

**CITY OF VERO BEACH, FLORIDA
MONDAY, NOVEMBER 16, 2009 9:30 A.M.
CITY COUNCIL WORKSHOP MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

PRESENT: Kevin Sawnick, Mayor; Sabin Abell, Vice Mayor; Tom White, Councilmember; Brian Heady, Councilmember and Charlie Wilson, Councilmember **Also Present:** James Gabbard, City Manager; Charles Vitunac, City Attorney and Tammy Vock, City Clerk

1. CALL TO ORDER

Mayor Sawnick opened the meeting and the Clerk performed the roll call.

2. INVOCATION

Mr. Warren Winchester gave the invocation.

3. PLEDGE OF ALLEGIANCE

Mayor Sawnick led the Council and the audience in the Pledge of Allegiance to the flag.

2. ITEMS FOR DISCUSSION

A) Electric Utility Discussion – Staff Presentation

Mr. R. B. Sloan, Former Utilities Director, thanked Council for the opportunity to make this presentation. He hoped that today's meeting would pull everything together. He then introduced Ms. Meahb Purcell, Boston Legal Attorney; Mr. John Lee, Customer Service Manager; and Ms. Sue Hersey, President of Energy Advantage, LLC.

Ms. Hersey gave a Power Point presentation on the OUC/Vero Beach Power Supply Update (attached to the original minutes).

At 10:24 a.m. the Council took a short break and returned back at 10:30 a.m.

B) City Council Comments and Questions

Mr. Heady wanted to make sure that everyone clearly understands that none of his questions are aimed at trying to lay any blame or accuse any former Councilmembers of anything, but in order to know where they are, he felt it was important for him to clearly understand how they got there. He asked the generation assets that they have, are they at dual capacity for fuel.

Mr. Sloan answered yes.

Mr. Heady asked so they could change at any time and run on oil as well as gas.

Mr. Sloan answered yes.

Mr. Heady said it was stated that the City cannot sell assets because of the terms of the bond with respect to IRS requirements. He asked if the City were to pay off those bonds, would that release any of those requirements. He asked is it correct that if those assets were debt free the City could transfer those bonds anywhere they want.

Ms. Hersey said the bonds are not on the Vero Beach books. They are bonds that are held by the FMPA. She said that she was specifically speaking on Stanton One and Two and St. Lucie. She explained that the City owns a portion of FMPA's share of the units. They did the financing and the City is obligated to pay. The total bond amount far exceeds the Vero Beach portion. Regarding the combined cycle plant, that bond is a revenue bond and it is on the City's books.

Mr. Heady said the City's obligation is only for a portion of the generated power at the end of the FMPA contract, what is the City's obligation with respect to the debt.

Ms. Hersey said the obligation with respect of the debt is the cost of the operation and maintenance expenses, fixed and variable, over the life of the project. It is a full obligation of total cost requirements.

Mr. Heady asked what is the City's obligation to FMPA.

Ms. Hersey said if the City was going to try to sell either the assets or the entire utility, the City would be obligated to give 90 days notice to FMPA and they, in their sole discretion, have the right to tell the City what it is going to do to them.

Mr. Heady said therefore, the City is still bound to FMPA after January 1st.

Ms. Hersey said the City would still be a member and would be contractually bound under the St. Lucie and Stanton One and Two contracts, but no longer under the All Requirements Project contract.

Mr. Heady referred to page 14 of the Power Point presentation where it showed the total power production cost. He asked Ms. Hersey if she had a similar chart showing the last three years. He asked is there a chart showing the history.

Ms. Hersey said that she did not have history of an FP&L or an OUC bid, but she does have monthly charts.

Mr. Heady said that Ms. Hersey showed on page 14 of the Power Point presentation, a comparison of FMPA, FP&L and OUC from 2010 going forward. He asked if she has a chart showing history back three years. He said that if all she was going to do is show him what she

projects to go forward it seemed to him what he would like to see has happened in the past. He asked what do the last three years look like.

Ms. Hersey said that she did not have bids from those entities for prior years. Therefore, she could only show him what she has going forward. To compare yourself with another entity from the past without having been served by that entity really does not reflect the City's economics.

Mr. Heady said the cost of power was probably public record. He thanked Ms. Hersey for her answers.

Ms. Hersey said if Mr. Heady wants the historical cost of power that is a comparison that could be done.

Mr. Heady referred to page 17 of the Power Point presentation. He said that Ms. Hersey referred to a \$700,000 20 year savings and Mr. Sloan touched on the problem with peak loads. He asked if the City had not met that peak load, were they telling him that the City would have had a 20 year obligation of \$700,000 each year to FMPA and if that is the case, which it is, are there any other obligations to FMPA other than the bond for those assets. He asked are there any other obligations to FMPA after January 1st.

Mr. Sloan explained that all the costs associated with the All Requirements Project, the only obligation that he was aware of was associated with Stanton and St. Lucie. He was not aware of any power supply obligation.

Mr. Heady said that in January 2006 the City reduced the list of options to three. He asked was there any data compiled on option 6 to sell the utility so that the Council had in front of them the advantages and disadvantages of this option.

Ms. Hersey answered no. She referred to page six of the Power Point presentation. She explained that the strategic options were listed, the estimated cost to study those options were listed and the estimated cost to implement those options were listed. In other words if the City decided to sell the utility, the estimate to implement that would be three million dollars.

Mr. Heady said in his way of thinking, if he was going to spend three million dollars to implement a study, he would want to know some kind of value. He asked if, at that time, if they presented to the City Council any kind of estimates of value of what the City had, such as the value of the Power Plant, the value of the Transmission and Distribution system, etc. Is there anything at all. Did the Council have any idea at all of the value of what these assets were.

Ms. Hersey did not believe that she made any guesses.

Mr. Heady said it was stated that there were seven qualified bidders. He asked were there any bidders that were disqualified and if so, how many.

Ms. Hersey said that she would have to check their records. She did not think there were.

Mr. Heady asked Ms. Hersey if there were disqualified bidders to give him a list of them.

Ms. Hersey said that she would.

Mr. Heady said it was stated that the bid instructions were issued on September 10, 2007 and the bids were submitted on September 24, 2007. Therefore, there was a 14 day window of opportunity for the bidders to put together a bid for a billion dollar contract.

Ms. Hersey said the document issued to the bidders in April were instructions. They then went through question and answer sessions and tours. Therefore, they had been working with them since April. On September 10th the bidders were given the final bid documents.

Mr. Heady said in their backup information, it stated that the Vero Beach team decided who the qualified bidders were. He asked who were the members of that team.

Mr. Sloan said it was primarily Ms. Hersey, Ms. Purcell and himself.

Mr. Heady said according to page 21 of the documents, the contract was presented to the City Council for consideration on April 7th and the following day it was awarded.

Ms. Hersey said that was correct. She clarified that the contract was presented to the Utilities Commission, not the City Council.

Mr. Heady said the only change the Utilities Commission saw to interject was a hold harmless clause.

Ms. Hersey said the Utilities Commission made no suggested changes. It was a City Councilmember who suggested the one change.

Mr. Heady said so then the only change that was made was to hold the City Council harmless.

Ms. Purcell said the only change that was made was the "to hold harmless" clause.

Mr. Wilson said nothing about this is personal. There is just a lot of information here and this is an extraordinary important time. Therefore, he would be remiss if he didn't ask these questions. He was mindful that there were a number people in the audience who had to go to work and he would try to get through his questions as quickly as possible because he was really anxious to hear from the public. Especially since this is the first time they have had

representatives from FP&L and OUC present at the same time that can answer each other's questions. He asked Ms. Hersey if he was correct that she was a party to all the negotiations.

Ms. Hersey answered yes.

Mr. Wilson asked Ms. Hersey if she ever advised the City Council that selling the utility was a preferable option.

Ms. Hersey answered that she did not recall advising that.

Mr. Wilson asked Ms. Hersey if she ever received direction from any staff members to not consider a sale.

Ms. Hersey answered that she was hired to run the RFP. She proposed the six alternative studies, certain alternatives were selected, and she was asked to do them.

Mr. Wilson asked selected by whom.

Ms. Hersey answered the Council.

Mr. Wilson said that he was unable to find a vote in which the option to sell the Plant was ever voted up or down or even considered. The only option he has seen was that there was a vote having to do with the RFP that Ms. Hersey prepared. He asked Ms. Hersey did you prepare the RFP.

Ms. Hersey answered yes.

Mr. Wilson said the RFP does not contain Option 6, which is the sale of the Plant. Therefore Ms. Hersey prepared a document that excluded Option 6 and what he was trying to find out was who directed her to prepare that document excluding Option 6.

Ms. Hersey said the City Council approved a Task Order for her to look at a long term power supply. It was to do the RFP that was done. She said that it was a very detailed Task Order.

Mr. Wilson asked why wasn't Option 6 included in the potential RFP.

Mr. Vitunac said Ms. Hersey gave a presentation before Council, much like today's, with all six options on the board. That was what she was hired to do was to get the range of options. There was a price beside each option and the Council was asked which of the options, all, any, or none would they like to fund her to do. He thought that after looking at the price, no one was interested in selling the Plant and they didn't want to spend \$300,000 on something that no one was really in favor of. There were no facts presented for or against selling. The Council indicated an interest not to pursue that option as well as a few other options and settled on the ones that Ms. Hersey pursued.

Ms. Purcell said the RFP was one of the options. There were six options, one of which was to sell the Power Plant. The City Council chose not to pursue the study in order to delve further into that option. The RFP represented a different numbered option than Option 6.

Mr. Wilson said that in reading the minutes, they indicated that what was brought up was a study to see what the value of the utility was and that in January of 2006 the cost of that study was \$300,000. When it was brought back before the Council the study was between \$300,000 and \$500,000 and Mr. Gabbard said at that time that he thought the option of going out to find out how much the Plant was worth was premature and that it would be brought back before the Council. Mr. Wilson said what he was finding was that it was never brought back before Council. The only vote that took place was for the RFP, which passed 4-1 with Mr. Bob Solari voting no. Mr. Wilson said that what he was trying to figure out was somehow the option to sell was never considered thoroughly and was never actually voted on by this Council. He asked if this was correct.

Ms. Purcell said that she would need to check because she was not at that meeting. She said that they would need to look into this.

Ms. Hersey said that she would take that question back and get an answer. She noted that she would need to check her documents.

Mayor Sawnick said that Council would receive a copy of those minutes so they would have the background information that Mr. Wilson was speaking of.

Mr. James Gabbard, City Manager, said that he did not exactly recall the conversation that Mr. Wilson said took place. But, during their deliberation of this there was a great deal of conversation about the value of the Plant, sale of the Plant, sale of the system and the sale of T&D, since they decided to get out of FMPA. The City Council wanted to know the cost to study the options and when they found out the potential cost to study the value and talk about sale, it was premature because there really was no interest in selling. They did not want to go that route and spend that kind of money if selling was not a serious option. They were all very conscious of what it would cost and the time frame it would take to add that component.

Mr. Wilson said that he was not trying to make trouble. He thought that they occasionally suffer from selective disclosure. What he was trying to get to was that he was sure there was no interest because the comparative good was never made to Council. He asked that they show him if there was ever an up or down discussion or consideration about whether it is best to sell the Plant or to keep the Plant.

Mr. White said when the City first realized that the costs would keep going up with their contract with FMPA the question was brought up and they went to FMPA to renegotiate the contract. As Mayor at that time, he sat on the negotiation team and FMPA said they would renegotiate and the sale of the Plant came up. The City was at the point that they were willing

to negotiate the sale of the Plant and FMPA kept the City on the hook for almost two years stating that they would purchase the Plant and then they said no. They (FMPA) refused to take over the City's bonds. The City then negated any sale of the Plant. The City then went into arbitration and lost on a two to one vote, which he felt that the City had a very good case because of the contract they had with FMPA. The City then decided to exit the contract with FMPA. The City did negotiate to sell the Plant and if they look at the history, Councils' prior to them at that time also looked at the sale of the Plant. He said that he has a book on sales of municipal utilities and the emphasis is "never" sell your utilities. If you have to fix it then fix it. The City is fixing everything they can. Mr. Sloan has been a blessing with his knowledge and experience. Most of the questions they are asking were done and yes, it is hard to pull the answers out of your head on some of the questions that were being asked. They have covered almost every base. The Council before them had questions, which were answered and they agreed not to sell the Plant and tried to fix the problem. He thought the Council voted to do so, which in about one and a half months it will be fixed.

Ms. Hersey said that she needed to check her information to refresh her memory on the final bid instructions that were sent out as well as the legal documents sent with them.

Mr. Sloan said that when this discussion was being made, they were less than two years away from the hurricanes (Frances and Jeanne – 2004). Vero Beach was getting a lot of accolades for their response to outages. He felt that if they read through the documents there were references made to the outages. He could not help but to believe that was a large part of the mindset at that time.

Mr. Wilson said under Item 6) – Sell the Electric Utility, there were pros and cons. When they make a decision that this is not their priority, he felt that they need to discuss what was in the cons and the pros because they chose the priority to be the cons. The cons listed in the report were: loss of annual contribution to the general fund, longer storm restoration periods, possible loss of jobs for City workers, counterpart credit risks and the shared City of Vero Beach IT systems would have to be separated. The pros listed were: a large one time cash flow to the City of Vero Beach, ability to reduce cost to customers, reduces operating risks and liabilities, possible value added from new entrants and possible franchise fee. The City chose income to the City versus cost considerations to the public. He asked is that correct.

Ms. Hersey did not know what was behind the City Council's decision. This was presented to the Council prior to the decision being made. She noted that there was a listing of some pros and some cons. These items were also contained in the other options as well.

Mr. Wilson explained that he was trying to find out why this was not presented to Council as an option. He was leaning towards finding out that it was because it was not in the financial best interest of the City of Vero Beach employees. It was a consideration of the financial health of this government as opposed to the financial health of the residents and ratepayers of the City.

Ms. Purcell explained that what Mr. Wilson just read was a high level initial layout of the options to the Council in order to fully develop the pros and cons which would have necessitated a full study that would cost \$300,000 in order to formally analyze that particular option. That never happened. She said that they would need to conduct some research when and why the Council decided not to expend that money. They can't sit here today and give an off the cuff response to the pros and cons.

Mr. Wilson thought that they were the ones who submitted this.

Ms. Hersey said that she submitted the study proposal.

Mr. Wilson said that they spent a lot of time defending the decision between FP&L and OUC. He said there are representatives of FP&L and OUC here today and they could defend themselves. He was not questioning the decision to leave FMPA. He wanted to make sure that they did not get into another contract that has similar pitfalls. He asked if they considered the viability of the electric utility if the City was to lose 61% of its customers.

Ms. Hersey answered no.

Mr. Wilson asked if they considered pending legislation of cap and trade when they were looking at the different proposals.

Mr. Sloan said part of the discussion and in making the recommendations was the impact of cap and trade. He said that they talked a lot about OUC's capability to fuel switch. They have a number of gas fired units. Another point is that the function that cap and trade would only impact coal is not supported by hardly anyone in the industry that understands fuel pricing. The idea that coal prices would go up and would not impact gas prices was not the case.

Mr. Wilson said that Ms. Hersey had indicated that the Plant's equipment would be valuable through 2015. He asked is the City destined to be in the electric business for infinite number of years. He asked if the time isn't right today, when is the time right.

Ms. Hersey asked are you talking about selling the Plant or the utility.

Mr. Wilson said the entire utility, with the exception of the Stanton and St. Lucie projects. He said that he was convinced that the City of Vero Beach is tired of being in the electric business and unless someone can show him that they could be competitive in the power business in the foreseeable future then they need to be out of the power business and he is going to find a way to get out of the power business. Part of the reason the City is not suggesting an out right now is because for five years they have not considered the option. He asked when is it proper for them to get out of the power business.

Mr. Sloan thought that Council has the right, obligation and authority to make any decision they want to make. The question was what are they going to base it on. If Council wants to make a

decision based on public opinion irrespective of financials or service quality, they have that right. He did not think they could make a financial argument to do it right now using the traditional utility planning horizon. He said that he made the comment earlier that eighteen months or two years after the hurricanes, there was a discussion about selling the system and he did not think anyone was interested in that because they remembered the outages. It is now three or four years later and everyone has forgotten. If their planning horizon as a Councilmember was three years, he would sell the system tomorrow. If it is five, ten, fifteen or twenty years he would never do it.

Ms. Purcell said deals are made at a moment in time and the deal made in 2008 (OUC) was a deal that the Council at that time voted to approve. Anyone can come in after the fact and talk about second guessing the process that was conducted at that time and they would be happy to come back as often as it takes to answer questions and to explain the rationale and analysis in making the decision that was made.

Mr. Wilson said that he was not trying to undo a previous Council. He was concerned whether all options were presented to Council, which it did not look to him like it was. His other concerns were how this contract came to be and under what authority this contract came to be. He asked Ms. Hersey since her and staff members presented a redacted version, how exactly did the \$50 million dollar penalty get into the contract.

Ms. Hersey said that it was part of the negotiations.

Mr. Wilson asked who recommended it.

Ms. Purcell stated that they would need to go back and look at their records. She said that the \$50 million dollars represented a figure that both parties agreed on. The point of entering into a contract like this is so that it could not be easily broken. The contract was negotiated so that it provided benefits to both sides. She stated that a clause like this is standard contracting language. She did not recall whose idea it was, but it was mutually agreed that it was a sufficiently high number to hold each party to follow through with their obligations.

Mr. Sloan explained that their purpose was to negotiate a contract that would stand the test of time. They went in with the intent to negotiate a contract that they both could live under for the 20 year term. They tried to find every loop hole and every opportunity to ensure that OUC honors the contract. He was sure that OUC was doing the same. He said that as he remembers it, they talked back and forth on a number that would be enough of a serious intent to honor several conditions in the contract. It was meant to hurt.

Mr. Wilson said then the City thought it would be a good idea for the City of Vero Beach to be on the hook for \$50 million dollars.

Mr. Vitunac explained that the \$50 million dollars would also go to the City of Vero Beach if OUC leaves the contract. It is the same both ways.

Mr. Wilson said there is another possible alternative, which is to make sure the sale of the Plant would be impossible. According to a presentation that was made last week, one reason it was not financially viable to sell the Plant was because of the penalty. He asked who put the penalty in the contract.

Mr. Sloan said that Mr. Wilson was speaking on two different things. He mentioned the Power Plant and transfer of those assets. He stated that was an IRS regulation.

Ms. Purcell remembered the discussion in negotiating this contract and it was from a drafting of contract point of view, a term of 20 years with the financial and economic provisions that are wrapped up in the contract, the \$50 million dollars was not for the purpose Mr. Wilson was suggesting. It was specifically crafted by both sides in order to make sure that all of this would not be a meaningless contract. It would actually be a contract that would survive. She remembered lower amounts being discussed and they decided that the lower amounts would not be enough to prevent OUC from breaching the contract. That was the purpose of this.

Mr. Wilson explained that he was trying to determine if the \$50 million dollars was mutual. He was sure that OUC has contracts with other utilities and he wanted to know if that contract provision was in there and if they requested it. If they requested it and it is not in their other contracts, then how could it be proprietary information. If it wasn't proprietary information then how could it be redacted and never presented to any member of the Council so that the Council was able to vote on a \$50 million dollar penalty that they were not aware of, which was improperly withheld from them.

Ms. Purcell said the redacted version of the contract was the copy of the contract that was made available for people to view it at their leisure. The full un-redacted version was made available and the terms were explained. Everyone had the full opportunity to view it.

Mr. Wilson said there were a lot of questions that the people in this community needed answers to.

Mr. Abell said that he was on the Council when this contract was adopted. A question was made as to Stanton and St. Lucie and does the cost continue. He said the cost would continue, but the City would receive the benefit of the power, which the City did not get before, at the cost. Any benefit of the power that was being generated from the cost at FMPA for coal and nuclear was spread to fifteen members, which ten of them do not generate power. This was an issue that he had when they began the process of getting out of the contract with FMPA. Another question was regarding the six options. He stated that all six options were given to Council. The key thing mentioned at that time was the only way they could find the value of the Plant was to have an auction. Another thing that came into his decision was coming out of 2004 (two hurricanes) and seeing the reliability factor. There were serious outages in the area after two hurricanes. One person just recently asked that they think about the factor of an outage and how much damage was done by mold. To him that was a huge answer. He made

his decision partially on the basis that an auction did not seem to be the right course and the reliability of the service was a good course to follow. The process started in September 2006, which concluded in April of 2008. This was not done over night. He saw the contract in April and as far as he knew so did the rest of the Council. He reported that Option 3 seemed to be the most favorable consideration of the Council, but the Council was still in favor of following other options as they arose. The option to get out of the contract ranged from zero to \$20 million to \$50 million dollars depending on the time of the contract. One of the issues of the larger number is that OUC has the opportunity to invest in equipment in the utility and if they do, then obviously they are entitled to compensation for their investment. To him this was almost a no brainer. He said that there were answers there for any questions that they have and they could be followed up with documentation.

Mayor Sawnick said asking questions is always good. He said that whatever this Council can fix in the approval process of certain issues that they make sure that they cross their T's and dot their I's.

Mr. Sloan did not want to mislead anyone. The purpose of the contract was to serve Vero Beach well into the future. Their intent was to write a solid contract. He noted that every contract regarding power supply that he has read or been associated with had similar conditions. The idea was to make both parties perform what they say they are going to do. He said that they must set the number at a level to get both parties attention. He thought that they arrived at \$50 million dollars was to make it significant and to get people's attention. The concept of confidentiality has been a nightmare for him. Because of the confidentiality clause the public was less informed. He wished that they were allowed to disclose everything two years ago.

Ms Purcell explained that the purpose of the confidentiality was to promote a healthy and robust bidding process in solicitations of this nature. In order for bidders to submit a bid designed to win the bid they have to provide information that they don't want other bidders to have access to because it will hurt their competitive position. In order to encourage them to submit a bid and to be as open and aggressive as possible they have to have the assurance, for a limited period, the confidentiality of their bid. She stated that this was common practice throughout the power market.

Mr. Sloan said it was not retained as confidential for the City's purpose. It was for the bidder's purpose.

Mr. Vitunac noted that these were the same procedures used with the Baltimore Orioles and with Piper Aircraft. The State of Florida told the City that they had to keep quiet because it would be a misdemeanor to divulge the information too soon.

Mr. Sloan said that Council makes the decision. If they want to make it on economics, social liability, or just popular opinion, they have that right. His argument from day one was that he

would support any decision Council makes and would implement any decision Council makes, but he asked that they base their decision on economics and service reliability.

Mr. Heady said the confidentiality was appropriate. He asked what is the time frame after a bid that confidentiality was no longer appropriate.

Ms. Purcell felt that their commitment to the bidders was two years, which was fairly standard.

Mr. Heady asked do you think that's appropriate.

Ms. Purcell said that she has seen as long as five years, but she felt that two or three years was an appropriate time. She noted that it depends on the subject and in this power market two years was what they operate under.

Mr. Vitunac noted that Florida Statute allows one year automatically with another one year extension. However, they can ask bidders if they would be willing to relinquish their confidentiality rights and open up the documents sooner.

C) Public Comments

Mr. David Gregg stated that he served on the City Council in 1972. At that time Vero Beach was the center of activity in Indian River County. He said that things have changed and Vero Beach is no longer the center of activity, but a part of Indian River County. He felt that this has been a valuable lesson for the public. He asked what is the City's alternative if they felt that they did not want to retain OUC as their supplier. He stated that when he was Mayor of the City they negotiated selling the electric power system in its entirety to FP&L. They looked at all of the alternatives open to the City at that time and they looked at what the benefits would be to all the residents. They determined that it would make practical economic sense for the City to sell the entire electric system to FP&L and negotiated a contract without a consultant. He said that the Federal Government tried to blackmail the City and that was why this was never consummated. The problem now is that the City is faced with a contract that two of the sitting members of Council were involved in and the City is committed. He asked what are the alternatives. Are they locked in or is there an avenue to get out of the contract for the possible renegotiation of a sale. He was stunned to find out that no person on this Council looked at the sale agreement with FP&L. He did not recall any penalty in that contract.

Mr. White said that in the 1980's the Council had the option to sell to FP&L and FP&L exited with no explanation.

Mr. Vitunac added to what Mr. Gregg was saying and he thought that the issue was that the government felt that FP&L was getting too big and they wanted to keep the diversity of electrical generation for the good of the State.

Mr. Gregg said that was not correct. He said that the first thing they had to do was to clear the Anti-Trust Department. Then they needed the approval of the Federal Energy Regulatory Commission. After discussions with the Federal Energy Regulatory Commission the City withdrew the contract. He said that they could look back in history to find the correct information.

Mr. Wilson said that fortunately FP&L and OUC were present for today's meeting and he felt that they finally were going to get some answers.

Mr. White read from the minutes of the March 31, 1978 Special Call City Council meeting where it states, "Mr. Gregg read the following comments to the Council. Negotiations between the City of Vero Beach and the Florida Power and Light Company were terminated today at the request of FP&L. Simultaneously with this announcement the application to the Federal Energy Regulatory Commission for approval of the acquisition of Vero Beach electric system and FP&L has been withdrawn."

Mr. Rock Tonkel, 5055 North Harbor Drive, Grand Harbor, found that once you address a question of what alternatives the City has at this point, including the severe penalty, which he felt there were solutions to recover, a more compelling question was are you inclined or willing to consider doing anything different than the decision that was made by the prior Council. He felt that without having witnessed everything that it was grievous omission not to have spent the \$350,000 dollars to look at whether or not the utilities should be sold. He asked what are the implications of the loss of the approximate six million dollars to the City if they were to abandon the policy and forgive it in favor of the customers in the County. He felt that the further they understand what the implications are, they might find a willingness to find a solution that provides a continuation of the arrangement or they might find the continued opposition to the arrangement.

Mr. Heady felt that the Mayor today opening up this workshop meeting for the public to speak was receptive and speaks volumes about whether or not this Council is going to be receptive. He thanked the Mayor for this.

Mr. Roger Redd, 1122 25th Street, stated that he has lived in Vero Beach since 1960. He said that he did not want the City to sell the Power Plant. There was a comment made by Mr. Wilson regarding a study to sell the Power Plant. He said that there were several over the past. He gave Council a copy of a study that was done in February 2006 (on file in the City Clerk's office). He felt that if a certain area wants to get out of the City utilities they should get together and vote their grid out. He said that he wants to keep the Power Plant. He likes the service and the expertise. If they look back at the records, there has never been an instance where someone has been without power longer than 30 minutes, except after the hurricanes of 2004.

Mr. Heady said Mr. Redd mentioned selling a grid. As he understood it, that was not possible under the current contract. He asked is it possible for a group of citizens outside the City to

unilaterally get together under a certain grid and decide to opt out without triggering a penalty clause.

Mr. Sloan said under the contract that would have an impact on loads, therefore there would be an impact. He said there is also a territorial law, which does not have an option to doing anything like that.

Ms. Hersey said there are stranded costs associated with doing this.

Mrs. Caroline Ginn, former Councilmember and former Mayor, felt that a lot of people were present today because they want to know why their electric bills have been so enormous. She said that they would need to go back to the agreement with FMPA to get that answer. She did some research on FMPA and was startled because they went from an agency that was like a self help agency that would yield power from one place to another if someone was in trouble. But, they decided in 2004 to become a producer of electricity, which was in direct competition with the other members. Not only did they do that, but they built five plants and are now loaded with debt with no growth. She said the members of the All Requirements Project are the ones who are carrying that debt. She wanted to know what is in the fuel adjustment, besides the fuel adjustment. She knew there was a lot in there and that is why the electric bills are so large. She also wanted to know if the requirements for the City go beyond 2010. She asked does the City have any further obligation for these five Power Plants and the debt that is there, outside of the St. Lucie and Stanton One and Two.

Ms. Hersey said that was correct. As far as the other Power Plants that were mentioned by Ms. Ginn the answer is no.

Ms. Ginn asked how much debt the City was we paying since the electric bills began escalating.

Ms. Hersey said that she could go into the FMPA financials to get that information for Mrs. Ginn. The last year has been the worst because they have the full impact of the Treasure Coast facility, Key Largo, as well as the fuel hedge of \$10.00. Gas prices went up to as high as \$13.00 however, the global recession did not hit and everything fell considerably. The decision to hedge, cost the customers millions of dollars.

Mrs. Ginn asked with the OUC agreement, are they going to supply the City with a certain amount of electricity just when it is needed or would they be supplying electricity regularly.

Ms. Hersey answered both. She explained that they sold the City a supplemental wholesale capacity amount that gets calculated annually. She explained that this is based on the next year's projected peak load and then subtract the excluded resources listed in the contract. She explained that the amount would vary over time as the load grows. Next year they are looking at about 95 megawatts of capacity. She said that the City is also purchasing supplemental wholesale electric energy from OUC at their system average price. The beauty of this resource is that it would be dispatched economically to serve the Vero Beach load. The load is served

using Vero Beach's least cost energy generation first. She explained that the City's nuclear would stack first, then the coal at Stanton One and Two, then the OUC purchase power adjustment block in the amount Vero Beach needs, and then the Vero Beach combined cycle Plant would be used for peaking purposes. As gas prices rise and fall these generation uses could shift. If the City only uses 70 megawatts out of 95, the additional 25 megawatts at the OUC average price would then be served to the market at the clearing house price and those revenues would come back to credit Vero Beach.

Mrs. Ginn asked is the City going to use the Plant and power up again. She said that the City Plant could generate. She said that the City has not had a peak demand over 185. She asked what is the City's most recent peak demand.

Mr. Sloan said 165 this calendar year and the City has exceeded 200.

Mrs. Ginn could not understand why the City was not using their entire Plant. She said the equipment is in good shape and is a good system. She said that Units One, Three and Four generate a lot of electricity.

Ms. Hersey said that Units One, Three and Four were considered peaking and reserve resources now. She explained that a utility must not only maintain enough generation to meet its peak load, but there is also a reserve requirement from the Florida Reliability Coordinating Council. She said that the City does run the units and over the past year have run quite a bit for different reasons. She said that these units do produce benefits and those benefits currently go to FMPA and are shared among their 15 members, but in the future those benefits will go directly back to the City of Vero Beach, under the OUC contract.

Dr. Stephen Faherty felt that they needed to focus on the OUC contract and not the rate and service study. What is being discussed today occurred between 2006 and 2008. He did not want people to get confused because the rates as presented by the City's consultant shows that the City's rates would be 21% above FP&L starting January 1st and with the six percent difference the rate would be 27%. He felt that it was important that he has no interest in FP&L, he does not work for FP&L and he is not being paid by FP&L. He said that it has been mentioned several times about the reliability and the underground capabilities of the system. He felt there was a need from FP&L to compare the rates on an urban to urban basis because what is done consistently by the City is compare their underground capabilities and reliability with the overall FP&L system, which includes a large amount of rural areas. He understood the Attorney's interest in protecting the interest of the bidders. He said that there were provisions under the Florida Statutes regarding the protection of bidders with regard to proprietary and confidential information. There is also a provision that surrounds that for non-proprietary and business information, which could vary from 90 days to one to two years. He said that there were seven bidders and 34,500 customers. He felt that the customers should have been considered in granting a quicker way of looking at what was occurring in the contract and not just a few months before entering into the contract. In reading the January 31st minutes when discussions took place regarding the different options, there was not a definitive vote by City

Council to sell the utilities. He said at that time Mr. White indicated that if the City could not make a profit they should sell it. He was concerned from the presentation made today that if there was such a serious impediment in doing anything with utilities that relates to the interest it has with Stanton One and Two as well as with St. Lucie then why were Options E4 and E6 not included in the option as a con, as an inability to sell the system. It does not appear. If that is such an impediment, why was it not included in that option. He felt that the City should have done an electric utility sell analysis back in January 2006. If he recalled the figures correctly, they were talking about spending four to five hundred thousand dollars on the contract. That should have included a number of the costs to explore the number of the options. The two options were to sell and they were ultimately rejected by the City. The City Manager stated in the minutes of the January 31, 2006 City Council meeting, "basically what it appears to all of the staff and everyone that he has talked to is that our system has been in decline for the past ten years. We have not held up our fiduciary responsibility to maintain our system like we should have." He also stated, "The Council has to decide if they want to take the sell option out or not. If they are going to take out that option then it can save them a lot of work and a lot of money. It is a real revenue source and can keep the taxes down." Dr. Faherty felt that those were critical statements and should have been taken into account by the Council as to the condition of the system and what had and had not been done by the City. The evaluation factors to be used to evaluate bids were not published in advanced in the RFP announcements as it is done in Federal procurements and presumably in State and local procurements. He said that he has had significant experience in Federal procurements and he has never seen a contract where evaluation and inspection criteria were not included except in a sole source procurement. The selection criteria was not included in the RFP. As a requirement to bid, the bidders had to sign a statement that they would not protest anything in the bid and evaluation process. He said that he has never seen that in any contract that he has done. He felt that was eliminating a right that also provides a balancing and leveling effect to the people doing the evaluation. He said that this was unimaginable when they think about a 20 year, two billion dollar contract where the bidders do not have the right to protest. He asked what prompted the City not publishing the evaluation factors in advance seeking the pre-bid wavers. In addition, the bidders had to agree to keep this confidential for two years. He did not feel the public's interest was protected by maintaining that two year silence. He asked that since the evaluation factors to be used to evaluate the bids were not published in advance, when and by whom were they developed. The rating of 33 and 1/3% of the total rating was established based on FP&L's retail electric costs. They heard today from Ms. Hersey that it was a fallacy to compare the City of Vero Beach to FP&L. He asked, therefore is it not a fallacy to compare other bidders to FP&L. That puts FP&L as a mathematical average. He asked why FP&L was used. Why wasn't FMPA used, which was the current provider. He felt that was a serious question regarding this process. He felt that the City Council at that time would have committed political and financial suicide in their own mind if they had to justify an FP&L selection when FP&L surrounds the City, because the City couldn't then justify continuing in the electric business with rate markups above FP&L levels, with FP&L of eight million dollars to the general fund revenue. City officials are now saying in the 32963 newspaper that it couldn't afford evaluation costs on a 20 year, two billion dollar City contract. He felt that the City should budget funds on such an expensive long term contract. As he understood it, from the newspaper, the City

indicated that the City's consultant review the bidders and reduce them from seven to three. If that was the case, why wasn't the panel doing it. He felt that the consultant was the most expensive item, not City staff (panel). The City Council didn't read the proposed redacted version according to 32963. The City does not have all the OUC contract files. If he requests information from the OUC contract they are forwarded to him via the City from the consultants. He asked is that consistent with the Florida Statutes. A unilateral option for OUC to expand or regulate the City's Power Plant was granted, which cost would be borne by City electric customers. With 61% of the City's customers outside the City who does not have a vote means uncontrolled costs. He asked what was the value of that option to OUC and/or to the City. He asked how did that lower the OUC's rates as suggested by the contract terms. The base load generation interest that the City granted to FMPA transferred to OUC. He asked what is the value of that transfer. He asked how did that lower any type of rates. Who paid for those interests originally and with what funds. He understood that it was held by bonds with the FMPA. He asked if they pay off that portion of the FMPA bonds related to those interests, could they then sell them. He said that there were two pertinent sections relating to the OUC contract, one of which was the \$50 million dollar penalty. Another item in the contract he felt should be looked at was in Section 15.11. The first paragraph provides that portions of the contract may be overridden by State and Federal law. He felt that provided an opportunity for the City to look at certain options. He felt that there needed to be an OUC contract validity review to determine if there were flaws in the evaluation, contract, or process and if this presents a legal way out of the contract. The City also should support Representative Mayfield's local legislation for Public Service Commission (PSC) control of the City electric utility the same as a public utility. This would benefit outside City customers by giving them a voice before the PSC. The City's rates would then have to be approved by the PSC, which would be an advantage to all customers. They could then request the PSC allow the termination of the OUC contract and the sale of the utility. The PSC's action as a governmental authority is covered under Section 15.11 of the OUC contract and may provide a way out. Dr. Faherty then read a letter from Mr. John Little (past City Manager) dated 1989 as the Florida Municipal Electric Association President, which stated "It's neither good management nor good rate making to maintain the level of contributions to the City's general funds as required in many of our systems. If we are indeed public power then we should realize that our customers whoever they are, inside or outside our City limits are our shareholders. This privilege is not simply limited to City taxpayers. In short we should either be regulated by the Florida Public Service Commission or we must separate equitably at home. Further with regard with municipal surcharge, if we continue to penalize customers outside the City who have no vote in City politics then we should either accept PFC rate regulations, which would eliminate this rate discrimination or limit our service area to the corporate limits. Perhaps we should simply face the issue and eliminate such surcharges." Dr. Faherty said that the City has eliminated the surcharge, but they also included it in the base rate to the tune of three million dollars. He felt that it would be appropriate for the City to request local Legislation from the State Legislatures to have another referendum as discussed by Mr. Gregg to see if the City voters and residents want to sell the utility. If that were passed by the State Delegation to Legislation verses the City Ordinance, it would also give the opportunity to possibly override the contract under Section 15.11. The City could apply to the PSC, if it were covered by the PSC, to sell the electric utility

because of economic financial hardships not realized when they started down this path. He said that rates can come down. The rate and service study showed that there are projected rate increases for every year for the next five years. This will also override Section 15.11. The City also has to deal with the reality of Indian River Shores Resolution #414 and Indian River County Resolution #87-12, which have 30 year agreements for the City to provide electricity. They are not overwritten by the OUC contract. They still have the right to give a five year notice to get out of those contracts. Also OUC could be notified by Indian River County and Indian River Shores of the proposed terminations five years in advance and then the PSC putting up the franchise of those areas for conversions under the territorial agreements. The PSC has accepted four of the five complaints filed on September 21, 2009 by himself and Mr. Glen Heran. They are refiling a territorial agreement portion of the complaint shortly. A favorable ruling could allow people outside the City to exit the contract. This is not just a City issue because 61% of the City's customers reside outside the City. The constraints that the City is putting on having the ability to sell and lease property should be kept in mind that the 27% rate disparity between the City and FP&L rates amounts to \$20 million dollars a year being sucked out of the local economy by the City for electric rates. If you want to divide that any number of ways by the number of utility employees that is a large price to be paying annually. City officials state that the City would fold to financial ruin if the electric utilities are sold. He felt that they should have looked at that in 2006 and should explore that right now. He was almost at a loss as to where the City wants to go. The City is locked into a contract and they need to look at how they can get out of it.

Mr. Sloan said the issue about having something in the RFP to limit a protest, when you go to major corporations and ask them to present a proposal, if there is a way to limit their ability to lawyer up and go against the City, he felt was inappropriate. He assumed the purpose was to allow every entity to give their best proposal. As far as the 33% FP&L's retail rate in the analysis, he did not know how many times people spoke at the dais and spoke about FP&L's rates. He said that was a reason they used FP&L as a benchmark. He was not tied to any benchmark. They used the one that they used most often, which was FP&L. The point was what wholesale rate they could get in the contract that would be most competitive in their retail rates to the City's customers when compared to FP&L. They could use whatever benchmark they want because they would get the same results. It was referred to that OUC has the unilateral right to do whatever they want to do at the Power Plant. He explained that when someone reads the document, they need to read the entire contract. The last phrase in that paragraph states "will be determined by mutual agreement between the parties." The following section discussed negotiations and there is a process if they cannot come to an agreement. In terms of FMPA bonds, if they look at the Bond Council and IRS regulations, they tell the City what they can do. He said that there was no opportunity for the City to pay off their portion. He wished there was, but there is not. Regarding the franchise agreements, he encourages people to read them. He said that the franchise agreements has zero to do with who serves who electricity. It has to do with water and sewer. He said that the County Commission approved the 10% outside charge that everyone has been upset about. He said everyone keeps saying that the City Council did this, but in fact the County Commission

approved it. If they read the franchise agreement, they will see that it has provisions to go higher than 10%.

Dr. Faherty understood that, but it does not have to be charged. They have an option.

Ms. Purcell wanted to ensure everyone that Section 15.11 referred to as a possible out of the agreement, she encouraged them to read it closely because it was not intended to be used as an easy mechanism for successor Councils' to second guess a decision of the Council who approved the agreement. It was intended to cover changes in future laws and regulations. It was intended to cover future laws or circumstances that neither party could contemplate at the time that they entered into the agreement. It is not drafted to operate as an out.

Dr. Faherty said that might not have been the intent, but it could provide the opportunity for an out.

Ms. Purcell said it would not.

Dr. Faherty asked if there are subsequent determinations made by the PSC to modify the territorial agreements wouldn't that change the number of customers covered by the contract.

Ms. Purcell did not think it would.

Ms. Hersey said that Dr. Faherty stated that he has never seen participation agreements that have clauses in them that require the bidders not to protest at end of process. She said that she has used this type of language in all the asset transactions that she has been involved in. She said that this is common in those types of transactions. It is there to protect the City because when they deal with large businesses it is not hard for them to come back and try to cause a ruckus. This prevents them from doing that up front.

Mr. White asked what about the 27% disparity Dr. Faherty mentioned would occur in January.

Ms. Hersey said that she was not involved in the retail rates. But she could not imagine that that wasn't an inaccurate piece of information due to the fact that the wholesale cost and the rate case numbers. The 19 million dollars of savings is there. She believed that the disparity is much smaller than what Dr. Faherty quoted.

Mr. John Lee, Customer Service Manager, explained that the rate the City is proposing is approximately \$125.00 per 1,000 Kwh. FP&L at this point in time is somewhere less than \$110.00. Therefore the difference of \$125.00 and \$108.00, \$110.00 or whatever it is as of January 1st, that is the percentage.

Mr. White said that is if the rate is approved.

Mr. Lee said that was correct.

At 12:32 p.m. Council took a ten-minute break and reconvened at 12:43 p.m.

Mr. Glen Heran said there was a comment made at today's meeting as well as in the press that there are some City residents who suggested that one solution would be to get rid of the transfer from the Enterprise Fund to the General Fund, which would be approximately \$5.9 million dollars because they felt that would help lower the rates. Mr. Heran said that would help lower the rates for City, County and Indian River Shores residents. The affect would be if they drop six million dollars of transfer, 39% of that would be picked up as a benefit to the City ratepayers (about two million dollars). The problem is that they now would have to cut government services, cut back on the size of government, or raise property taxes to the tune of \$5.9 million dollars if they lose that from the General Fund. There would be a tax deduction because property taxes are Federally tax deductible. But, the effect is the City taxpayers would be out of pocket two million dollars. They would receive a benefit from their rates, but they would have to pay two million dollars out of pocket in property taxes or cut back on the size of government. What he is proposing is better. He is proposing to sell this system to FP&L. He felt that they were the natural buyer. He then went over the rate disparity. In the Consultant's report, for 1,000 Kwh the rate would be \$158.82, for 2,500 Kwh the rate would be \$386.24, which does not include the gross receipts tax. That is just the base and fuel rate. If they look at the rates projected by FP&L, in January 2010 for residential 1,000 Kwh the rate would be \$101.76, which includes gross receipts tax. That includes the 30% increase in base rates, which amounts to about a 35% decrease in fuel rates. He said the three assets of the system were the transmission and distribution, base load generation investments in Stanton One and Two and the Power Plant itself. He said that he has tried to get an answer on the revenue bonds, but has been unable to. The newspaper reported that the revenue bonds in the system as of September 30, 2009 was \$68 million dollars. There is a concept known as the buy back provision that FP&L would have to sell the City back the transmission and distribution if the City sold it to them. There would be an OUC penalty to do this. He showed the Council variables that show residential, commercial and industrial rates all higher than FP&L's rates. He said if the City was able to sell the transmission and distribution to FP&L for \$150 million dollars and pay the \$68 million dollars in revenue bonds, this would result in \$82 million dollars in proceeds. If the City invested those proceeds at four point one percent, the City would end up with three million dollars. The tax that would be generated by FP&L, which would now own the transmission distribution lines and would be taxable, the City of Vero Beach would gain about \$53,000. The City would no longer need the people in the General Fund providing services to the Enterprise Fund because the Enterprise Fund would be gone. But, the City would lose the transfer of five point nine million dollars and the revenue that comes in from the administrative transfers. Therefore, in this case if the City received \$150 million dollars for the sale of the transmission and distribution, and that was it, the City would end up increasing the property taxes by two point four million dollars. Although that sounds tragic, the benefit would be that in the year 2010 the City would collect \$92 million dollars from their customers. This information came straight from of the Consultant's rate report. If the City was 27% higher than FP&L on average, that means that if FP&L was to service our territory, they would do it for \$72 million dollars. Those are straight billings. Therefore, the City's customers are losing \$20

million dollars per year. The City's portion of that would be seven point six million dollars of loss, the County would lose \$10 million dollars and Indian River Shores would lose one point nine million dollars. Those are the savings they would get if they were using FP&L. If the City sells for \$150 million dollars, the City would receive seven point six million dollars in benefits in electric bills, the City customers would pay two point four million dollars in additional property taxes, they would receive a benefit of \$600,000 Federal tax and that benefit in the City of Vero Beach taxpayers pockets would be five point eight million dollars. On average that would be about \$450 per year. If the City has a buyback provision and in this case FP&L theoretically would give the City a 30 year bond, charging the City four point one percent interest, so the City would have to pay back eight point seven million dollars. They would not receive the 27% reduction. They would have to carve into that. Therefore, they would lose some of the benefit by having the buy back. So, instead of seven million dollars, it would drop down to four point two million dollars. They would still be ahead by two point three million dollars. This would be better than losing two point one million dollars if the City dropped the transfer. If the City took the penalty of \$50 million dollars, they still would be ahead by almost one million dollars. The County would be ahead by five point five million dollars, Indian River Shores would be ahead by one million dollars and residents as a whole pick up an extra one million dollars because now FP&L's transmission and distribution lines would be taxable. The total savings would be seven point five million dollars for the County as a whole. If the City gave the system away and kept the bonds, the taxpayers would still be ahead one point one million dollars. The County would be ahead \$10 million dollars and Indian River Shores would be ahead two million dollars. This totals a savings of \$13 million dollars per year. He felt that this was a better deal than just dropping the transfer.

Ms. Hersey said that Mr. Heran was assuming that they would get FP&L rates by selling the system to them. According to the Commission's orders, they could not. According to FP&L's tariffs, they could not. FP&L must give their benefits to their existing customer base. She said that if the City was going to give away their system, they should give it to themselves with lower rates.

Mr. Heran asked how does that work. He said the City is buying 90% of their power from other people. It was not as if they have a business model that would allow for that. FP&L has a history of being lower than the City of Vero Beach for the past 10 years straight.

Ms. Hersey said FP&L does not have a history of being lower than OUC.

Mr. Heran said OUC was cheaper in 2008, but now OUC is more expensive than FP&L by 21%. He said that OUC is also an unregulated price monopoly.

Ms. Hersey said 27% was not a correct figure.

Mr. Heran said FP&L's rates would be \$101.76 and the City would be \$129.00. This shows that the City would be 27% higher than FP&L unless the City drops their fuel rates between now and then, but they cannot guarantee that FP&L won't drop theirs.

Ms. Hersey said according to the most recent calculations, they would be looking at somewhere around \$121 dollars for the City of Vero Beach and around \$106 to \$108 for FP&L. It was her understanding that in the rate proceedings that has been going on, the Commission looked at the fuel adjustment calculation and determined that the over correction that was estimated to reduce the current rates had to be put back immediately and therefore, the over correction had to be taken out of the calculations. This amounted to over \$4.00 in increase. She said that they were looking at a difference of about \$15.00 of which about \$8.00 of that is a result of the General Fund transfer. She also disagreed with the savings of one point eight million from the City. The City would still have to pay for their Councilmembers. If the City was going to give the system away they should give it to themselves. The result of this would be that the City could set the rates at whatever rate they want and could become competitive.

Mr. Heran showed on the screen the history of residential rates. He said based on the Consultant's numbers, 88% of the City's customers use between zero and 2,500 Kwh. In 2009 the combined average of all customers was 41% higher than FP&L. In 2008 the City was 30% higher, 24% higher in 2007, etc. In the last 10 years there is not one single year the City has been competitive with FP&L. The last six years the City has been 21% higher and will be 27% higher in 2010. He does not call that competitive.

Ms. Hersey understood the calculations that Mr. Heran made. But, the cost of being with FP&L was assuming that they would receive the FP&L rate and that was not accurate. Mr. Heran was missing the costs that the City is obligated to pay regardless if the City keeps or sells the system. She explained that she was talking about the St. Lucie and Stanton One and Two contracts.

Mayor Sawnick felt that Mr. Heran and Ms. Hersey could continue going back and forth all day on this. He appreciated Mr. Heran's presentation and the Council would continue to look at this in future meetings.

Ms. Hersey requested a copy of Mr. Heran's model.

Mr. Heady felt that the debate back and forth was productive and it was good for everyone to listen to the debate. He said that he heard Mr. Heran make some comments and he would like to hear the answers from Ms. Hersey. So rather than cut off the debate between Mr. Heran and Ms. Hersey, he would appreciate hearing it.

Mayor Sawnick felt that it would be hard for them to defend either way without having the model that Mr. Heran presented. He felt that Ms. Hersey should have the opportunity to look at the model and determine whether the numbers were valid or invalid.

Mr. Heady felt that they were experts in the field and should be able to answer the questions from the model presented.

Mr. Wilson pointed out that there were two more City Council meetings before this contract takes effect. If they ever were going to have a discussion about it, now would probably be the time to have it.

Mayor Sawnick was concerned with the model and if it was accurate and if it could be determined today.

Ms. Purcell clarified that the contract has been in effect since April 21st. Mr. Wilson was referring to the turnover date.

Mr. Abell said that they had the presentation that Mr. Heran just gave for some time and it was appropriate for Mr. Sloan and Ms. Hersey to comment on the figures that do not seem to be right.

Mr. Sloan showed on the screen the New Electric Utility Funding Model. He said that Mr. Heran acknowledged that there is apparently very little asset value in St. Lucie and Stanton One and Two going back to the IRS requirements and bond convenience. He was encouraged that they recognized the value of the dirt where the Power Plant is located. What Mr. Heran has not taken into consideration is the transmission upgrades. Anyone who has listened to him during public presentations, he repeatedly talked about transmission constraints. He explained that the City sought an additional 40 megawatts of transmission allocation for future use. FP&L gave a price of \$14.4 million dollars. If the City decides to sell the system, that no longer is future it is immediate. By selling the system, the City would be doing away with the excluded resources of Units 5 and 2, which is approximately 50 megawatts. Therefore, the City would need an additional 10 megawatts. He did not know how much an additional 10 megawatts would cost and this was not addressed in Mr. Heran's model.

Ms. Hersey said there also would be distribution costs for the distribution upgrades that were not included in that study.

Mayor Sawnick said that Mr. Heran agreed to email his model to Ms. Hersey to review and then they would go from there.

Ms. Amy Brunjes of FP&L thanked the Council for inviting them here today. She said that they were here today to listen and learn and to provide any information that they can provide to help the City make the best decision possible for the City. She introduced Mr. Patrick Brien, FP&L Senior Attorney, to the Council.

Mayor Sawnick asked if they would be willing to answer any questions Council may have.

Ms. Brunjes said they would answer any questions they could today and if not they would take the questions back with them and get the answers back to the Council.

Mr. Wilson thanked the representatives of FP&L for attending today's meeting. He asked is this the first time that they have been before the City Council regarding this matter. He asked if they ever have been invited before.

Ms. Brunjes answered that they have not been invited by the City Council, but have been asked by several people in the community. She said that they do not have an interest in being somewhere they are not wanted. She said that they were invited by Council to attend today's meeting.

Mr. Wilson said the fact that they are attending today shows that they have an interest in what happens in Vero Beach.

Ms. Brunjes said that they would help when they could. She said that FP&L serves about 55,000 customers in Indian River County and they certainly would be helpful wherever they could.

Mr. Wilson asked if they have ever been asked if they were interested in purchasing the Vero Beach Utility system.

Ms. Brunjes answered not from Council, but by people in this community.

Mr. Wilson said when discussing complicated things like this they need two things, which were the need and the plan. They have been discussing the plan a great deal about what things stop the City from being able to sell the utility. That is what the discussions have been about. His point blank question is if the City could meet the legal and financial requirements, is FP&L interested in the discussion with the City of Vero Beach, if it is mutually to their benefit, the possibility of purchasing the City's system.

Ms. Brunjes said yes they would be interested.

Mr. Brien said that if the City Council did make a determination that it desired to enter discussions regarding an acquisition by FP&L, they would be interested in sitting down and discussing it. He felt that initially there would need to be an initial assessment made by either FP&L or the City as to if there were any instrumental road blocks. If not, then FP&L would conduct a comprehensive evaluation to study the system, take a system inventory, a condition assessment of the system, try to determine the value and it would have to be a collaborative process and they would only do it if they are asked to.

Mr. Wilson asked does FP&L require a \$300,000 or \$500,000 study to be done before contemplating a potential sale.

Mr. Brien answered no.

Mr. White said the City would have to go to a competitive bid. They could not just ask FP&L if they want to buy the City out. The City cannot choose who they want to sell the system to.

Mr. Brien was not sure that was correct.

Mr. Heady asked if FP&L were to purchase the system, do they know the legal requirements of where to spread the cost. He asked would that strictly be all over the Vero Beach ratepayers or would the cost of the acquisition be spread over a larger base.

Mr. Brien did not know the answer. He said that they were getting farther down the road. He said there could be a number of ways, if any, to structure an acquisition that would make sense for the City and for FP&L.

Mr. Heady said it was his understanding that if anyone were interested that there were some legal requirements that the buyer would pay a fair market value. He said that Mr. Heran mentioned giving the system away in his presentation and as he understood the law, that was not possible. He asked do you know if any buyer would be required to pay fair market value.

Mr. Brien thought that would be the objective. He felt that was actually the City's decision to make. What FP&L would do, if asked, would be to conduct a comprehensive evaluation to determine the value. He said that there would be a number of factors that would go into that equation. There is no way at this point in time that they would know what they were. There were a number of issues that were raised today. That would be the ultimate objective of the comprehensive evaluation. He explained that FP&L would undertake, in cooperation of the City, to arrive at a value that makes sense to both parties.

Mr. Heady asked would there be a cost for that evaluation. He asked if Council said that they were interested in selling the system to FP&L, would they do that evaluation or would they send the City a bill for it.

Ms. Brunjes said it was her understanding that FP&L would do the evaluation and incur the cost. Obviously, it would need to be a serious invitation.

Mr. Brien said if they were to do that, they would need full cooperation from City staff because that is where the information would come from.

Mr. Heady said if the Council were to vote for the evaluation, City staff would give their full cooperation. He thanked the representatives of FP&L.

Mr. Abell explained that the City would have to have a consultant to evaluate the process. He said that this process has been going on for five years and one thing that amazed him was that during this whole process he was not aware of FP&L or anyone trying to purchase the City's transmission or generation facility. He could not imagine that anyone who provides power and is interested in expanding their territory didn't come to the City before now.

Ms. Brunjes explained that FP&L's position was that they would talk about it when asked and invited to the table. They were not interested in a takeover or an inquisition where they were not wanted. They were present today because the Mayor invited them. They are aware of what has been going on.

Mayor Sawnick thanked the representatives of FP&L for attending today's meeting. He said that there is a lot of information being thrown out right now and they are going to look at everything. The contract with OUC takes effect on January 1st and they would go from there.

Mr. White asked as far as selling the Plant, do they have to go out for bids.

Ms. Hersey said as the City's Consultant, she would advise that they go through an RFP process. She said this would be the only way the City would have negotiation leverage and comparative information. In the long term, purchase power supply only makes the City a more viable candidate for a future prospect to take the City over. She suggested that if the City was going to do this that they hire an independent consultant to help the City and to go forward with a process that involves more than one inclusive buyer.

Mr. Vitunac said that the Vero Beach Code makes it discretionary to go out to bid, unless required by State or Federal law. He did not know the Federal law on the sale of power systems.

Mr. Bill Carpenter, President of Rockridge Homeowner's Association, said that he normally receives three petitions per day from people who live in the County that want to get out of the Vero Beach Electric. He said he has about 30,000 people who have signed these petitions. He felt that they needed to see what the people want. He said that he has held meetings in Vero Isles and in several other areas. He said that the residents of the community were concerned that OUC does not come under the PSC. They feel that if the City enters the contract with OUC, it could be good for a few years and then the same thing happening today would happen again.

Ms. Hersey explained that the contract that has been negotiated has fixed demand charge provisions and they cannot change those rates. She said that it is a 20 year contract with a fixed demand charge. In the seventh year OUC has to give the City a project for years 11 through 20. If OUC chooses to modify the demand charge at that time, the City of Vero Beach can terminate the contract.

Mr. Carpenter said that people are asking him questions. He said that the Press Journal showed that on January 1, 2009 the rate would be \$101 per 1,000 Kwh for the City and \$168 per 1,000 Kwh for FP&L. He said that Vero Beach was third from the bottom.

Mr. Abell said that he looked at that ad and felt it was a good thing for Vero Beach because it showed FP&L rate for January 2010, the current rates for the other 30 utilities in the study and there were four or six not included. But, Vero Beach was shown to be the third highest rate at that time. If they take the projected rate for Vero Beach for January 2010, Vero Beach becomes

somewhere between the fifth and the tenth lowest in the State just based upon what the City is going through now.

Mr. Carpenter said that the people saw FP&L at \$101 and Vero Beach at \$168 per 1,000 Kwh, which is a concern to them.

Ms. Hersey explained that what they were looking at was a projected FP&L rate on January 1st verses an existing Vero Beach rate that they know is going to go down. They did not print the City's projected, but the City's existing. She said that the City has done the right thing by getting out of FMPA.

Mr. Carpenter felt that something should be put out by the City to the citizens to help them understand.

Mr. Heady said that FP&L comes under the PSC and that is his concern.

Mr. Carpenter said that is a concern that he has. This is a problem that happened before because of the City not being regulated.

Mr. Sloan said that he has heard that said several times. The truth is for wholesale rates, FP&L is not regulated by the PSC, they are regulated by FERC.

Mr. Heady said the wholesale rates were not really a concern to a ratepayer. What concerns them is the bill that they have to pay every month. Tomorrow the Council is going to have a meeting where they are going to decide whether or not to raise the rate. There is no regulation on that. The five Councilmembers can decide to raise the rate and that is his point. He understood what Mr. Sloan meant by wholesale.

Ms. Hersey said that the City Council government has control and is regulating their own rate. Likewise, OUC is regulating their rate and they pledged no adverse distinction between what they do for their own customers and what they do for the City of Vero Beach.

Mr. Wilson said the lower rate being promised and the comparison that Mr. Abell just made, as he understood it, did not include the 12.5% increase that is being asked of the Council to approve at tomorrow's meeting or does that projection include the 12.5% increase.

Mr. Lee said that the project does include the 12% increase. He explained that right now there is a base charge and a fuel adjustment. The truth is in the base there is \$30.25 worth of what they call bulk power cost adjustment. Bulk power cost is all the items associated with the production, generation, and transmission of electricity. The first thing the City would do is out of the base of \$75.00, they would take \$30.25 worth of bulk power cost and move it over to where it belongs. This will reduce the base rate significantly. The base rate has not changed since 1992. Therefore, there would be some increase in the base and an overall reduction in the fuel, which results in an overall reduction in the bill.

Mr. Wilson asked then why are we spending so much time on base rate when it has not changed since 1992 and yet the City's continual expenses have gone up every year until they are 48% higher. He asked what is the big dependency on the base rate if that is not a protection for the actual person paying the bills. He said the bills to the citizens have changed since 1992.

Ms. Hersey said it is because of the fuel.

Ms. Purcell said that it fluctuates.

Mr. Wilson said the fuel adjustment charge does not include just fuel. It includes legal costs, mistakes, etc.

Mr. Carpenter said that he was not telling the City to get out of the electric business. He asked if the people in the County who are served by the Vero Beach utility can get out of the City utilities, would FP&L take those customers.

Ms. Jennifer Layman, 1205 Scarlett Oaks Circle, said that she was a County resident using City utilities. She thanked the Council for having today's meeting. She wished that they could have done this a long time ago. She said that she had to take off work to attend today's meeting and there were a lot of City customers who could not get off work to attend today. She felt that these meetings should be held at a more convenient time for the citizens. As a County resident, she can control a lot of her bills herself. She could reduce her cable, cancel it, turn off her phone service, etc. She said that the Chambers air-conditioner is set at 73 degrees. She could not run her air at 73 degrees. She can barely afford to air-condition her house at 80 degrees. She said that she previously was an FP&L customer and her electric bills now are higher than what she was paying with FP&L. The comment that was made that the City has not had service outages for over 30 minutes was false because a few weeks ago her power was out for one hour and 20 minutes. She was not present today to say sell. What she wants is a lower utility bill. To say the bill will go down in January was not enough. The City Council has the choice to bring the electric rates down. They could choose not to transfer the money to the General Fund and make it up with ad valorem taxes, which are tax deductible. She said it is in the Council's control to help their citizens. They could take the money that would have gone to electric and spend it in this community. She said that this is hurting all areas of the economy. She asked Council to make whatever decision they need to make to reduce their bills.

Ms. Roseanne Harrington, Vice President of Marketing, Communications and Community Relations of OUC, said that it has been a pleasure to work with the Council and City staff over the past two years on this very important power purchase agreement. OUC takes this seriously and are looking forward to working with the City. This was not their first large scale power purchase agreement. She was involved with the agreement they made with St. Cloud in 1997. She said that has been extremely successful and in fact, in 2003 St. Cloud was so impressed with their relationship that they extended their contract another 10 years. She said that St.

Cloud had the same concerns regarding lowering rates. She said that OUC worked with St. Cloud over the years and the rates are lowering significantly. She said that OUC is the reliable one and they take that seriously. Their foundation has been built on balancing affordability, reliability and environmental stewardship. She said that reliability is a very important issue to a large scale customer. She reported that OUC has been benchmarked the most reliable electric utility in the State of Florida for the past eight years. She said that is why they worked so hard with this power purchase agreement. They worked with staff to not only benefit OUC, but also to benefit the City of Vero Beach and their customers. She said that they do not have any issues with FP&L and in fact they are their partner in the St. Lucie Plant. She invited Council to speak with the City of St. Cloud about their relationship with OUC. She also invited Council to visit their Stanton Energy Center. They looked forward to service the City beginning January 1st.

Mr. Wilson understood that OUC was a fine company. He did not have any questions between the competition between OUC and FP&L. He was concerned about the \$50 million dollar penalty. He asked does other OUC contracts include a \$50 million dollar penalty.

Ms. Harrington said that they do include some type of penalty.

Mr. Wilson asked was the penalty important to OUC. He asked did OUC pick that amount. He asked where did that number come from.

Ms. Harrington said that she was not involved in the negotiations, but it was mutually agreed upon.

Mr. Wilson said that he spoke with a representative of OUC and he was told that the \$50 million dollars was Vero Beach's idea. He asked was that the case.

Ms. Harrington said it was mutually agreed upon. When they talk about a contract of this size they want to have protection on both sides.

Mr. Wilson asked in OUC's contracts with other utilities, is the provision of the penalty always redacted.

Ms. Harrington said it would depend on if there is a confidentiality agreement.

Mr. Wilson asked was this redacted at the request of OUC or at the request of the City of Vero Beach.

Ms. Hersey reported that OUC redacted the contract.

Mr. Wilson said there are four or five ways to deal with terminating this contract. He asked would OUC entertain an amendment that withdraws or eliminates the \$50 million dollar penalty.

Ms. Harrington said that she could not answer that question. The City would need to put that in writing with further details and submit it to OUC.

Mr. Wilson said so the City could put this in writing and request that OUC consider an amendment.

Ms. Harrington explained that any changes to the contract would need to be in writing from the City Council.

Mr. Abell said the \$50 million dollar penalty is there in case OUC invests in facilities in Vero Beach. That is what the primary purpose is.

Mr. Wilson said that Mr. Sloan gave a presentation to Council about one week ago and part of his presentation was that this utility could not be sold because there is a \$50 million dollar penalty.

Mr. Abell said the contract states that some of this would be for reimbursement if OUC puts money into the system.

Mr. Wilson said the fact is that they have something hanging over their heads that is said to be a reason why they can't sell. He was asking Ms. Harrington whether they (OUC) would entertain a change that would allow the City to at least consider the possibility of selling the Plant.

Mr. Heady said a comment was made that the City can't sell the Plant. That was not what he heard. What he heard was that there was a penalty clause that runs both ways. It runs from OUC to the City and from the City to OUC. He asked to be corrected if he was wrong. He asked that anytime he says anything wrong for staff to stop him because he does not want to say something wrong. The accuracy is yes the City could sell the Plant, but there would be a penalty of up to \$50 million dollars. He noted that the contract states up to \$50 million dollars.

Mr. Sloan said Mr. Heady was right on target.

Mayor Sawnick said that they are in the contract at this time taking affect on January 1st. He said that they need to look at all options and for right now this is the option that they are in for x amount of years. He thanked Ms. Harrington for taking the time to meet with the Council today.

Mr. Vitunac felt that the City could sell the Plant as long as OUC agrees.

Mr. White asked Mr. Vitunac if the City does try to sell the Plant what happens with the property it sits on. He said that the City has a Resolution that if the City ever gets out of the utility business the property would be used as Park land.

Mr. Vitunac said those are complications that would have to be worked out and they cannot sell the property without a referendum.

Mr. Peter Gorry, 10 Seagull Avenue, wanted to address what the employee entitlements are and the liabilities contained therein. He said that this would exist whether there is a sale or not. He said that the general pension of the City last year between 2009 and the budget for 2010, the pension fund contribution for electric went from \$888,000 to \$1,308,000, which is a 47% increase. The employee entitlements are the pension funds, other employment post retirement, unused vacation and sick days, and severance is discretionary for up to two weeks at the Department Head level. The City electric has 119 employees in 2009 and has budgeted 113 employees in 2010. If there was a merger or acquisition, issues of costs for employee retirements has to be addressed. He asked if the electrical enterprise is sold, how is the City going to deal with the employee entitlements.

Ms. Bea Gardner said that she was present today to discuss the ungodly rates that County residents were paying for City electric. She stated that 60% of the utility customers live outside the City limits and are paying a higher rate than City residents in order for Council not to have to raise the City's ad valorem taxes. She said that Ms. Hersey made the statement earlier today that she was hired because the City Council recognized the fact that they were not being compensated enough from FMPA. Ms. Gardner said that some of the reason non-City residents got involved in this was because of the work that Mr. Heran and Dr. Faherty did. She asked Ms. Hersey what is enough.

Mr. Abell said the City is charging all residents the same. The way it is figured is a little different. The existing base rate to the City customer is \$7.21 and the outside City rate is \$7.93. The City customer pays a 10% tax on the \$7.21. If they add that 10% tax to the \$7.21 the total amounts to \$7.93. The only difference in what a City resident is paying and a County resident is paying is the six percent County tax.

Mr. Mark Mucher, Indian Lilac Road, said that Mr. Sloan stated that in a three year time frame to sell, but in a five, ten or twenty year not to sell. He asked what is the difference.

Mr. Sloan explained that he was talking about the planning horizon. It appeared to him that their focus was short term. He explained that electric utilities are capital intensive and they cannot make decisions for short terms purposes. If they go back to Ms. Hersey's presentation where they projected FP&L's projected full cost and the OUC, they could see that it started to diverge significantly. What was driving that was that a big part of their power supply cost in this contract is fixed. Therefore, the City knows what their demand cost is going to be.

Mr. Mucher urged the Council not to write a blank check to the consultants. An example was that Mr. Heran was going to send Ms. Hersey his model. He did not think Council wanted to pay her to figure that model out and he did not feel she would do it for free.

Mr. Tonkel had four specific actions to present. First, he felt that it was essential that Council consider requesting a proposal to FP&L, or any other qualified bidder for the purchase of the assets including the models that were ran or any subsequent models provided during the process. He felt that this should be done sooner than later. Second, he asked have you considered establishing a Citizen's Advisory Committee. He felt that there was a wealth of information in this community who would be willing to share with the City's paid consultants and the members of the Council, their conclusions. The ultimate thing would be to find a solution for the 60% of the customers who are not City residents. That has been, up to this point, basically given very little attention by the City Council. Third, they should advocate a public referendum and get this community behind the Council for a solution that will last for a long time. Fourth, he asked Council to consider elimination of the transfer of funds to the General Fund. He felt that this could be part of a remedy and solution that gets the community and 60% of the customers who live outside of the City in support of the Council's actions.

D) City Council Closing Remarks

Mayor Sawnick said years ago the City recognized that the FMPA contract was not a good contract and exited it. The City entered into a new contract with OUC that will take effect on January 1st and until they see the first bill they will not know how much the bill will be lowered. He appreciated all the comments made during today's meeting. He felt that they needed to keep all options open and be flexible.

Mr. Abell thanked everyone for attending today's meeting. He said that there will be information in the utility bills that would indicate what their usage might be. He said that the rates are going down and the reason the base rate had not been raised since 1992 could be because past Councils or City staff might not have wanted to get involved with raising rates. It was agreed that this is a process that they would go through every three to five years (rate study). He felt comfortable with what's happening and felt that the contract with OUC was a very good contract.

Mr. White said for every action this Council does, there is a reaction. He hoped that what they did over the past years was the right action. He said that FP&L pays their stockholders 12% dividends and they pay millions of dollars to lobby our Legislature. He reported that the City of Vero Beach puts five point four percent back into the General Fund, which pays for the Parks, beaches and recreation. He said that 70% of County residents use the City's Recreation Department. He said that Vero Beach had record breaking days this year (heat). He said that he has a business and a home in the City and yes, his utility bills are outrageous. He said that if someone wants to talk with a Public Service Commissioner they would have to go to Tallahassee and they can't vote for a Public Service Commissioner. He said the City Council does listen and are trying to be fair. They have worked very hard to get the rates competitive. He said that they need to look at the cons for selling the Plant. If they do sell it, they need to look at what it is going to cost. He said that they have to stop and look at it to see what the total cost is going to be. He felt confident that they made the right decision.

Mr. Heady said one of the things that used to drive him crazy was listening to Councilmembers thanking everybody under the sun. Having said that, he thanked Mayor Sawnick for running today's meeting the way he did. He felt that it was a wonderful change from what they have seen in the past. He said it was great to have the interaction between the Council and the public. He only expected that the Mayor would continue this and if he does, he would be a happy camper. He also thanked FP&L and OUC for being here today and presenting things to him that he felt was interesting. He thanked Mr. Heran and Dr. Faherty for all their hard work, whether he agrees or disagrees with them. He also thanked the public for attending and the press for their coverage. In moving forward they need to look at the value of Mr. Heran's model. He did not think they needed to spend money on the consultant that Mr. Mucher spoke about. They need to have a meaningful dialog with FP&L with respect to whether or not there is an opportunity there. He did not know if it would automatically trigger any kind of penalty because someone made the comment that FP&L could buy the contract with OUC. Clearly one thing they need to do is immediately do something with the electric rates and he hoped today's meeting started that. When he was informed of this meeting he was told that there was no backup so he requested documents from the City Manager, which was provided to the Council (on file in the City Clerk's office). Between all the documentation that Council received and the presentation made today he still was unsure about the St. Lucie and Stanton One and Two and their assets. He did understand how they are locked, but there are still some questions regarding the original cost and debt structure and where the City is on that debt in terms of amounts. He hoped that the City Manager could provide that information. He was a lot more hopeful at this moment that they are looking at lower rates whether with OUC or FP&L. He felt that the message was clear that they need to do something sooner rather than later and he thought this was the beginning. He thanked the public for a tremendous attendance at today's meeting.

Mr. Wilson thanked Mayor Sawnick for allowing this meeting to go forward. He thanked the representatives of FP&L for attending today because they waited a long time to say their piece. He said there were a few questions remaining and he looked forward to working with them in the future. If they have not been asked before, he is asking now. He hoped that they would be able to get the Council to understand, at least the need, of that alternative. He also appreciated OUC for attending today's meeting along with the citizens who spent today away from work to attend. There were a few things he learned today. One was that he does not agree or subscribe to the fact that they are in an unalterable contract with OUC. There are specific things in that contract that allow changes and specific things in the contract that allow challenges. Therefore, he does not subscribe to the theory that there is nothing that they could do because this contract exists. There are still things they can do. He was dismayed that the Council didn't know that they had to ask FP&L. They have been going through this for six years looking at a two billion dollar contract and it never occurred to anyone to ask FP&L. He was dismayed that the sale option was never truly considered. This Council and previous Councils were guided away from this particular alternative that so much information shows that it was at least worth consideration. He didn't understand how, in the presentation from the Consultant, that she could list the six options in 2006 and in one of those options states a substantial one time financial gain. Now all of a sudden there is no gain. He asked how did we

get so much worse. He felt that there was credible evidence that there is an alternative that was not considered. He felt that there was also credible evidence that disturbed him about the reason that this was not considered and the reason it was not considered was because rule number one was never get smaller. The option of smaller government was not even mentioned today. It is a good and viable option and he felt that they were steered away from the option of selling the Plant for the benefit of government employees to the detriment of citizen and rate payers. He agreed that the main thing they have to do is get the support of the citizens because they don't have it now. They are in a customer revolt and they (the customers) have the right to revolt. He felt that they needed to pay more attention to their ratepayers. In reality the way you run a business is to have happy customers. Over the next couple of weeks he will be asking staff and the City Attorney some pointed questions on how we got here. Not to point the blame, but to see what they can do from here. Whatever the reason, they can't keep paying these rates. The bottom line is they keep promising that the rates will go down and he is hopeful they will go down, but will it ever be competitive. If they can't be competitive they need to get out. If Council makes the decision that they need to get out or consider the possibility of getting out, then they can discuss how to get out. He said that he was going to ask for the support of Council at an upcoming meeting to take the steps necessary to consider a sale at the earliest legally available time.

Mayor Sawnick thanked everyone who participated in today's workshop.

3. ADJOURNMENT

Mr. White made a motion to adjourn today's meeting at 2:32 p.m. Mr. Abell seconded the motion and it passed unanimously.

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