

MINUTES FROM A REGULAR MEETING OF THE UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA, HELD AT 5:00 P.M. ON JUNE 13, 2007 AT THE WILLIAM ARNOLD SERVICE BUILDING LOCATED AT 1001 JAMES STREET, KEY WEST, FLORIDA

The above referenced meeting of the Utility Board of the City of Key West, Florida, convened at 5:00 P.M., on the above date and location and was called to order by Chairman Padron. Present and answering to the roll call were Utility Board members: Peter Batty, Charles Bradford, Lou Hernandez, Mona Clark and Robert Padron. Also present at the meeting: Jack Wetzler, Assistant General Manager & CFO ; Nathan Eden, Board Attorney; Suzanne Greager, Director of Management Services; Alex Tejada, Customer Services Director; Dale Finigan, Director of Engineering/Control Center; Stan Rzd, Compliance Administrator; and David Price, Director of T&D.

Chairman Padron asked that agenda Item #6c be moved to the top of the action items and reclassified as #6a.

Chairman Padron asked if there were any additional changes or additions to the agenda. There were none.

AGENDA ITEM #4 - INFORMATIONAL ITEMS

Power Supply Report

Mr. Finigan reported that since the last Utility Board meeting there was one transmission disturbance, three distribution outages and twenty two reclosure outages.

Mr. Finigan stated that the transmission disturbance was due to a fault located in the Florida Keys Co-Op (FKEC) territory and de-energized fifteen percent of KEYS' customers for seven minutes.

Mr. Finigan said that twenty of the reclosures were due to weather and the other two were undetermined.

Generation Report

Mr. Jack Wetzler reported that CT3 is still in a forced outage which is now going on one year and should be back in service by the end of next week. Mr. Wetzler said they are currently working on the shaft, the pump and motor and awaiting the delivery of bearings. Mr. Wetzler also said that currently there are 103 megawatts available, which is eighty five percent of the current load.

Final Disposition of Bond Proceeds

Mr. Wetzler reported to the Board that in April, KEYS invested \$4,072,733.04 with the Bank of New York with an interest bearing note at 4.80%, which will mature in 2016. In May, KEYS invested \$28,570,826.00 with Wells Fargo/ JP Morgan at an interest rate of 4.721%, which will terminate in 2010. Also in May, KEYS invested \$4,651,152.00 with Wells Fargo/ JP Morgan at an interest rate of 4.648%, which will terminate in 2010.

Mr. Wetzler stated the balance of \$3,225,000.00 was invested in State and Local Government Securities (SLGS), which earns no interests and is used to lower the overall interest earnings so KEYS does not earn more interest on the funds than what is paid out.

Mr. Batty asked who will be the beneficiary of the money on the SLGS. Mr. Wetzler replied the beneficiary is the Bank of New York.

Mr. Bradford asked for clarification on there being no earning on the money. Mr. Wetzler said that the money goes to a State and Local Governmental Investment account which the Federal Government has formed so that a tax free municipal agency can issue bonds and stay in compliance with bond regulations.

Land Use Update

Mr. Rzad stated that the Land Use Committee (LUC) has many focus areas and that he will update the Board on three areas.

Mr. Rzad informed the Board that the BAMA leased property on Stock Island has sold their Stock Island business operation to Fishbusters, owned by Mr. Charlie Renier, for \$8.5 million. Fishbusters has indicated that they would like to assume the lease as well as make changes to authorized uses stated in the lease. KEYS' legal counsel has advised that KEYS still has a contractual relationship with BAMA. At the present time, KEYS has authorized legal counsel to send a letter to BAMA to immediately cease all unauthorized activities on the property.

Mr. Rzad said the second update was on the R.W. Beck Property Analysis. On March 21, the Utility Board approved a Professional Services Agreement with R.W. Beck for the preparation of an Economic Cost/Benefit Analysis which will evaluate alternatives with respect to the Service Building, the 53 Park N' Ride spaces, and a portion of the Stock Island Property, including, but not limited to the BAMA leased property, the warehouse footprint up the discharge canal, and the decommissioned Ralph Garcia Steam Plant, with the operational Synchronous Condenser located on the roof. The draft report should be ready the first week of July. A workshop to thoroughly discuss the results is planned for mid-August.

Mr. Rzd said the third update was the decommissioned Cudjoe Peaker Site and that Mr. Ty Symroski, Land Use Consultant, has completed a Regulatory Analysis of the Cudjoe Peaker Site. The LUC is currently planning a meeting with Mr. Symroski to discuss the results. Mr. Rzd stated that on March 20th KEYS sent a letter to Mr. Jose Papa, Monroe County Planning Manager, to amend the 2010 plan.

Mr. Rzd also stated that KEYS submitted comments to the Stock Island/ Key Haven Livable Community Keys Master Plan on May 21st.

Mr. Batty said that he recalled that, at one of the LUC meetings which included BAMA and Fishbusters, there was a verbal request to transfer the lease from BAMA to Fishbusters. Mr. Batty asked if KEYS had received a written request. Mr. Rzd said that KEYS did receive a written request from Fishbusters, but legal counsel advised that the lease is with BAMA and there is no relationship with Fishbusters.

Chairman Padron asked for clarification on the BAMA lease being assignable. Mr. Batty replied that the lease is not assignable without authorization from the Board.

Chairman Padron asked if Fishbusters has requested assignment of the lease. Mr. Rzd responded that they did ask for assignment and it has been forwarded to legal counsel.

Mr. Rzd stated that KEYS has asked the appraiser, in addition to providing the highest and best use of the property, to include what the new rental value of the property will be. The information from the appraiser will be available shortly.

Renewable Energy Update

Chairman Padron stated that, as a member of the Legislative and Regulatory Committee for Florida Municipal Electric Association (FMEA), he attended a meeting on May 30th, which was called for the purpose of dealing with the renewable energy issue.

Chairman Padron discussed the brief background on the issue and said that at the last legislative session an energy commission was created and ordered the Public Service Commission (PSC), and the energy commission, to conduct a study and come back before December with a renewable energy proposal.

Chairman Padron said several options came before the committee. The option the committee came to a consensus on was to encourage the development of clean energy in Florida, including renewable energy and energy efficiency.

Chairman Padron stated that in 2002 the Public Service Commission (PSC) conducted a resource study within the State of Florida on the availability of renewable energy. The study indicated that there were 393 megawatts in municipal solid waste, which is 38% of Florida's renewable capacity; 50 megawatts in hydroelectric, which is 5% of Florida's renewable capacity; 340 megawatts in waste heat, which is 33% of

Florida's renewable capacity and 245 megawatts in biomass, which is 24% of Florida's renewable capacity.

Chairman Padron said the purpose for the new study is to implement a renewable portfolio, which will be required by all utilities.

Mr. Batty said he heard on the radio that the PSC closed a coal plant and asked Chairman Padron if there was any connection. Chairman Padron replied that there is a 1800 megawatt Florida Power and Light coal plant and the main issue is the proximity to the Everglades. Chairman Padron said there will be hearings on that matter within the next couple months.

Attorney General's Opinion on Credit Card Fees

Mr. Eden reported to the Board that he received a letter from the Attorney General today regarding the outcome of prohibiting a municipal utility from imposing a surcharge for customers paying by credit card.

Mr. Eden said the letter stated a unit of local government/municipality is authorized to accept payment by use of credit cards, charge cards, and bank debit cards for financial obligations and to surcharge the customers using such payment methods.

Chairman Padron stated this was good news for the utility.

AGENDA ITEM # 5 – CONSENT AGENDA

- a) Approve Minutes - Regular Meeting – May 23, 2007
- b) Approve Disbursements Report
- c) Approve Renewal of KEYS' 2007/2008 Federal Flood Insurance with Fidelity National Property & Casualty Insurance Company through Key West Insurance, Inc
- d) Accept Actuarial Valuation Report as of January 1, 2007, Approve Change to Pension Contribution Percentage, and Approve True-up Contribution
- e) Approve Pole Attachment Agreement between Keys Energy Services and Local Paradise TV

Motion was made by Mr. Batty and seconded by Mr. Bradford to approve the Consent Agenda.

There being no further discussion the motion passed unanimously.

AGENDA ITEM #6 – ACTION ITEMS

Item #6a – Approve Option Agreement with the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida for the Sale and Purchase of Real Estate Parcel #00115530-000000 located on Cudjoe Key (West of Blimp Road) in the County of Monroe, State of Florida

Mr. Wetzler stated that at the January 10, 2007, Utility Board meeting, the Board approved the property at the Cudjoe site west of Blimp Road as surplus and declared as excess to need of the utility. Mr. Wetzler stated that since that meeting the State has made an offer to purchase the property for \$1,938,000.00 with the ability to reduce the offer to ninety percent which is \$1,744,200.00 based on an assessment the State will do.

Mr. Wetzler stated that in addition the proposal in the States agreement says if the State conducts an environmental assessment and finds remediation is required they can require that KEYS does the remediation at a cost up to \$ 194,000.00.

Motion was made by Mr. Hernandez and seconded by Mr. Bradford to approve the Option Agreement with the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida for the Sale and Purchase of Real Estate Parcel #00115530-000000 located on Cudjoe Key (West of Blimp Road) in the County of Monroe, State of Florida

Mr. Padron asked if there was any discussion.

Mr. Batty requested additional information regarding the background on the agenda item.

Mrs. Erin Nevius, Eden & Nevius, PL, approached the podium and informed the Board that the agreement states once the agreement is signed, the State has the option to make their own assessment as to how much the property is worth. If the States feel the property is not worth \$1,938,000.00 they can reduce the price to as low as \$1,744,200.00 and they will conduct their own appraisal on the property to determine its worth.

Chairman Padron asked if KEYS has conducted an appraisal of the property.

Mr. Wetzler replied no.

Mr. Wetzler commented that in discussions with Ty Symroski, Land Use Consultant, Mr. Symroski has stated that with the regulatory restrictions on the property there's not much value or very limited value on the property to anyone other than the State.

Mr. Batty asked if that was a unilateral decision the State can make or a bilateral decision. Mrs. Nevius replied unilateral.

Mr. Batty also asked about the environmental impact, since there was

discussion on selling the property "as is" and now there's a clause stating KEYS is responsible for clean up.

Mrs. Nevius said her suggestion was to get an assessment on Phase 1 and an approximate value to clean the property and the estimate came in under \$10,000.00.

Mr. Batty said he is hesitant to enter into a contract using a number of \$194,000.00, which binds KEYS to the contract where there's an estimated cost of \$10,000.00 for clean up. Mr. Eden replied that those provisions have always been in the offer.

Mr. Eden stated that Mrs. Nevius has spoke to the State regarding their ability to close due to the lack of money remaining in this year's fiscal budget. The State advised Mrs. Nevius that if the agreement was not entered within this fiscal year that they may not have the money available next fiscal year and will have to wait another year.

Mrs. Nevius stated that she has spoke with the State to make certain revisions to the agreement on behalf of KEYS and the State has advised her that the changes were forwarded to their legal department several months ago and she is still awaiting a response.

Mr. Batty asked what certifications the State will require prior to closing. Mrs. Nevius replied that the contract reads, at the sellers' sole cost expense, and prior to exercise the option in closing will commence and diligently peruse any assessment and clean up and monitoring the property to bring the property to full compliance with environmental law.

Chairman Padron asked Mr. Symroski to approach the podium.

Mr. Symroski stated he did not know when the previous assessment or appraisal of the property was but the western portion of the property is zoned sparsely settled, which is half a dwelling unit per acre and submerged land does not count.

Mr. Symroski stated that under the existing building code there could be twenty six dwelling units. He stated that this is the best news he could give to the Board at this time.

Mr. Symroski said the property is designated as a Tier 1 property per County maps and the maps are currently being challenged to assess environmental sensitivity. He also stated that since the property is currently designated Tier 1 this means it will be very difficult to have ROGO units built.

Mr. Symroski said if KEYS was to develop residential units on the property and score enough points with the County would be to greatly reduce the number of units down to five or six and also be restrained to only clearing at best twenty percent of the property.

Mr. Symroski also stated the property is on a list of FEMA property where KEYS will be unable to obtain flood insurance.

Mr. Eden said that the only rational way to look at the agreement is at a \$1,500,000.00 sale with the chance KEYS may not collect anything from the County for remediation.

Mr. Batty asked if there is value range pricing between \$1,700,000.00 and \$1,900,000.00, what happens if the price falls below the \$1,700,000.00 range and does KEYS have the ability to withdraw from the agreement. Mrs. Nevius replied that if the offer is below \$1,700,000, KEYS has the sole discretion to terminate the agreement.

Mr. Batty recommended that the motion should be amended to state that KEYS will enter into the agreement but under no circumstances would KEYS sell the property to the State unless KEYS nets \$1,500,000.00 or above.

Mr. Wetzler said the contract states that the offer is \$1,938,000.00 and can offer as low as \$1,744,200.00 and KEYS would be obligated to sell at that price and be obligated to pay \$193,800.00 for remediation which would bring the price down to around \$1,550,400.00.

Mr. Batty made a recommendation to accept the contract and immediately instruct legal council to start litigation with the County for the clean up.

Chairman Padron requested a roll call for the original motion made by Mr. Hernandez and seconded by Mr. Bradford.

The roll was called and the following vote was recorded:

Ms. Clark	Yes
Mr. Batty	Yes
Mr. Bradford	Yes
Mr. Hernandez	Yes
Chairman Padron	Yes

A second motion was made by Mr. Batty and seconded by Mr. Bradford to immediately get an estimate within the budgetary allowance to remediate the environmental situation on the property and then make claim to the County to compensate KEYS for the cost of the analysis and the cost for clean up.

Under discussion Chairman Padron asked if the enabling act requires KEYS to get an appraisal on the property. He asked if it is advantageous for KEYS to obtain an appraisal if the State comes back with a \$1,700,00.00 offer. Mr. Eden responded that he will have to review the enabling act to see if KEYS is required to get an appraisal. If the State comes back with an offer of \$1,700,000.00 then the Board needs to make a decision.

There being no further discussion the motion passed unanimously.

Mr. Batty then made another motion which was seconded by Mr. Hernandez to review the enabling act and determine if an appraisal is required and whether the Board needs to go forward with an appraisal if it is required.

Chairman Padron asked if there was any additional discussion on the motion, there being none the motion passed unanimously.

A brief discussion ensued regarding the appraisal coming in above \$1,938,000.00 if one is required.

**Item #6b – Modify the Terms by Which the General Manager & CEO May
Consummate the Sale of SO₂ Emission Allowances for Vintage Years
2010 – 2014**

Mr. Wetzler informed the Board that at the January 10, 2007 Utility Board meeting, the Board authorized the General Manager & CEO to consummate the sale of current surplus and 2010-2014 SO₂ Emission Credits on or before June 30, 2007. Currently there are 12,55 tons of credit available.

Mr. Wetzler said staff is requesting an extension of the deadline to December 31, 2007 and a reduction in the price per ton, from \$400 to \$325 the current market value is \$300 per ton.

Mr. Wetzler stated staffs recommendation to the Board is to modify the terms by which the General Manager & CEO may Consummate the Sale of Current Surplus and 2010-2014 SO₂ Emission Credits to or before December 31, 2007 with TFS Energy, LLC or Evolution Markets each earning a broker's commission of \$0.25 per allowance, provided the proceeds equal or exceed \$4,077,236 which equals \$325 per ton.

Mr. Batty stated that the Board made a motion about 18 months ago to give the General Manager & CEO authorization to sell credits several months ago since the market has eroded and continues to erode. Mr. Batty said every time this item comes before the Board, the Board approves a level above where the market is and this leads to market risk.

Mr. Batty recommended modifying the terms to authorize the General Manager to sell at \$300 per ton and sell so KEYS doesn't assume the market risk.

Mr. Wetzler commented that as he was preparing the agenda item summary last week, the rate was \$325 per ton and since then it has decreased to \$300 per ton.

Mr. Batty then asked Mr. Wetzler if he felt the market would recover. Mr. Wetzler said he spoke with two brokers and they feel that if KEYS was to hold out a little longer it's possible it would increase. However, they did not indicate how much.

Mr. Padron asked for a motion before further discussion in ensued.

Mr. Batty made a motion to approve with the change to \$300 per ton seconded by Ms. Clark.

Ms. Clark asked for clarification on the motion. Mr. Batty replied his motion was to authorize the General Manager to sell SO₂ Emission Credits for \$300 per ton with the ability to negotiate if needed.

There being no further discussion the motion passed unanimously.

Item #6c – Approve Resolution #751-Declaraton of Surplus Threshold Amounts to Support the Enabling Act (69-1191)

Mr. Wetzler informed the Board that on January 24, 2007, the Board approved language for changes to the Enabling Act and the Governor's Office received KEYS bill on June 5th and has fifteen days to sign or veto - no action results in automatic enactment.

Mr. Wetzler said that Resolution #751 establishes Utility Board policy on surplus property which states that the Board shall have sole discretion to classify as surplus any of its property that is obsolete or that which is uneconomical or inefficient or serves no useful function, and is valued over \$100.00 (based on original book value)

Mr. Wetzler said it is staff's recommendation to approve Utility Board Resolution #751- Declaration of Surplus Threshold Amounts, to support the Enabling Act (69-1191) to be effective on the date the Governor signs the bill.

Motion was made by Mr. Batty and seconded by Ms. Clark to approve Utility Board Resolution #751- Declaration of Surplus Threshold Amounts, to support the Enabling Act (69-1191) to be effective on the date the Governor signs the bill.

There being no discussion the motion passed unanimously.

Item #6d – Approve Resolution #753 Seeking FMPA's Support on Various Climate Change Initiatives

Mr. Wetzler stated at the May 23, 2007 Board meeting, the Utility Board adopted an additional business priority to develop a plan to reduce atmospheric concentrations of greenhouse gases while considering the rate impact on KEYS' customers. Staff reported that one action plan to support the new business priority is to lobby Florida Municipal Power Agency to establish renewable goals.

Mr. Wetzler stated that staffs recommendation is to approve Resolution #753 and send to FMPA's General Manager and CEO with a request that said Resolution is discussed in the appropriate FMPA Committees and the results of the discussion be shared with KEYS.

Mr. Wetzler read the resolved section of Resolution #753 to the Board which states that:

The Utility Board of the City of Key West, Florida, urges FMPA to:

- 1) Adopt an appropriate percentage goal to reduce greenhouse gas emissions, achievable by 2020.
- 2) Commit to studying alternative fuel sources during Fiscal Year 2008 and implementing use of appropriate sources beginning in Fiscal Year 2009.

The Utility Board of the City of Key West, Florida, requests FMPA to:

- 1) Immediately consider identifying, and financially supporting, a renewable demonstration project in Key West.
- 2) Provide the necessary expertise to conduct a preliminary feasibility study of constructing a waste-to-energy facility in the Florida Keys.
- 3) Assist Keys Energy staff in identifying potential grant funding for a waste-to-energy project.

Motion was made by Mr. Batty and seconded by Mr. Bradford to approve Resolution #753 Seeking FMPA's Support on Various Climate Change Initiatives.

Under discussion Mr. Batty requested that the wording in item one of Resolution #753 be changed to read as follows: Adopt an appropriate percentage goal to reduce greenhouse gas emissions, achievable by 2020.

There being no further discussion the motion passed unanimously.

OTHER BUSINESS

There being no further business to come before the Board the Regular Utility Board meeting of June 13, 2007 adjourned at 6:23 P.M.

APPROVED:

Lou Hernandez, Vice-Chairman

ATTEST:

Lynne E. Tejeda, Secretary