

**OFFICE OF THE CITY COUNCIL**

**RESEARCH DIVISION**

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**CITY COUNCIL FUTURE OF JEA WORKSHOP MEETING MINUTES - amended**

**Lynwood Roberts Room, 1st floor, City Hall**

 **December 9, 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, Al Ferraro, Reggie Gaffney, Tommy Hazouri Joyce Morgan, Sam Newby, Ju’Coby Pittman, Brenda Priestly Jackson, Ron Salem, Randy White, 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; April Green, Sherry Hall, Ryan Wannemacher, Kerri Stewart and Sherry Hall – JEA; Carla Miller – City Ethics Officer; Jordan Elsbury – Mayor’s Office

**Meeting Convened**: 11:00 a.m.

Council Member Boylan called the meeting to order and the attendees introduced themselves for the record. Mr. Boylan said there are a variety of paths to the decision making process and much has been revealed since the last workshop meeting. He thanked several council members for having the courage to tackle some very important fundamental issues regarding the potential privatization of JEA. He hoped that the community would look back in 5 or 10 years and decide that the City Council had done a good job of addressing a very difficult issue and doing the best it could for the community. Council President Wilson announced that General Counsel Jason Gabriel will be drafting legislation to approve the hiring of the law firm of Smith, Hulsey and Busey as the City Council’s special legislative counsel for JEA matters. Four firms were interviewed by a 3-member selection team. Council Member Cumber felt that Smith, Hulsey and Busey have no relevant experience in the utility industry and was surprised by their selection. She sees the need to hire a firm with a great deal of relevant experience, not just a prominent local firm that would then have to hire another firm with the needed expertise. Council Member Carlucci said he had confidence in that firm and believed that the Council always anticipated that the firm selected would hire additional expertise as needed. Council Member Priestly Jackson took issue with some comments attributed to the workshop chair in the media after her bill to call for a stop to the JEA privatization process was filed. She understood that the purpose of the workshop process was to identify any flaws or weaknesses in the JEA privatization process and to address them immediately as necessary. The 19 Council members are doing their best to represent the best interests of the citizens. Council Member Bowman asked to be provided with a copy of the special counsel selection scoring documents.

JEA Management Presentation

Melissa Dykes, President and Chief Operating Officer of JEA, and Ryan Wannemacher, Chief Financial Officer of JEA, made a presentation on important factors leading up to JEA’s current strategic planning process. The three primary factors are: 1) high debt load, 2) declining sales, and 3) uncapped Plant Vogtle (nuclear power plant) liability. In 2005 the utility ended the year with 1 days’ worth of operating cash and borrowed from customer deposits to make payroll. In early 2006 bonds were issued and customer rates began to be raised to deal with the cash flow issue. The construction cost of Plant Vogtle has more than doubled and the plant is years overdue and still not completed. Westinghouse, the company building the plant, filed for bankruptcy 2 years ago.

JEA’s customer base is growing steadily but power consumption is falling due to increased energy efficiency standards and new technologies. Commercial and industrial users are making investments to reduce their energy consumption at a greater rate than residential customers, which will depress sales further. JEA’s debt load peaked in 2009 at the same time as consumption began declining. Debt has been paid down rapidly in recent years with the revenue from base rate increases. Fuel costs are a pass-through cost and have generally fallen since 2009, offsetting the impact of the base rate increases to the customers. Electric utility employment has fallen by 400 in the last few years. The Plant Vogtle debt obligation will double in the next few years as the plant reaches completion, so rate increases will be needed in the future to deal with that impact. The basic market conditions of growing numbers of customers but reduced sales are the same for water and sewer as for electricity. At some point JEA will need a new water source that will be expensive compared to the current cost of withdrawing water from the aquifer, and the septic tank phase-out issue will be very expensive. Ms. Dykes said that JEA’s financial challenges are not simply Plant Vogtle-related; there are many other factors at work, not the least of which is the impact of conservation and energy and water efficiency.

“Value” has many meanings beyond just financial value. JEA undertook a strategic planning process with a recognized world leader in that area of business and is still undergoing a 5 Scenario process to determine the utility’s future. It is not a simple sell/don’t sell decision, but a wide variety of choices. The scenarios range from status quo at one end to complete privatization at the other end. Ms. Dykes said that change is painful, but JEA faces serious challenges and important decisions need to be made about how to move forward. Going back to a “golden age” of JEA as it used to be is not an option. She said that the JEA workforce is doing great work under trying circumstances.

In response to a question from Chairman Boylan about why JEA would be an attractive acquisition candidate given all the problems outlined, Mr. Wannemacher said that investor-owned utilities are facing the same market challenges as municipal utilities but still need to grow value for their investors. They do that by acquiring new customers by buying other utilities, so JEA is an attractive acquisition target.

In response to a question from Council Member Morgan about why other municipal utilities aren’t going down the road to privatization, Ms. Dykes said that every utility is facing the same market challenges, but they don’t have JEA’s debt load and Plant Vogtle liability to deal with. Two of the five future scenarios are public ownership models and a decision could still be made to go that way. Ms. Morgan asked about what will happen with the billion-dollar septic tank phase-out problem, and whether a potential solution would go away with a private owner not interested in dealing with that issue. Ms. Dykes said the city is still dealing with a huge 50 year old problem so there has to be a way to find a better solution. Maybe there are better technologies in the marketplace that could reduce the cost.

Council Member Salem said the community may not be opposed to rate increases in order to keep a municipal utility and asked if JEA has surveyed customers about that. He said other cities are looking to re-acquire their utilities from private ownership and get them back to public ownership. Ms. Dykes said that no customer surveys had been done to her knowledge, and pointed out that keeping JEA as a municipal utility represents 2 of the 5 possible scenarios.

Council Member DeFoor said that in the spring of 2018, JEA represented to Wall Street a very healthy financial future for the utility while acknowledging some challenges ahead, and asked what has changed since then to produce the current gloomy forecast. Mr. Wannemacher said that JEA’s consultant McKinsey did new sales forecasts that showed a need for higher rate increases and no practical way to grow out of the problem of declining sales. The strategic planning process identified serious long-term issues with no easy solutions if nothing changes. The crisis is not today, but is looming in the next couple of decades so remedial action is needed.

In response to a question from Council Member Dennis about how many of the country’s largest public utilities are pursing privatization, Ms. Dykes said 3 of the top 7 either have already gone that route in some form or are considering it. Mr. Dennis asked if JEA should consider expanding its water/sewer footprint, getting into the “dark fiber” (leasing fiber optic cable capacity) business or selling the St. Johns River Power Park property to raise revenues. Ms. Dykes said the answers to the questions about those 3 business lines are “possibly” to water and sewer expansion, “not under the current government structure” to dark fiber, and “yes” to selling SJRPP land. Mr. Dennis requested that JEA make recommendations to the Council for what Charter changes could be made to allow JEA to get into other lines of business. In response to another question from Mr. Dennis about why the JEA’s financial forecasts and other documents all contain language cautioning the reader not to rely on the forecasts they contain, Mr. Wannemacher said JEA has $3.4 billion in debt outstanding and has to be very cautious in making forward-looking statements due to federal disclosure requirements about things that are subject to change. Projections are just that – projections, not guarantees. Every disclosure document contains those caveats as required by the US Securities and Exchange Commission.

Council Member Cumber expressed concern that Plant Vogtle is a huge future liability but wasn’t included in the recently disclosed Management Presentation to be made to ITN proposers in the near future. She said the ITN proposers need to know that and fully understand what they’re potentially getting into and questioned why it was not included in the Management Presentation. Ms. Dykes said that she has been advised by OGC not to talk about that due to on-going litigation and the ITN procurement process. What she could say was that the Plant Vogtle contract is well understood in the marketplace and everyone in the industry understands where JEA stands in that regard. Ms. Cumber said she would be opposed to any ITN proposal that left the City holding the Plant Vogtle liability. She is open to what the private sector can offer to the City with regard to utilities, but not leaving the Plant Vogtle liability for the City to deal with.

Council Member Ferraro expressed concerned that the general public doesn’t know what’s going on with JEA’s debt and why that’s so important. Mr. Wannemacher said JEA’s Plant Vogtle debt service obligation will eventually be over $200 million per year and rates will have to go up to pay that, whatever the cost may be when the plant finally goes into service.

Council Member Pittman said she feels like the City Council has been bamboozled and is not getting the full story or consistent information from JEA. She is not comfortable that she can tell her constituents what the truth really is. Constituents are rightly concerned about how the process is proceeding and they need to be fully informed and made to understand what’s really happening. Ms. Dykes said that no one likes uncertainty, least of all the JEA’s employees, but it can’t be helped because there is no final answer yet until the study process plays out to its conclusion.

Council Member Carlucci said that many homes were not taken off septic tanks and hooked up to public sewer because in years past the homeowner had to pay for the connection and couldn’t afford it. That’s not the way it is being handled now. He asked if JEA is aware of the City’s Technology Master Plan and what that could mean for JEA in terms of selling fiber services. Ms. Dykes said she is somewhat familiar with the plan. Mr. Carlucci said he wants to hear from the head of the Florida Municipal Utility Association about how other utilities are coping with market forces and what changes they’re making. He believes the trend in the country is to municipalize, not privatize, utilities. Ms. Dykes said there is exploration of utilities going both ways – there’s not a clear trend favoring municipalization.

Council Member Bowman expressed displeasure with JEA’s “parade of horribles” and scare tactics to its employees and the general public and urged JEA to have town hall meetings across the city to really explain to citizens what’s happening and why. He questioned why JEA jumped right to the ITN process without fully exploring options 1-3 first. Ms. Dykes said there is no easy, happy ending to this process, so some discomfort is inevitable. Scenario 5 (full privatization) is the most complicated and takes the most time and effort to flesh out, so work on that option had to get started fairly early so it could be completed at the same time that work on the other scenarios is completed in order for the results to be compared.

In response to a question from Council Member Newby about why JEA isn’t taking advantage of the current low interest rates to refinance its bonds, Mr. Wannemacher said JEA is paying off its bonds completely rather than refinancing them to save even more money. It has refinanced to lower interest rates in the past and achieved savings.

In response to a question from Council Member White about how long the Plant Vogtle liability will go on, Mr. Wannemacher said there will be an approximately $4 billion liability payable over a 20 year contract.

Council Member Gaffney asked if every scenario involves a rate increase and suggested that every investor-owned utility is going to want to recover its investment with a sufficient rate of return. Mr. Wannemacher said the Public Service Commission will determine what rates can be charged by any purchaser, so it’s a matter of how well they can operate and how much profit they can produce given those approved rates. No one knows yet what the rates will be, but that will be known before the end of the process.

Council Member Priestly Jackson asked how JEA management was instructed with regard to Scenario 2 and exploring constraints on being government owned. Ms. Dykes said they were told to fully flesh out Scenario 2 and how that would be implemented, and also to look at potential changes to the Charter, Florida law, Florida Constitution, etc. needed to move beyond the constraints of government ownership. Ms. Priestly Jackson felt that management had overstepped its bounds by moving on to a scenario that wasn’t on the table at the JEA board’s June meeting and asked what happened between the June and July board meetings that justified jumping from exploring options for potential charter changes to an ITN process. Ms. Dykes said that a lot of strategic planning took place in that month and it was judged to be better to consider more scenarios since it looked like making Charter and state law changes would be difficult to do. Ms. Priestly Jackson said that’s where the trust broke down, by JEA jumping immediately to consideration of the most extreme option without any advance notice to the Council or the general public.

Council Member Becton asked what governmental constraints the JEA would like to see removed to allow it to be more successful. Ms. Dykes said she needed to think about that question and provide her “wish list” at a later date.

President Wilson asked the Office of General Counsel what was needed to make those kinds of changes. Deputy General Counsel Peggy Sidman said a JEA charter change requires a 2/3 majority vote of the Council. Mr. Wilson asked about the vote needed to authorize a referendum for the public to change the charter. Ms. Sidman said a simple majority is needed to put a referendum on the ballot, but if the change is approved by the voters, should the proposal require a Charter change by Council, it would need a ~~subsequent~~ 2/3 vote of Council or a referendum to actually change the Charter ~~as the citizens desire~~. Mr. Wilson asked for that interpretation in writing.

Council Member Hazouri said that JEA CEO Aaron Zahn pitched one set of circumstances to the Council in the spring, and then completely changed tracks in the fall without any warning or any conversation about what could be changed in the Charter and state law to get where JEA wants to be. He lamented the lack of transparency throughout the process.

Council Member Priestly Jackson said eventually the Council needs to get back to the question of whether the ITN was even legal under the authority of being a procurement process.

Council Member Ferraro urged JEA not to wait until January to propose ideas for Charter changes, inviting the submission of ideas as soon as they’re ready.

John Crescimbeni – Special Committee on the Future of JEA

Former City Council Member John Crescimbeni, who chaired the previous Council’s Special Committee on the Future of JEA, described his background with the City Council and the work of the Special Committee. He urged the council members to read the report of the special committee. The report covers several fundamental topics: 1) what’s the value of JEA; 2) what factors should play into a privatization decision; 3) how should purely monetary values be balanced against JEA’s other community contributions; and 4) what process should be used to perform the balancing test and involve the public in the final decision. Issue #4 was addressed by the straw ballot referendum in 2018 and subsequent charter change last year to give the public the right to vote on the terms and conditions of a sale of JEA in a referendum. Mr. Crescimbeni cited a June 2018 legal opinion by the Office of General Counsel that said a sale of 10% or more of JEA requires a simple majority approval by City Council. He noted that investor owned utilities in Florida are required to have a “uniform rate” – all customers of an IOU in the state must pay the same rates, so every customer in the state would pay a storm recovery levy to repair damages that occurred anywhere in the state. IOUs are not eligible for FEMA damage cost reimbursements as municipal utilities are, so are authorized to levy cost recovery charges to pay for storm damages.

In response to a question from Chairman Boylan about whether the special committee spent much time talking about expansion of business lines by JEA, Mr. Crescimbeni said that CEO Aaron Zahn did talk about a few things but he didn’t remember much discussion about Charter changes. He said he had talked to Mr. Zahn and the Council Auditor outside of the committee about a structure or formula for determining a good 10% of assets threshold, determining what basis should be measured.

Council Member Salem asked when JEA’s aim turned from charter changes to privatization. Mr. Crescimbeni said he doesn’t know when that occurred. His concern before the left the council at the end of June 2019 was dealing with the question of the 10% of assets threshold.

Chairman Boylan asked Ms. Sidman for a report on how the Council can change the Charter and promote changes in state law and the Florida Constitution.

Council Member Dennis asked if, when the Special Committee finished its work in the spring of 2018, it foresaw that this issue would come to a head so soon. Mr. Crescimbeni quoted from a November 1, 2018 Letter to the Editor he wrote to the *Florida Times-Union* predicting that the issue would come back up after the city elections in the spring of 2019.

JEA Board Chair Comments

JEA Board Chair April Green said that the issue of potential privatization has become all-consuming in the community. JEA wants to provide great service at affordable rates to its customers. She only supports plans that protect the ratepayers and the employees that are produced in an open, transparent process. She proposed dropping the Performance Unit Plan entirely; discontinuing any marketing expenses to promote any particular point of view; adding a City Council member to the ITN evaluation team; and adding a prohibition against JEA board members being employed by the JEA for one year after leaving office. She and her family are dedicated to the City and the JEA. She asked the City Council to help reset the process and restore public trust.

Chairman Boylan said he will collect comments and questions from council members and have Ms. Green back to the next meeting to respond to them.

Public Comment

As the meeting had already exceeded its two hour time limit, public comment was not taken. The following members of the public had submitted cards to speak: Bill Kuhn, James Tilley, David Bruderly, Bruce Fouraker, Ted Mikalsen, Connie Benham.

**Meeting adjourned:** 1:02 p.m.

Minutes: Jeff Clements, Council Research Division

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12.12.19 Posted 2:00 p.m.