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RESEARCH DIVISION**

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**CITY COUNCIL FUTURE OF JEA WORKSHOP MEETING MINUTES
Lynwood Roberts Room, 1st floor, City Hall**

**November 25, 2019
11:00 a.m.**

Location: Lynwood Roberts Room, 1st floor, City Hall – St. James Building; 117 West Duval Street

In attendance: Council Members Michael Boylan (Chair), Danny Becton, Aaron Bowman, Matt Carlucci, LeAnna Cumber, Randy DeFoor, Garrett Dennis (by telephone), Al Ferraro, Terrance Freeman, Tommy Hazouri, Joyce Morgan, Sam Newby, Ju’Coby Pittman (arr. 11:46), Brenda Priestly Jackson, Ron Salem, Randy White

Excused: Council Member Scott Wilson

Also: Peggy Sidman – Office of General Counsel; Kyle Billy, Kim Taylor, Heather Reber, Jeff Rodda – Council Auditor’s Office; Jeff Clements – Council Research Division; Steve Cassada - Council Staff Services; Cheryl Brown – Council Secretary/Director, Sherry Hall and Ryan Wannemacher– JEA; Carla Miller – City Ethics Officer; Jordan Elsbury – Mayor’s Office

Meeting Convened: 11:01 a.m.

Council Member Boylan called the meeting to order and the attendees introduced themselves for the record. He thanked the council for their attendance and their interest and participation in the workshop process. He encouraged the general public to access the workshop’s numerous documents and presentations on the JEA Workshop page of the City Council web site. He said that today’s workshop is all about historical perspective.

Follow-up items from previous meeting

A memorandum from the Office of General Counsel was distributed addressing several questions raised by the council at the last workshop regarding City Council access to the work of special outside legal counsel engaged by JEA and the ability of JEA to initiate exploration of a potential sale of the utility absent prior approval of City Council. A memorandum from Jeff Clements of the Council Research Division was distributed regarding the requirement for voter approval of a sale of more than 10% of JEA’s assets. Chairman Boylan said that JEA had sold 4 items valued at \$62,000 in the last year, and a

parcel of property on Atlantic Boulevard is pending a sale. Council Member Carlucci asked about a parcel of land on the Westside proposed to be used for a solar farm.

Review of Public Financial Management's February 2018 Report: "The Future of JEA: Opportunities and Considerations"

Kerri Stewart, Chief Customer Officer of the JEA, said the JEA embarked on a 10-year strategic plan earlier this year, part of which involves a look back at significant events in JEA's history. Significant factors include: 1) debt out of control from borrowing in the 2000s to keep rates under control; 2) the Energy Policy Act of 2005 changed the nature of the electric utility industry with new energy efficiency requirements for appliances and lighting; 3) diversification of the power portfolio was accomplished with a purchase power agreement with the Plant Vogtle nuclear power plant under construction in Georgia, which has been extremely costly even though no power is yet being produced; and 4) massive federal stimulus and subsidy for solar power development. JEA is in relatively good condition now, but is looking at trends over the next 10 years. A decision is anticipated in March 2020 on implementing one of 5 options: 1) maintain the status quo; 2) traditional utility response (raise rates, cut employment, seek new business lines); 3) become a customer owned utility; 4) initiate a public stock offering; or 5) utilize the results of the current Invitation To Negotiate to sell the utility to a private operator.

Ms. Stewart introduced Michael Mace, Managing Director of Public Financial Management (PFM), to give an overview of his valuation report to JEA from 2018. That report was requested by the JEA board to evaluate JEA's position in the marketplace and its potential value to a third party. The report was not intended to drive a recommendation to sell the utility but to provide a sense of its value in the marketplace. At the time of the report, utility stock prices were high and interest rates were low, and both of those measures have continued those trends for the past year. Investor-owned utilities value growth and there has been little organic growth in sales to current customers due to conservation and energy efficiency measures. There are fewer investor owned utilities (IOUs) in the marketplace due to mergers and acquisitions, and now IOUs are looking to the municipal marketplace as a way to purchase expanded territories and customer bases. JEA is an attractive acquisition candidate due to its strong cash flow and financial position, its debt reduction pattern in recent years, and an attractive customer base and asset mix in a growing part of the country. Mr. Mace discussed several valuation methodologies, starting with the discounted cash flow projection model that is the industry standard, which is then tested and verified with evaluations of company earnings, cash flow multiples, and price/earnings ratios. The implied transaction value of JEA in 2018 was \$7.5 to \$11 billion prior to any payoff off JEA's debt and meeting other financial obligations. He believes that market conditions since 2018 have likely increased that value somewhat. JEA has \$3.4 billion in debt that would need to be eliminated, along with a potential \$1.2 billion for JEA's portion of Plant Vogtle's net present value debt, and \$100M in interest rate hedges that would need to be terminated. He estimates net proceeds from a sale, after all adjustments, at \$3 billion to \$6 billion, and possibly more.

The PFM report listed several important considerations to the City from a potential sale of JEA: 1) future utility rates would be regulated by the Florida Public Service Commission, not the JEA board; 2) transition of JEA employees to new employer and retention of key employees; 3) change in the nature of JEA's financial value to the City – annual contribution ends, property taxes begin (including a portion to the public schools); 4) local economic impact of a large employer headquartered in the city and partnerships with the city; 5) execution complexity with regard to combined real estate and rights-of-way, Plant Vogtle, etc. 6) private utilities are not eligible for FEMA reimbursement for natural disaster damage. Mr. Mace said a JEA sale would be a complex undertaking, one of the biggest in the public utility world, and actual proceeds would depend on market conditions at the time of the sale.

Council Member Salem requested further information from JEA about when the utility borrowed to pay operating expenses. Ms. Stewart will provide that information. In response to another question from Mr.

Salem about whether PFM had looked at pension costs and retention bonuses and their impact on a potential sale, Mr. Mace said they had not, but could do that if asked.

Council Member DeFoor noted that the PFM report says consensus and commitment are needed for a sale process, and that a *pro forma* and rate projections are needed to inform the process. Mr. Mace agreed those are necessary items. Ms. Stewart said the JEA has consultants working on those things and will report their finding in the future. In response to another question from Ms. DeFoor about whether PFM has previously done valuations for public utilities, Mr. Mace said they had, but none of the utilities for which valuations were done have gone to a sale.

In response to a question from Council Member Bowman about hybrid models where a municipal utility either owns or runs the utility with a private partner, Mr. Mace gave the example of a private management contract in place at the public Long Island Power Authority in New York, but he doesn't know of an example of the first hybrid model.

In response to a question from Council Member Ferraro about what caused JEA's debt to increase so substantially in the mid-2000s, Ms. Stewart said that a lot of it had to do with water and sewer expansion costs, along with increasing operating expenses. In response to another question by Mr. Ferraro about why the St. Johns River Power Park was decommissioned, Ms. Stewart said that JEA had too much electrical generating capacity for the declining demand and the plant was too expensive to maintain compared to other options. Mr. Ferraro said he was under the impression when he was Chair of the TEU Committee at the time that the plant was going to be sold to another utility and continue generating power. He expressed a desire for the JEA to have one spokesperson/point of contact for the City Council so that the Council will hear only one official position from the JEA throughout this privatization consideration process. Ms. Stewart said that she would work with the Council President and the workshop chair to make that happen.

In response to a question from Council Member Morgan about why she had called options 1 and 2 the "fallback position" in her earlier remarks rather than considering them as the starting point, Ms. Stewart said that those options are the status quo position if no changes are made to JEA's structure and operations. Ms. Morgan asked about the source of the \$15 million for septic tank removal that JEA contributed to the City recently. Ms. Stewart said it was a portion of the proceeds from with the sale of the Southside Generating Station property downtown. The property sale proceeds were not used to defease JEA debt.

In response to a question from Council Member Cumber about whether the consolidation of utilities nationwide is generating efficiencies and cost savings, Mr. Mace said he hasn't done any research in that area.

Council Member Dennis asked why, if JEA is an attractive acquisition candidate, the status quo isn't a viable option. What has changed that causes the desire to consider privatization? Mr. Mace said JEA is currently in a strong financial position and changes in the last few years in the utility industry and interest rates make it a more attractive acquisition target to IOUs than it was previously.

In response to a question from Council Member Hazouri about whether JEA is considering the hybrid model with public ownership and private management, Ms. Stewart said it could be proposed through the ITN, but that wasn't specifically requested. Mr. Hazouri said PFM should go back over its 17 years of financial advice to JEA to be sure nothing got left out of their analysis (debt, pensions, Plant Vogtle, etc.) that would be important to the decision making process. Mr. Hazouri asked if the Orlando Utilities Commission has considered privatization; Mr. Mace said PFM has been a financial advisor to the OUC and has not been part of any consideration of privatization there.

In response to a question from Council Member Priestly Jackson about when public and private borrowing costs equalized and become competitive with each other, Mr. Mace said over the last 5 years because of extremely low interest rates making the two types of borrowing are relatively compressed and the public utilities have less of an advantage than before. Ms. Priestly Jackson asked for more details on what that compression means in financial terms. She stated that the PFM report did not place values on many things JEA offers the community (employment, pension benefits, FEMA reimbursements, etc.) and those values are needed for a true valuation report.

In response to a question from Council Member Becton about the current status of PFM's work with JEA, Mr. Mace – they are still JEA's financial advisor, primarily with regard to debt issuance. They've had no involvement in the ITN or privatization discussion. In response to another question from Mr. Becton, Mr. Mace said nationwide there are approximately 2,000 public utilities serving 15% of the country's electric customers and about 40 IOUs serve 75% of customers; the remaining 10% of electric customers are served by about 1,000 cooperatives. In water and wastewater the public/private ratios are reversed. Mr. Becton asked for examples of municipal utilities privatizing in recent years. Mr. Mace said there have been no municipal utility privatizations of the scale of JEA that would be comparable. The Vero Beach municipal utility, much smaller, was recently sold, and there is the Long Island Power Authority mentioned earlier with its public ownership and private management contract. He noted that 10-15 years ago the valuation process was simple and municipals had the borrowing advantage of tax-free bonds; now that the costs of municipal and private borrowing are so close, the question of privatization will come up more frequently and will be more complex to value.

Council Member Carlucci said that natural disasters are inevitable and becoming more frequent and the availability of FEMA funds to repair damages will be vital in doing a proper valuation. He has called several municipal utilities and found that none of them are considering privatization. Mr. Mace said that privatization is a trend across the country in government, but not in the utility field as of yet. It may become more common due to changing trends in the utility industry. Mr. Carlucci asked who started the JEA privatization study process, and if City Council was involved at all Mr. Mace said PFM got involved in its valuation study when JEA's then-board chair told management to undertake a study of the utility's value. Mr. Carlucci said JEA's response to customers after natural disaster is probably much better than that of IOUs because they are getting so big and are spread so thin as they expand their territories.

Review of Council Auditor's March 2018 Report: "The Potential Sale of JEA: Things to Consider"

Council Auditor Kyle Billy discussed his report from 2018, noting that JEA has contributed to the City's General Fund every year since consolidation in 1968, both in the form of a contractual contribution formula and in other ways. The negotiated contribution formula creates certainty in the City's budgeting process from year to year. The current year contribution to the City general fund is \$118.8 million and the current agreement provides for a minimum 1% increase each year. If JEA was sold, it would create a hole in the City budget because the City would no longer receive the contribution. His staff evaluated what a private utility might pay in ad valorem taxes and came up with an estimate of approximately \$60 million. That amount of taxes would still leave a hole in the City budget. Mr. Billy then discussed possible ways to fill the budget hole. For example, proceeds from a sale of JEA could be used to pay off all City General Fund-supported debt saving \$90 million per year in debt service; pay down the City pension liability thereby reducing annual pension payment costs; or invest the proceeds from the sale to create a permanent revenue stream to the City. He cautioned against using one-time funds to pay recurring expenditures. Mr. Billy discussed the variety of other contributions the JEA makes that have value to the City, which include: 1) transfer of water and sewer system to JEA in 1997 which got an EPA administrative order against the City for sanitary sewer overflows lifted in 1998; JEA has invested \$3.6 billion in water and sewer facilities since 1997; 2) the City gets a JEA financial contribution on water and sewer that it didn't get when the City ran the system; 3) JEA saved the City money on the River City Renaissance Program in the 1990s by guaranteeing a maximum amount of interest the City would have to pay on the variable rate

bonds issued for the Program; 4) In 2001, JEA purchased the private United Water utility and lowered rates for its 36,000 customers; 5) the City and JEA have entered into joint project agreements to do work in roads simultaneously to avoid overlapping construction costs and multiple traffic disruptions; 6) JEA has an economic development rate rider to help attract companies; 7) JEA made a \$53 million infrastructure investment in Cecil Commerce Center to jump start economic development at that facility; 8) JEA made \$20 million in conservation lands purchases in conjunction with the Preservation Project; 9) JEA built chilled water systems for the Courthouse, Main Library, Arena, and Baseball Grounds to help the Better Jacksonville program meet budget for these facilities; 10) JEA has contributed \$30 million for septic tank phase-out; 11) JEA contributes nitrogen credits for BMAP compliance; 12) JEA gives the City Solid Waste Division a discounted leachate disposal rate at Buckman Treatment Plant; 13) JEA is eligible for FEMA reimbursement on storm damage, whereas private utilities have to impose surcharges on their customers to recoup the costs of storm damage; 14) JEA is a large, locally headquartered company; 15) JEA prioritizes restoration of power to sewer lift stations after storm power outages. He noted that the Duval County Schools would not receive as much of a benefit from ad valorem taxes as one might think because of the state's school funding formula that reduces the state appropriation for operations when local revenues increase. They would get some additional capital funding, perhaps \$8 million per year.

Council Member Becton asked if City Council can actually set aside funds permanently in a "lock box" that would bind future councils. Mr. Billy said that's a legal question and subject to state law changes. Chairman Boylan will have the Office of General Counsel address that question at a future meeting.

Council Member Priestly Jackson said that combining PFM and the Council Auditor's report gives a fuller picture of JEA's total value to the community. She asked if the Auditor's Office had ever gotten 30 day advance notice from JEA about their desire to start recapitalization activities as required in the City Charter. Mr. Billy said that he does not recall getting any notice, but needed to check thoroughly. His office gets the JEA board packet and there might have been something in there that could possibly be construed as "notice" – that would be a legal question. Ms. Priestly Jackson said she thinks the notice requirement has not been complied with and the whole process may be invalid from the start. Chairman Boylan will ask Kerri Stewart to address that notice requirement at the next meeting.

Council Member Hazouri said he wants to hear from the OGC about the prior notice issue and whether the process has been proper. He wants the information the Council is getting during these workshops about JEA's intangible values to be sent to the 9 ITN proposers so they can factor that into their proposals.

In response to a question from Council Member Cumber about who sets the JEA contribution formula, Mr. Billy said City Council does; the current contract extends through 2023. Ms. Cumber asked what happens to the contribution formula if sales continue flat or lower and the formula contribution keeps going up; at what point do rates need to go up to cover the contribution or does the contribution need to decrease? Mr. Billy said JEA is paying down its debt and should be able to continue the 1% minimum contribution increase each year without too much problem; fuel costs, debt service and payroll are all bigger factors in the JEA budget than the City contribution.

Council Member Morgan said JEA is an invaluable resource in the community for many reasons. She asked where IOUs would get the money to purchase the JEA – wouldn't it all come out of consumer rates? Mr. Billy said that IOUs need to make a fair rate of return and pay dividends to their shareholders, and the source is customer rates.

Council Member Ferraro asked Mr. Billy to confirm his statement that JEA can continue to make the contribution without rate hikes. Mr. Billy said he believes that to be the case; the City contribution alone won't be the reason for a rate hike. He related that when current JEA CEO Aaron Zahn was interviewing

for the position a year ago, in response to a question about “what would success look like 10 years down the road”, Mr. Zahn said that JEA could double its contribution to the City. He cautioned against an irrational opposition to any rate increases because most everything gets more expensive over time.

Council Member Bowman asked about the Auditor Office’s involvement in JEA’s financials and audits on a day-to-day basis and questioned how the City is informed about what’s going on at JEA apart from reading the JEA’s board meeting materials. Mr. Billy said he is the internal auditor for the City and its authorities. Ernst and Young is JEA’s independent auditor. Mr. Billy stated that his staff does find things out during audits, but usually, they call or email JEA to ask for information when they need it.

Council Member DeFoor asked about JEA’s current debt level; Mr. Billy did not have those numbers with him. Ms. DeFoor noted that JEA is paying down debt at an increased rate using an available pot of \$1 billion of cash reserves. She asked who controls JEA rates and Mr. Billy responded that it is the JEA Board. Should a private entity take over the utility, rate decisions would be made by the Florida Public Service Commission.

Commissioner Salem noted that there are interlocal agreements with Nassau and St. Johns Counties giving them a first right of refusal to purchase the systems in their jurisdiction and asked if there have been any discussions along those lines yet? Mr. Billy said some contact has been made and JEA could provide further details. Salem wants that subject on a future workshop agenda to hear about the intentions of those counties with regard to potential privatization.

Remarks by Mayor Lenny Curry

Mayor Curry said the work of the City Council is critical to the City’s future. He said the City is at a crossroads with regard to JEA, which faces fundamental change in the utility market and has an uncertain future. The business model and regulatory framework of JEA are unchanged since consolidation 50 years ago while the world is changing rapidly around it. The process of exploring alternatives is good business and vital to the future of the community. Declining revenues with increasing customers is not a sustainable business model. He noted the first customer has left JEA for total reliance on solar power and battery storage, and that’s a future scenario JEA needs to face. The mayor said he believes that a government run utility monopoly does not serve the best interests of the community in the long term. The City needs to fully examine all possibilities and let JEA go through its strategic planning process in a public forum. The process in recent months has been frustrating and controversial, but he has great trust in the JEA board and the City Council to engage in a thorough process and come to a good result. The JEA board will make a recommendation for a course of action in the spring and the Mayor and Council will deal with it then, followed potentially by a public referendum depending on the recommendation. The process of considering options can’t be abandoned because it’s hard, and everyone needs to overcome the negativity and conspiracy theories surrounding the issue and get on with business. He and his staff are available to answer questions and assist the Council whenever possible.

Review of the City Council’s July 2018 Final Report: “Special Committee on the Future of JEA”

The presentation was postponed to the next meeting due to lack of time.

Public Comment

Michael Ward – speaking today as a private citizen today, not representing the Jacksonville Civic Council of which he is a member. He was shocked and disappointed by the revelation of JEA’s Performance Unit Plan (PUP) and believes it is an outrageous violation of the public trust. JEA employees stand to reap windfall gains from a sale of the utility. He called for an immediate end to the flawed Performance Unit Plan and for the JEA board and management to be replaced.

Jake Godbold – the former mayor said that in 1980 JEA had the second highest electric rates in the country because of fuel costs (total dependence on oil) and that was the primary issue in his mayoral campaign that year. He and his team explored every possible option for alternative fuels and brought down the costs when they were in office. He was offered a deal to sell the JEA when he was mayor and refused it because the community opposed it. The community is equally incensed today about the proposal to sell the utility. One good thing to come out of this experience is to unite the community in its opposition. He urged that a good board and management be appointed to run JEA properly, not sell it off.

James Tilley – opposes the sale of JEA and supports the pending resolution calling on JEA to abandon the PUP. The community is dismayed by the continuing string of revelations coming out of JEA regarding pensions, incentive plans, consulting contracts, and various conflicts of interest. The JEA advertising on television and in the bills is offensive and the process is corrupt. JEA should always remain a public utility.

Dave Bruderly – has worked in the energy and utility industry for many decades. He advocates for another option to be considered – get the Florida Congressional delegation and Florida Legislature to change federal and state law to allow municipal utilities to evolve and modernize to meet current operational challenges. We need to change the focus from short-term finances to long-term carbon emission reduction. City Council needs to set policy and then have JEA react to that.

Bruce Corcoran – JEA could refinance all its bonds and save considerable money in debt service each year, albeit financed over a longer time period. JEA's financial obligation for a portion of the Plant Vogtle nuclear plant output could be paid for with and advance cash payment financed using low-interest municipal bonds and avoid a rate increase. A 501(c)(12) organization (a cooperative) could issue municipal bonds. An IOU with enough earnings and savings could buy JEA for cash which would not impact customer rates.

John Nooney (Chairman Boylan read a question from Mr. Nooney, who was not present, into the record) – Chris Hand suggested at a recent Charter Revision Commission subcommittee meeting that the JEA franchise could be doubled as a possible funding source for City activities. Has the City considered this?

Connie Benham – City Council has veto power over the actions of all the independent authorities and should not be afraid to use it. She was not impressed with the Mayor's appearance at the workshop today. She doesn't trust that JEA is telling the Council and the public the truth and urged the City Council to take the offensive to affirmatively put a stop to the issue of privatization.

Meeting adjourned: 1:16 p.m.

Minutes: Jeff Clements, Council Research Division

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11.27.19 Posted 5:30 p.m.