

**UTILITY ADVISORY COMMITTEE  
CITY OF FORT LAUDERDALE  
CITY HALL 8<sup>TH</sup> FLOOR CONFERENCE ROOM  
100 NORTH ANDREWS AVENUE  
FORT LAUDERDALE, FLORIDA 33301  
SEPTEMBER 22, 2009 – 6:30 P.M.**

Cumulative  
January 2009 -  
December 2009

<b><u>Committee Member</u></b>	<b><u>Attendance</u></b>	<b><u>Present</u></b>	<b><u>Absent</u></b>
Bunney Brenneman, Chair	P	9	0
Fred Stresau, Vice Chair	A	6	3
L. Thomas Chancey	A	6	3
Chris Chiari	A	8	1
Robert Cole	A	6	3
Dr. William Goetz (arr. 6:38)	A	8	1
Don Larson	P	8	1
Dr. Magdalene Lewis	A	1	3
Terri Murru	P	7	2
Raymond Parker	P	7	2
Frances Smoot	A	7	2
Maria Canady	A	3	0
Claire Vickery	A	3	6
Jay Weiss	P	4	0

**Staff**

Peter Partington, City Engineer and Staff Liaison  
Bob Dunckel, Assistant City Attorney  
Nikki Sack, Assistant City Attorney  
Mike Deonanine, City Engineer  
Brigitte Chiappetta, Recording Secretary, Prototype, Inc.

**Guests**

Lynn Shatas, FPL  
Vic Beninate, AT&T

**Communications to City Commission**

None at this time.

**I. Call to Order**

Chair Brenneman called the meeting to order at 6:35 p.m.

## **II. Roll Call**

Roll was taken and it was noted a quorum was not present.

## **III. Self-Introductions**

Self-introductions were made by all members, Staff, and guests.

Dr. Goetz joined the meeting at this time (6:38 p.m.).

## **IV. Minutes of August 25, 2009 Meeting**

As a quorum was not present, the minutes could not be approved at this time.

## **V. New Business**

- **Update on Sustainability “Green” Committee**

Dr. Goetz advised the first meeting of this new Committee will be on Monday, September 28, 2009. They plan to meet with Carbon Solutions America in October 2009 to discuss carbon footprints.

- **Discussion of the Proposed Franchise Agreement Ordinance**

Chair Brenneman reported that this was approved at the most recent City Commission meeting upon first reading. The second reading will be held at the regular session of the October 6, 2009 meeting, beginning at 6:00 p.m.

She invited the Committee members to discuss any aspects of the franchise agreement at this time.

Ms. Murru stated she felt proud to have served on a Committee that made a firm commitment to “not take a stance either way” about the franchise agreement, but instead presented information to the group without bias.

She congratulated FPL, which she said “did a fabulous job” negotiating. She recognized the City’s efforts in negotiations as well.

Chair Brenneman agreed, and congratulated Attorney Dunckel, Attorney Sack, and the other City negotiators, noting that they had participated with a very busy schedule and had put forth a good deal of hard work.

Attorney Dunckel thanked Chair Brenneman and Ms. Murru for their consideration. He observed that there are more issues that may come before the Committee, as there are “subtleties within the franchise agreement.”

He referred the Committee to Section 1, pointing out that the prototype franchise agreement would not have applied to easements “and other places.” The negotiating team had worked to limit the applicability of the franchise agreement to public rights-of-way, as the “other places” could have resulted in fixtures located on beaches, parks, or easement areas behind property lines. Attorney Dunckel explained the City had wished to preserve their ability to regulate installations, and the final agreement had stated facilities would be regulated under the National Electric Safety Code.

In addition, the City franchise is designated only over those roads considered “City streets,” with no jurisdiction over County or State roads. The prototype agreement considered all roads to be the same; during the course of negotiations, this was “pared down.”

It was also stipulated that FPL’s installations and facilities will be subject to City rules and regulations. The franchise agreement will apply to all FPL electrical generation, but not to “other services” than the transmission of electricity.

Attorney Dunckel explained that the prototype agreement states facilities can be moved “if they interfere with traffic.” The City’s public rights-of-way, he noted, are used for more than traffic: telecommunications, water and sewer, and other services are located in these areas. The scope of what can be considered “interference,” which would trigger the relocation of facilities at FPL’s expense, has been expanded.

Indemnification has also been broadened considerably, he continued, and is very similar to the text used by the City of Plantation, FL.

FPL had wanted a 5.9% franchise fee, he noted. The City’s former fee was 6%, which included ad valorem taxes, licensing fees, and other considerations. Attorney Dunckel characterized this category as “a set-off.” The current agreement removes ad valorem taxes from this category, which, he felt, was considered justification for 5.9% rather than 6%; eventually FPL agreed with the City’s 6% fee. He clarified that removing ad valorem taxes from the current agreement “puts more into [the City’s] pocket.”

The City’s right of audit has also “expanded considerably,” and Attorney Dunckel characterized the “most favored nations clause” as “better than any other... that we’ve seen.” The franchise fee starts at 5.9%, and if another municipality within Broward or Dade County with a population equal to or less than the City’s is given a greater franchise fee, it would trigger the most favored nations clause.

Dr. Goetz returned to the issue of the franchise fee, asking if it meant the City could not include “anything in the future” unless it is specifically mentioned in the current agreement. For example, he pointed out that the potential advent of hybrid electric cars could trigger the construction of electrical charging stations. Attorney Dunckel clarified that this electricity could be included in the franchise fee as presently written.

He pointed out that the franchise fee is based on “residential, commercial, and industrial” use, and 6% would be available from these revenues.

Chair Brenneman requested that Attorney Dunckel elaborate on the audit. He explained the City has the right to audit FPL’s records within 180 days of each anniversary date. FPL is required to use a specific system of accounts as established by law; the audit clause requires them to attach a monthly statement of the gross revenues upon which the franchise fees are based. Even if the City accepts a franchise fee for a specific month, it does not prevent them from auditing their figures to determine if they have been under- or overpaid.

The audit must be conducted during normal business hours, and the records the City may audit do not relate to hardening of the system, but with billed revenues. It relates to records not prepared by FPL “in the ordinary course of business;” should these be needed by the City because they are relevant to the audit, the City could procure them at its own expense.

Another added provision in the new agreement is that FPL must retain its records for five years. Lastly, the audit provision must survive any termination of the franchise agreement.

The City may engage with other utilities outside the area for the purchase of “wholesale electricity,” Attorney Dunckel continued, although they cannot sell utilities to retail uses.

Toward the close of negotiations, he advised, the City’s negotiating team learned that there were three things necessary to FPL in the agreement:

1. A 30-year franchise;
2. A 5.9% franchise fee;
3. No buy-out provision.

He indicated that the City had managed to get “two out of the three:” the 5.9% fee and the buy-out provision. Attorney Dunckel explained that the City had raised issues that other municipalities apparently had not in order to achieve these goals. Since the time of negotiations, other municipalities had contacted the City to ask to see the new franchise agreement, he added. The consideration of municipalization may have been a factor, he noted.

Mr. Larson congratulated Attorneys Dunckel and Sack for their part in the negotiations, and thanked Ms. Shatas on behalf of FPL, which he felt had contributed to a “good meeting of the minds.”

He noted that there is a company called Next Era, which is owned by FPL, and asked if the City might be paying for “the buildup of that company” through its franchise money. Ms. Shatas explained that Next Era is a subsidiary of FPL Group, as is Florida Power & Light, and the two “have nothing to do with each other.”

Attorney Dunckel stated that the FPL representatives who met with the City’s negotiators were “professionals [and] aboveboard in every sense of the matter.” He felt reasonable compromises were reached whenever necessary.

He returned to the issue of the buy-out provision, explaining that this may be exercised at the expiration of the franchise or at the termination of the franchise. The formula for this would allow the City to purchase the property FPL uses for distribution of electricity at a purchase price that includes the reproduction cost of the property (less depreciation). This clause follows the eminent domain clause, Attorney Dunckel noted, with one exception: it is exercisable “as a matter of contract,” and each side assumes its own attorneys’ fees and costs.

Should the parties be unable to agree on a purchase price, he continued, the price would be determined by a jury, in a declaratory judgment action.

A “legislative or regulatory action” clause was denied by the City, Attorney Dunckel observed; this would have allowed FPL to terminate the franchise if a law was passed that placed them at “a competitive disadvantage.” The City had argued that a law cannot constitutionally be passed if it impairs existing contractual obligations, and FPL would have such an obligation. The phrase was changed to “a material competitive disadvantage,” and FPL would be required to provide notice of and reason for termination. The City would also have the ability to legally challenge such a termination.

Dr. Goetz asked if the case would be different should FPL be unwilling to develop renewable energy resources, and these resources became available from other sources. Attorney Dunckel explained the City has specifically provided for the possibility of obtaining resources elsewhere, or allowing FPL to match the rate of such an outside offer.

He noted that the City’s concern, as communicated to him, was with the rate rather than the means of generating alternative energy. State law will control renewable energy and “set the standards,” as rates and services are within the

jurisdiction of the Public Service Commission (PSC) and cannot be addressed by the City.

In the event that FPL chooses not to match such a competitor's rate, Attorney Dunckel clarified, the City may opt for that competitor's provided service.

Dr. Goetz asked if the agreement could be amended so the source of the power might be included, which might give some preference to alternative energy. Attorney Dunckel reiterated that the rate, rather than the means of providing energy, would be the deciding factor.

He added that there are "best efforts" provisions in the agreement, one of which refers to undergrounding: as the PSC retains jurisdiction over rates and services, a municipality cannot "demand" that lines be undergrounded. Currently the practice of undergrounding is being considered on a neighborhood-by-neighborhood basis.

Dr. Goetz pointed out that undergrounding could be incentivized, which might encourage communities to come up with ways to pay for this service. Attorney Dunckel explained this practice would be "up to the City to pursue" rather than to FPL. The City must approach FPL with regard to undergrounding in order to be able to take advantage of the 25% contribution FPL would make in aid of such construction.

He added that another provision regarding undergrounding reverts to the PSC's stance that "no public utility shall make or give any undue or unreasonable preference or advantage to any locality." This means undergrounding could not be given to Fort Lauderdale only, but must be offered throughout the entire territory of FPL's service. He clarified that this "gives back to the City" the ability to set the pace of undergrounding.

Mr. Partington stated that the City Commission plans to discuss their current policy toward undergrounding, most likely at the first Conference Agenda meeting in October. They will revisit the process that neighborhoods must currently follow regarding undergrounding, most likely including the "up-front money" needed to start such a project.

Ms. Shatas advised that the process followed by other cities, such as Riviera Isles, is to obtain a ballpark estimate, then move forward if desired and learn the "firm estimate" and pay engineering costs. If the city in question moves ahead with the project at this point, the engineering costs go toward the project's completion.

She noted that for most cities, the process does not move forward to this next level, as they first try to learn if they meet the criteria to qualify for the 25% contribution.

Mr. Larson asked if this cost would be collected through a bond issue, or if it would be separately assessed. Mr. Partington replied that it would be a special assessment, and noted that in order to proceed with a project such as undergrounding, the City would need to bring individuals with expertise in that area on board. Thus far the City Commission has preferred to hire consultants, for whom neighborhoods must front the costs.

Mr. Parker noted that engineering fees to determine an accurate cost are “not really very much” – for example, the engineering fee at Sunrise Key has been quoted at \$5500. Chair Brenneman noted that Sunrise Key is a relatively small area.

Mr. Partington noted that FPL’s offered 25% toward construction costs “has made it more likely” that undergrounding might be successfully pursued by neighborhoods, and might move the issue forward.

Attorney Dunckel moved on to severability, stating that FPL’s position on this issue was that if any clause or provision in the franchise agreement were found invalid by a court, the entire agreement would then be invalidated. Eventually it was agreed that while this position would stand, the ultimate result would most likely be renegotiation by both parties, as FPL is obligated to supply the City with electricity at that point.

Chair Brenneman and the other Committee members thanked Attorneys Dunckel and Sack again for their thoroughness in negotiating the new franchise agreement, and discussing it with the UAC.

Ms. Murru asked if the recording of tonight’s Committee meeting would be made available to those members who were not present. It was clarified that the recording would be available.

Chair Brenneman requested more information from Ms. Shatas regarding the “three mile” criterion for FPL’s 25% reduction in construction costs. Ms. Shatas explained that three contiguous miles of feeder lines must be available in order for a neighborhood or neighborhoods to qualify for the reduction. She noted that the City is aware of such criteria.

Ms. Murru declared she hoped the UAC’s work would continue, and pointed out that they have done other good work, such as the Tree Subcommittee.

Chair Brenneman advised that the most recent Tree Subcommittee has been rescheduled for October 15, 2009, and there is “critical” information that they have been working on, including the identification of trees that are cared for by homeowners.

Mr. Larson asked if there is any “mechanism” in place regarding individuals who refuse to bring their trees into compliance. Attorney Dunckel responded that FPL and other utilities have legal recourse within public utility easement areas; however, the City does not have an Ordinance on its books by which the Code Enforcement Department could force a property owner to trim his/her trees or pay a fine.

Mr. Larson proposed that the Committee might consider urging the City Commission to adopt such an Ordinance. Ms. Murru explained that part of the Tree Subcommittee’s work involves “[using] a carrot, not a stick” to this end – in other words, working with homeowners and FPL to encourage the homeowners to comply.

Chair Brenneman added that she hoped subcommittee assignments could be announced at the next UAC meeting, so if anyone wished to join the Tree Subcommittee they would have the opportunity to do so.

She explained that the Infrastructure Subcommittee works with siting of substations, which has not been an issue in some time; they are also concerned with poles, lines, and their distribution. Both subcommittees meet on an as-needed basis, unless an emergency or City Commission issue has arisen.

She noted that there has been no additional input from City residents regarding the franchise agreement at this time, although she stated she is still receiving emails and telephone calls. The City Commission has stated she may refer these to the Mayor if necessary.

- **Green Expo 2010**

Chair Brenneman advised that the date under consideration for next year’s Expo would be at the end of March, which would make them one of the first cities to hold such an event in the year, rather than one of the last.

Ms. Murru suggested that FPL might wish to take over the Green Expo from a community entity perspective, with UAC members providing their expertise as needed. This would remove the financial burden of the Expo from the City, and the UAC could partner with the Green Committee to assist.

Ms. Shatas noted that due to the size of FPL’s service area, they do not become greatly involved with individual cities’ events of this nature. While she felt FPL

could work with the City on the Expo, she did not feel taking ownership of the event would be within their purview.

Chair Brenneman stated the Green Expo had been included on the Agenda so the UAC could begin thinking about the event in advance, and perhaps decide at the next scheduled meeting whether they wished to proceed with the Expo in March 2010. She pointed out that the City requires paperwork to be filed in advance of the Expo, and there was discussion of a possible change of location as well.

Ms. Murru encouraged the Committee to think about collaborating with the Green Committee, as well as lining up sponsors to help alleviate the City's costs. She suggested that for-profit entities might be interested in participating in exchange for the positive exposure.

Chair Brenneman noted that she had contacted two companies that assist in putting together events of this nature; in addition, UAC member Claire Vickery had referred information regarding a similar event in Dania Beach in November 2009. She offered to have this information distributed to interested Committee members.

Mr. Parker felt that a Green Committee would seem to be more suited to the Green Expo than the UAC. Chair Brenneman explained that the UAC retains a more "educational mission and message," while the Green Committee will be more involved with the "bigger picture," such as the City's carbon footprint. She concluded that the City Commission does not anticipate an "interworking" of the two committees.

Mr. Parker proposed that while the committees might remain separate, they might still collaborate on this particular event.

Ms. Murru asked how the City would budget for the event. Mr. Partington advised that to his knowledge, the Green Expo would be budgeted through the UAC.

- **Other New Business**

Ms. Shatas distributed copies of the 4<sup>th</sup> Quarter Line Clearance report to the Committee. Ms. Murru suggested sharing this information electronically whenever possible, including with neighborhood associations.

Mr. Parker asked if it might be possible to vote on asking the City Commission to rescind the Committee's last recommendation, which had urged the Commission to contract with Power Services for Phases II and III, as it was now a moot point. Chair Brenneman explained that the recommendation had not been discussed or acted upon by the City Commission.

## **VI. Unfinished Business**

Ms. Murru stated that it was of concern to her that the City lacked the capability of running its utilities, and she wished to discuss best practices regarding water and sewer services at the next meeting to ensure that these services are being run appropriately.

Chair Brenneman and Mr. Partington noted that these issues are not part of the Committee's purview, due to the Resolution that created the UAC. Mr. Partington proposed that if the entire Committee is interested in reviewing these issues, they could recommend that the City Commission revisit the terms of the Resolution.

## **VII. Good of the Committee**

Nothing at this time.

## **VIII. Announcements**

- **Tree Subcommittee Meeting: Thursday, October 15, 2009, 3:30 p.m.**

Chair Brenneman noted that this meeting is subject to participants' availability.

- **Next Regular UAC Meeting: Tuesday, October 27, 6:30 p.m.**

There being no further information to come before the Committee at this time, the meeting was adjourned at 8:02 p.m.

[Minutes prepared by K. McGuire, Prototype, Inc.]