

**OFFICE OF THE CITY COUNCIL**

**RESEARCH DIVISION**

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**CITY COUNCIL SPECIAL INVESTIGATORY COMMITTEE ON JEA**

**MEETING MINUTES**

**Virtual meeting via Zoom – no physical location**

 **July 27, 2020**

**8:00 a.m.**

**Location:** Virtual meeting via Zoom – no physical location

**In attendance:** Council Members Brenda Priestly Jackson (Chair), Randy DeFoor, Rory Diamond and Scott Wilson

**Also**: Council Members Ron Salem, Al Ferraro, Joyce Morgan, Sam Newby, Garrett Dennis, Michael Boylan; Jason Gabriel, Peggy Sidman, Paige Johnston, Chris Garrett, Jody Brooks, John Phillips – Office of General Counsel; Cheryl Brown – Council Secretary/Director; Kim Taylor, Phillip Peterson, Jeff Rodda, Heather Reber – Council Auditor’s Office; Steve Cassada, Melanie Wilkes and Eric Grantham – Council Support Services; Jeff Clements and Yvonne Mitchell – Council Research Division; Steve Busey – Smith, Hulsey and Busey law firm; Kurtis Wilson, – JEA; Carla Miller and Kirby Oberdorfer – Ethics Office

**Meeting Convened**: 8:05 a.m.

Chairwoman Priestly Jackson convened the meeting and the attendees were introduced for the record. Council Member DeFoor gave the invocation and Council Member Diamond led the Pledge of Allegiance.

Acting Council President Newby asked for prayers for Council President Hazouri who is in the hospital and doing very well. He wished the committee a very good year.

Committee special counsel Steve Busey gave an update on his work to date. Review of over 360,000 JEA and third-party documents has taken place and an index of facts has been developed from that review. Another 200,000 documents have been received in the last 2 weeks and need to be reviewed, with additional documents still expected. 26 interviews of involved parties have been conducted by Mr. Busey’s firm and by the Office of General Counsel. There are 27 additional persons who may be of interest to the special committee depending on how deeply the committee wishes to delve into what happened; Mr. Busey suggests that 5 of those persons may be of particular interest. That would require invitations and/or subpoenas to obtain that additional testimony. As noted by General Counsel Jason Gabriel at the last meeting, the committee needs to determine if these additional witnesses and their potential testimony falls within the scope of the committee charge and would not interfere with the ongoing federal investigation. Mr. Busey stated that in his opinion these 5 additional persons fall under the scope of the committee’s charge if the committee wants to hear from them. With or without their testimony, he believes that a final report of the complete story of the JEA saga could be written by October.

Council Member Diamond asked about the remaining scope of documents to be reviewed and how many are being reviewed for claims of privileged information. Mr. Busey said that relatively few privilege claims are still pending; the Office of General Counsel has been processing them as they are identified. Mr. Diamond asked about JEA Interim CEO Melissa Dykes’ tablet device being locked and inaccessible as a result of multiple password entry errors and felt that public records on that device are being deliberately suppressed by that action. He believes the Ethics Office and Inspector General should investigate. Mr. Diamond asked about deposing the senior leadership of the JEA’s consulting firms and law firms and Mr. Busey said they are part of the list of the 27 additional interviews that could be done if the committee desires. He believes that there is a legitimate evidentiary basis for the additional 27 persons to be interviewed based on their involvement in the process and the testimony received from other parties about their actions. In response to a question about interviewing consultants and lobbyists from other companies aside from those affiliated with Florida Power and Light, Mr. Busey said he’s trying to be conscious of the time and money this process is already taking.

In response to a question from Council Member DeFoor about how many documents left are left to be reviewed, Mr. Busey said perhaps a few tens of thousands, which he will work with OGC on finishing up. Ms. DeFoor reported that current JEA Interim CEO Paul McElroy said he will waive any privilege claims on JEA’s behalf and she felt it would be good if the City could take testimony in JEA’s place in the position of the client.

General Counsel Jason Gabriel said that Mr. Busey has accurately laid out the balance between doing more interviews for greater depth of knowledge and saving time and money and wrapping up the process. He again urged the special committee to be conscious of the appropriate legislative authority of the special committee and the evidentiary basis for additional witnesses.

Council Member Salem asked Mr. Busey about the status of the special counsel’s budget. Mr. Busey said he has billed for approximately $697,000 through the end of June. He confirmed to Mr. Salem that 90% or more of the requested documents have been received at this point. Mr. Salem doing whatever is needed to get access to Melissa Dykes’ locked computer to see what relevant information it contains.

Council Member Dennis said that the State Attorney has jurisdiction over public records matters and the Dykes computer issue should be referred to her for investigation. Jason Gabriel said that as his office comes across any items that might have a criminal element they are being turned over to law enforcement for investigation. He’s been told that JEA has a long-standing policy on computer device passwords and locked access and this episode fits under that policy.

Chairwoman Priestly Jackson said that she has talked to Mr. Busey about being prepared with a good, defensible rationale for the necessity of the additional interviews to the work of the special committee.

**Motion** (DeFoor/2nd Diamond) – the Special Committee requests issuance of subpoenas by the Rules Committee to Kevin Hyde, Michael Munz, Tim Baker, Alan Howard, and Sam Mousa in accordance with the previous OGC memo on options for the committee to obtain testimony which may be relevant to City Charter changes, ethics legislation, Ordinance Code changes, and other relevant subcommittee recommendations – **approved 4-0.**

Chris Garrett of OGC said responses have been received from all of subpoenaed bidders and bankers. The Morgan Stanley document production has been completed. JPMorgan has also produced a great deal of documentation and may produce some additional items. 3 Degrees consulting has responded via email. Bruce Doueck appeared at the meeting via Zoom and has provided documents on behalf of New Solutions for Business. The Committee did not have any questions for him. Not many documents are left to come over from JEA – perhaps 10,000. The OGC has developed a good process for doing reviews of claims of privileged or exempt information. Trade secret claims are still problematic. The redactions and withholding of trade secrets were required by third parties (including bidders, vendors and respondents), and not by OGC. There is no simple resolution to that problem short of filing a lawsuit against those third parties. A hearing was recently held in the NextEra v. JEA lawsuit. The judge will likely decide soon whether the NextEra net and gross proceeds bid values may be released by JEA. Council Member Diamond said that is a crucial number - plugging that NextEra value into the Performance Unit Plan formula tells us what senior leadership thought they were going to make from the PUP after a sale.

Chairwoman Priestly Jackson asked Mr. Gabriel to explain his role as General Counsel in representing multiple parties in this investigation. Mr. Gabriel said that the General Counsel can’t be an advocate for one side of this issue and must facilitate the legal needs of all components of the City government. His ultimate responsibility is to the government as a whole, not the individual parts. His attorneys defend each element of the government as a separate client as necessary. At JEA’s request they helped develop a process to explore privatization in the best way possible. When JEA developed its PUP plan the OGC reviewed it and counseled them that it was not legal, despite the conflicting opinions of prestigious law firms retained by JEA. They worked hard to keep the Ethics Office and Inspector General involved in the process when JEA tried to exclude them. The overall best interest of the City government as a whole is the ultimate goal and the OGC facilitates the interests of each of its client agencies as best it can within that framework.

Council member conflicts and disclosures: Chairwoman Priestly Jackson suggested in January that council members disclose any potential conflicts of interest or relationships to JEA board members or lobbyists to assure the public that there were no improprieties or perceptions of impropriety among council members that might undermine public confidence in the investigation. Ethics Officer Carla Miller has distributed a conflict of interest self-identification form to the special committee members to aid them in identifying conflicts. That form was the basis for removing JEA’s negotiating team and replacing them with City officials. Ms. Miller said there are two types of conflicts: 1) things directly prohibited by law; and 2) an appearance of conflict which isn’t illegal but may not look good. Kirby Oberdorfer of the Ethics Office said the checklist covers the 2 legally prohibited conflicts: 1) a public official (or their family) doing business with their own agency; and 2) a public official having a contractual relationship with an entity doing business with their agency. Ms. Priestly Jackson said the form will be reviewed in 2 weeks for its applicability to the work of the Special Committee and asked that it be distributed to all city council members. Ms. DeFoor said from her early review she thinks the scope of the document should be expanded. Council Member Boylan asked that being a JEA customer be specifically excluded as “doing business” with JEA. Mr. Salem asked about the rationale for filling out this form separately from any other conflict of interest process to which the council members are subject. Ms. Miller said some council members may have had to declare conflicts of interest should the JEA privatization have come to a vote, but that never happened. She said was asked to develop this form at the request of Ms. Priestly Jackson. The Chairwoman said she wants to go this extra step to give the public confidence that there was no undue influence or conflict on the part of council members during the process that might be used to try and discredit the special committee’s work when it issues its final report. She asked that committee members review the checklist and be prepared to vote next time on amending and adopting it for use.

One on one meetings with outside counsel: Mr. Busey said he is available to meet with individual council members for update on where the special committee is and to make any suggestions for any additional issues, witnesses, etc. that might further the committee’s work. He is available for the next two weeks to talk to anyone. Chairwoman Priestly Jackson said she will send his contact information to all council members and their ECAs.

Outside counsel budget: the extension passed in June requires notification by Mr. Busey to the special committee when $800,000 has been encumbered. Peggy Sidman said that $610,000 as been paid to date and the OGC has a June bill for another $157,000. The $800,000 notification limit is being approached and the special committee may want to consider an additional extension for more work. Chairwoman Priestly Jackson proposed extension of $300,000 to cover additional witness testimony and document review. Council Member DeFoor said that spending the full $1.8 million allocated to the special counsel would be a drop in the bucket compared to what JEA has been spending on its defense.

**Motion** (DeFoor/2nd Wilson): extend the special counsel budget by an additional $300,000 – **approved 3-0** (Diamond excused early).

Council Member Ferraro asked if there is any chance the JEA could be made to reimburse the City Council for the cost of this investigation. Council Auditor Kim Taylor said she will investigate the possibilities.

Council Member Dennis said that City employees and elected officials get their private attorney fees covered if they are not convicted of any crime after an investigation. The City is racking up substantial legal fees for employees as a result of this process. He believes OGC is going to be asking for legislation to appropriate funds to pay for those attorney fees. Mr. Dennis said he brings up this topic at every meeting as a caution to keep it in everyone’s mind. Ms. Priestly Jackson said she will have an item on the next meeting agenda for Mr. Gabriel to explain how outside counsel fees work for people involved in the JEA investigation. Mr. Gabriel said that generally speaking, based on common law, public officials are entitled to reimbursement of reasonable attorney fees if: 1) they are exonerated at the end of an investigation, and 2) the investigation is based on actions commensurate with the official duties and responsibilities of that public official. There will very likely be reimbursement requests for people involved in both the City Council’s investigation and the state and federal investigations of JEA. Ms. Priestly Jackson asked Mr. Gabriel to bring an estimate of the costs he knows about thus far to the next meeting. Council Member DeFoor said that legislation may be needed to define “reasonable” rates for outside counsel reimbursement.

**Meeting adjourned:** 9:23 a.m.

Minutes: Jeff Clements, Council Research Division

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7.28.20 Posted 5:30 p.m.