

**City of Fort Lauderdale
UTILITY ADVISORY COMMITTEE
Tuesday, November 28, 2006 – 6:30 p.m.
100 North Andrews Avenue; 8th Floor Conference Room
Fort Lauderdale, Florida 33301**

<u>Board Members</u>	<u>Attendance</u>	<u>2006 Cumulative Attendance</u>		
		<u>Present</u>	<u>Absent</u>	<u>Total</u>
Bunney Brenneman, Chair	P	11	0	11
Richard Barrett	P	11	0	11
Bob Caine	P	7	4	11
L. Thomas Chancey	P	9	2	11
Bob Cole	P	8	3	11
Caldwell Cooper	P	6	3	9
Joe Holland	P	10	1	11
Dr. Magdalene Lewis	P	8	3	11
Terri Murru	P	10	1	11
Bernie Petreccia**	A	5		
Fred Stresau	P	9	2	11
Dr. Geri Udell*	P	2		
Clare Vickery	P	5	6	11
Nathaniel Wilkerson	A	4	7	11
Vacant				

*no meeting notification

**residency question

City Representatives

City Commissioner Christine Teel – District I
Peter Partington, City Engineer
Bob Dunckel, Assistant City Attorney

I Call to Order

Chair Bunney Brenneman called the meeting to order at approximately 6:43 p.m. and announced that they did not have a recording secretary at tonight's meeting.

Richard Barrett reminded everyone to mention their names before speaking this evening.

II Roll Call

Chair Bunney Brenneman proceeded to take roll call.

III Self-Introductions

City staff and guests attending the meeting proceeded to introduce themselves. Chair Bunney Brenneman proceeded to welcome Commissioner Christine Teel.

IV Approval of Minutes

Chair Bunney Brenneman advised that the minutes of the July 25, 2006, August 22, 2006, September 26, 2006 and October 24, 2006 meetings recently were submitted to the City staff. She advised that she did not want to send all these minutes via e-mail, and therefore, the minutes would be provided for everyone's review and they would be approved at the Committee's next meeting.

Peter Partington, City Engineer, said there had been an issue with the contract for these minutes and staff was attempting to resolve the problem.

Chair Bunney Brenneman stated that Robert Dunckel had called to everyone's attention via e-mail the Sunshine Law. She reminded everyone that they were to respond as to whether they would attend a meeting or not.

Chair Bunney Brenneman stated that Rosie Campbell, Recording Secretary, had just arrived, along with Caldwell Cooper. (Arrival time approximately 6:50 p.m.)

Robert Dunckel advised that if anyone had any questions regarding the Sunshine Law they were to contact him directly. He further stated that his e-mail was not suggesting any wrong-doing on anyone's part, and was to only serve as a reminder to the Committee Members.

Dr. Geraldine Udell arrived at the meeting at approximately 6:52 p.m.

V Old Business

Line Clearing Status

**Lynn Shatas, FPL
Fred Stresau, Chair Tree Sub-Committee**

Chair Bunney Brenneman announced that Ms. Shatas was unable to attend tonight's meeting due to another commitment. She further stated that Ms. Shatas stated that she had no new information to provide to the Committee, and that they were running about one month behind and were currently in Coral Ridge Isles in District I. She stated that she had received a letter as President of the Homeowners Association stating that they were to be in that area, but individual residents had not been notified. It was her understanding that they would be moving to the east.

Commissioner Teel stated the City had trimmed trees in their neighborhood and all homeowners had been contacted, and three people refused to have their trees trimmed. She further stated that 2500 homes in her area did not have electricity about 1 ½ weeks ago due to a palm frond falling on the wires. She continued stating that when FP&L had done some work in their neighborhood letters had been sent out to all residences.

Dr. Lewis stated that homeowners in her neighborhood had also received notice regarding FP&L work being done.

Mr. Chancey stated the issue dealt with methodology, but things were still not being done correctly thereby causing growth to be faster. He stated further that he had never seen anyone so unwilling to learn some available methods in regard to tree trimming as FP&L.

**Update on RFP – Consulting Services -
Electrical Infrastructure Needs Assessment & Strategy**

**City Staff
& Fred Stresau –
Selection Committee**

Peter Partington, City Engineer, advised that the RFP had not gone out yet and work was still being done on it.

Ms. Murru asked if the Committee could do anything to move this process along. Mr. Partington stated that the problem was that they were seeking a consultant that would be taking a position contrary to FP&L, and therefore, the field was narrowed. Also, what could help the process would be comparable RFPs.

Other Old Business

Mr. Caine stated that FP&L had provided a sample ordinance to the City Attorney regarding under grounding utility lines for new construction, and he asked if an update could be provided at the Committee's next meeting.

Robert Dunckel stated that he had been provided with the ordinance in the context of an item going before the Commission at their first meeting in December in connection with the under grounding of Seven Isles. The ordinance would also have to be reviewed by Planning and Zoning staff and dealt with individual construction as opposed to an entire neighborhood. Afterwards, it would continue going through the normal process.

Mr. Caine further asked if the process was anticipated. Mr. Dunckel confirmed.

Substations

Mr. Holland stated that on another Board's agenda he understood that FP&L had submitted a new substation site, and asked if further information could be provided on that matter.

Robert Dunckel explained that there was new State Legislature prescribing what could and could not be done in regard to the site planning process for a substation. He was not directly involved in the DRC process, but he had provided the new legislation to staff. It was his understanding that the first substation would be coming up for review, but he did not know of its location. He advised that he would look further into the matter and report back to this Committee.

Chair Bunney Brenneman stated they had been advised of the number of substations that would be necessary for a build-out. Previously, she had received information regarding a possible location and they were working on possible sites.

Mr. Maken, FP&L, stated that he was aware of substations being on their radar for the future and one of them should be moving forward very soon.

Mr. Cole asked about the procedure regarding reviewing substations. Chair Bunney Brenneman explained the process which was in place.

Mr. Chancey stated that another issue had been in regard to the location of a substation in Commissioner Moore's District. He stated that the substation was needed and asked if it was going to be downtown or where. Chair Bunney Brenneman stated that she did not have such information. He further stated that his question was when would this Committee be able to review such items and could they do so before final determinations were made.

Mr. Maken stated that he would request Ms. Shatas to provide an update in connection with sites for substations in the City at this Committee's next meeting.

Mr. Barrett stated that it was his understanding that they were considering a site at Oakland Park Boulevard and I-95.

Dr. Lewis explained that she had attended meetings on this matter about three years ago and it was supposed to have been placed behind the post office in that area, but nothing had been done.

Under Ground Ordinances

Mr. Caine asked if an update could be provided monthly regarding under ground ordinances. He also asked if FP&L could provide whatever ordinances they might have in regard to under grounding.

Mr. Maken stated that FP&L had provided a model ordinance to the City and a copy could be provided to this Committee.

VI New Business

Election of Vice Chair

Chair Bunney Brenneman advised that Christine Campbell had to resign from this Committee, and therefore, a new Vice Chair had to be elected.

Mr. Barrett nominated and Dr. Udell seconded Terri Murru as Vice Chair of the Utilities Advisory Committee.

Motion made by Mr. Stresau to close the nominations. Ms. Murru accepted the nomination. Board unanimously approved.

Utility Municipalization & Undergrounding

Vic Beninate, BellSouth

Vice Beninate, BellSouth, proceeded to distribute copies of the tariff put forth by the Public Service Commission in August. It outlined in detail how proposals would be

handled. He stated that the first document was a legal one describing rules as to how to handle requests for under grounding. He announced that Sal Renco was also present this evening and was the local engineer. He proceeded to provide an example of a request for under grounding. The first step in the process was to see if it would be feasible in the area making the request, and providing an estimate cost. He advised that FP&L was more expensive than BellSouth. The next step was that the group making the request had to provide such request in writing. Fees were charged for the preparation of the cost estimate and had to be paid up front and were non-refundable. An agreement would be executed within 180 days or they would forfeit the monies paid. Easements also had to be provided and locations for the boxes.

Commissioner Teel stated that in 1960 an easement was dedicated on the face of a plat which was 6' in the rear of the property with another 6' to the rear of another property, thereby making a 12' utility easement. A photograph was shown to the Committee. She stated that the City did not appear to have a set criteria that had to be followed by the utility companies to prevent such issues.

Mr. Beninate stated that when under grounding all things above ground were not eliminated.

Mr. Chancey asked where along the line in the design process would they know how many boxes would be erected in a given area.

Mr. Beninate stated it was easier to position the boxes in a new area than an existing area. He explained that public utilities were in right-of-ways, and then private easements were a legal agreement between the utility company and the homeowner. The boxes had to be in proximity to the houses in order for the technology to work.

Mr. Barrett stated that he was concerned they had no control over the services being provided by the utility companies, and that options needed to be available to the customers.

Mr. Caine asked if some of the boxes are required for the conversion from overhead to under grounding. Mr. Beninate confirmed and stated the boxes were all over.

Robert Dunckel explained that the City was contesting the 1962 matter because the City had accepted the dedication of the public easement area, but he did not believe such large boxes were being erected in backyards. There was ongoing dialogue in regard to that issue and the matter could end up in court.

Ms. Vickery asked if there were any agreements with the property owners. Mr. Beninate explained they had a legal private easement that was on a plat. Ms. Vickery stated that since the larger boxes were needed had they considered being more creative to make the boxes more aesthetically pleasing. Mr. Renco stated that landscaping had been agreed to in some cases to assist in hiding the boxes. Mr. Beninate stated that BellSouth did not want to be in a negative light, and therefore, would do whatever possible to ease the situation.

Robert Dunckel clarified that the utility companies would indicate where the boxes were to be located. Mr. Renco confirmed and explained that the boxes had to be placed

between so many houses in order to provide service. Robert Dunckel stated that in regard to FP&L they were discussing a 25% reduction by virtue of putting the utility boxes in the public rights-of-way. He asked if a set of criteria could be provided by BellSouth. Mr. Renco confirmed. Robert Dunckel reiterated that staff and the communities needed to evaluate what space would be needed. He believed this would be part of the overall marketing program of the utility companies if they were to be successful. Mr. Beninate explained that a general plan could not be put out because each neighborhood was different, but the tariff and the law would be followed.

Mr. Cooper stated that the boxes should be placed under ground and he proceeded to explain about the box placed on one of their properties in connection with the WaterWorks 2011 Program.

Mr. Holland stated that possibly some landscaping could be used to dress up the utility boxes.

Mr. Chancey stated the reason for this Committee was aesthetics, and hopefully the three utility companies could provide a master plan in connection with aesthetics in order to retain the City's value.

Mr. Beninate stated that under grounding was not the cure for all problems because from a service standpoint there are some negative impacts.

Utility Municipalization & Undergrounding

Cindy Stoddart, ComCast

Cindy Stoddart, ComCast, introduced Clay Fanell who was their Regional Vice President of Government Affairs and Community.

Clay Fanell stated a proposal was submitted to this Committee suggesting that the City construct its own municipal facilities and lease out to anyone interested in leasing them. ComCast was not interested in leasing someone else's facilities, and they have upgraded this City's broadband network and in February, 2007 they would launch their digital voice product comparable to BellSouth's product. AT&T Broadband renewed its cable franchise with this City. He stated they wanted to make sure that the City viewed them as a good citizen providing good customer service. In their franchise there were actual customer service requirements and the City had the ability to enforce those standards upon ComCast. They were not regulated the same as FP&L and BellSouth and were regulated both at the Federal and local levels. If they place equipment under ground they did not have the ability to recoup the costs through a tariff or a rate of return regulation scheme and the costs were borne by the customers.

Mr. Fanell further stated that an overall under ground conversion was a very complex and expensive project and did not necessarily advance the aesthetics. He proceeded to provide samples of situations in other cities.

Robert Dunckel assumed that their business plan followed the same as the other utility companies as far as initial cost estimates and the remaining process. He asked if they had any stock conversion agreements. Mr. Fanell confirmed. Robert Dunckel stated that information was provided by FP&L in regard to placing the boxes in the rights-of-way,

and he asked if they had such information available. Mr. Fanell stated they could review the matrix supplied by FP&L and then duplicate the information in their regard.

Mr. Cooper stated that they have not been good neighbors and he had been told that the company was not going to maintain the wires on his buildings. Mr. Fanell stated that was an untrue statement because they had spent \$143.5 million in maintenance.

Mr. Chancey stated that aesthetics were mentioned in regard to an historic area and a master plan was suggested for areas not in the water table such as Victoria Park. He hoped the utility companies could meet and resolve these issues together.

Ms. Vickery stated that during negotiations decisions would have to be made by the companies and were there options available to them. Mr. Fanell stated that because they leased pole space, it was more often than not that when the pole owner went under ground the financial feasibility of the project came into view and they would not then have to construct their own poles and would go under ground also. The cost should be explored because some utility companies could recover their costs for such under grounding. Ms. Vickery suggested that possibly public art projects could be done in connection with the utility boxes.

Mr. Caine asked if ComCast had a franchise agreement with the City and if so when was the expiration date. Mr. Fanell stated they had a more expansive agreement because they were regulated by the City and it did not expire until 2012.

Mr. Beninate explained that telecom companies in Florida did not have City franchises and they were regulated by the PFC. He stated further that hypothetically the City could build their own telephone company.

Robert Dunckel stated that once all costs and specifics were put together for under grounding would the neighborhood be willing to come up with the easements that were needed and would they be willing to pay the cost. It was a one-package deal and negotiations could not take place without all three utility companies participating. The most feasible way to approach this would be through a bond issue.

Mr. Underwood stated that his proposal addressed the issue of the City putting into place their own distribution network and renting out on a competitive basis to competing suppliers, not owning their own utility companies.

Mr. Fanell stated the companies communicate with each other and discuss the rights-of-way. They did not want anyone telling them what they could do on the poles as long as they were abiding by the national safety code.

Mr. Beninate further stated that there were three pages of companies in the phone book competing with BellSouth for local telephone service in addition to ComCast. He stated that it was an evolution and what counts was that the companies began understanding each other's issues.

Ms. Murru stated that money and aesthetics were important and they needed to look at all available alternatives to accomplish their goals. She asked if this Committee could

recommend funding for obtaining more professional advice on this matter so they could then move to the next level. Mr. Partington stated that was the intent of the RFP.

Chair Bunney Brenneman stated that at the last meeting Mr. Buffington had indicated that there would be an expansion of the RFP, and that was why it had not yet been released.

Mr. Partington stated that this was a fairly specialized subject, and since the City had traditionally not been in such a business, the question was could the City be encouraged to gain access through additional expertise. The answer was they could think about a motion recommending that the City enhance their staff and expertise in the area. But when they consider hiring consultants, they had to think about the process by which that was done and all the rules which applied. Ms. Murru stated that possibly that alternative would be less complicated than the RFP process. Mr. Partington reiterated that he did not think the hiring of a consultant would be less complicated than issuing an RFP. He stated that the City's weakness was that they did not have any individuals on staff who had worked for the utility companies or dealt with utility distribution. The traditional way the City made up for what it lacked was through hiring consultants or the issuance of an RFP. One had to be careful in the RFP so that the right questions would be asked.

Mr. Partington further stated that this Committee could request to view the RFP before it was issued.

Ms. Murru asked if a motion should be made to include all utilities. Mr. Partington stated that the expertise that addresses the issue of the City getting into the electricity distribution business and the relationship of under grounding brought with it automatically a discussion of who else was connected with this.

Mr. Caine stated that he believed verbage should be added to the RFP that all three franchise agreements be analyzed. Robert Dunckel explained that there was no agreement with BellSouth because there had been a change in the law regarding telecommunications. The change in the law put such services on an even playing field opened to competition, and therefore, the State had stepped in and they were pre-eminent in the field instead of dealing with this on a municipality basis. The State collects such taxes and then distributes them to the municipalities. Mr. Caine asked if verbage could be included in the RFP that would analyze the two agreements and the feasibility of taking over the BellSouth infrastructure. Robert Dunckel reiterated that there was no franchise agreement with BellSouth.

Mr. Underwood stated the change that took place was with the franchise fee because the uniform tax took its place, but did not take the place of an agreement governing the relationship between the City and the incumbent telephone company. He asked what was now governing the relationship with the City, or was it just a relationship at the State level.

Robert Dunckel explained that there was a state level relationship and at the City level was the administration of what happened in the public rights-of-way.

Mr. Underwood asked what was envisioned with the City putting in their own under ground distribution system as proposed, and would there be any obligation on the part of

the City to acquire the infrastructure that presently existed or having it removed. It appeared that without an agreement there would not be a relationship.

Robert Dunckel advised that he would have to review the State legislation in regard to having the facilities removed. In the absence of an agreement with the City, one had to respect the fact that they had private property rights and there would need to be a form of compensation. In the absence of litigation there would be a negotiated agreement along those lines.

Ms. Vickery stated that it seemed that they needed to hire an expert to write an RFP in connection with this matter, and then all certainties could be resolved and there could be an effective RFP.

Mr. Holland stated that many companies invested in under grounding equipment and then technology changed and investors lost money. He believed such unknown factors should be considered.

Mr. Partington stated he did not feel an expert was needed to write this RFP, and therefore, the Committee might want to suggest that they be given the opportunity to review the RFP before it was issued.

Mr. Stresau stated that the evaluation of any RFP needed to consider any fees involved and the two respondents were easy to evaluate because one was considerably higher than the other. The City ordinance stated that a percentage of 15 points had to be assigned to each applicant. He stated that he and the Assistant City Attorney questioned why they did not have to follow the Florida Competitive Negotiation Act which required the City to select and rank each application, and then negotiate a fee with the number one firm. He stated that he was appalled that this City had an ordinance requiring the Procurement Office to assign 15% of the total number of points to a firm that had the lowest bid. He did not feel that was the proper way to choose a consultant and he did not know if this Committee could influence the City Manager to incorporate the requirements for the Florida Competitive Negotiation Act in the new RFP or not.

Mr. Partington further stated that it would be a different process. Mr. Stresau stated that was the proper way to select a consultant. Mr. Partington stated that ultimately it was up to the City Commission and it was possible that even though the Procurement Director's process requires an assignment of scoring to the lower price that the Commission could overrule that decision.

Mr. Stresau stated if that was the case and if they could not weigh in with the City Manager directing the Purchasing Department to make those types of decisions, then his choice was simple which would come directly from the City Commission to the City Manager. He stated this has gone on for a long time and he firmly believes it should follow the Florida Competitive Negotiation Act to get a fair consultant hired. The best firm needs to be chosen and then the rules explained to them about what the City was willing to pay for. If that was unacceptable, then they would go to the second ranking firm. They should not select a firm that was marginally qualified because they submitted the lowest price and that almost happened.

Mr. Cole stated that he did not understand how that could be done against the CCNA. Mr. Partington explained that it was judged not to fulfill the criteria that required the City to follow the CCNA process. Mr. Cole stated further that he was concerned about the RFP because they were being too definitive in regard to its contents. He believed it should be broader because they were not sure what they wanted the consultant to do and then tasks could be assigned. Therefore, a fee could not be assigned at the beginning because they did not know what it would be. Mr. Partington stated they would be writing a recipe for consultants to bill the City as they chose. He believed it was necessary to think through what the scope of the RFP should be.

Mr. Holland stated that possibly they should use the tried and true methods for procurement providing flexibility to address all of the issues. Mr. Partington reiterated that this Committee should consider reviewing the RFP before it was issued, and if the Committee was dissatisfied with the RFP then they could provide their input. He further stated that it was important, in his opinion, to focus on the scope of the work.

Motion made by Mr. Cole and seconded by Ms. Murru that this Committee be provided the opportunity to review the RFP before it was issued.

Ms. Vickery stated that she wanted to receive an outside opinion about the RFP. Mr. Partington stated that it was a draft document and he did not think there would be an objection to her receiving an outside opinion on its contents.

Robert Dunckel stated that he would approach this from two perspectives. First of all, at the point it was distributed to staff the document was a public record, and therefore, outsiders can view it and conversations could be held with outside experts and that would not violate the Sunshine Law. Conversations could not be held with other members of this Committee, except at an open public meeting.

FPL Port St. Lucie Nuclear Plant & Energy Roundtable III Update

Chair Bunney Brenneman

Chair Bunney Brenneman stated that she wanted to table this item until the January 23, 2007 meeting. She advised that regarding the Energy Roundtable they were currently awaiting input from the Commission Assistant in regard to the February 26th date.

Other New Business

Dr. Udell stated that she did not receive minutes or notifications of the meetings and asked what process was normally followed. Chair Bunney Brenneman stated that the matter would be resolved.

VII Next Meeting

Chair Bunney Brenneman stated that there would be no December meeting, and therefore, the next Committee meeting would be scheduled for January 23, 2007 at 6:30 p.m. Notifications would be sent via e-mail regarding the February 26th meeting.

Mr. Chancey stated that he had received a notice that the EPA had a deadline for stormwater run-off a year and a half from now. He advised that this matter should be placed on the agenda for discussion. He stated that he did not want to see taxpayers paying a fine in connection with this. He explained that there was a sponge type product to be placed in the drains and he wanted to have the item investigated further.

VIII Good of the Committee

Nothing reported.

IX Adjournment

There being no further business to come before this Committee, the meeting was adjourned at approximately 9:14 p.m.