

**SPECIAL CALL CITY COUNCIL MINUTES
THURSDAY, JANUARY 8, 2009 9:30 A.M.
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

PRESENT: Mayor Sabin Abell, present; Vice Mayor Tom White, present; Councilmember Debra Fromang, present; Councilmember Bill Fish, present and Councilmember Kevin Sawnick, present **Also Present:** James Gabbard, City Manager; Charles Vitunac, City Attorney and Tammy Vock, City Clerk

ITEM FOR DISCUSSION:

1) Report from the City of Vero Beach Utilities Commission regarding Utility Authorities

Mr. R.B. Sloan, Utilities Director, reported that what was before the Council today was a report that has been assembled over the past two months by the Utilities Commission and City staff. He stated that City staff and the Utilities Commission were given the charge by Council to review the structure of Municipal Utility Authorities in Florida and to identify the advantages and disadvantages of having a Utility Authority. The Utilities Commission held five meetings from November 7, 2008 to December 16, 2008. The first two meetings were to identify areas that needed to be looked into to answer questions. At their third meeting they brought in representatives of three of the six Authorities in the State of Florida (Kissimmee, Orlando and Ft. Pierce). The sole purpose of the fourth meeting was for public comments and the last meeting they consolidated all the information into the final report. He then went over the report with the Council (on file in the City Clerk's office). He reported that the critical issues were representation, authority responsibilities, debt, assets, direct transfers, and cost of authority (page one of the report). He reported that they spent the most time discussing representation. They then talked about what kind of responsibilities are included in the Authorities across the State. They also discussed debt and assets and the transfers from the Authority funds to the general funds. He reported that in general, the six Utility Authorities have anywhere from 5% to 55% of their customers outside of their corporate limits. The City of Vero Beach has roughly 61%. If they break down the 61%, about 9% is within Indian River Shores and about 52% is in the County. In looking at the six Utility Authorities, the maximum representation that any City had was one of five Commissioners or Authority members. One City had in their charge the ability to have up to 40%. The maximum representation by any of the six Authorities is about 20%. In the City of Vero Beach, five of the seven Utility Commission members live outside the corporate limits, which is 71%. He said that they looked at seven areas having to do with representation. One was who would make the appointments. In five of the six Authorities, the City Council makes the appointment. He stated that Key West has their Authority members elected by popular vote. He said that the size of the Board members are anywhere from five to seven members. Even though Key West has popular vote, all the members must be City residents. All the Authorities have term limits with the exception of Key West. The maximum term limit that any Commissioner could serve would be 10 years. The qualifications vary from City to City. He said that there were only three of the six

Authorities that pay a salary. In some cases the pay is identified in their Charter and in other cases it was a budget item. He explained five of the six Authorities had the responsibility to set the rates and the City Council had veto power over the sixth Authority. Incurring debts was also a significant item. All six Authorities had different formulas. In five of the six Authorities, the City Council retained some element of control over incurring debt. Four of the six Authorities had the responsibility and delegated right to develop the budget. In three of the six Authorities the City retained some control of the assets. Operational control was the responsibility that was not explicitly retained by the City Council. He said that the day-to-day operational authority was delegated to the Authorities to administer on a day-to-day basis. The Council in every case retains some significant responsibilities either through veto power or explicit approval requirements. That being the appointment of the members to the Authority, the incurring of debt, rate setting, budget setting, etc. Mr. Craig Dunlop of Dunlop and Associates, made a presentation to the Commission on financial aspects of an Authority. He said that it was Mr. Dunlop's thinking, for the most part, that the markets (grading agencies) who routinely acquire municipal debt have not viewed an Authority negatively when it came to issuing a debt. Mr. Sloan said that because of the close connection of the cities to the Authorities, it appeared that the market viewed the Authority as an extension of the City and therefore had great confidence in the newly created entity. The Charter, as it's developed, dictates what authorities, what responsibilities, and what debts and assets are transferred. It was his observation during the presentations, that the Charter was what defines control. Therefore, as a Charter is developed, they need to be very careful on who controls the assets. When they talk about incurring additional debt or refinancing additional debt, the market tends to view that positively. Mr. Dunlop did not see any detrimental affect of transferring debt obligations to the Authority. He stated that five of the six Authorities have transfers of 6% of gross revenues or more. Four of the six Authorities is explicitly enumerated in the Charter what it would be through formula or flat percentage. It is handled by Resolution or Ordinance in the other two Authorities. In one case that it is not defined in the Charter, the transfer was well above 6%. In looking at what was being done in other Utilities in the State, they looked at what the Public Service Commission (PSC) does with the investron utilities and for 2006/2007, which was the most current data, the rate of return that the PSC permits for investron utilities was 8.1% return on equity. If they did that computation for Vero Beach, the transfer on equity would be less than 6%. He said that they did not spend a lot of time trying to develop expenses because until they know the bandwidth, it would be hard to arrive at a cost. He said that there were several other things discussed and he tried to describe what they thought were the important issues. He gave a special thanks to Mr. Tom Nason, former City Manager and Finance Director, Mrs. Danielle Kulp, Office/Web Content Coordinator of the City of Vero Beach and Mr. Barry Moline, of the Florida Municipal Electric Agency (FMEA) for their assistance.

Mr. Fish asked if Key West had a generating facility.

Mr. Sloan said that they have generating assets. Over the last few years they have been working with FMPA to update some of their units.

Mr. Fish asked if they have customers who live outside the City.

Mr. Sloan answered yes.

Mr. Fish said in looking at the chart in the report, the control of the Authority is on a daily basis but they don't meet on a daily basis. He said that they must be more of a policy setting board.

Mr. Sloan said the way he understood it was that they were kind of a Board of Directors of the utility and as such, they set direction and it is up to the Directors of the City to implement and administer the directives. It was not unlike what the City of Vero Beach does.

At this time, Mayor Abell asked for public comments.

Dr. Stephen Faherty thanked the Utility Commission and City staff for their hard work. He felt that they did an excellent job. He asked the Council to keep an open mind on what was being presented. He pointed out that the report was not finalized until last night so the public did not have access to it. They did not have any notice on what changes were made to the report. He said that Mr. Sloan pointed out that 71% of the panel in Vero Beach was from outside the City. If he understood the Ordinance three of the seven members should be representatives from the City. Also when comparing the amount of representation, they should also compare the level of authority and responsibility. The Utility Authorities that exist have a much greater level of authority and responsibility than the City of Vero Beach Utilities Commission. Regarding the debt and transfer of debt from the City to the Utility Authority, he did not have the same sense Mr. Sloan had that the issue was the connection with regards to the City because the bonds would be transferred and the authority for debt would be with the Authority and its revenue generating capability, not a correlation with the City. Mr. Sloan also mentioned that there was an 8.1% return from FP&L and 6% by the City. The 6% by the City did not take into account the two and one half million dollars in fees that are paid for payroll and personnel services, nor the two and one half million dollars in 10% surcharges and taxes, which could not be reflected on an FP&L type profit sheet. He hoped that they would be able to see the report in the near future.

Mr. Mark Mucher, Indian Lilac Road, said that he was fairly confused about this. He said that a customer of FP&L does not have any right to representation. If they were paying more per kilowatt rates than the residents of the City of Vero Beach were paying, then they might have a legitimate complaint. He was confused on where their standing is on this whole thing and why the City of Vero Beach is even considering this.

Ms. Marian Carpenter said that it was obvious that people want to be represented fairly. If the City had a local Authority with fair representation, it would be preferable for asking for State regulations. There is a lot of unhappiness among the City's customers. She felt that the City should consider a highly structured Utility Authority that is fairly and numerically represented and the members should be duly elected. She stated that there

has been some talk of moving the sewer plant. She suggested putting a Park on the river. She said that Mayor Abell was quoted in the Press Journal saying that he did not think that the County residents have proven their case for a Utility Authority. Her question to the Mayor was what it was that they still have to prove.

Mr. Tom Burkett, recently move here from the State of Washington. He said that the rates there were considerably less. He said that his last bill there was \$8.83 per kilowatt-hour. He had FP&L for about one month and their rates were \$12.37. His first bill with the City of Vero Beach was \$103.49 for the usage of 523-kilowatt hours, which equates to about 20 cents. He felt that should compare equally to what FP&L charges. He did not know where the money was going.

Mr. Lee Everett, Chairman of the Utilities Commission, said that this has been a long process and the process was to find out how and what they have to do to create a Utility Authority so that the Commission could inform the City Council of the whys, hows and therefores of such a creation and what it could do for us. The Commission spent a lot of time studying the details of the six municipal Authorities that operate in the State of Florida. He said that they received fountains of information and had excellent public participation. He said an Authority is created by State, County, City or the United States government. An Authority has a charter to accomplish a specific purpose. He felt that it was a good idea to remove the operation of a particular area of items from the normal political process of that government. Any authority we create is going to be owned by someone, presumably this government. The Authority is allowed to operate as long as it's within its Charter, but it can always be changed by the governmental agency that formed it. He strongly suggested that the City follow Dr. Faherty's suggestion not to act in a hurry. He said that there were two important items for the utilities in the near future. One was a study of the cost to serve as a rate base for all the City of Vero Beach utility customers. The second was what benefits the City gets out of its utilities. He said that he has not seen any benefits that the City gets out of its utilities other than what everyone knows about and are listed in the accounts. An Authority will probably answer that question, but the rate study will show every item of cost that goes into the rates, where those costs are incurred and who pays them. Therefore, the City should have an excellent idea on if the City is getting any hidden benefits from the operation of its utilities. This will show if the City wants to go through a long and possibility expensive process of creating an Authority. No one should be concerned if the City Council chooses to create an Authority because it will be well operated. The City of Vero Beach has a very well run utility. There is no question that the rates are higher than FP&L. He said that if they look at all the municipalities in the State of Florida, the City of Vero Beach is just about in the middle of the rate structure. He said that next year the City would be receiving power from OUC, which will be less expense. It should provide together with the rate study new rates equitable and lower than the rates at this time. If the City doesn't rush into this, they could see how those things play out and then determine whether the utility should be ran by an Authority. The Utilities Commission is dedicated and they know from their own backgrounds a lot about the matters that come before them. He has asked the Commission members to be prepared to make a statement and to advise the City Council on whether or not they think an Authority should be created and what it will do

for the City. He said that he was being open-minded on this and has not made a decision yet. In one hand he could see that creating an Authority would be like driving in a tack with a sledgehammer. On the other hand an Authority would answer a lot of questions that do not seem to have very good answers now. He felt that an Authority would definitely work, but how much it would cost and how it would separate itself from the City was very difficult to determine. He said that an Authority would have a life of its own. He stated that the Utilities Commission did not discuss the need of an Authority, they discussed how to put one together and how they work.

Mr. Dick Chapman, Vice Chairman of the Utilities Commission, reiterated the comments that he made at a previous Utilities Commission meeting. He felt frustrated when the Commission discussed the creation of a body because he felt they were wasting time in addressing what the problem was. He felt that the problem was that they want the cost of electricity delivered to the customers to be cost based, fair and equitably distributed. He did not think that they could assure anyone if that was true or not. But time marches on and they are studying a bureaucracy. A bureaucracy that he did not think added any value, would probably be costly, unnecessary and would probably lengthen the period of time it takes to get the answers they were seeking. His recommendation would be to put aside this excellent report, get on with the rate study and to do it diligently, carefully, and comprehensively and come up with a timely solution. While doing that, they need to reflect on the fact that the quality and reliability of the service delivered by this utility is excellent.

Mr. Robert Blumstein, Utilities Commission Member, presented Council with a written statement (please see attached).

Mr. Herb Whittall, Utilities Commission Member, stated that he was the second longest serving member of the Commission. He said that Council received a copy of what he wrote on December 16th (on file in the City Clerk's office). He has seen problems in the past where things were not done the way they should have been done because of politics. Almost all of the Authorities that came before the Commission said they were formed in order to get away from the politics. That was one reason he was in favor of having an Authority. They heard a lot about electricity, but not a word from the public regarding water and sewer. How the City would set up the electric he did not know because if a citizen has electric, water and sewer they should get three votes, if they had electric and water they should get two votes and if they had electric only they should have one vote. They are stating that 61% of the customers live outside the City. That is true for electricity, not for water or sewer. Therefore that number changes. He felt that the Authority should have authority over all of them (electric, water and sewer). He felt that the City could use an Authority, but the City still has to retain control. He also felt that the system that the City has now is working well. He said that sometimes maintenance and upgrades are not done when they should be done and that was the only reason he felt that an Authority would be useful.

Mr. Everett felt that by this time next year the City should know what is going to happen with the rates, whether they are going to be equalized and whether we really do need

separation from the utilities and from the City, as far as operation is concerned. He assured the Council that the Utilities Commission was ready to help to do whatever they can.

Mr. White said that he spoke with Mr. Malcolm Roach, Utilities Commission Member, who was unable to attend today's meeting. He was told that Mr. Roach wrote a letter to Mr. Everett.

Mr. Everett thought that Council received a copy of the letter. He said that they would receive a copy of the letter, which was written to Mr. Sloan as well as to Mr. Everett.

Mrs. Fromang asked Mr. Everett, in his opinion, if Council gave a definite answer about the Utility Authority now to stop some of the political maneuvering and then the rate study is done and they see how OUC works instead of visiting the Authority later, would it be better to end the discussion now or did he think discussions should be lengthened over the next two to three years. It was her opinion to have a definite answer now and allow the rate study to be completed. She was looking for a final answer for the people here today rather than a continuation on what she considered a political process and would allow the Utilities Commission to do their work and for Council to receive their advice.

Mr. Everett said that he has asked himself the question why should Vero Beach have an Authority and what is wrong with the way they operate now, which he could not answer. He said that the City has a gem of Electric Utility, Water and Wastewater Treatment Departments. He could not see any way the City could improve on the group of men and women who run those operations by creating an Authority. Therefore he could not answer Mrs. Fromang's question. He did not think the City needed to act precipitously when they don't have the answers to those questions. He suggested that they keep the Authority under study and they could flush out the framework that they have developed and be ready to recommend the kind of Authority the City should have.

Mrs. Fromang said that she found the original charge for the Utilities Commission when they were formed in 1976. She then read the purpose of the Utilities Commission, their responsibilities and duties (on file in the City Clerk's office). She felt that they should have a joint City Council/Utility Commission meeting to review their responsibilities and duties to see if they are appropriate now.

Mr. Everett said that was precisely what they have attempted to do. If the Commission would be thought of as a place for giving extra power for ratemaking, then he suggested that they revisit the duties of the Commission to make sure they have the right members for that purpose.

Mr. White stated that there were changes made to the Charter in 1982. It read "the purpose of the Commission shall be to recommend measures to the City Council in all phases of the operation and management of the City's utilities and at least three members shall be residents of the City." He felt that they needed to look at possibly having

members from other areas in Indian River County, such as Indian River Shores and South County be members on the Commission. He said that these were things that they needed to look into. He stated that he was under the impression that not only were they looking at the pros and cons of an Authority, but also at a rate study. He hoped that they could get down to the grid of what is going to be proposed January 1, 2010. He felt that they needed to look at a fair and equitable charge and that should be the primary purpose of their investigation. He said that several years ago the City considered whether to keep or get rid of the electric facility. The City talked with FMPA and they told the City that they would not take over the City's debt service. He explained that the City of Vero Beach has not been complacent on the utility bills. He said that he was still open on whether or not to have an Authority and he wants to investigate and study everything.

Mr. Barry Moline of the FMEA thanked the Council for the opportunity to speak today. He said that this has been a long road and there has been a lot of discussions on this and some have been heated. He complimented Council because they listened and established a plan more than a year ago to investigate and gather the facts of an Authority. The Utility Commission and City staff did an excellent job and the report was an excellent summary. There is still more work to be done and he is committed to working with the City to reach a resolution. What is important is to look at possible solutions and to have an open mind. His opinion was to deal with this issue and make a decision one way or another between now and the next six months rather than waiting a couple of years.

Mr. Sloan said the impact on the utility was more important than a lot of the other stuff they have talked about. He said that he could look at this somewhat objectively. He felt that the members of the Utilities Commission had more knowledge and experience in the electric utility business than any similar group in the Country. He felt that the City went above and beyond in finding qualified people to do what the Council has asked them to do. He would like to arrive at some conclusion. He reported that a lot of staff's time was being spent on this and the last thing they want an electric utility to be is political. The operational cost of this utility is what it is. Whatever form of government is put in place is not going to impact the operational cost of this utility very much.

Mr. Whittall said that he compared his utility bill (he resides in the City) with a friend of his who has FP&L with County water and sewer, and Mr. Whittall's bill was less.

The Council took a five-minute break at 10:52 a.m.

Mayor Abell asked for discussion among the Council.

Mr. White said that Ms. Carpenter mentioned putting a Park on the property of the Sewer Plant if it was moved. He said that last year the Council voted that the Power Plant and the Sewer Plant has to remain in public use. It cannot be leased or sold without going to voter referendum.

Mr. Fish referred to Ordinance 2006-23, which states that the land would remain public use. He referred to the statement "move the Water Treatment Plant." He felt that they

needed to use a different word other than “move” because they would not move the plant, they would build another one.

Mr. White said that they have looked at hardening the Plant so it would not pollute the Indian River Lagoon. He said that it is now not doing any injury to the Indian River Lagoon. They have also looked at beautifying it and are working on odor control.

Mr. Sawnick said sometimes when there are problems they look for the best solution, but other times there is a more realistic solution. He envisioned giving more power to the Utilities Commission. He felt that there would still be issues with rates if an Authority were created. He said that the rate study should clarify this. Everyone has been working together and they will find something that will work out. He said they are not going to be able to satisfy everyone.

Mr. Fish said there were only six municipalities that have an Authority and Ft. Pierce has been trying to gain control back. Regarding representation, the City could change the Utilities Commission Ordinance to reflect the 61% of the people. The Commission was made up of the people Council felt would do the job without any thought about where they lived. He said that there are a lot of technical people on the Commission and Council could strengthen the Commission’s duties.

Mrs. Fromang said that there were two issues. One was whether or not they want a Utility Authority in Vero Beach. The second is how the Utilities Commission charge may or may not be changed. She was not in favor of another layer of government. Her responsibility was to do what she was elected to do and she does not feel that she is overburdened with work. They have excellent staff and an excellent Advisory Committee, which allows her to make the decisions that she was elected to do. She respects Mr. Everett and he suggested that she wait until the rate study is completed before she makes a decision on the Utility Authority. She personally did not know that she needed to wait until the rate study is done to make a decision.

Mr. White said that he is keeping an open mind on a Utility Authority. He recently met with the Director of Utilities of Ft. Pierce. Mr. White explained that Ft. Pierce turned over their Power Plant and FMPA has a new facility west of town. The Power Plant is going to be torn down and a company has offered one million dollars for the metal. The Authority feels that they should receive the money because they control the assets. He said that Ft. Pierce City Council wants to do away with the Authority. He felt that this all started because of the different charges of utilities.

Mayor Abell felt that this started because of public comments and articles in the paper where they compare FP&L rates with City rates. The City addressed this four years ago with a notice to sever their relationship with FMPA. They further addressed it in 2007 with the contract with OUC, which will take place on January 1, 2010. He said that it was his understanding that OUC was very competitive with FMPA. He felt that the City rates would be competitive with FP&L. When he first was elected to the City Council four years ago, the natural gas rate was \$2.00 per million BTU’s and it was raised to

\$14.00. The City will have their first fuel cost adjustment, which will be about 11% less than it currently is. The current Utilities Commission has two to five times the representation of any of the six Authorities. Five of the seven members reside in the County. The City did not pick a particular place where the members live. There is a great resource in this County for people to serve on our Boards. To limit ourselves to someone within the City is ridiculous. The City's process of how they get people to serve on the Boards was very similar to what some of the Authorities use. The City did not decline to vote on the electric customers by meters or names. The Supervisor of Election and the Attorney General said that it couldn't be done. He said that he has not been convinced that the City needs an Authority. He felt that the Utilities Commission needed to have more responsibility. He did not agree with any transfer of assets. He would not have a State Charter, but would consider amending the City's Charter. He felt that they should equalize the rates by the kilowatt-hour. He suggested that Council have staff develop a plan for governance, representation, and added responsibilities to the present Utilities Commission. He said if they formed a Committee by election, they would not have the qualified people that they have now. He felt that the City has the best, most knowledgeable Commission of any Authority or Utilities Commission in the State of Florida.

Mrs. Fromang said that they might need to use the Finance Commission in addition to the Utilities Commission for the rate study. She wanted to make a clear vote up or down as soon as the rate study is complete. She did not feel the City needed another layer of government. She agreed with most of the members of the Utilities Commission that an Authority was probably not in the best interest of the City of Vero Beach.

Mr. Fish felt that Council needed to give staff better direction.

Mr. James Gabbard, City Manager, explained that staff would bring three or four different models for Council to choose from. He said that waiting until after the rate study is completed would give staff about four months to gather the information for Council. He said that they would meet with Council individually to get their thoughts. He said that one of the key things they discussed is that they want to have one flat rate for everyone.

Mr. Sloan hoped to bring a rate study contract before Council at their next meeting. He felt that the rate study would take about four to five months to complete. He said part of the process would be to go out into the community and talk with the public.

Mr. Gabbard said copies of this report would be available in the City Clerk's office this afternoon. He felt that annexation would help resolve the representation issue. City staff has been working on criteria for annexation, which the issue of representation would go away because their customers would be able to vote in City elections. He said that the City's only real interest in annexation is the service territory for water, sewer and electric.

Mr. White said that there have been some comments made about selling the City utilities and going with FP&L. He said that history has shown some of the troubles that have

happened when cities decided to do this. He then discussed some troubles that Sebring had when they decided to sell their utilities.

Mr. Fish said that there was a letter in the newspaper on the same issue that was discussed by one of the presenters today. He said that he asked Mr. Lee to be here today to discuss this issue.

Mr. John Lee, Customer Service Manager, agreed with some of the things that Mr. Burkett said. The power in the Northwest is very inexpensive. Mr. Lee explained that when Mr. Burkett received his bill, he applied the kilowatt-hours to the bottom line. But, what he neglected to do was realize that there is a \$15.00 one-time service charge for setting up the account. Therefore, Mr. Burkett made a simple math error. He said that FP&L discounts their base rate on their fuel and non-fuel portion by 15%. So at 1,000-kilowatt hours or less, the City utilities does not compare very well. Once they get past the 1,000-kilowatt hours, they are closer. He felt that the City utilities would be very competitive in the future. He said that he did explain this to Mr. Burkett.

Mayor Abell made a motion that the City Council direct staff and the City Manager to develop a potential plan for the City of Vero Beach for governance, representation and increased responsibilities of the Utilities Commission including rates and any other area that they think the Utilities Commission would be helpful and be able to help the City with their knowledge.

Mr. Gabbard asked Mayor Abell if he wanted to include capital expenses.

Mayor Abell answered yes.

The motion read “The City of Vero Beach Council directs the City Manager to develop a series of alternatives for their consideration to address governance, representation, and responsibilities issues for presentation to Council at the conclusion of the anticipated cost of service/rate study.”

Mr. Fish seconded the motion and it passed unanimously.

Mr. Gabbard said that they are most anxious to get closure on this.

Mayor Abell felt that the City was doing more for the representation than any other solution that was presented to them. He could not imagine anyone thinking that they were not doing all they can.

2. ADJOURNMENT

Today’s meeting adjourned at 11:45 a.m.

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