was my main question is what harm, what ill could it bring upon the City to request and grant this easement; I couldn't see any. If you want my opinion I think it is to, in one way shape or form, to try to resurrect 19-05 and the City exercise powers over the Utilities Commission, to not recognize it as a legal entity, to be able to access properties. I'm just giving you an opinion, okay, I'm not an attorney, I can't give you anything that would stand up in court, but I'm concerned about it too. I know that right now I'm very concerned with the function of the City of New Smyrna Beach and the way we're viewed from outside the City. I've been working with a lot of people outside the City, in the past six months to a year on various projects, and I may be saying things that may get myself in trouble a little bit, hopefully not legally, but we're being looked at as dysfunctional. We're not operating at the level, we're not operating as a team, I see this discourse and this contentiousness between the City of New Smyrna Beach and the utility and I don't see why. I see nothing but benefits that come to us, especially in the form on the 6% that we get, the service that we provide the residents and the ratepayers for this utility; I don't really see a downside to it. And I'll say what I said well over two years ago, that I saw a ship that was sunk, it was on the bottom, it was patched up, it was brought up, and it's sailing now and it's underway and it's doing pretty good. And that, for this to continually happen after years, I would speculate there's other reasons why you see things like this

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

occur. I don't know if I clarified anything, I don't know if I, you know, got myself in trouble but that's just my opinion, that's the way I view it, and I don't see any reason for the contentiousness that exists between the Utilities Commission and the City of New Smyrna. I see the U.C.'s nothing but a benefit to us, they do a great job, competitive rates; I just don't see it. He added hopefully you got something out of that.

Commissioner Zeller stated well it's just, you know, I didn't think we had any ill waters, I mean all of us, I think we've worked real hard to get together to make the ship float and sail straight.

Vice Mayor Richenberg stated and it's floating and it's sailing straight, and to see the reaction over something as simple of a request of a utility easement, for something that's a State mandated use, that's basically dictated to us, that as Mr. Rodi stated, can't be moved, can't be altered, there's not really anything that you can do to it, and to see that there's, what would the harm be for us to grant the easement; so...

Commissioner Zeller then thanked Vice Mayor Richenberg.

Commissioner Hall stated he had a question and stated to Vice Mayor Richenberg, I really don't want to put you on the spot but you've caught...

Vice Mayor Richenberg interjected I'm already on the spot.

Commissioner Hall stated you're really caught between a rock and a hard place. You have an attorney who's made a very strong, Tuesday night, made some very strong statements. He confirmed it was last Tuesday, and then continued with the City attorney made some very strong statements about the easement, about the Utilities Commission, in general. And that's not the first time, they've been made privately also is my understanding. I'm going to suggest to my fellow Commissioners and Mr. Rodi that we ignore Mr. Gummey, I'm sorry. He commented to Mr. Preston, I may be getting into trouble on that one, I mean I've been there before in another world sometimes. And if he's read the Charter, if he knows the history of how this Commission was established, if he knows the wars that have been fought before, I don't think he really would have, I would hoped that he would have had the good sense not to make those statements, but that didn't happen. And so I know your feelings (Vice Mayor Richenberg), and I think I know City Commissioner Plaskett's feelings about this Commission, and the cooperation that is needed to make this a working body of two.

Vice Mayor Richenberg added and a working relationship.

Commissioner Hall reiterated and a working relationship. I'm disappointed tremendously in what happened last week and I don't remember reading about it in the press. I mean I heard about it from somebody, the night it happened I had a phone call, I actually had a couple of phone calls about it.

Vice Mayor Richenberg state to Commissioner Hall, in my opinion it's something that the City Commission needs to address.

Commissioner Diesen stated absolutely.

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

Vice Mayor Richenberg stated we really need to address this because this is something that's happened several times in the past, and not just particular to the Utilities Commission, but in other areas too. And he is our legal representative of the City of New Smyrna, and when I see a representative of the City acting the way that he did, to tell you the truth it embarrasses me because I don't like to see that. There's no reason to be so aggressive.

Commissioner Diesen stated it's your problem, not ours really.

Vice Mayor Richenberg stated it is, most definitely.

Commissioner Diesen stated the City Commission has to deal with it, but on the other hand, the fall out from it, is absolutely critically serious. I can't say it any stronger than that because the implications are grave. But again, all we can do is say, yes, we can say we don't agree, that doesn't matter, it stands as the word, as the opinion, and even if it was just given off the record, and it wasn't off the record in fact, it was allowed to stand by the City Commission. So if you listen to your attorney and you take his word, then you in fact believe that the Utilities Commission does not exist. So Mr. Rodi, what does that do to him, his contract is with the Utilities Commission. What does it do to a Commission as such, I mean we can close the doors and turn out the lights and that's it, your six percent is down the tubes.

Vice Mayor Richenberg stated but even more than that, what does it do to the ratepayers and residents.

Commissioner Diesen stated well, apparently that isn't even on the table. She added and I'm not being arbitrary with you.

Vice Mayor Richenberg stated I know, and I realize that, but like I said I mean for the statements to come out the way they did that night, I think that it took everybody a good bit of time thinking about what the repercussions are and we're still experiencing the repercussions of what that is or the possible repercussions, and that's, like you said, of grave concern.

Commissioner Diesen stated much more so I think than anybody really realized that night on the face of it, and sometimes things that jar you like that, you have to go away and think about. And I think there's been time now to reflect on it, and I would hope that your fellow Commissioners have reflected as well.

Vice Mayor Richenberg stated I know that I have reflected on it, at length, and I do, I hope that my fellow Commissioners have also reflected on it.

Commissioner Diesen stated I don't think it can be swept under the rug, I don't think it can be left as it is.

Vice Mayor Richenberg stated I don't think it should be, I really don't think it should be, but everything I'm saying here tonight is my opinion.

Commissioner Diesen stated that's your opinion, and as a citizen I understand that.

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

Vice Mayor Richenberg stated all right.

Commissioner Hall stated and we appreciate that.

Vice Mayor Richenberg stated I'm glad if I could enlighten any of the dark areas in this subject. Commissioner Hall then asked Chairman Allen if he could ask another question. I understand Mr. Preston was in the audience that night and that he spoke.

Mr. Preston stated I did.

Commissioner Hall stated can you give us a brief summary of your response to Mr. Gummey.

Mr. Preston stated first I want to thank Vice Mayor Richenberg and I appreciate your opinion and also your understanding I think of the issue. I see my role here as counsel, as unity builder, problem solver, and protector of legal rights for the Utilities Commission. And I believe that we have made great strides in our relationship with the City and if there are issues that are unspoken, if there are issues that lead to comments like this, I just hope that we can get them on the table and we can resolve them. As far as my comments to the Commission on Tuesday night, I simply stood to request an easement for the outfall on the AOB site, that was my purpose of being there. The comments made by the City Attorney were a surprise to me and while speaking I just quickly decided that there were two approaches I could take. One of which I took, and that was to just simply identify the role of the Utilities Commission as granted by the Charter and the authority granted by the Charter and the ordinances of the City to the Utilities Commission and to leave it at that, because I believe the comments were, as we have spoken tonight, certainly inaccurate, inappropriate, and out of line.

Chairman Allen then thanked Vice Mayor Richenberg for his comments and added I see Mr. Tolley in the back raising his hand.

Mr. Bob Tolley, 803 Fairway, addressed the Commission and stated well I think I can go directly to the point because I'm not worried about the same legal issues as some of you are and possibly some of the City Commissioners are. I emphatically state that we still have a corruption problem in the City of New Smyrna Beach; corruption with a capital "C". It hasn't stopped, it's abated, but it hasn't stopped. I can tell you emphatically, and I think the evidence will bear me out, there is at least one sitting City Commissioner, as well as three members of the staff that sit up on this dais on any given night, have led a concerted effort to undermine Mr. Rodi since the day he got here, impacting this man's family, in ways that we can only imagine. They have done everything that they could to impede, slow down, derail, whatever term you want to use, this utility from carrying out its business. With special emphasis on the 800 acres west of 1-95, which when you see all the evidence and gather it, is what this is all about. This goes back to the previous administration here, the Turano days, the Vaden days, just keep connecting the dots, you'll see where it all goes. Am I standing up here worried about what I'm saying to any of you, no way. I refer to them as the four "J's" that are involved with this, and when you think about who the four "J's" are, you'll get it. And they're there, there is a big push from those, not sitting at this dais, to impose their will on people that do sit at that dais, to do everything they can to get rid of that man, scare his family off,

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

sell this utility, close the doors, and do whatever they can. Corruption, capital "C", Mr. Johnson (DB News Journal reporter), capital "C", nothing's changed, different day, different players. I heard Mr. Rodi ask you before, to consider something, and I want to say this in the nicest way possible, if you don't do it, I'll do it, but I wanted the lead to come from our officials. I believe that there are Federal statutes that have been violated here, and that's why I believe your General Manager wants to go outside. Mr. Preston is a nice guy but he works here, he lives here, and you know how your business can be impacted when you raise up against certain folks, and you know that power play is very evident today, it's still alive and well. What happened the other night was scripted, Commissioner Zeller you were there, this had nothing to do with the easement, not a thing to do with an easement; that was a joke. You saw Mr. Gummey's anger, did you not, I saw it, Mr. Rodi saw it, even Attorney Preston said how scared he was, well not scared, surprised. Mr. Gummey was off the wall, why, it was a simple easement issue and it could have been settled with a phone call between the two attorneys. Why, well maybe you need to talk with some of the players in the audience that were maybe generating some of the pressure on the City Attorney, and some of the staff.

Mr. Tolley stated let me tell you what I'm going to do, I'm going to wait until you guys decide what you're going to do, but I hope you support the General Manager. This man has played hell since he's gotten here, his family has suffered, and this utility still continues to suffer. Now I've requested to appear on the agenda for the 28th, I'm going to tell you straight up what I'm going to ask for, the immediate resignation or termination of the City Attorney, the City Manager, and Mr. Mark Rakowski. They want to fight and get into the pissing contest, no problem, we can play that game, but I think when you correlate all the facts of what's continuing to go on here, with the continual corruption, we're never going to be able to move forward as a City until we take some definitive action.

Mr. Tolley stated you know when I was a kid growing up, I weighed 116 pounds, had a size 26 waist; you wouldn't believe it today. And I was the runt and every day, not every day, a couple times a week, I'd always get beat up. And then one day I remembered what the handle on top of the garbage lid was for, and if any of you saw the Godfather with Sonny Corleone, that was me but I was a little runt. And after you knocked a couple of people's teeth out and you got their attention, you know what, the bullying stopped. That's what we have here, you've got a bunch of bullies who think they can do whatever they want in this City because they're the good ole boys, and they'll just hurt whoever gets in their way and with their agenda. And like any bully, you've just got to beat them back, and by supporting your General Manager's request to seek outside counsel, with specialty in Federal Statutes, you get to fight back on the bully and maybe one day down the road we can stop this corruption issue. Thank you.

Chairman Allen thanked Mr. Tolley. He then stated he would like to share a couple of things and thoughts he had as he looked over the information, listened to the audio of the meeting that particular night. The City Attorney's statements have serious implications that do interfere with the functioning of the Utilities Commission as it stands today. The tragedy, because of the fallacy of the statements that were made, and when you look around, the Utilities Commission is a recognized entity by many governing entities, the County, the State, and the Federal levels of government. The communicating with all the levels of government in meeting compliance and regulatory standards, and the Utilities Commission reports and carries out a high level of standard of compliance for the

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

betterment of this community and its ratepayers. And we, as the Utilities Commission here, have a responsibility to see that the policies and the operations of the City's utilities are done in a proper and prudent manner. This Commission, I feel that we need to let it be known to the City Commission of our concern of the reference of these statements and the hostile presenting of the so to be facts. I think we can voice our concern but it is the City that needs to take and make the corrective action on the issue with Mr. Gummey because he is their legal counsel. He is a Charter officer serving the City and the City Commission. And as City Commissioner Hathaway had said, we spend an awful lot of money on his advice, so it is over in their court. We look and we think about there needs to be a communication of our concern as a Commission to them over at the City Commission. That they need to respond to the action and the statements that were made publicly as a part of record, and see if that can not get cleared up because it is on their side.

Chairman Allen stated this Commission, through hard work and guidance by Mr. Rodi, our Chief Executive Officer, he has set a high standard of ethics for this Commission and for its staff and its employees. And with that in mind, I don't think we want to bring embarrassment on our City or through lowering ourselves to taking low jabs and losing focus on the betterment of this utility and the betterment of this community. He added or even jeopardizing our forward movement to draw folks who have viable R&D projects that would benefit this community, provide the needed resources for the utilities, and even further, the advancement of the R&D products as each one of those come on board. I think it's important for us to understand that. And I believe with a notice, as we would send to them, a clear statement from this Commission, they must take action, proper, appropriate action for his legal counsel (City Attorney's) that was verbally brought forward; and that's where I stand.

Commissioner Diesen stated I'd like to recommend that we do, you do a letter under your signature, and if you want, everyone here. I would hope that we would get concurrence on that, that we send a letter to them, an official from the Chairman, if you're in agreement with that.

Commissioner Zeller stated I think we all ought to sign it.

Commissioner Hall stated I agree.

Chairman Allen stated I'm in agreement with that, so you make the motion to draw up a letter from the Chairman and this Commission.

Commissioner Diesen stated I do, and we can all sign it if you'd like.

Commissioner Hall then stated I'll second it.

Chairman Allen then asked for a roll call vote to be taken on Commissioner Diesen's prior motion. The motion passed unanimously on a roll call vote.

Commissioner Diesen stated I'd like to make another motion too, that we support the CEO in seeking outside counsel at his discretion.

Commissioner Hall stated I'll second it.

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

Chairman Allen stated okay, we have a motion and second as far as supporting Mr. Rodi in seeking outside counsel as needed. There being no further questions or comments, he asked for a roll call vote on the motion.

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

Chairman Allen then asked Mr. Rodi if he had anything further.

Mr. Rodi stated after that, no.

Commissioner Diesen stated well, there is another item, do you want to talk about that, it's the constant shifting of Williamson Boulevard through the 800 acres, it seems to have a floating platform.

Commissioner Zeller interjected a moving target.

Mr. Rodi stated I guess that also occurred during the meeting last Tuesday, where a subdivision that is in the Port Orange area was discussed. During the presentation there was a map displayed that showed Williamson Boulevard traversing across the center of the U.C.'s 700 acres. And this is an old map, it's one that was brought up even a few weeks prior to that in another City Commission meeting as it related to Restoration. So prior to the Restoration meeting, I had sent out the map and an excerpt from the minutes that were taken by a court reporter in September of 2007, and this was a joint meeting with the City Commission, and in fact Commissioner Zeller, I think you were sworn in that evening. And it was decided by the City Commission to accept the Utilities Commission resolution to relocate Williamson Boulevard to the western side of that property. It would start in its northerly position and move along the western corridor. Those minutes were sent out, probably a month or so ago, to both the City Commission, and of course I copied you (UC). So to see that map again show up with regard to the subdivision north of Pioneer in Port Orange's subdivision was somewhat of a concern but it shows that the information still isn't being queued properly. I think that information, by the way, was conveyed to legal counsel for Restoration, I'm talking about the relocated path along with the minutes, so that he would have that. And that's as much as I can convey, I don't have anything else to add.

Commissioner Diesen stated no, I just thought it was good to put it back on the record where it actually was agreed that it would come, not down the middle, and however the shifting winds may flow, it was agreed to by a joint, in a joint meeting. I just wanted to reiterate that, I think it's important as we get more activity now with the developments, that there be a clear understanding.

Chairman Allen asked if there was any other business. There being none, he stated I've got one item that I was asked to bring for clarification. Possibly, if you checked your email today, you received an email with a fax document that came from the City Clerk that was forwarded by Mayor Mackay to the U.C. It was sent for our information, it wasn't sent as she was being a proponent for the particular document that came over. It is in reference to, as Mr. Rodi has been sharing with us, in reference to the Healthy Water Fee Proposal. She sent that over here mainly for our clarification, it was a correspondence that went to her and it needs to be over here for us. So she just did not want us to think that or misconstrue that she was a proponent for that.

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

Mr. Rodi stated thank you, and that was also as we understood it, it was just a conveyance of a document, that's all.

Chairman Allen stated okay.

Commissioner Diesen then stated we're not going to pay it though, right.

Mr. Rodi stated no, we suggested that it should return to DEP.

Commissioner Diesen stated right.

Chairman Allen then stated as we come to Commissioners' time, Commissioner Hall?

Commissioner Hall indicated he had no business to discuss at this time.

Chairman Allen then went to Commissioner Zeller.

Commissioner Zeller then asked City Commissioner Plaskett if she would like to say something. He added we don't mean to leave you out if you have something to say.

City Commissioner Plaskett indicated she did not.

Commissioner Zeller then stated we'd like to recognize you and thanked her for coming.

Chairman Allen, after confirming Commissioner Diesen didn't have anything further, stated I just have one thing to really say. I consider it an honor and pleasure to be here, there's been a lot that has been accomplished here at the Commission in the last five years by the direction of Mr. Rodi. I appreciate his effort, his time, and even with all the battles going on, we're making progress. It gets to be a battle when you're striving to do your very best. And there's the technology that you see the potential because of the size of our utility and our make up for a lot of the R&D projects, the viability of those would work very well here. A lot of effort and a lot of time goes into trying to see that come forward and when you have other battles distracting you, plus having a full plate beyond, and dealing with these other issues that jump out. I appreciate Mr. Rodi in providing that direction for us, he's a major asset to the Utilities Commission and to the staff here. I appreciate the staff that works along with him. And one of the things, having come from a utility environment, being a part of this utility in the past, there are times I may ask questions, but it is my endeavor to stay out of the operations. I may ask questions to have a better understanding of how that operation is functioning, and maybe by asking the questions it would answer the door that maybe individuals may even think a little beyond just the normal routine. We're in some challenging times in our country and also in the utility industry. And so while we're in those challenging times it calls for being able to not be complacent, but be thinking forward and ahead, not just tomorrow but looking ahead into months and years. Keeping abreast of the many changes, especially when we look and we think about the fuel costing and where energy is going. We can hear a lot of things but as you hear you have to evaluate what you're hearing and evaluate what the real thing is and take your best shot at it. So there's a great challenge that lies before us and as we deal with those challenges, as we communicate together within this Utilities Commission, and as we work together across lines at

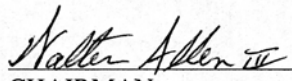
(9) Possible Other Business – Time for Commissioners (cont.):

the City Commission, we will see a much better community in the future as we get over some of the old hurdles that need to be broke down and so that we can move forward.

Chairman Allen then asked if there was a motion to adjourn.

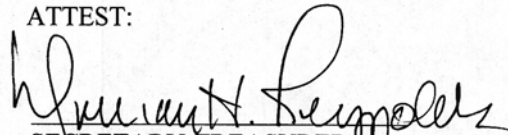
There being no further business to come before the Commission, Commissioner Hall made a motion to adjourn. Chairman Allen closed the regular U.C. meeting at 6:54 p.m.

APPROVED:



CHAIRMAN

ATTEST:



SECRETARY-TREASURER

These minutes were formally approved by the Utilities Commission at their November 17, 2008 meeting.