

**OFFICE OF THE CITY COUNCIL**

117 WEST DUVAL STREET, SUITE 425

4TH FLOOR, CITY HALL

JACKSONVILLE, FLORIDA 32202

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**Special Committee on the Potential Sale of JEA Meeting Minutes**

**March 22, 2018**

**3:30 p.m.**

**Topic:** Potential sale of the JEA

**Location:** City Council Chamber, 1st floor, City Hall – St. James Building, 117 West Duval Street

**In attendance:** Council Members John Crescimbeni, Danny Becton, Anna Lopez Brosche, Joyce Morgan

**Excused:** Council Member Garrett Dennis

**Also**: Council Members Greg Anderson, Jim Love, Al Ferraro, Lori Boyer (arr. 5:13); Peggy Sidman, Stephen Durden and John Phillips - Office of General Counsel; Kyle Billy and Phillip Peterson - Council Auditor’s Office; Staci Lewis and Adri Segui – Legislative Services Division; Jeff Clements – Council Research Division; Sam Mousa – Mayor’s Office

**Meeting Convened**: 3:31 p.m.

Council Member Crescimbeni called the meeting to order and the attendees introduced themselves for the record.

Council Auditor Kyle Billy made a presentation on the application of the City’s franchise fee and public service tax (“utility tax”) to customers’ JEA bills showing which elements of the bill are subject to the fees and which are not. The City charges the state maximum 10% utility services tax and levies a 3% franchise fee of the 6% authorized by the state. Mr. Billy agreed to clarify with JEA the basis on which the franchise fee is collected with regard to the maximum $2.4 million charge per customer and e-mail the committee with the answer. He then presented data on the last 10 years of history of the annual JEA contribution to the City pursuant to the contractually negotiated calculation on water and electric sales. The contract provides for the payment to be the greater of a millage calculation applied to annual sales or a guaranteed minimum growth rate, whichever is greater each year. A 30-year historical report showed the changes over time in the millage rate used in the calculation (ranging from 4.5% in 1978-79 to 7.468% currently) and in total contribution revenue (from $25.7 million on electricity only in 1978-79 to $116.6 million on electricity, water and sewer in 2017-18). Chairman Crescimbeni asked the Auditor’s Office to do a CPI calculation on the annual contribution from a base year of 1978-79 and to calculate the amount of adjustment on the basic residential rate that would be needed to recoup the amount of the JEA contribution should the JEA choose not to pay the contribution out of its operating revenues.

Principal Auditor Phillip Peterson reviewed a JEA Free Cash Flow Schedule for the past 10 years. In some years the free cash flow was negative and the deficit was made up by either borrowing or drawing on reserve funds. In other years the free cash flow was positive and the funds were used for early retirement of debt or deposited into a reserve account for future expenses. Council Member Becton asked for information on JEA retained earnings, which will be presented at a future meeting. He is interested in the JEA’s balance sheet over 10 years and their investment practices.

Mr. Billy reviewed his office’s Special Report #807 – Potential Sale of JEA: Things to Consider. The report estimated a potential gross sale amount of between $7.5 million and $11 million and a net proceeds amount (after payment of debts, pension obligations, Plant Vogtle obligation, environmental liabilities, etc.) of between $1.7 billion and $5.2 billion. The report discusses a variety of potential uses for the net proceeds of a sale, including replacing the JEA’s annual contribution to the City General Fund, paying down accumulated pension liabilities, and setting aside a portion of the proceeds to generate a dedicated revenue stream (i.e. investing in 30-year Treasury bonds). He cautioned that net proceeds from the sale should *not* be used directly as a revenue source to replace the missing JEA annual contribution. In response to a question from Council President Brosche, Mr. Billy explained that the value of improvements currently on the St. Johns River Power Park property (but not the land) and the value of the JEA headquarters tower (but not the land on which it sits) were deducted from property tax estimation of what a private utility would pay after a sale. Mr. Billy will check with the City Treasurer to determine the exact cost to pay off all City debt, including any pre-payment penalties that may be incurred.

Council Member Morgan suggested the need to perform additional calculations to determine potential sale proceeds and net revenues from sale of the electric and water and sewer operations separately.

Mr. Billy reviewed a list 18 items of additional JEA contributions to the City, ranging from $3.6 billion invested in the water and sewer system since it was transferred from the City to JEA to assistance with issuing variable rate debt for City projects to contributions to investment in water and sewer installations and septic tank phase-outs to electric rate discounts for large not-for-profit users (including the City, Duval County Schools and U.S. Navy). In response to a question from Council Member Becton, Mr. Billy agreed that several of the listed items would involve additional City expenses if JEA ceased to provide the service or if a new owner did not provide a similar discount. Council Member Anderson asked for a calculation of the potential liability the City would incur if it no longer received JEA’s excess water quality credits at no cost and had to purchase those credits on the open market. Council Member Morgan felt that JEA employees contribute large numbers of volunteer hours to worthy causes that have a substantial, though uncalculated, value. Council President Brosche suggested the need to calculate the economic impact of JEA utilizing local businesses, particularly small and minority businesses. Council Member Love asked for a 10-year history of JEA rates versus investor owned utility rates in Florida to compare costs to residential users. Council Member Becton suggested that JEA be requested to poll its employees for examples and amounts of community volunteerism.

Mr. Billy reviewed a list of 20 “Other Considerations” that may impact on consideration of a potential sale, ranging from the ineligibility of investor-owned utilities to receive FEMA reimbursement for storm damages, to the pledge of a portion of the JEA contribution to Jaxport’s bonded debt, to the degree of local influence that can be exerted on the utility’s operations, to the potential impact on the City’s General Employees’ Pension Plan if JEA employees are removed from that plan. Mr. Billy then reviewed a list of 3 benefits to the City of selling JEA and 6 benefits to keeping JEA. He explained an appendix to the report showing how privatization of JEA and an allocation of newly collected property taxes on an investor owned utility would impact the School Board’s budget. In the current fiscal year a private utility’s property taxes would produce an additional $8 million in school funding for capital uses and an additional $26.7 million in operating funds, which would be offset by a $26.7 million reduction in state funding for school operations due to the state school funding formula that reduces state funds as local revenues increase. The net result would be no increase in operational funding and $8 million additional capital dollars.

Mr. Billy reviewed two sets of recommendations – 3 recommendations if the decision is to sell the JEA and 1 recommendation (with 7 sub-parts) if the decision is made to keep the JEA.

The committee was in recess from 5:31 to 5:36 p.m.

Council Member Morgan asked the Auditor’s Office to provide the committee with a breakout of separate electric and water/sewer valuations in the $7-11 billion gross sale price estimates discussed earlier.

The committee requested the Auditor’s Office to provide information about the value of JEA’s assets in St. Johns and Nassau counties, over which those counties have the first right of refusal to purchase should JEA be sold. The also requested a calculation of the JEA’s economic impact on the City as determined by the Office of Economic Development’s return on investment calculation were the JEA to be a company the City was trying to attract to town. With regard to investor owned utilities successfully appealing their property valuations to the county Value Adjustment Board, the Council Auditor’s Office was asked to research whether property appraisers during the next year kept property valuations at the same, lower level set by the VAB or if they raised the assessed values again.

Deputy General Counsel Peggy Sidman stated that committee’s subpoena was executed on March 20th and served March 21st to JEA CEO Paul McElroy to appear at the committee’s meeting on March 29th. She reviewed the information requested of Mr. McElroy in the subpoena. John Phillips of the General Counsel’s Office was introduced as the committee’s advisor for the proceedings involving subpoenas and testimony under oath at future meetings. In response to a question from Chairman Crescimbeni, Mr. Phillips said that he expects General Counsel Jason Gabriel to certify the need for public officials subpoenaed to testify to be represented by legal counsel other than the General Counsel’s Office. Each agency will be responsible for their witnesses’ attorneys’ fees and funds will need to be allocated accordingly. He reviewed the process for questioning a witness compelled to appear under subpoena and explained the need for asking very specific questions to obtain the desired information. In response to a question from Council Member Anderson about how closely the questions must agree with the wording of the subpoena, Mr. Phillips said that questions can be fairly broad in scope as long as they are relevant to the topic of the sale of the JEA. If the witness or his attorney objects to a particular question, he will advise the committee on how to overcome the objection.

Council President Brosche reviewed the work of a subcommittee that met in a noticed meeting last week to discuss with the Jessie Ball duPont Fund its offer to help fund an expert consultant to the Special Committee. Sherry Magill, the President of the Fund, is exploring several options for acquiring the services of such a consultant and will report back by next week.

Public Comment

Raymond Oland, IBEW Local 2358, thanked the committee members for attending the JEA board workshop yesterday and thanked Council Auditor Kyle Billy for his report. He expressed his disappointment that several council members scheduled a noticed meeting on the JEA sale in City Hall opposite the JEA board meeting, making it impossible to attend both. He also expressed disappointment that the special committee decided not to swear in all persons giving testimony. Mr. Oland said that JEA employees volunteer countless hours to community causes and has a huge economic impact on the city.

Andy Johnson said that every witness appearing before the committee needs to be sworn in and specifically asked if a JEA sale would in any way benefit themselves or their family members or business associates. He said that City Hall is now less accessible than it was a few years ago because of a lack of handicapped accessible parking immediately adjacent to City Hall. He said that selling the JEA makes no sense and that if a sale is considered, then all City assets should be considered for sale as well.

Chris Howard said he did not understand how the PFM valuation could look at the fact that JEA’s electric and water sales have been declining in recent years and produce the potential sales values it projected. He questioned the attractiveness to interest of investor owned utilities of a system with declining sales.

Council Member Boyer asked for further research on whether the proceeds of a sale could be deposited into a permanently restricted account, since an OGC opinion during the discussion of pension reform options said that current City Councils could not bind the actions of future councils.

Future items

* CPI calculation on the JEA annual contribution from 1978 to present
* Amount of basic residential rate adjustment that would be needed to make up for JEA not making the annual contribution out of its operating budget
* Separate out the electric and water/sewer valuations in the $7-11 billion gross sale price estimates
* JEA balance sheet over last 10 years
* Check with Treasury about exact cost (including pre-pay penalties) to pay off all City debt
* Calculation of the value of JEA’s 30.34 excess BMAP water quality credits
* Economic impact of JEA’s use of local businesses, particularly JSEBs, and compare with the City’s JSEB record
* 10-year history of JEA rates versus investor owned utility rates in Florida to compare costs to residential users
* Calculation of the value of JEA employees’ community volunteerism
* Check if IOUs’ extra fees for storm recovery costs are included in their base rate
* How much would St. Johns and Nassau counties have to pay to purchase the JEA assets in their jurisdiction?
* Chairman Crescimbeni will distribute the “play book” being used by IOUs to defeat proposals to municipalize private utilities
* Auditor’s Office to check on whether IOUs prevailing in VAB challenges to property valuations got the lowered valuations the next year or if property appraisers raised the values again
* What is the Office of Economic Development’s return on investment calculation if it was attempting to attract JEA to move to the City?
* Council Member Boyer requested an OGC opinion on whether the current City Council can bind the actions of future councils with regard to use of JEA sale proceeds

Next meeting – March 29th at 2:00 p.m.

**Meeting Adjourned**: 6:00 p.m.

Jeff Clements, Council Research Division

3.26.18 Posted 2:30 p.m.