

**MINUTES FROM A REGULAR MEETING OF THE UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA, HELD AT 5:00 P.M. ON FEBRUARY 11, 2009 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 Hernandez. Present and answering to the roll call were Utility Board members: Peter Batty; Charles Bradford, Mona Clark and Ty Symroski. Also present at the meeting: Lynne Tejeda, General Manager & CEO; Nathan Eden, Attorney; Jack Wetzler, Assistant General Manager & CFO; Suzanne Greager, Director of Management Services; Dale Finigan, Director of Engineering/Control; Alex Tejeda, Director of Customer Services, David Price, Director of T&D; Eddie Garcia, Director of Generation, and Stan Rzas, Compliance Administrator.

**GEAR-UP CLASS**

Mrs. Tejeda informed the Board that the Gear-Up Class members are in attendance at tonight's meeting. The members were asked to stand for recognition. She stated that the class will be learning a lot regarding the Utility Board and part of the process is to attend a Utility Board meeting. They have also been familiarized on the Utility Board's Enabling Act.

**AGENDA ITEM #4 – INFORMATIONAL ITEMS**

**Item #4a – Generation Report**

Mrs. Tejeda informed the Board that the Generation Report is included in the Board meeting packet and staff is prepared to answer any questions they may have. There were none.

**Item #4b – Power Supply Report**

Mrs. Tejeda informed the Board that the Power Supply Report is included in the Board meeting packet and staff is prepared to answer any questions they may have. There were none.

#### **Item #4c – Update on Key West Steamplant Condominiums Project**

Mrs. Tejada informed the Board that Mr. Swift planned to attend the meeting tonight to answer any questions the Board might have. However, he called and said that he has a family emergency that prevents his attendance and has asked me to relay his apology for the absence. Mr. Swift plans to attend the March 11<sup>th</sup> Utility Board meeting.

Mrs. Tejada stated that Mr. Swift has been able to switch all the permits from Dooley Mack as the contractor to his own company for the continued construction. Mr. Swift is working with Wells Fargo since they acquired Wachovia to accept this contract change so he can continue to make draws to complete the project. He has expressed hopes that closings will occur in 60-120 days. From the contract perspective, there is an outstanding issue being that the yearly rental deposit of \$100,000 was due on January 1, 2009. That payment has not been paid and Mr. Swift has indicated that it is a hardship to make the payment at this time. As a result, KEYS' respective attorneys are working on an addendum to resolve the deposit issue. It appears that the addendum will provide that a portion of the deposit be paid as each unit closes and with the full deposit coming due by July 2010 which provides Mr. Swift an additional eighteen months before the Board has to address the issue again.

Mrs. Tejada continued to say that staff has reiterated their position to Mr. Swift that he should identify all possible approvals that he will require from the Utility Board early enough that the items can all be placed on a Regular Utility Board meeting agenda. Staff does not want to schedule any special meetings to sign off on documents nor does staff want to hold up any closings.

Mrs. Tejada stated that there will be an action item on the March 11<sup>th</sup> Utility Board meeting regarding the Key West Steam Plant. She stated that if the Board has any ideas that they wish staff to consider to please let staff know.

Chairman Hernandez suggested that Mr. Swift provide a timeline when certain documents require approval by the Board to ensure that there is a full Board or at least a quorum.

#### **Agenda Item #4d – Update on BAMA Lease, Terms and Conditions Compliance and Fishbusterz Closing**

Mrs. Tejada introduced Ms. Michelle Cates who is a partner with Mr. Nathan Eden to provide an update to the Board regarding the existing lease with BAMA Seafood and the related sales contract with Fishbusterz. Mrs. Tejada stated that staff is not seeking action on this item tonight but staff will most likely have two agenda items for the March 11, 2009 Utility Board meeting that will require action from the Board. The

first item will probably be a revision regarding the lease and the second will be an addendum approving the sales contract or ending the sales contract.

Mrs. Tejada pointed out that Mr. Tom DiDato and Mr. Charles Renier from Fishbusterz are in the audience.

Ms. Cates informed the Board that currently KEYS has a lease with BAMA Sea Products Inc. and a Real Estate Purchase Agreement between KEYS and Fishbusterz, LLC. She proceeded to say that the existing lease between KEYS and BAMA Sea Products is a three year lease that was entered into in January 2007. It currently has a \$40,953 per year payment (actual is \$44,333.64) plus applicable taxes. The yearly rent shall increase each year to the greater of the following – either 1) 2.0% per year or; 2) the Consumer Price Index or CPI (All Urban Consumers-Miami/Fort Lauderdale, FL All Items Index, plus applicable taxes. Fishbusterz has purchased adjacent property from BAMA. As the Board is aware of from prior meetings, Fishbusterz requested to enter into a lease for the property BAMA is renting or to purchase property.

Ms. Cates stated that at this point KEYS staff would like to revise the lease and have it brought into the name of Fishbusterz since they are operating it. BAMA is the tenant but it is being operated day to day by Fishbusterz. Currently there are picnic tables and trailers to store ice on the property and Fishbusterz would like to continue keeping them on the property. These items need to be changed or modified in a new lease and any other terms the Board would like to change.

Ms. Cates proceeded to discuss the Real Estate Purchase Agreement between KEYS and Fishbusterz, LLC. They entered into this contract on March 26, 2008 to purchase a parcel of property. The original closing date was set for May 25, 2008. There was a first addendum that granted an extension to August 25, 2008 and then there was a second addendum extending the contract closing date to November 25, 2008. In this extension one of the additional requirements was the release of a \$500,000 deposit and interest payments on the balance of the \$5 million which at 5% equals \$684.93 per day for the ninety day extension period. At that point, the interest should have been paid at the closing which should have occurred on November 25, 2008. A third extension was requested and granted extending the closing date to March 25, 2009. The changes in the terms under that extension were that the accrued interest from August 26, 2008, through November 25, 2008, was to be paid on November 25th. Interest from November 26, 2008 to the closing date of March 25, 2009 were to be paid on the first day of the month beginning December 1, 2008 in arrears and continue each and every month with a 5% penalty if not paid by the 10<sup>th</sup> of the month. No interest payments have been received by KEYS to date.

Ms. Cates stated that now Fishbusterz is not in the position to close on March 25, 2009. The reason being that the current market conditions and the price based on the appraisals obtained are different. Their ability to obtain financing to obtain that price is

very difficult. Fishbusterz is still very interested in purchasing the property for \$5.5 million but in order to do that they need another extension.

Ms. Cates informed the Board that she met with Fishbusterz on Monday along with Mrs. Tejeda and Mr. RZad and discussed some options on where to go from here. The two potential options that were discussed were:

- KEYS selling the property to Fishbusterz and holding a mortgage with a five-year balloon payment.
- Grant a one-year extension with the payment of accrued interest through December 31<sup>st</sup> to be paid upon the execution of the extension. Additionally, Fishbusterz is requesting a 1% interest rate instead of the current 5% on the \$5 million that was to be paid in addition to the lease payments. They would basically be paying approximately \$4,000 on the lease payment and approximately another \$4,000 monthly on the 1% for the year extension.

This concluded Ms. Cates presentation to the Board.

Mrs. Tejeda stated that in moving forward to prepare an action item to come before the Board on March 11<sup>th</sup> staff would like to prepare a new lease agreement with Fishbusterz. Ms. Cates has addressed some of the terms that need to be dealt with. Staff is looking at a one-year lease with five one-year renewal options with a CPI adder to the monthly payments. Additionally, staff would like to begin working on how to address the sales contract. In looking at the two options mentioned by Ms. Cates and the additional option to end the contract which will call it in default, staff's preference is to allow the addendum and arrive at an amount that is agreeable by all the parties involved and fair to Fishbusterz.

Mrs. Tejeda stated that at this time staff would like some direction from the Board regarding whether they are comfortable with the direction staff would like to take or are there options that the Board would like for staff to explore.

Chairman Hernandez asked where the Land Use Committee stands on the issue.

Mrs. Tejeda responded that the Land Use Committee has had no discussion on this issue due to the fact that the two Board members who serve on the Land Use Committee have to recuse themselves from this issue.

Mr. Bradford expressed a concern that if staff goes with the one-year extension and in a year's time Fishbusterz feels the property is only worth \$3 million and that is the price that they will pay then KEYS ends up with what we currently have which is the deposit money.

Ms. Cates responded that KEYS has 1% interest on the \$5 million on a monthly basis. KEYS will also receive back interest which is approximately \$92,000 through December 31<sup>st</sup>, 2008 at 5% annual interest. If the Board decides to reduce the interest rate to 1% at the request of Fishbusterz, from January through today's date the amount owed will be \$96,513.78 which includes late fees.

Mr. Eden informed that it is legal for KEYS to hold the mortgage if it sells the property to Fishbusterz. He advised that the Board should not enter into a decision at a moments notice since a lot of things have changed since the original lease was drawn up.

Ms. Cates commented that staff is just seeking some direction from the Board on this issue.

Mr. Symroski stated that he may no longer have a voting conflict on this matter. He commented that he agrees with Mr. Eden and wants to look at the options more thoroughly and is not prepared to give direction at this time.

Ms. Clark inquired about a third option.

Mrs. Tejada stated that there are three options:

- End the contract
- Extension of the existing contract
- KEYS going through with the sale today and holding the mortgage

Mrs. Tejada proceeded to say that staff's preference at this point without taking a deeper look into it is to extend the contract for a year. Staff will certainly be able to research and analyze each of the three options and give a report on all three so that the Board can choose from the three different options.

Mr. Eden stated that KEYS entered into the original lease with BAMA knowing their background, when KEYS agreed to sell the property to Fishbusterz they weren't concerned because they were buying it. KEYS is now in a different posture so Fishbusterz' background needs to be explored. He also commented that the additional attorney/expert fees that will be incurred needs to be addressed during the negotiations.

Mr. Eden continued to say that the motive to sell the property needs to be revisited to determine if it still exists.

Mr. Symroski asked for an update on the easement issue regarding the property.

Mrs. Tejada informed that the matter is still in the hands of the title company and there have been no updates regarding the access.

Mrs. Tejada commented that staff would like input from the Board if they have any additional ideas regarding the property.

Mr. Charles Renier from Fishbusterz told the Board that they still want to purchase the property. However, with the current market they are having difficulty acquiring funds from the bank. He stated that they desire for the Board to extend the lease for an additional year in hopes that the market will turn around. He told the Board that any thing they can do to help is greatly appreciated.

Mr. Batty stated that he will continue to recuse himself from this issue but suggested that the Board be furnished with a series of bullet points with the dates rather than the documents which are difficult to go through.

Mrs. Tejada stated that this item will come before the Board again on March 11, 2009.

#### **Agenda Item #4e – Finance Committee Report**

Mrs. Tejada informed the Board that the Finance Committee met on January 29<sup>th</sup>. Chairman Hernandez and Mr. Bradford represent the Utility Board on this committee.

Mr. Wetzler proceeded to give a brief update on what transpired at the Finance Committee meeting. He stated that the Board and staff have been looking at KEYS financial condition for sometime due to the current economic conditions and the fact that sales were down 13% through the end of December.

Mr. Wetzler stated that staff compiled an Analysis of Results of Operations for the first quarter of Fiscal 2009 of the actual expenses compared to the budget and it indicates a favorable variance of \$2.5 million. He stated that sales were under budget by \$4.2 million, the power costs relating to those sales were under budget \$5 million. In addition the O&M Expense was under budget \$1.9 million; other non operating income and expense was under budget \$200,000 resulting in the \$2.5 favorable variance.

Mr. Wetzler continued to say that an extremely conservative projection was considered for the remainder of the fiscal year. Staff assumed that for the remainder of the fiscal year the operating revenue will be down by 14% from budget as it has been for the first three months of the year. The assumption has been made that all of the O&M savings made during the first quarter will be spent and the entire remainder of the O&M budget will be spent. As such staff has identified that KEYS will be approximately \$2 million in the hole at the end of Fiscal 2009. Staff has identified \$1.1 million of O&M

expenses and approximately \$900,000 in capital expenditures that can be frozen and possibly not used at all.

Mr. Wetzler stated that the General Manager has directed staff to take the majority of the budget dollars for those funds and freeze them. An encumbrance will be set up in the financial system so that no one can accidentally use those funds without approval.

Mr. Wetzler continued to say that staff has also identified approximately \$2.2 million of unbudgeted projects as follows:

- \$2 million for Line 1 conductor replacement
- \$200,000 for a renewable energy display

He proceeded to say that in the multi-year plan there is also approximately \$8 million needed for the static var compensation. It can be done in two phases one can be accomplished for \$4 million which will put static var support on Big Pine. FMPA has \$1.9 budgeted in their FY 2008 budget for this which has been rolled over to 2009. FMPA was going to share half of the cost with KEYS. However, KEYS is not ready to move forward since staff had earmarked dollars from the BAMA proceeds for the project. Staff is looking at the possibility of having discussion with Florida Keys Electric Co-op (FKEC) to determine if they are willing to contribute as well.

Mr. Wetzler informed the Board that the second \$4 million may be expended to either put var support in Stock Island area and retire the synchronous condenser or keep the synchronous condenser and make capital improvements on it to extend its life.

Mr. Wetzler continued to say that the committee also discussed land use in regards to BAMA and Fishbusterz which has already been covered. He stated that a pension contribution option for new hires was also discussed. Some recommendations will be presented to the Board at a later date. The other item of discussion was a \$4.1 million master repurchase agreement with Citibank which was put into place at the time of the 2006 bond issue. It is more than 100% collateralized by Citibank but the note specifies that if they drop below certain ratings by the rating agencies the bank has to change their collateral. Currently 4.8% interest is earned on that money and the money is in there to guarantee one year debt service on the Series 2000 Bonds and will be tied up until 2016.

He informed the Board that staff has contacted KEYS financial advisor Mr. Craig Dunlap on this issue. The money can be withdrawn and reinvested elsewhere and most likely not earn 4.8% interest or it can be left where it is and staff can monitor the situation and make sure the collateral stays above 100%. It can also be used in the future to fund a long-term capital project by putting a surety bond in place for a one-time fee of

\$80,000 to \$100,000. Mr. Dunlap has informed staff that acquiring a surety bond at this time is highly unlikely but perhaps in nine months to a year the opportunity may arise.

Mr. Wetzler stated that this concludes his report and assured the Board that staff is closely monitoring spending and all expenditures are being prioritized.

Mr. Batty commented that a lot of expense has gone into the synchronous condenser for maintenance and it seems that the useful end of its life is being reached. He stated that an engineer would need to inform him that it would be wise to spend a significant amount of money to rebuild the synchronous condenser as opposed to static var compensation which will be longer lasting. This is a capital expense that staff should probably anticipate within the next twelve to eighteen months.

Regarding the surety bond, Mr. Batty suggested that staff exercise the option of a surety bond the moment the market is available to secure it.

Mr. Eden commented that surety bonds are rare but concurs with Mr. Batty.

Mr. Batty asked if there is a possibility to go back to FMPA and ask for more than \$1.9 million for var support.

Mr. Wetzler responded that staff has contacted FMPA and there is discussion regarding this matter. There may also be some discussions with FKEC.

Mrs. Tejada stated that FMPA will enjoy substantial savings if static var compensation is installed.

Chairman Hernandez asked how the FKEC will benefit from the static var.

Mrs. Tejada stated that it will increase the capacity of the tie line. The contract states that FKEC does not need to pay for improvements within KEYS service area which is where the static var compensator would be placed. However, staff is hopeful that they will be able to reason with them that it will be beneficial to both utilities.

Mr. Batty asked for an update regarding the fin-fan coolers.

Mrs. Tejada stated that staff will be making a report at the March 11<sup>th</sup> Utility Board meeting regarding the fin-fan coolers. She informed the Board that RW Beck will be attending the meeting.

Mr. Batty inquired on the collections status.

Mr. Wetzler stated that collections have increased slightly but are not significantly different from past years. Customer Services provided a report to the Finance Committee which is included in the minutes from that meeting for your review.

Mr. Batty asked for an update on the sales tax underpayment issue.

Mr. Wetzler responded that there has really been no major issue in the collections.

Chairman Hernandez thanked Mr. Bradford and all of the staff involved in the Finance Committee meeting. It was beneficial to see how staff is working towards cutting costs.

#### **Agenda Item #4f – Power Cost Adjustment Update**

Mrs. Tejada informed that the PCA rate has been set for February at \$21.50 per 1000 kwh which is the same figure as December and January. The numbers from FMPA continue to be favorable and below budget. Currently an over collection exists and if the projections hold, staff will be able to maintain the \$21.50 through the remainder of the fiscal year. It is highly unusual to go through the summer without an increase. Staff considered decreasing the PCA now and bringing it up slightly in three months but decided to keep the PCA level rather than making another change.

#### **Agenda Item #4g – KEYS' Recycling Efforts Update**

Mrs. Tejada informed the Board that KEYS' Facilities Section rolled out the recycling program week before last. There are trash receptacles and recycle receptacles in every office. As a result of launching this program staff anticipates a savings of approximately \$8,000 a year in waste pickup. Staff is excited about the contribution and the savings.

#### **Agenda Item #4h – Annual KEYS' Self Insurance Health Plan Certification**

Mrs. Tejada stated that the self insurance annual report was been submitted to the Office of Insurance Regulation at the end of 2008. Staff received a letter this month which states; *"Since the liabilities and assets appear to produce adequate positive surplus, your filing accepted as being in compliance with the requirements of Section 112.08."*

Mrs. Tejada informed the Board that the self insurance plan remains healthy. The target set by the Board of \$1 million for the self insurance fund has been exceeded it is currently at \$1.2 million. There is an additional \$500,000 in the operating reserve fund for a combined reserve of \$1.7 million. As staff was preparing for the Finance Committee meeting and looking at means to save, one idea that was identified is to reduce the insurance premiums for employees and retirees from \$671 to \$600 and for those on Medicare from \$335 to \$300. When the insurance was established in October 2008 staff indicated that they would report back to the Board in March. However, the reporting is

being presented one month early. Staff wants to proceed with the reductions in the insurance premiums in February. With the true ups and premium reduction there will be a savings of approximately \$260,000 for the retirees insurance and approximately \$126,000 for employees for a combined savings of approximately \$386,000 for this fiscal year.

Mrs. Tejada proceeded to say that Finance has put a mechanism in place that if the combined reserves, currently at \$1.7 million, drops to \$1.25 million staff will review the liabilities and assets and determine if premium adjustments are necessary to protect our reserve fund.

#### **Agenda Item #4i – Discuss General Manager’s Performance Evaluation Process**

Mrs. Tejada stated that this item is an informational or discussion item. She stated that after her evaluation in the fall she received some feedback from Board members that the evaluation process can be improved. It will be helpful if the Board has some discussion regarding the process and their expectations of the process as to how it can be done more effectively and tied to compensation.

Mrs. Tejada distributed a copy of the process FMPA uses to evaluate their General Manager. She stated that the General Manager provides a written report on accomplishments; each Board member fills out an evaluation; a noticed meeting of the Evaluation Committee occurs to review and discuss the evaluation; the Evaluation Committee then provides feedback to the General Manager instead of presenting to a full Board at a regular meeting; after that evaluation feedback a full Board approves the written evaluation which includes recommendations on salary or benefit changes.

Mr. Bradford commented that FMPA’s process sounds like a better method.

Mrs. Tejada stated that she did meet with Mrs. Clark one on one during the evaluation process. She stated that if an Evaluation Committee meets with her as a noticed meeting it will effectively take the evaluation process away from the Regular Board meeting which has made it quite uncomfortable. It may be a better process.

Mr. Batty stated that he concurs with Mr. Bradford and the Chairman and another Board member should be on the Evaluation Committee.

Chairman Hernandez asked what the next step should be.

Mrs. Tejada suggested that the process can become part of the By-Laws and be adopted at the next Organizational meeting.

Mr. Batty suggested a trial period of one year prior to including the process in the By-Laws.

Mr. Batty asked for Mr. Eden's opinion regarding changing the By-Laws. Mr. Eden stated that he concurs with Mr. Batty regarding a trial period. He also stated that he wasn't sure that the proper place to document the evaluation process is in the By-Laws.

Mr. Batty stated that the Board seemingly likes the process used by FMPA and recommends that staff put something together to bring back to the Board.

Mr. Symroski asked how this will affect Mrs. Tejada's contract.

Mrs. Tejada stated that she believes that there is a single line item stating that the Utility Board will evaluate the General Manager.

Mr. Batty asked Mrs. Tejada if she is comfortable with the existing process.

Mrs. Tejada responded that the current process is very uncomfortable.

Chairman Hernandez commented that he wants to clean up the evaluation process and make it friendlier. He stated that he feels that the evaluation should also be tied to specifics in the strategic plan.

Mrs. Tejada stated that perhaps it is appropriate to have the Evaluation Committee meet and come up with something that Chairman Hernandez and Mrs. Clark are comfortable with.

Mr. Symroski commented that it is always best to know what is expected up front. He stated that it is sensible to have the evaluation related to the strategic plan.

Ms. Clark stated that the items on the evaluation are tied to the overall expectations and the job description. The strategic plan is also tied to what has been accomplished during the evaluation period.

Mr. Batty stated that it is very uncomfortable to discuss the compensation package at a Utility Board meeting. The members of the Evaluation Committee should make recommendations regarding the compensation.

Mr. Symroski added that any information regarding the evaluation should be presented to the Board prior to the Utility Board meeting so that they can have some time for review.

#### **AGENDA ITEM #5 – CONSENT AGENDA**

- a) Approve Minutes – Regular Meeting – January 28, 2009
- b) Approve Disbursements Report

Motion was made by Mr. Bradford and seconded by Mr. Batty to approve the consent agenda. The motion passed unanimously.

**OTHER BUSINESS**

Mr. Symroski commented that he regrets that he will not be able to participate in the City Cleanup scheduled for February 28<sup>th</sup> since he will be out of town. He expressed his gratitude that KEYS' employees will be participating in the cleanup.

**ADJOURNMENT**

There being no further business to come before the Board motion was made by Mr. Batty to adjourn the Regular Utility Board meeting of February 11, 2009 at 6:00 p.m.

APPROVED:

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Lou Hernandez, Chairman

ATTEST:

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Lynne E. Tejeda, General Manager & CEO/Secretary

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