

AGENDA ITEM 2-a

MINUTES OF A REGULAR MEETING OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, HELD MONDAY, FEBRUARY 22, 2010, AT 6:00 P.M., AT 200 CANAL STREET, NEW SMYRNA BEACH, FLORIDA

Chairman Allen opened the regular U.C. meeting and stated we'll begin with an invocation as we stand, and then Commissioner Diesen will lead us in the pledge.

Chairman Allen then requested for a roll call to be taken and all of the Commissioners were in attendance as follows:

Chairman Walter Allen III
Commissioner Jeanne K. Diesen
Commissioner William E. Hall
Commissioner William H. Reynolds
Commissioner Oscar Zeller

Others in attendance were as follows: R. Rodi, General Manager/ CEO; R. Mitchum, Director of Electric Operations; T. Beyrle, Director of System Ops. & Generation; J. White Director of Engineering; P. Di Chiara, Director of H.R.; D. Hoover, Director of Water Resources; B. Bilinski, Controller/Budget Supervisor; E. Fisher, Public Information Manager; D. Zorge, Customer Service Supervisor; B. Keehn, Administrative Support Specialist; D. Simmons, Exec. Adm. Offices Mgr./Recording Secretary; P. Pilblad Jr., Electric Lineman; W. Preston, U.C. Legal Counsel; Clay Henderson, Senior Legal Counsel with Holland & Knight, LLP; James S. Morris, P.A. and three other unidentified men in attendance with him; and Carrie Pilblad, a member of the public.

Presentation of Certificate for Completion of Apprenticeship for Line Maintainer from Florida Department of Education to Paul Pilblad, Jr.:

Chairman Allen stated okay, as we prepare and before we get into our agenda, I have a certificate here to present to Paul Pilblad Jr. He requested Mr. Pilblad to come to the front of the room so we can share this with you. Those in attendance applauded as Mr. Pilblad came to the front of the room. Chairman Allen stated to Mr. Pilblad, I know you've looked for the opportunity to see this and I'll go ahead and read it. It says Completion of Apprenticeship for the Department of Education, Division of Career and Adult Education, this is to certify that Paul Piblad Jr. has with merit fulfilled the terms of the apprenticeship agreement in accordance with the standards prescribed by the Division of Career and Adult Education Apprenticeship and the Federal Committee Apprenticeship, and is hereby recognized as a qualified line maintainer, together with all rights, privileges and opportunities which pertain here too. He concluded by stating congratulations. There was additional applause and pictures taken.

(1) Agenda Changes, Additions and Deletions:

Chairman Allen stated as we move on, item 1, agenda changes, additions or deletions.

Mr. Rodi stated I have several items to discuss during Commissioner Time, if that meets with your approval.

Chairman Allen stated okay, that would be fine.

(2) Approval of Consent Items:

Chairman Allen then stated item 2, the approval of the consent items, we have six items on the consent agenda. He then asked do we have a motion for approval.

Commissioner Diesen then made a motion to approve the consent items: item 2-a. Minutes of Regular U.C. Meeting Held 1-25-10, approve as submitted; item 2-b. Change Order No. 3-Hazen Construction, LLC – 20-Inch Potable Water Transmission Main, a motion ratifying the execution of Change Order No. 3 (an increase in the amount of \$18,311.32); item 2-c. Change Order No. 4-Hazen Construction, LLC -20-Inch Potable Water Transmission Main, a motion ratifying the execution of Change Order No. 4 (an increase in the amount of \$10,978.00); item 2-d. Interest on Customer Deposits, a motion to approve the interest rate of .1% to be computed on customers' deposits and to become effective with the first billing cycle of March, 2010; item 2-e. EEI Master Power Purchase & Sale Agreement –Tampa Electric Company, a motion to approve the EEI Master Power Purchase & Sale Agreement, by and between Tampa Electric Company and the Utilities Commission as submitted; item 2-f. Developer's Agreement and Addendum, Memorandum of Understanding (MOU), Easement Deed, and Agreement of Assignment for The Shoppes at Coronado, approve the Developer's Agreement and Addendum contingent upon the City of New Smyrna Beach's approval for the exact same site plans submitted to the U.C., the MOU, Easement Deed, and Agreement of Assignment contingent upon utilization of the finalized plans submitted to the U.C. and subsequent permitting, and authorization for the General Manager/CEO to execute said documents. Commissioner Hall seconded this motion and it passed unanimously on a roll call vote.

(3) Public Participation:

Chairman Allen then stated item 3, public participation. He asked do we have any general public that want to participate?

After confirming there was no public participation at this time, Chairman Allen closed public participation.

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

(4-a) Financial Status –January 2010:

Chairman Allen then moved on to item 4-a., the General Manager's Report Financial Status (January 2010).

Mr. Rodi asked Mr. Bilinski to present this item.

Mr. Bilinski (Controller/Budget Supervisor) addressed the Commission and stated for the month ending January 31, 2010, our change in net assets for the combined system was a positive \$699,529 which is, as you know reported on a GAAP basis. He stated January's significant change was a direct result of the historic cold weather impact on our electric system operations. He stated as of January 31, 2010, our fuel adjustment is now \$187,000 under-recovered, as compared to a \$760,000 over-recovery as of December. He stated it was quite a switch in the one month due to the cold weather and having to purchase a lot of extra electricity during the month.

Mr. Bilinski then stated for new business, with the assistance of our consultants, Integrated Business Groups (IBG), we are starting to implement the bank reconciliation module of Great Plains. He stated we expect to be completed and testing within 30 days. He stated when fully integrated, this module should significantly reduce the labor intensiveness of reconciling bank accounts every month and assist Finance in producing a monthly cash flow financial statement. He added that's something that we've been looking to do for a long time.

Mr. Bilinski stated an update on our online credit card payments is they continue to gain in popularity. He stated in January 2010, we had approximately 650 payments at an average of \$196 per payment. For the first 20 days of February 2010, we had approximately the same amount, 647 payments at an average of \$250 per payment. So we've had a slight increase in the dollar value of those payments, and again, the customer reception for this new program has just been phenomenal. He then offered to answer any other questions the Commissioners might have.

Commissioner Reynolds stated just for curiosity's sake, how many of our customers have direct withdrawal approval for you.

Mr. Bilinski asked for confirmation from the Customer Service Supervisor in attendance and then stated it's around 300.

Commissioner Reynolds stated okay, so you're talking about 700 people right, that are doing that, the rest are paying by check, I presume.

Mr. Bilinski stated check or walking in the door with cash, or something of that nature, that's correct.

(4-a) Financial Status –January 2010 (cont.):

Commissioner Reynolds stated that's a high percentage.

Mr. Rodi stated yes, it really is, and added we would have thought that more people would participate in the automatic bank withdrawal but it's rather remarkable, especially since, and we heard this for a number of years, that everyone wanted to be able to pay by credit card, and so we're seeing this come true now.

Commissioner Reynolds stated that's less than 3% of our customers.

Commissioner Diesen then asked how are we doing on billing, do we have that under control.

Mr. Bilinski stated yes we do.

Commissioner Diesen stated in both the commercial and the residential.

Mr. Bilinski stated yes, the Cogsdale system is working as advertised and we've really tightened up a lot of things as far as actual billing, and credit and collections as well.

Mr. Rodi then commented deep breath, we're happy.

Commissioner Diesen stated I'm going to ask that question every month.

Mr. Bilinski stated yes, we're happy.

Mr. Rodi then stated for those of you who don't recall, Brian Bilinski is our Controller and Ms. Klinkenberg is in the Atlanta area tonight being trained on another module there for our Great Plains System. He stated I think we have an I.T. person up there as well.

Mr. Bilinski stated Heddy Domingo (UC System Analyst) also went up there, yes.

Mr. Rodi thanked Mr. Bilinski and Chairman Allen confirmed there were no further questions or comments regarding the financial status.

(4-b) FDEP Consent Order Status Update (inc. "Smart Ball" Results):

Chairman Allen stated the next item is item 4-b., FDEP (Florida Department of Environmental Protection) consent order status update, and directed this to Mr. White.

Mr. White addressed the Commission and stated what this item refers to is a leak problem we had twice over the last two years with the 30-inch wastewater force main that broke in an untimely period. He stated typical thing was it would break in the middle of the night, split, and it spilled about a million gallons of wastewater. He stated we got fined twice and the consent order was issued from the Department of Environmental Protection.

(4-b) FDEP Consent Order Status Update (inc. "Smart Ball" Results) (cont.):

Mr. White stated this past week we completed the leak test as one of the requirements when we placed that back in service. The leak test involves the Smart Ball technology where there's a complex electronic widget, dropped into the pipe line and pumped along with the wastewater that locates and identifies any leaks or gas bubbles in the pipeline that would indicate additional problems. The test report was completed Friday (actual test performed 2-9-10). It had no anomalies, no indications of any leaks or gas bubbles, and the system's capable of locating, detecting leaks to a 0.1 of a gallon per hour. So as a result of that, and the report that we received confirmed that, we expect to go to FDEP and ask for a no further action closure on our consent order. Mr. White then asked if there were any questions.

Commissioner Reynolds stated good.

Mr. White stated it is good news.

Commissioner Diesen then asked what was the failure.

Mr. White stated a 20" pipe section split in the middle of the night.

Commissioner Diesen stated well I understand that, but was there any cause and effect. I mean was it because of original installation, is it age, is it...

Mr. White stated the pipe is new in that kind of an installation, it was about 10 years old. He stated conclusion is it's probably a combination of a defective material, a defective joint design, and probably poor installation.

Commissioner Diesen stated was it installed by internally or externally.

Mr. White stated it was installed by Utilities Commission crews. I've been told, in a bit of haste at the time.

Commissioner Diesen confirmed Mr. White stated 10 years ago.

Mr. Rodi stated to Commissioner Diesen, about 1996, 1997 vintage, and we had a previous report because of the significance of not only for the need for this force main, but also the trauma of losing it twice within like a one calendar or a twelve month period. And the initial reports, basically focused upon as Mr. White said, poor installation and also there was some questions about materials that seemed to be secondary to the installation. This is a really significant item for us because if we're not able to demonstrate that these two items were maybe an anomaly, we might end up in the position of having to replace that entire line which was a \$3.5 million dollar expenditure. So last month you had approved the use of the Smart Ball and that's what we receive the response back today through a report that said, well, from everything that they can see it doesn't have any leaks.

(4-b) FDEP Consent Order Status Update (inc. "Smart Ball" Results) (cont.):

Mr. Rodi stated now it doesn't address the issue yet of any inferior material, but if the pipeline itself as an entire installation was maybe suspect, we would have expected to see some leaks. So with that I think that Mr. White will approach FDEP again and say we think we've complied with what we've said we were going to do and the indications are it's probably just a couple of bad sections.

Chairman Allen stated also along with that if we ever had another incident is there a way that you could actually line that pipe or not.

Mr. Rodi stated well, if we could turn off the flow somehow. Mr. Hoover and I have talked about what do we do in the worse case situation and the Plan B is actually to convert the reuse line temporarily into a waste line in order to allow us to move forward. And that's not easily done but there's a close enough connection near Station 60, I think that we might be able to manage that. He added it's a pretty troubling Plan B.

Commissioner Reynolds then stated I have a question, Mr. White what was the cost of that. I'm just thinking that we're good now, it sort of like it may be bad tomorrow who knows, what is the cost of using the company providing the Smart Ball, plus the results.

Mr. White stated the cost of the test is approximately \$80,000. He stated there was another system that had a similar kind of technology that had some problems that we couldn't use it, and it was about \$130,000 for that. We subsequently had to abandon that because that technology required higher flow velocity to carry the electronics through the pipeline. The third option had we not done this would have been kind of an older style acoustic, placing listening packages along the pipe line and correlating the recordings from those. It's less sensitive and less accurate, but it is an established technology.

Commissioner Reynolds then asked is this something we should maybe periodically do, like in a five year plan, three years from now think about programming or at least allocating funds for doing something like that.

Mr. White stated given the fact that it's a pretty costly one time turn around, I would think that you would want to have some expectation that there's a problem or there's a reason to expect there might be a problem. He stated in a situation where you might have a transmission line that was, say a key water line that operates at high pressure, it's iron, it's old, you might say yes, that's one that we should do every few years. He stated this one, I don't think that's the situation, it operates about 20 psi, it's corrosion resistant material, and there's no reason to expect a cluster of leaks to erupt on it if everything is operating normally.

Mr. Rodi stated I think longer term, if I'm picking up on what the Commissioner's suggesting, since we have a base line at this point, that in some point in the future if this technology becomes more cost effective, either in terms of us being able to buy it and throw a ball in there, and then send them the results for interpretation, that we might do

(4-b) FDEP Consent Order Status Update (inc. "Smart Ball" Results) (cont.) :

that every eight or ten years, just to see if we have any leaks that are beginning to appear.

Mr. White added the whole economics of it could substantially change in a few years.

Commissioner Diesen stated if the materials had been what we hoped they were, what would be the normal life.

Mr. Rodi stated at least 50 years. I mean most of these now, they really have very long extended lives. We depreciate this, I think it's a 50 year depreciation schedule, and a lot of these materials now are expected to last 50 to 100 years.

Chairman Allen then confirmed there were no further questions or comments and thanked Mr. White for the report.

(5) Commission Counsel's Report:

Chairman Allen stated item 5 is Commission Counsel's Report.

Mr. Preston stated I do tonight want to talk about a few things with you, one thing in particular, the litigation with the St. Johns Water Management District. I wanted to give you a status update of where we are and to engage you in providing some directions for us. He stated Clay Henderson is here with us, as lead counsel on that, for any particular questions you might have.

Mr. Preston stated where we are today is probably, is certainly, in a lesser position than where we were almost a year ago. We filed the law suit a little less than a year ago and we entered into a settlement meeting last summer, if you recall, at the Daytona airport. And at that point, by that time, there were three parties, the City of Deland and the County of Volusia had also filed similar actions with the St. Johns Water Management District. All arriving primarily out of the requirement that the District was placing on us to eventually, for water resources, tap into the Oklawaha River, which is no where close. We entered into settlement discussions and came to verbal understanding in particular for the Utilities Commission with the District at that meeting last year, last summer. The other two parties, the City of Deland and the County, were not as close as we were. Since that time, the District has been engaged in negotiations with all three parties, some of which have moved forward, others of which have not. So we're primarily concerned about our issue, our negotiations have actually regressed from where we were last summer. Each and every time it seems that revisions were sent back and forth, there was a little less that was granted than what we had before to the point where we really don't have much of an agreement today at all.

Mr. Preston stated so we, being Mr. Rodi, Clay Henderson, and myself, had once again a strategy session not long ago during which time we looked at what do we do, and in doing that we weighed, a cost benefit analysis basically. We weighed what are the issues,

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

the real issues, and what are the real concerns for us the Utilities Commission for the City of New Smyrna Beach. Again, I'm focusing on the primary issue here of the Oklawaha connect or what the District would like, and in our analysis and through the discussions with all three parties, we believe that the Oklawaha project isn't going to happen in layman's terms. It's just logistically from a cost standpoint, from a political standpoint, won't happen regardless of our particular law suit. Not to say that it has been removed from the table by the St. Johns Water Management District because it hasn't, it continues to remain an issue. But as we were doing our analysis and looking at the cost benefit of continuing, we don't believe that the Oklawaha issue is going to be an issue for us and we looked at why continue.

Mr. Preston stated we looked at the monies that we have spent to date. For the law firm of Holland and Knight we have spent in excess of \$29,000 as of November, and for me you've spent in excess of \$6,000 as of January; so the U.C. has \$35,000 invested to this point. We have a trial date scheduled for May 23, 2010, I believe, which in my opinion wouldn't happen anyway because we're not moving close to being prepared for a trial but even if it did, we are looking at some significant expenses to move forward. What's a significant expense? My estimate, and I don't know if you have any better numbers or not Clay (Henderson), but my estimate is the U.C. is probably looking at \$60,000 to \$80,000 to take this to trial. And in our analysis we thought that unless you direct us to do so, our recommendation will be that there may not need to be that expenditure for the U.C.

Mr. Preston stated so that's basically where we are. He stated as I said I can't paint the picture clearly enough because you haven't been a part of the day to day process, but the process has been frustrating at best. I remember an email that Clay Henderson had sent no too long ago using that word exactly, it's very frustrating in the dealings that we have had to this point. I want you to know though it's not a retreat because of frustration, it's an analysis of we have been able to gain with the District in a very, I think, important issue that really isn't a part of that Oklawaha directly, in looking at alternative water sources for the Utilities Commission and in particular the methods that we have proposed, and have re-proposed I believe at this point, in regards to how we can acquire alternative water through sources certainly other than tapping into the Oklawaha River. And I would say though, I don't know if there's been anything definitive, that the St. Johns Water Management District has gained respect for the presentations and the solutions that we have offered. So I think there has been a real gain there, we're not under the same pressure as the City of Deland with our CUP but we will be at some point, and I think all of the issues that have been discussed have been with merit, but I just want to engage your discussion and direction regarding how or whether to proceed with this litigation.

Commissioner Diesen then asked what's happened with the County?

Mr. Preston stated to Mr. Henderson if you want to address it more specifically.

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

Commissioner Diesen stated I mean there were three parties right.

Mr. Preston interjected the County started in last place and finished first.

Mr. Henderson addressed the Commission and stated good evening. He stated to Commissioner Diesen, the answer to your question, they settled. They sort of saw themselves in the weakest position and reached a settlement in October. The County and the City of Deland are in a little different positions because the District is putting a lot of pressure on them right now to reduce the capacity in their CUP and they are in terms of millions of gallons, I mean the number they're floating around on the west side is a combined deficit of about 26 million gallons per day of water; so that's where the pressure is. The County was trying to get that off the table so that they can work towards developing some alternative water sources. Deland, I want to say is in a similar position to both New Smyrna Utilities Commission and the County, since their CUP is up for renewal right now they're pushing down on that number but they're also trying to reach an agreement.

Mr. Henderson stated the U.C.'s legal position is probably the strongest because everyone in this room would certainly agree that requiring the Utilities Commission, New Smyrna, to develop a \$200 million alternative water project 60 miles away in Putnam County is not financially feasible and will never be permitted. But that's what they have obligated you to do, and it's crazy and is ridiculous and everybody who sees that knows that is the case. But at the same time, in the next few months, your CUP is up for its five year review by these same individuals who hold this extraordinary amount of power, and so we want to keep our eye on the ball. As Bill (Preston) says, we through your staff, we have presented them with our own preferred alternatives which would be working to develop brackish water in the upper (lower) Floridan as an alternative when it is needed. It is not needed now because of the result of your conservation efforts and your pro-active efforts, you're in a much better position than anyone else. I keep telling the District, you know, sue us, take us to court, do you really, really want for the Utilities Commission, New Smyrna to be the poster child of this because it has the highest rates of water conservation in the 19 county region, at over 90% reuse; do you really want that, of course they don't. So at this point and the frustration is, as Bill Preston says, we're throwing I won't say good money after bad, but it's frustrating to continue to spend this kind of money trying to work through a process of administrative procedure that isn't the real game. The real game is getting the alternative water project approved by them and also getting your CUP renewed, and we just need to cut it, to turn loose to go do that I think. He then added I'm sorry, that was a long one, I should have said yes, the County settled and that would have answered your question.

Commissioner Diesen stated no, I would have asked more. I want to ask you another question, what's the political bottom line here.

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

Mr. Henderson stated that is a very good question. There was an amazing thing that happened, you know, after we met in June too, and when we all thought we had settled this thing; I mean we walked away thinking this is done. Within the next couple of days, the Governor signed that bill that changed the permitting authority within the District and so the staff has a whole lot more power than they did this time last year, and the Governing Board members have a whole lot less power; and that's what you're saying. We had a, I wasn't a part of it, but it's been talked about so many times it's almost urban legend, the County had a meeting with the Water Management District last month, on a routine matter, they just sent a couple of staff people up to go deal with it. The District had 20 staff people in the room for that meeting. Now, that's, just think about that, everybody in that room had to justify why they were there, so this is what happens, it's a piling on that's occurring. So I'm not you know, that gives you some perspective on how, why, the lay of the land has changed.

Commissioner Diesen stated yes, I've been reading about the other Districts too and what's been going on and I just wondered, I mean somebody stands to gain something out of this somewhere, and I was just trying to figure out who it is that owns property up there along the Oklawaha and who's going to be in the way on the way down here that's going to get money. You know, I mean, those are the facts of life.

Mr. Henderson stated there's some of, you know, and added in another conversation we may have that, but not on a public record. But the other thing you know, also from being around for a long time is that everything about the Oklawaha is controversial, everything. And the thought that, I mean if I wanted a life time job of security as an environmental lawyer, I would want to permit that project for you. I would spend the rest of my life doing it at a cost of a "gazillion" dollars and it still might not happen. That would be the ultimate boondoggle to get that project approved. He jokingly added it will be approved shortly after the Cross Florida Barge Canal is opened I guess.

Commissioner Diesen stated thank you, and added we'll have a side bar some day.

Commissioner Zeller asked Mr. Henderson, does the law suit go away, or what do you do with it.

Mr. Henderson answered they have proposed, we've gone back and forth for six months now on settlement language, and where we stand now is they will process our request to approve the upper (lower) Floridan brackish water project and they will work to get it on the list of the approved projects. And we're going to have to trust them on that, we've got their attention, I think they will, and then we will agree if that's the case. He stated it's really a dot on a page, it's a strange thing, there's a matrix that shows all of the utilities in the 19 county region and the alternative water projects to which they are assigned, and ours is to the Lower Oklawaha. Frankly we're being punished a little because they had always planned we would be getting alternative water from the Swoope Desal Plant. It's not going to happen so they had to put us somewhere so that's where

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

they put us. So in the meantime we'll come through and we'll work through this other project; so that's that.

Mr. Henderson stated the other thing, I'll just tell you because this is just an odd one, I've never quite seen this before. In fact I was talking to one of the County attorneys today about this, we've never really seen this before. They (District) threw in a whole another issue today, which is no big deal it's just the way it was done, is they want us (U.C.) to work with the City Commission to have them adopt a new irrigation ordinance. Again, it has nothing to do with this, it's just this is now they're attaching this condition, as a condition to just about everything that comes their way. That's part, and parts of a larger discussion the County is having with them because the County has had stronger conservation rules in effect for 20 years than the District. But the District maintains that they're the only entity that can tell you what, you know, how to do water conservation. He commented that's one of the reasons why you're so far ahead of everyone else is because you were pro-active, because we have water conservation rules in this County that are stronger than the other Counties in the District, and that you have had a water reuse plan for at least ten years that I can think of, probably longer. So again, you're way ahead of everybody else and yet they can't quite see that.

Commissioner Diesen commented they do it because they can.

Mr. Henderson stated that's exactly right.

Commissioner Diesen stated they've got that new power.

Mr. Henderson then stated but I think Mr. Chairman, we would just like to put this to bed so we can move onto the real project which is trying to get these other projects approved by them.

Commissioner Reynolds stated he had one thing for Mr. Henderson. I presume since we're not interested in the water up there, and we haven't really done even a desk top study of drawing on a map what we perceive would be a pipeline, what Counties we go through, what Cities, what railroads do we cross, or come up with a novel idea of putting a pipe in the St. Johns River and bringing it down. Is it worth us trying to begin to gather data so that, I agree with you, the Audobon Society and everything else is certainly going to say no, you're not going to do that. But by the same token, is it worth us doing a desk top review about how we might go about seizing permits and a route and certainly get that out into the world.

Mr. Henderson answered well, that's what you would do if we were going to trial. We would go hire a couple of experts who would opine that the District's \$2 million price tag for this is low, because what you have to do to treat that water is going to cost you "X", the transportation of that over 60 miles is going to cost "Y", the challenges and the permitting costs associated with it over x number of years is going to cost "Z". So that's

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

what you would do if you went into a trial component, you would go hire those experts to do that. In this case I would say if we go forward you put your capital into actually working toward your project which is right for your ratepayers, which is developing what you have toward this upper (lower) Floridan project, and that's where you're going to get the most bang for the buck.

Commissioner Reynolds stated by the same token, St. Johns, they're not going to just say you're relieved of that responsibility are they?

Mr. Henderson stated well, they won't until they approve your project and it's ultimately, that's the end game. We've got to convince them to accept the upper (lower) Floridan brackish water project and we have to get them to accept the renewal of the CUP at these current levels.

Commissioner Reynolds stated okay.

Mr. Henderson stated and we just really don't need this, kind of hanging around. I want you to know that I will continue to remind them of this.

Commissioner Hall stated but the worse case scenario is that they can disapprove our brackish water, so where do we stand at that point. Do we call an emergency meeting and sue them again.

Mr. Henderson stated well you know, you actually could in a sense, this is an annual, and what we challenged is their District Water Supply Plan which is annually renewed, so we challenged their 2009 version. We're now moving forward to get this upper (lower) Floridan brackish project put on their 2010 plan, and so if we're not satisfied with that, and they're still committed to this Lower Oklawaha Project, we still hold that, and they know it. I mean they, I want you to know that as soon as we filed this, they responded with a very detailed lengthy motion to dismiss, to try to throw us out of court, and a judge saw very quickly that this is a case, that you know our claim was real. Anyone that's been around environmental law in this state for any period of time knows how difficult it would be to permit something in the Oklawaha. So we don't lose anything by putting our energies in the other things.

Chairman Allen stated also you made the statement that they're in somewhat verbally so far in agreement of this brackish water, of our harvesting.

Mr. Henderson stated we've moved them a long way, we're going to have to continue, the U.C.'s engineers are going to have to work with their engineers. They certainly have approved brackish water, upper Floridan projects in other parts of this District, and we expect that ultimately they will. The good news is that because of the planning, your pro-active planning, the water conservation measures, we don't need that right now. We don't need that in the immediate future so time's on our side there.

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

Commissioner Diesen stated do we need a motion.

Chairman Allen also stated we need a motion.

Mr. Preston explained not a motion necessarily, but maybe consensus for direction as to where you'd like to see us go.

Chairman Allen stated so you'd just like a consensus that we just stay in "limbo" right now until or as we move forward, not to take it, just monitor it.

Mr. Preston stated well, at this point I believe that perhaps even more directive than that in regards to taking some action on this lawsuit. That is either move forward full speed, or as far as the law suit is concerned to go ahead and at this point dismiss the law suit and then pursue these other objectives.

Mr. Henderson stated well, you know this is why we always hate having settlement discussions out in the public like this. I think I would ask it this way, I really want to take your temperature tonight, if you really wanted to go forward with the hearing and do everything that we needed to do to prove this case, that you would nod and tell us and we would go forward and we would do that. And if that's not your case, then we would use our best professional judgment to get you in the best posture where you can be going forward.

Commissioner Diesen stated I like that.

Mr. Henderson added and I think that's where you want to be.

Commissioner Reynolds stated basically we want to really see what happens when our CUP review and our brackish water plan goes forward.

Mr. Henderson stated that's correct, this is a three-dimensional process and we don't want to appear to easily give up something when we know what's really at stake.

Commissioner Hall stated I want to go back to the law suit. You're not advocating dropping that law suit, you're actually saying let's hold it in abeyance.

Mr. Henderson stated I'm saying we will decide, I don't want to telegraph that we're dropping it, we're going to continue to work with them (SJRWMD) on the settlement discussion, we're also moving forward on these other things, and we just keep pushing forward.

Commissioner Diesen stated you use your best judgment, that's why we hired you.

Mr. Henderson stated thank you.

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

Commissioner Reynolds commented get the best "fisherman" on board.

Mr. Henderson stated absolutely. He added that actually would unite the Audobon folks and the bass fishermen.

Commissioner Diesen confirmed Mr. Henderson was a past president of the Audobon Society.

Mr. Henderson also added and a bass fisherman.

Chairman Allen then stated we need an acknowledgment for a consensus to kind of just hold back.

Commissioner Diesen interjected let the lawyers do their "lawyering".

Commissioner Reynolds stated it seems to me that we don't have to do anything, we've just been briefed on that.

Commissioner Diesen then asked if there was anybody opposed to what's just been discussed; I guess that's a good way to put it.

Chairman Allen stated it sounds good to me.

Mr. Henderson stated I think we all have our direction; thank you.

Chairman Allen also confirmed Mr. Preston was "good" with this as well.

(6) Old Business

(6-a) Alternative Water Source and Harvesting Project:

Chairman Allen stated as we move on to Old Business, item 6-a., Alternative Water Source and Harvesting Project.

Mr. Rodi stated this is the part two of the discussion and I think at this point I'll ask Mr. White to brief what the proposal is, and there are some additional comments that I'd like to make when Mr. White finishes.

Mr. White then stated the next steps in this Alternative Water Source Project, as we've sketched it out, is essentially a build and analyze, model the aquifer in an attempt to clearly demonstrate that the concept is viable. He stated in order to do that we prepare a drilling plan. The geologist we have tentatively retained is Missimer Groundwater Service, a component of Schlumberger, they're in Clearwater, Florida.

(6-a) Alternative Water Source and Harvesting Project (cont.):

Mr. White stated we have a task authorization prepared, which you approved October, to do the geological and the engineering, the analysis, the testing, and the modeling. He stated the tag on that is about \$64,000. He stated also upfront, at about \$50,000, is a task authorization with Quentin L. Hampton and Associates. The services needed from them includes the preparation of a DCA approvable facilities plan. We had, in 2006, completed a two stage water facility study which would need to be revisited, rewritten, turned into a DCA facility study, which meets a little different requirements. The reason for doing this is by obtaining an approved facilities plan then you can apply actually for government funding, through the District, through DCA, through whatever agencies, the Florida State Revolving Fund; all the various sources that are available for water.

Mr. White stated the second part of the Quentin Hampton service would be to support, if you will, the City of New Smyrna Beach in their developing a DCA approved and approvable Comprehensive Plan Water Element, of which they've had some issues with. The District has either blocked or been blocking the approval of plan amendments and it kind of has them wrapped around the axel. So the thought is that we need to provide them the technical support that they need in order to get that Comprehensive Plan issue unwrapped, and get their plan approved, and get them into the situation where they can create plan amendments, allow projects, and have growth get underway. Assuming that there are some more people that want to develop growth, and there seems to be a few yet, with the Coronado Shoppes project still moving and the Hampton Inn still moving, and some other things still moving. There appears to be a demand and a need for that and that's the way we think we need to assist that so that those things can move.

Mr. White stated the real work part of the plan involves hiring a driller to go out there in the "700 acre wood" and punch a hole 500, 600, 1,000 feet; we'll know when we get to the bottom. Then develop the well, pump it, test it, log it, and model it, and that generated data would then be the basis of demonstrating the viability of the well, economically, water quality, and processes. That drilling, it's a little difficult to quantify, \$300,000 to \$400,000. He stated if we end up on the short end of the hole, more towards 500 feet than 1,000 feet, we might be in and out on the order of a number with a two in the front. At 1,000 feet, you might be into the four's. The Missimer services include the analysis, the modeling, the water quality studies, and a court defensible report. He then offered to answer any questions.

Commissioner Reynolds stated yes, I have one. Let's take a case of where we drill this thing down to 1,200 feet and basically we don't really reap anything. Is there an alternative use for that like pumping reuse water down. I'm looking for something where if it doesn't work, worse case, how can it help pay for itself.

Mr. Rodi stated well, first of all, at some point we'll hit water, and the question is what quality will the water be. He added it's pretty straight forward, I don't know if you picked up on some of the nuances that Mr. White was describing, but in this plan the idea is to start to drill down and validate some of the things that we've heard by those others who

(6-a) Alternative Water Source and Harvesting Project (cont.):

have also drilled, like Daytona. And there's supposed to be a layer, at maybe the 500 foot level, that is below the upper Floridan, it's confined, and it may provide a water source that is near potable. So if in the drilling that we don't find that, we will continue to go down. Now let's take the worse assumption, that we end up with very brackish water down at 1,200 feet. What that means for us is if it's too brackish we're going to have to do something with that and what do we have to do. What is the quality of that water, because the issue is simply how concentrated is the byproduct when you end up with a potable supply, or some level of potable. He stated that's meaning anywhere from 400 ppm or under as far as the chlorides are concerned. So in this approach, and I want to just back up a little bit because it's very important, in all of our studies so far, and based upon our current performance, I think we're at like 92 gallons a day, per person. He asked Mr. Hoover for confirmation of that number.

Mr. Hoover answered that sounds about right.

Mr. Rodi stated based upon that and our existing CUP, that we won't need this alternative water supply until sometime after 2020, 2025. In fact the tracking that we've done, we've taken all of the 17,000 some ERU's, and at those levels we can with our current CUP supply the needs; so that's one beginning point. We're into this position because the Water District demanded that we have an alternative water supply. And I'm going to back up just a little bit more, but prior to my arrival there were commitments, one of them was with WAV, the other was with the Swoope Plant. He stated the WAV expenditures totaled some \$43 million, and the Swoope Plant, again another facility that would not have been permissible in my opinion, it would ruined the estuary here, it was \$186 million plus \$25 million in operating costs, for I think it was a 10 or 15 million gallons a day (MGD) plant. Both of those projects went away and we had to declare, because we received a registered letter from St. John's, what our alternative supply would be. We said, and we have consistently said, we're going to go out on our property, drill a hole, put a well there. And bear in mind this is not a high production well, we're talking about something that is 1 to 2 MGD because our daily consumption has hovered right around 4.8 to 5 million gallons, for ten years now (also confirmed with Mr. Hoover).

Mr. Rodi stated we keep making improvements, so all of this comes to bear when we started talking about well, what do we do about the litigation. The first thing we want to do is we have declared, which is our right, that we're going to have a local alternative water supply, and now we have to prove it. This is where we want to put the money, detail it, so that we're able to show that this is viable alternative. What we're suggesting is not complicated, it's not cutting edge, it's very straight forward. And the kinds of things that we can run into are maybe some upwelling, or maybe something that we didn't expect with regard to the confining layer, because no one really knows what's there. So the idea is to prove that we're not getting any problem with the upper Floridan interacting with any of the other lower levels of water sources.

(6-a) Alternative Water Source and Harvesting Project (cont.):

Mr. Rodi stated so when we're all said and done, we'll have a water supply. It's just how much money we have to spend to use it at the time we would put it in. He stated but our very first step is we have to prove and work with the District to say this is viable. So I wanted to just go over those points, but when you stop to think of the amount of money that was already committed, I mean that's crazy. Here we're talking about we have a million dollars invested in this, and if we have to hang an RO at the end of it or spend some extra money, we've assured the alternative water. This is a chicken and egg in a way, but I think that's what we're trying to achieve here.

Commissioner Reynolds stated I don't doubt that, but the worse case is St. John's can turn off the spigot any time, so we're really not in control of our own destiny in that respect.

Mr. Rodi stated no, that's right, and that's what I think the Counselor was saying, we have our CUP coming up. And again, if we have a reduction that is based upon our performance. I mean, and think about this, conserve, do well, put in all of your efficiency measures, and the end result is you're punished. Okay, that seems as if that might prompt some other issues, but the fact is we, in this whole process, have not tried to be threatening, we've just tried to exercise our rights in response to what we were demanded to do. So this is our next step, to show our good faith, that we are serious about this, and we've held back all this time. We could have started down this road, but we've held back trying to work out a lot of the details, and it just keeps going south, so we need to be more proactive with it; that's what we're up against.

Commissioner Diesen stated I think we're caught up in an unfortunate political situation that is not of our making, and there may be more to come in the sessions ahead.

Commissioner Zeller then asked what is Port Orange doing.

Mr. Rodi stated well they're struggling, they're bouncing at their limit. They're interested in, you know they've some exploratory wells themselves. They're looking at this approach also, a local well for providing additional supply but they haven't really declared themselves yet.

Commissioner Reynolds then stated the charter of the St. John's, does that cover water or drilling from here to China. I mean is there something there that says if you drill to China you've got to get our approval; I'm being facetious.

Mr. Rodi commented I know you are, well I'm sure there's a point where some of the statute would be challenged as to just how far reaching the authority is. For example we're looking at some technologies that will remove the humidity out of the air, they say economically. Well if that's true, who owns the moisture in the air, you see, I don't know, that just makes your point.

(6-a) Alternative Water Source and Harvesting Project (cont.):

Commissioner Diesen then stated can we drill horizontally.

Mr. Rodi stated yes, and you know in this whole thing what we're asking to do is move forward. We're trying to do this in a cost effective manner and that's why we're suggesting, that we will proceed with the drilling based upon what we find as we go. And so hopefully, if we can end up in the 500 to 600 foot area, then that's a better thing.

Commissioner Diesen stated what did Daytona, how far did Daytona go.

Mr. Rodi stated they went 1,200 feet and they ended up with a, it's a monitoring well at this point. I think they ended up with a 4" pipe near the bottom and I don't know what the results were. They were a little higher than they thought, somewhere around 1,800 to 2,000, but I'm not recalling specifics.

Commissioner Zeller stated and they spent a million.

Mr. Rodi stated no, they had some grant money and they were able to use, the State was interested in helping them, they had a State-contracted well driller. And it took them like eight months to drill the well; it was a very long time.

Commissioner Reynolds then asked, and Chairman Allen confirmed, he was ready for a motion.

Commissioner Reynolds stated I make a motion that we approve the next steps in our Water Supply Project; to approve and authorize "next steps" in the U.C.'s Alternative Water Supply Project, as set forth in the U.C.'s CUP and in compliance with SJRWMD requirements, for an additional amount of \$750,000. (This amount is supplemental to \$250,000 previously authorized on 11-10-08.) Commissioner Diesen seconded this motion and it passed unanimously on a roll call vote.

(7) New Business

Chairman Allen stated seeing that there is no new business, we'll move on.

(8) Possible Other Business – Time for Commissioners:

Chairman Allen went on to item 8. Possible Other Business - Time for Commissioners, and then directed this item to Mr. Rodi.

Mr. Rodi stated I have some information items and then I have maybe an awareness item, maybe that's the easiest way to phrase all this. The information item, we have or will be this week, opening negotiations with Local 2088, and it will be another austere year. And we're also finishing our budget, and this time we're a month early. We have our CIP and O&M both and I'm unsure whether we want to present the budget in a Special Meeting in

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

March, or wait until the March meeting (Regular). There are several reasons why we pushed ahead on the budget but we're expecting later this year to reduce our fuel and purchased power price. So that depending upon what happens in the market and you can see in January that was a stunning impact to us. So that when we reduce that price, of course, then we will need a plan to make sure that we can hold the cost. He added a lot of this is a big driver from me, and not that the staff isn't supportive of this, but we have at least a 15% unemployment rate here. You know the official rate is around 12%, and who knows how many underemployed or people that have just given up; with that environment it lends itself to continuing to be austere.

Mr. Rodi stated and there are some employees who say you really ought to come up with the money to take care of us, you know we work hard and all that, and that's very true, they work very hard. But in the scheme of things we've been trying to maintain employment and we have eliminated some positions along the way. There are some others we're looking at as to what we eventually want to do, but all of this is in keeping with trying to keep us in the low cost category, which we are now as far as the municipalities are concerned and from a standpoint of most of the IOU's. In order to do that we have to make money and do well with what we have, and that's been our focus. In order to even recognize in some meaningful way, financial recognition for employees, about the only way we can do it, is an incentive program that really has gateways. That unless we can really earn the amount of money by saving it, realistically saving it, to then share with them on a one-time basis; we're pretty limited. We're going to have health care increases despite what may be going on in Washington, that's a real wild card there. But there are a number of other increases and we're trying to maintain that little bit of cushion that we have for the unexpected, while maintaining the employment levels and salaries that we're paying now.

Mr. Rodi stated I bring that up because some of it may become contentious. When you, and this is a full contract this year which means it's the language, we'll have a number of items that we'll be addressing, they're difficult items. And obviously if we have wages, what we've been doing is year by year, and I think that probably will continue, especially with all of the economic forecasts that we're seeing. I hope that the gloom and doom does not turn out to be true but if we look around at where our customers' sources of income are derived, they're very limited also. So we have that first and foremost in our mind, you know we're empathetic, we have to run a business, I think we're running it well, but this is a time to remain to be austere and pay attention to what's going on. So I wanted to be straight forward, bring that forward, because if you hear any complaints about, Paula (DiChiara), she's our chief spokesperson. We have strategies in place, we're working, and a lot of this is just trying to do the right thing right now, and as you know it's hard.

Mr. Rodi then stated I'm going to switch gears a little bit. One of the things I wanted for your awareness, to heighten a little bit. I had sent to you in early February a recap with what's going on with West Canal, and that is a very difficult story all the way around.

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

We've met with the City a couple of times and the positive thing is, for the future, we're going to commit to writing who does what, who's paying for what. We were asked, because of change orders that the contractor (City's) submitted to the CRA, to consider paying for the relocation of what was proposed to be a front electrical installation to a rear installation. Without getting into all the pieces and parts of that, very candidly it was a design build contract, they didn't talk to us ahead of time, we tried to work it out and it didn't work out. So I really, I'm summarizing that maybe too abruptly, but I don't see any reason to consider any payments for that, I really don't. On the other hand, in the street itself on West Canal, it was originally a FDOT project to line the canal like they did here on the east side of canal, that really didn't move forward. The project of digging up the street really isn't an FDOT project, but they are digging up the street. What's happened with that, and assuming that the streetscape never would have occurred, and they just wanted to improve what was happening in the main entrance to our City, we would have participated in the dig up from the standpoint of conflicts. And what I am suggesting is, and I did in the email, that there's about a \$100,000, a little bit less than that, item that deals with conflict devices, they're manholes with pipes running through them. They're specially made to help resolve the conflicts between the storm system and our wastewater system and our water system. That I think has some merit and that's why I bring it forward. I have made comments that I don't understand why the acrimony that has gone on with all of this, but it has, and just from a standpoint of equity, and I bring it forward in that regard, that I think that it's meaningful to compensate for that. In the future as we deal with the rest of them, Jim's (White) on point, will have Memorandums of Understanding, then we'll have defined who's going to do what. That's what I'm trying to work through so we don't end up with this kind of issue. So I wanted to bring that forward and we can do that, I don't think I need any approval to move forward, that would be an expenditure, but I would certainly like your support in doing that. I think at this point it's the right thing to do. He then asked Mr. White if he had misspoke on any of that.

Mr. White answered that's pretty much where we are.

Commissioner Zeller stated this is something that's been going on about a year and a half isn't it.

Mr. Rodi stated it goes back three, four years ago, and what happens is you get into all of this who said what, where, when, why, and at this point it's irrelevant, it really is. What I'm focused on is how do we do it better, how do we work with each other better, and I think there's a lot of growth that has to happen yet.

Commissioner Zeller stated isn't it unusual to issue a design build contract with a contractor.

Mr. Rodi stated well, yes, but the assumption is that the firm that you pick is superlatively competent.

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

Commissioner Zeller commented they are, I mean I know they are, but still.

Mr. Rodi stated well, they weren't for this and regardless of that, that's where we are. He added we've used that firm and we've been very pleased with the firm, they did some wonderful work for us. But I think that it gets into a lot of other things that went on that I publicly don't want to present because they don't serve any purpose, they don't help; that's why I'm trying to say this in a very positive way.

Commissioner Zeller stated we'll support you.

Commissioner Diesen stated may I ask a question, on this subject that I wanted to ask earlier and I didn't, so I'll just ask it now if I have permission of the Chair. Would things have been so dramatic cost-wise in January had CR-3 been up and running. How did that impact that?

Mr. Rodi stated I've had Tim (Beyrle) working on the what-ifs with that and where we've received replacement power, costs are the same. So what they're doing is saying we owed you and now they're talking about, what July (start up of CR-3), and he added I sent you the powerpoint so that you could see that. Now what we're not sure about is where they didn't send up replacement power, what is the effect for us, and it could be anywhere from zero to maybe 10% of additional costs. But it should be based on the amount of fuel burned and the amount of fuel burned is zero, so we're not quite sure. He added and we've not received a bill, and Tim (Beyrle) has been in contact with them. He then asked Mr. Beyrle if he was describing this properly.

Mr. Beyrle stated they replied back today, that the replacement power they are sending us is based on the fuel burned, so they'll be no additional charges for that.

Mr. Rodi stated right, it sounds simple and it's a very fair question, you know when they're down are we going to pay more or less. It's one of those well, but we think we're probably alright with this. He added I hate to give you a wishy, washy answer on this.

Chairman Allen then confirmed there were no further comments from the other Commissioners. He stated I was just a little concerned when I received the email today in reference to the stuff on the golf course. And of course, knowing that several items that have come up and I think somewhere along with documenting and making aware, a lot of this stuff gets plugged into a public agenda and it's there permanently. It's a mark out there for somebody to pull up and say well, this went on, that went on. A lot of times, along with documenting, I think somewhere along the line, and not knowing who's responsible, it looked like there was a different group of people involved for the item to come out and be so incorrect and for the wrong purpose, it actually hinders, puts a black mark on the operation here. And even though we document it, somewhere along the line some type of correspondence needs to go toward the City Manager, acknowledging, showing where we see some real issues. And not being a biologist, or a hydrologist, or

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

any of that stuff, but just reading and thinking about somebody's doing testing as far as a soil test or a water test; they're completely two different "animals".

Mr. Rodi stated yes.

Chairman Allen stated and consequently you come up with all these crazy numbers, and then also the other thing to say that it's our reuse, and then all of a sudden you're augmenting the reuse with an old well which actually hinders the quality of the reuse. And to me on one line, you're saying it's the reuse, and yet you're the one that's causing the shift in the quality; it's almost like it's a criminal act in my mindset, to me personally. But I just have a real problem with that and if that is allowed to go on and on, if we're not kind of following on with some type of correspondence. I don't know how the other Commissioners feel, but I feel that we need to be sensitive because it's out there in the public and of course what's in the public, black and white, and that's it; this is where you're at.

Mr. Rodi stated understood. This is one of those items, and first of all I wanted to make you aware because it's clearly not true. He stated for those of you who aren't familiar with this issue, there was a City agenda item that said they wanted new landscaping because the vegetation couldn't handle the high salt content reuse water. So they wanted plants that would be salt tolerant, which is just not the case. And the bottom line is that this sounds a lot, in order to get a grant, that they had to state their basis for the grant and that there are some issues there with regard to the brackish water surrounding the golf course and what have you, and then they further contaminate the pond that is used. So it's like the definition of a blighted area, I have great difficulty with that when they say that some of the land over there, you know, off the North Causeway is blighted, and it does a great disservice. Well, since this started to poke at the water supply, we engaged it through the back door and we're trying to be good partners. But there have been several of these kind of issues that are characterizing things inaccurately. And they may be done because of a need in order to get a grant but as you say, the overall long term affect can be very damaging unless it's challenged. So in this particular one, we hope that we've gotten the attention, and I'll pick it up with the City Manager, but I thought you needed to be aware of it first because we sent a very capable person to investigate it, just to make sure what kind of issue is there, do you have an issue, and the answer is no. So I thought it important to carry it forward.

Commissioner Reynolds stated you know the shame of that, the previous manager out there had a \$75,000 grant from FEMA of which the City just had to provide \$10,000, but he turned that down and that's what happened. Secondly, there's a clay base that's about two and half feet below the surface there which keeps the roots from growing, so in order to plant a pine tree or an oak tree you have to drill.

Chairman Allen interjected auger.

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

Commissioner Reynolds continued, auger down in there you know for the roots. He added yes, they just threw some words in there.

Mr. Rodi stated yes, we're with you and that's why in many of these you know sometimes discretion is the better part of valor, and you're not trying to harm a partner. But then again when you're harmed you just can't leave it alone, but I wanted to get our version, what we believed to be true, into your hands.

Commissioner Diesen stated well, more importantly it needs to get into more hands than ours because the damaging words are out there and there's so many people just waiting to pounce on that.

Commissioner Reynolds commented if we can get the City Manager to retract those words that's the best way to do it.

Mr. Rodi stated as I'm understanding it the issue is that there have to be certain magic words for the grant and I just think they need to correct the source; that was my issue.

Commissioner Diesen asked was it a Federal grant?

Mr. Rodi stated I don't know, I really don't know. He stated with all of the grants any more, at one time I would have known, but ...


Commissioner Diesen interjected you're right.

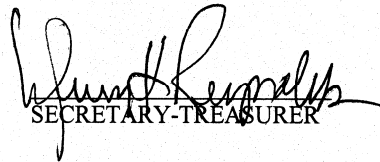
Mr. Rodi concluded it's very difficult.

There being no further business to come before the Commission, Chairman Allen closed the regular U.C. meeting at 7:23 p.m.

APPROVED:

ATTEST:


CHAIRMAN


SECRETARY-TREASURER

These minutes were formally approved by the Utilities Commission at their
March 15, 2010 meeting.