

City of Jacksonville

1st Floor - Council Chamber
117 W. Duval Street



Meeting Minutes

Monday, March 9, 2020

5:00 PM

Council Chambers 1st Floor, City Council

Special Investigatory Committee on JEA Matters

Rory Diamond, Chair

Randy DeFoor

Brenda Priestly-Jackson

Scott Wilson

Cheryl Brown, Director/Council Secretary

Carol Owens, Executive Administrator

Jessica Matthews, Chief of Legislative Services

Jeff Clements, Chief of Research

Peggy Sidman, Office of General Counsel

Paige Johnston, Office of General Counsel

Attendance:

Committee Members Rory Diamond (Chair), Randy DeFoor, Brenda Priestly Jackson, Scott Wilson

Council Members Danny Becton, Joyce Morgan, Ron Salem, Al Ferraro, Michael Boylan, Randy White, Terrance Freeman, Garrett Dennis

Also: Jason Gabriel, Peggy Sidman, Sean Granat – Office of General Counsel; Kyle Billy, Kim Taylor, Heather Reber, Jeff Rodda – Council Auditor’s Office; Colleen Hampsey and Richard Distel – Council Research Division; Carol Owens and Steve Cassada - Council Staff Services; Steve Busey – Smith, Hulsey and Busey

Meeting Convened: 5:00 pm Meeting Adjourned: 8:08 pm

1. **Call to Order**
2. **Pledge of Allegiance**

Council Member Diamond convened the meeting and the attendees recited the Pledge of Allegiance. The members introduced themselves for the record.

3. Michael Brost

The committee called Michael Brost, who also gave a sworn statement on February 27, 2020, up for questioning. The sworn statement transcript is on file and posted on the City webpage. Mr. Brost worked for JEA for 38 years, and was responsible for the planning, construction, operation and maintenance of JEA's electric system – generation plants, and the transmission, substation and distribution systems. He joined JEA in 1983 as an electrical engineer in System Operations and retired in January 2019 as the Vice President & General Manager, Electric Systems.

Mr. Brost was asked about JEA's 10 year site plan and the IRP (integrated resource plan). A 10 year site plan is required of all large utilities in the state to project their energy production needs for that period to meet customer demand and to document to the Florida Public Service Commission how they will meet that demand. In March of 2019 JEA ceased to use its PSC 10 year plan as its long-term planning document which signaled a shift from use of operations-based data to value-based data. The committee also asked about the 'death spiral' projections that indicated that JEA would be facing a decline in growth and the portrayal of JEA as financially troubled that Aaron Zahn used as justification for trying to sell the city-owned utility. Mr. Brost said that the reality of JEA's financial health did not reflect that. While Mr. Zahn touted increased rates over the last ten years (71%) and workforce reduction (400 employees) as rationale for considering recapitalization, Mr. Brost said that was a false narrative in that rates have really decreased over the past decade and that employee reductions were not accurately portrayed. JEA's future electric sales projections in 2019 varied from document to document prepared for different purposes.

Mr. Brost called the notion that JEA was facing challenges to its business model from energy efficiency and solar technology misleading. Mr. Brost said that the first concern was that the reporting of the unit sales decline in electricity was an "apples to oranges" comparison because it did not account for the loss of the contract for power sales to Nassau County, a substantial portion of the sales loss. Based on his years of expertise, Mr. Brost did not believe the argument that any problems could only be solved by JEA being owned by the private sector. Mr. Brost also said that he felt the rate data was accurately presented and that the strategic plan was being reverse engineered to validate the ITN process. CM Morgan asked how one would know if a utility company was in trouble. Mr. Brost said that indicators are bond ratings, consumers' rates and satisfaction, and overall financial health. In his opinion, JEA was not in trouble. Mr. Brost was asked if there was a favored bidder in the ITN process. He said rumors indicated it was Florida Power and Light, but those have not been substantiated.

Mr. Brost was asked about the PUP, but he said it was not discussed in meetings he attended. As to who the architect was for the PUP, Mr. Brost said that no one claimed ownership for the program design. When asked about Aaron Zahn's leadership, Mr. Brost noted the pessimistic nature of his views for JEA's future that did not jibe with Brost's extensive experience in the industry. Mr. Brost said he recognized that Mr. Zahn had no experience in the utilities industry and offered to teach him more about it but

Mr. Zahn did not take him up on his offer. Mr. Zahn, coming from the private sector, also struggled to accept Florida's Sunshine Law and public records requirements, Mr. Brost said. According to Mr. Brost, Zahn focused on external policies and collaborated extensively with consultants, and JEA Interim CEO Melissa Dykes was the one who kept the proverbial lights on. CM Diamond asked if he believed Mr. Zahn was qualified for the CEO position. Mr. Brost said no.

Chairman Diamond told Mr. Brost that the City Council very much appreciated his testimony and asked him to report any harassment or retribution attempt he might receive as a result of appearing before the committee today and pledged to offer the Council's full support should that happen.

4. Steven McInall

Mr. McInall is responsible for long-term planning for JEA's energy and water sectors, overseeing the development of JEA's capital program, and for real estate acquisitions and sales. Mr. McInall worked for JEA since 2011, serving as the Director of the Electric Production Resource Planning Department, with oversight of the Electric Generation Planning, Fuels Management Services, Natural Gas Commercial Services and Byproducts Production Services areas, and as the Manager of Nuclear Generation Business.

The committee asked Mr. McInall about conversations at an executive workshop in Ponte Vedra, regarding the performance unit plan, as his sworn deposition from January 2 seems to show that Ms. Dykes knew and relayed to Mr. McInall that the number of shares that could be purchased through the PUP was directly related to the results of an employee review. The committee asked if Mr. McInall, as the Vice President Energy and Water Planning, was a part of the JEA strategic planning process. Mr. McInall said no. Mr. McInall was asked about the quality of Mr. Zahn's leadership. Mr. McInall said that it wasn't great. When asked if Mr. Zahn understood the utility business, Mr. McInall said that all signs point to no. Mr. McInall said that he does have a senior executive contract, but that he was not sure who negotiated the terms of the contract. CM DeFoor asked about the water component of JEA, which he indicated is a large and healthy part of the utility. Mr. McInall said that it is rare for water to be owned and operated by a private entity.

JEA has a virtual data room, established for documents prepared by contractor Intralinks for outside consulting firm Pillsbury Winthrop Shaw Pittman. Mr. McInall said that he was the person on JEA's senior leadership team who had editing, writing and deleting access in the data room. He was unsure as to who else had these privileges, and the committee asked him to find out and report back.

Chairman Diamond told Mr. McInall that the City Council very much appreciated his testimony and asked him to report any harassment or retribution attempt he might receive as a result of appearing before the committee today and pledged to offer the Council's full support should that happen.

5. Document Request Update

To date, none of the 84 documents requested by the committee have been produced by JEA. Kyle Gavin, Office of General Counsel, said that JEA has indicated that it intends to be fully cooperative, but the records request is large and specific and as such will take time. Some publically released documents related to the ITN are already available on the City Council web page, but because of the size of the request (over a billion pages/24 terabytes), a third party vendor has been hired to aggregate the data and compile it into a searchable database. The Office of General Counsel and outside attorneys will then have to complete the process to review information being transferred to redact any information that might be related to JEA lawsuits, collective bargaining or other personal information. Mr. Gavin said that they placed the highest priority upon gathering the requested email exchanges related to the privatization plan and the controversial employee bonus plan (PUP) that could have paid employees hundreds of millions of dollars if JEA was sold.

Both the vendor and the Office of General Counsel hope to have the total request fulfilled within 4-5 weeks, a time frame the committee members found unacceptable. Council Member Diamond expressed extreme frustration at the time it is taking to complete the request, intimating that JEA's delay might be purposeful. CM Diamond said that the committee has run out of patience and that subpoenas would be the next step if documents are not produced in a timelier manner. CM Diamond also said he also wants to issue subpoenas for public records from the investment banks that assisted JEA in their sales efforts and speak with the companies that submitted bids to buy JEA about lobbyists with whom they interacted. Council Member DeFoor shared CM Diamond's frustration and mentioned that at some point it may be necessary to involve the State Attorney's Office regarding what could be a public records violation on the part of JEA. Council Member Priestly Jackson echoed the view of her colleagues, saying that the document request must be completed faster and that she may draft a memorandum which would include a strict deadline for the document request. Jason Gabriel, Office of General Counsel, said that he appreciates the need for speed, but that it is also necessary to be thorough. Mr. Gabriel said that some of the documents may be released in phases, to expedite the process.

CM Salem asked about how much the data mining process will cost through the outside vendor. Not including the expenses to pay staff and administration, the data storage alone is roughly \$55,000 per terabyte for one month. CM Salem wondered why the labor could not be speedier, perhaps working in 2 or 3 shifts to get the request finished. The suggestion was not embraced by the committee members. CM Dennis said that he has reservations about the data vendor contracting directly for JEA instead of for council, as it may misguide their loyalty. CM Dennis also said that the committee should request all of the emails sent and received by Aaron Zahn and Herschel Vinyard, JEA Chief Administrative Officer, not just a subset from a certain month or year. CM Ferraro cautioned that the perception among constituents was not good and that if getting the documents piecemeal was an option perhaps it would be the more prudent way to proceed.

Before the next agenda item, CM Diamond said that the committee would like: Melissa Dykes, Interim CEO for JEA, deposed by OGC within one week; OGC to prepare subpoenas for the investment banks involved in the privatization ITN process and the PUP; contact with the bidders to determine which lobbyists were working on the potential recapitalization as well as if the bidders had an opportunity to evaluate JEA's assets (and if not, why not).

6. Any Other Business

7. Public Comment As Time Allows

In response to the ongoing coronavirus epidemic, CM Diamond said there would be no public comment.

8. Adjourn

Minutes: Colleen Hampsey and Richard Distel, Council Research
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