

**OFFICE OF THE CITY COUNCIL**

**RESEARCH DIVISION**

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

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

 **February 24, 2020**

**11:00 a.m.**

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

**In attendance:** Council Members Michael Boylan (Chair), Randy DeFoor, Joyce Morgan, Rory Diamond, Randy White, Ron Salem, Ju’Coby Pittman, Al Ferraro, Aaron Bowman, Reggie Gaffney,

**Also**: Peggy Sidman and Lawsikia Hodges – Office of General Counsel; Kyle Billy, Kim Taylor, Heather Reber, Jeff Rodda – Council Auditor’s Office; Jeff Clements – Council Research Division; Carol Owens and Steve Cassada - Council Staff Services; Cheryl Brown – Council Secretary/Director; Carla Miller – City Ethics Officer; Steve Busey – Smith, Hulsey and Busey

**Meeting Convened**: 11:25 a.m.

Council Member Boylan called the meeting to order and thanked the Special Investigatory Committee on JEA for its good work at the just-concluded previous meeting. He thanked Council President Wilson for appointing two separate bodies – one to examine what happened in the past regarding JEA privatization, and the other to look forward to the future of the utility. He said that the Future of JEA Workshops will continue for a time doing background work with subject matter experts until a new JEA board is seated and a new CEO selected, then the workshops will resume in earnest to assist JEA’s new leadership in determining its future path. The short-term work will also include consideration of proposed changes to the JEA charter that need to be made immediately.

Presentation by Gerald Hartman - Hartman Consulting

Mr. Hartman said the utility industry standard is to continually improve existing operations to meet changing market conditions, using what other utilities in Florida have done as an example of what is possible. He suggested working with private utilities such as Florida Power and Light to determine what improvements might be possible through integration of operations. He has never seen a municipal utility IPO in his 44 years in the utility consulting business.

JEA Scenario 1 – Status Quo: Mr. Hartman said that JEA declared this scenario complete, but provided very little information aside from high level summaries and unverified assumptions. He believes there are a number of opportunities for improvement within JEA with its current workforce.

JEA Scenario 2 – Traditional Utility Response Plan: Mr. Hartman said this is really the same scenario as #1 – professionally address the challenges being faced, optimize performance, adapt to change, consider available opportunities. Consider looking at what the Orlando Utility Commission as an example of a similar in-state public utility. There are several innovative programs to look at in Florida.

JEA Scenario 3 – Community Ownership Plan (similar to a utility cooperative): not really a practical option for JEA because of start-up costs, complexities, governance issues, higher interest costs and less surety. A well-managed JEA should be more competitive than a co-op. The evaluation process was never completed on this option.

JEA Scenario 4 – Initial Public Offering (IPO) Plan: also not really a practical option for JEA. Mr. Hartman said it is not a model he has ever seen done in the public sector. Failure is not an option when dealing with essential public services

JEA Scenario 5 – ITN Plan (sale): this in an option; many utilities compare the results of Scenarios 1 and 2 to the sale scenario. Basic work was not completed on developing this scenario, including a full professional appraisal of JEA’s value. This model has been successful in other cities. Mr. Hartman noted that there is legislation pending in the Florida Legislature regarding fair market valuation of utilities that would need to pass to provide for a reasonable sale.

Mr. Hartman presented a series of bullet points entitled Management Decisions Review which laid out a number of steps that a governing entity could use in determining how to chart a path forward, including optimization strategies, analysis of viability issues, rebuilding JEA’s board and senior management, making determinations about the appropriate process for considering a potential sale, using consultants to advise management on a temporary basis, etc. He urged fully and publicly deciding on goals and objectives for the JEA in the areas of rates, city contribution, economic development, customer satisfaction, innovation, and the like. Those goals and objectives are then prioritized for implementation. He urged that a true appraisal of the value of the utility be done and that an optimization program be designed for operations, finances, capital investment and engineering.

In response to a question from Chairman Boylan about water and sewer operations, Mr. Hartman said that JEA’s water and sewer operations are very good and its rates are projected to be very moderate (compared to other Florida utilities). In response to a question from Council Member Becton about JEA’s relationship to adjoining co-ops, Mr. Hartman said that JEA could partner with adjacent co-ops on things like joint procurement and wholesaling of electricity and water. In response to a question from Council Member Hazouri about the water and sewer operation, Mr. Hartman said that Jacksonville has very good water quality (takes very little treatment) and a well-designed system citywide that makes it a very efficient operation. Mr. Hazouri asked about what might be the implications if JEA gave different sets of information to the Florida Public Service Commission than what was given to the JEA board and City Council. Mr. Hartman said that Jacksonville appears to be in a very unique situation in that regard – he has never seen an instance where that kind of information would not be uniform to all users. In response to a question from Council Member Morgan about JEA’s water and sewer rates and whether they are too low, Mr. Hartman said there are 10 “buckets” of expenses that need to be fully funded. If any of those “buckets” are currently or projected to be underfunded, then rates should be raised to meet the identified needs, fund ongoing renewal and replacement, and provide adequate reserves. In response to a question from Council Member DeFoor about the St. Johns River Power Park, Mr. Hartman said that he did not do a detailed examination of the plant’s operations or efficiency and its value in comparison with the Northside Generating Station.

Presentation by Tom Cloud - Gray Robinson law firm

Mr. Cloud discussed municipal utility charter provisions relating to sales of those utilities. He discussed the concept of “municipal prerogative to serve” utilities within cities based on the right of municipalities to grant franchises. Franchise rights are held in trust for the benefit of the public by the governing body, and JEA was granted the right to serve Jacksonville by the City Council via a franchise agreement. From 1897 to 1973 no Florida city could purchase or construct a power plant without first holding a referendum. That law was repealed in 1973 but referendum requirements remain in some municipal charters. There have been very few electric utility sales in Florida since World War II, in part because the sale price of utilities is inflated by the value of the “contributed assets” – those assets constructed by developers and donated to the utility to operate. That inflated value generally means higher rates for customers down the road as the private utility seeks to recoup its cost of purchasing those assets. Mr. Cloud said that when he and Mr. Hartmann spoke to former JEA CEO several months ago, he would not provide an answer to question about JEA’s level of contributed assets. He said there are bills pending in the Florida Legislature that would make Florida into a “fair market value” state, meaning that the Public Service Commission would have the discretion to include contributed assets in the rate base of private utilities, which would increase the price to consumers for assets for which they have already paid.

Mr. Cloud said that the City Charter controls the sale of JEA so a public hearing would have to have been held on the sale of the JEA water and sewer system pursuant to state law and the impact on ratepayers likely would have been discussed. The City Charter requires City Council approval of more than 10% of JEA’s assets. He said it is unprecedented in Florida for a public utility to have an executive compensation package of the type that JEA was proposing. He posed the question of why all the major investor-owned utilities would have bid on JEA if the utility was in a “death spiral” as its leadership proclaimed; obviously this is a false scenario. He noted that there is a bill pending in the Florida Legislature to prohibit municipal electric utilities from making financial contributions from their operations to their city general funds; he believes that bill will not make much progress. He reiterated his earlier comments about the bill pending in the Legislature that would allow the Florida PSC to consider contributed assets in the sale process, which it has never done, and repeated his assertion that the additional value of those assets is ends up being recouped from the ratepayers in the form of higher rates or riders (i.e. the “Sebring rider”) on customer bills. He lauded the inclusion of a voter referendum requirement prior to a sale in JEA’s charter and urged that it be preserved as a valuable mechanism for requiring City Council and public input into a potential sale process.

Council Member Bowman noted that JEA was downgraded by the bond rating agencies last week because of the replacement of its board and the management shakeup. Mr. Cloud recommended stabilizing the board as quickly as possible and then doing a nationwide search to find the best possible CEO to restore the financial world’s confidence in the utility. Council Member Hazouri asked what impact the ongoing investigations will have on the bond rating agencies. Mr. Cloud said that while the investigations necessarily go on, what’s important is to deal with the future and get past the controversy. Council Member Priestly Jackson asked if Jacksonville’s consolidated city charter could supersede Florida statutes, Mr. Cloud said that in 99% of cases the general statute will prevail, but there are circumstances where it might. In response to a question from Council Member DeFoor about whether utility board members are restricted by ethics laws from receiving payment in their private business from the agency on whose board they serve, Mr. Cloud said he assumed that the usual ethics laws would apply.

JEA Charter Amendments

Deputy General Counsel Peggy Sidman reviewed a set of proposed JEA charter amendments developed at the request of numerous council members over the past couple of months. Council Member Becton suggested the need to add a definition of “10% of assets” to clearly define when a sale of JEA assets would need City Council approval before sale. Ms. Sidman reviewed the timeline for getting a referendum on the November 2020 ballot, because some JEA charter changes will require referendum approval. Revisions are proposed to the JEA’s procurement and professional services contracting provisions. Another change would require City Council approval of any employee bonus program. Another change would add specific requirements for the qualifications of a JEA CEO and would prohibit employment contracts except at the highest management level. A proposed change would require the JEA board to adopt a real estate code covering the sale, lease and transfer of the utility’s property. Another proposal would have the City Council appoint 4 members and the Mayor 3 members of the JEA board, address removal of those board members, and allow board members to be paid for expenses incurred. A proposal would require that the JEA board agenda and handout package be published at least 2 days prior to a meeting. Council members were asked to send in any additional proposals or comments for discussion and incorporation in to a future draft.

Council Member Salem advocated for allowing JEA to have one employment contract with the CEO only. He also felt the short term incentive program should be for a term of one year at a time and should be approved by the City Council. Council Member Priestly Jackson advocated for adding Council Auditor review of any proposed privatization or reorganization. She also advocated for addressing the issue of a proposed sale of JEA via a “procurement” process. In Sec. 21.04 she advocated for language setting a trigger for when the Council Auditor must be notified. She recommended checking the qualifications of the current JEA board nominees to see if they meet the residence requirements being proposed in the amendments. Council Member Salem felt the 6 year residency requirement was excessive. Ms. Priestly Jackson asked if Charter changes that do not require referendum approval could be accomplished via a referendum as well. Council Member Hazouri asked how the board appointments would be arranged to get 4 appointed by the council and 3 by the mayor. Ms. Sidman will craft an appointment mechanism that will spread the appointees across the currently staggered terms. Council Member Morgan suggested the need for a JEA board training requirement. Chairman Boylan said that is covered in the JEA board manual and recommended that the council members read that section and see if it covers what is desired. If not, the council may request that the JEA board revise its manual.

Council Member Diamond asked about the process for reviewing the numerous proposed amendments. Chairman Boylan said they would be discussed at the next Future of JEA Workshop. Mr. Diamond said he is going to be proposing several ordinances that would impact on all the independent authorities and possibly the executive branch, which may also impact on JEA incidentally.

Ms. Sidman asked how she should handle the inclusion of conflicting proposals from council members. Chairman Boylan asked that the next version of the document include all proposed changes with attributions attached to the various recommendations showing which council member proposed them.

Public Comment

Aisha Franklin Covington thanked the council members for taking ownership of the JEA issue and protecting the public’s interest. She urged that the General Counsel’s office recuse itself from the JEA process because they have not been giving fair and unbiased advice during this process. She said that public meetings held during the working day are inaccessible and hostile to public participation. Jacksonville doesn’t ask its residents what they want, but citizens are becoming more active and will push back against being excluded.

Next meeting

March 9th, featuring a presentation by the Florida Municipal Utility Association and continued fine-tuning of proposed charter amendments.

**Meeting adjourned:** 1:16 p.m.

Minutes: Jeff Clements, Council Research Division

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2.26.20 Posted 5:00 p.m.