

POOR ORIGINAL

MINUTES OF A SPECIAL JOINT MEETING OF THE FORT PIERCE UTILITIES AUTHORITY AND THE FORT PIERCE CITY COMMISSION, FRIDAY, MARCH 26, 1976, AT 3:30 P.M.

Utilities Authority Members Present: Chairman, Ewell Menge; Vice Chairman Sam Reilly; Secretary, Havert L. Penn; Ernest E. Settle, Mayor Ben L. Bryan, Jr., Ex-Officio Member Charles Jackson

City Commissioners Present: Commissioners Browning, Caynon, Leslie, Long and Mayor-Commissioner Bryan.

Others Present: Director of Utilities, Walter Baldwin; U.A. Attorney, Charles R.P. Brown; City Clerk, Inez Lowery; Harry Schindchette and Ken Daniels of Florida Power and Light; Attorneys George Speigel and Bob Jablon; Fiscal Agent, D.C. Huskey; Superintendent of Electric Distribution, Glen Monnette; Administrative Assistant, John Litton; Director of Finance, Bill Bidle; Superintendent Electric Transmission, Troy Lee; U. A. Chief Engineer, Bob Skinner; Electrical Engineer, Tom Moulton; Customer Service Manager, John Fradd; Power Plant Superintendent, Jack Smith; Ann Wilder of the Miami Herald. Don Turk, FNUA Dir. Communications.  
Mr. Menge called the Utilities Authority meeting to order.

Mayor Bryan called the City Commission to order.

Mr. Menge said we have with us today Mr. Speigel and Mr. Jablon from the firm in Washington that is presently representing us on the gas suits and so forth. He thinks they have something to bring us at this time. Mr. Menge turned the meeting over to Mr. Speigel and Mr. Brown.

Mr. Brown stated he might say a word by way of introduction for those who do not know Mr. Speigel. He has represented the City and Authority in the Gas Transmission suit which is pending in the District and Federal Court in Miami. It started in 1971. We had an initial settlement in 1972. He specializes in this kind of work or his firm does and he is probably the most qualified attorney in the country in this particular kind of work involving Gas Transmission Companies and all facets of utilities.

Mr. Speigel said it is a pleasure to be here. He has never visited here although he has represented the City for four or five years. Although his firm does work in gas perhaps the largest part of his work is dealing with electric problems. Their law firm does almost nothing but represent municipal groups, municipal utilities, authorities who own their own electric, gas and municipal operations. Their work basically is negotiating for them, arrangements with major power companies in the country and occasionally dealing with the Federal Power Commission and other agencies in order to protect their interests. The thing that strikes him about the Fort Pierce situation is that it is like so many things. They have a good operation here and something has happened. Here they are losing their gas supply which was producing energy at a fairly cheap rate and have had to shift to oil. Every utility faced with that particular situation found that their rates were escalating. What needs to be done in evaluating the situation is first to evaluate whether you need to operate your system a different way in view of the change of economics. There was a fuel supply which permitted the system to operate base load. The fuel was coming in pretty cheaply. He could talk for an hour about why the price of that gas was kept down. There was a cap put on the price of gas and but for that cap, the price would have gone up. It no longer makes sense to operate base load. Now the City wants to operate under a very excellent agreement they have with Florida Power and Light. There is an interconnection agreement and the first thing that should be studied is what the economics of the operation would be -- what kind of rates could be charged -- on a fully connected, fully integrated basis with Florida Power and Light. An operation like that which is contemplated by the agreement and contemplated as being done throughout the industry, then the plant would operate as part of a combined system made up of Florida Power and Light, this system and some of the other systems that Florida Power and Light display to them. The hours the plant would operate would be greatly decreased, the amount of oil burned would be greatly decreased. He hasn't looked at all the engineering aspects of the operations, but the plant would probably operate as a peaking plant, a flow factor cycling plant. The plant would be turned on and generate whenever it is in the best interest of the combined systems in that hour to generate. On that basis you would find that the total cost of power is considerably cheaper. That is one analysis that needs to be made.

The second analysis is the fact that with the new generator coming in,

359970

012290393

POOR ORIGINAL

Page 2  
3/26/76

you are temporarily surplus in capacity. When you add generating units you don't get just enough to take care of this year and next year; you have to size it big enough so you have a fairly efficient unit and, therefore, you put in more capacity than is needed in the year in which it is installed. It usually takes 3, 4, or 5 years to grow into that capacity. What they do is sell their excess capacity.

The analysis has to be made of what you could sell that excess capacity for, what price, on a short, long or medium term basis. There are some 40 or 50 separate electric utilities in Florida. An analysis needs to be made as to what their relationships are between how much capacity they have and how much load do they have. Some years ago the City of Lakeland was selling temporary excess capacity over Florida Power and Light's system, to the City of Jacksonville. Florida Power and Light was transmitting the power. The way the arrangement was semantically put together was a sale from Lakeland to Florida Power and Light and a sale from Florida Power and Light to Jacksonville. In connection with the New Smyrna situation, Florida Power and Light agreed to transmit power for New Smyrna Beach and he thinks they agreed to transmit power for this capacity. He hasn't looked at Florida Power and Light's balance between capacity and load. He doesn't know yet whether they need it. If there is some other system that needs it, it is salable. It seems to him in talking with Charlie Brown last week, that a study has to be made as to whether under a revised operating basis with Florida Power and Light, you would want to see whether your rates in Fort Pierce might be reduced down. He doesn't know how far down. They might well get below Florida Power and Light.

There is another theme that needs to be struck here. Any business has good times and hard times. You have a good business. If you look back on the history of the business, you will see that it has been a good business. It has produced. It has had a lot of economic benefits to the City. Like any business it comes into hard times. Those things don't necessarily last forever. Today Florida Power and Light's rates are lower than Fort Pierce's rates. There are a number of reasons, a lot of which are to the credit of Florida Power and Light. They've gone deeply into nuclear generation. They took their chances. They made their judgements and made the investments. As long as those nuclear generators are running and they don't run into any special problems, great. You don't know what could happen tomorrow. If they develop problems with some of these nuclear generators, suddenly the situation could change and if and when they like the City are faced with running out of their fuel supply, you might find in another year or two that the situation is reversed. He has seen a number of situations where systems were sold because of the anticipation of lower rates from another company and two or three years later, you find that because of situations and circumstances, this doesn't materialize. He doesn't mean to underestimate the problem that faces Fort Pierce, but he would say that as the owners of this business, it would seem to make sense to first see if there is another way of operating it at a profit, at good low rates and evaluate that along with everything else that may be evaluated.

He said he would be happy to answer questions because he's tried to say a lot in a relatively short time.

Mr. Menge said he understands one of the actions this board needs to take is to file our intentions to buy a piece of the nuclear power plant that is to be built in South Dade County. He asked if that is in the process of being done or are we waiting for direction on that. Mr. Baldwin said he is waiting for some word to go ahead. We have written them, asked them about it some time ago, but haven't gotten any further with it. Mr. Menge understands our intentions have to be filed in the early part of April. Mr. Baldwin confirmed this.

Mr. Settle asked Mr. Speigel if he is going to get into some of these alternatives. Mr. Speigel said he would at the direction of this Authority. He said he is representing the Authority in gas matters and if they desire him to represent them in electric matters, he will be glad to do it.

Mr. Settle asked him what some of the alternatives are. Mr. Speigel said to be specific, the Authority has a fine interconnection agreement with Florida Power and Light. He remembers this very acutely because when he argued the case for the City of Gainesville in the Supreme Court, he brought that agreement up on the day of the argument. He said that all Gainesville is asking for from Florida Power Corporation is what Fort Pierce has from Florida

009971

There is an agreement, but Fort Pierce is not utilizing it to its full extent. The first thing that needs to be done is to make an analysis which ultimately has to be a joint study between Fort Pierce and Florida Power and Light, as to how the two systems can most economically benefit from a combined operation which generally will have centralized dispatch by Florida Power and Light. Then an evaluation of the costs, charges and rates would be necessary. Mr. Settle said Mr. Speigel is speaking of peak load. Mr. Speigel said that is right. He would have to know the characteristics of the generating unit. Ideally this would be peaking and reserve capacity. Every electrical system has to have base load capacity, peaking capacity such as turbines and generally their older capacity which usually isn't worth very much, they hold in reserve. In the event of outages of the good units, they have to bring in the older stuff. We're on a combined operation basis and Fort Pierce wouldn't be burning all the oil they're burning, energy costs would be reduced.

Mr. Settle asked Mr. Speigel if he represents the FMUA. Mr. Speigel said he doesn't represent the FMUA as such. He represents a number of cities in FMUA. Mr. Settle said he knows Mr. Speigel represents the so-called seven cities. As Mr. Settle understands it the FMUA can go in together now and build their own nuclear plant. He asked if this is correct. Mr. Speigel said he dealt with the edges of that issue. He isn't sure and would have to turn to some Florida lawyers on that. There was Legislation passed in connection with the Chrystal River generator. There, Florida Power Corporation sold 100 megawatts to a number of municipalities in Florida and there was special legislation related to that. There was another bill introduced which he believes was opposed by Florida Power and Light under which the municipalities could have done what Mr. Settle is saying. Mr. Settle asked if that bill was passed. Mr. Brown said Don Turk could probably tell Mr. Settle. Mr. Turk introduced himself. He stated he is Director of Communications for FMUA. He stated there were 2 bills introduced in session last year. One was in response to the Constitutional Amendment approved in November, 1974, which would allow private companies and municipalities to be involved together in generation and transmission facilities. There were 2 introduced last year: One to allow participation in Florida Power Corporation's nuclear unit and another which became known short title-wise as joint power authority which FMUA introduced. The bill that allowed ten cooperatives to participate in Florida Power Corporations nuclear unit passed and the other is still on file in the House of Representatives. There is some disagreement as to whether cities could get together with present legislation. It has not been tested. The bill FMUA filed pertaining to joint power is still in the legislature. Mr. Settle said so at this point the answer is no. Mr. Turk said that probably would be the quickest answer.

Mr. Settle said that would bring out another question in his mind. If we file intervention in the Dade County plant of FP&L someone has said, and he is going back in his mind and doesn't know who said it or where or when, that the bonds could be sold on future revenue of this participation in this plant. He asked if that is possible. Mr. Huskey said that is a possible means. If you can show a sufficient savings over a period of time, it is a possible way of financing.

Mr. Settle asked what the cost per megawatt was for this plant down here. Mr. Schindchette stated that if he recalls correctly it was around \$1,000 to \$1,100 per kilowatt. Mayor Bryan asked what he estimates the cost of the new plant to be. Mr. Schindchette said it would be approximately \$800,000,000. It will be in the same area per kilowatt, but that doesn't include inflation. Mr. Settle said 10% of that would be \$80,000,000. If we can show that we're going to save enough money to pay off the 80 million dollars over a 20 year period, we can sell the bonds on that basis. Mr. Huskey said there are a number of cities that have done exactly that in connection with the Florida Power Corporation deal. The same process could be followed except that this is a little bit different situation in that they anticipate being on the line some-time late this year. It wasn't an 8 or 10 year proposition. It was a year to a year and a half before they could start receiving those benefits. It would be financing over a longer period of time for a unit just starting. Mr. Settle said he is trying to picture this in his own mind. He asked Mr. Speigel how much lead time is involved. Suppose we intervene in the second plant and want to buy 10% of the plant in Dade County-- at what point in time, either in construction, application or completion, do we have to come up with the 80 million dollars. Mr. Speigel said it varies depending upon how the matter is resolved. If the company says they are willing to let you in as a participant and say to let's sit down and get the contract drafted and the studies out, there are 2 things you need to do: You have to take a good close look at the economic data that only the company has -- what is it really going to cost?



Secondly, you have to iron out the contracts. When you are putting your money out for a plant somewhere else, you have to make sure you have the transmission and everything else. There is one company out west that is moving along fast and if the company does that, the municipal is going to have to put up its money and come in on the ladder. Some of these situations up in New England, they were arguing and litigating while the plant was being built. The result was that they didn't have to put in any money until after the plant was operating and they already knew what they were getting into. It depends on how the course of events go with the company. Mr. Settle said looking at it from our own particular standpoint if we are looking at leadtime -- and he doesn't know how long it takes -- Maybe Harry can answer this -- if we file intervention and are successful and they say they'll sell us a percentage of the plant or regardless of whether we don't, what point in time is the Dade County plant going to be in operation. Are we talking ten years, five years or what? Mr. Daniels said 1985-86. Mr. Settle said this is about 10 years. He doubts seriously if we could pay interest on the bonds for that length of time. Mr. Huskey said you wouldn't need to sell 80 million dollars worth of bonds at one time. You would sell 4 or 5 series of bonds. You aren't going to need to put up 80 million dollars. Mr. Settle said possibly we could work it out like the company out west and put it up after it is in operation. Florida Power and Light's got all the money in the world. Mr. Huskey said he is sure that Florida Power and Light isn't going to borrow 300 million dollars. They're going to borrow it as they need it.

Mr. Speigel said the ideal situation is that you argue with Florida Power and Light up until the day the plant is ready to go into operation. At that time you finally get your contract. Once they decide to go ahead with you, they want to see your money as fast as possible. In any negotiations some people are pushing and some are pulling. The way he looks at it is the petition to intervene is for the purpose of establishing your right to have the opportunity to buy. When you petition to intervene you're not making your decision because you can't make a decision until you have more of the facts and the whole legal relationship clarified. It costs money to do that. You're talking about millions of dollars in investments. You're going to have to spend money on consultants analyzing the thing before you commit yourself. You can study everything in the world unless you know you have something that is real. That is the position he has taken in every proceeding he's handled. The duty of the company to make a proposal, a definitive proposal with the facts and data is needed by City officials to make an intelligent determination as to whether or not they want to do it. He remembers this in connection with the Maine Yankee plant where the company said dramatically before the FCC, "Well, Mr. Speigel, are your clients ready to put up their money?" He said they are not ready until you give us a proposal and we know we have an offer, the people can spend the money needed to evaluate the offer and get it. At the first stage you develop your right to have the proposal made definitively. Thereafter, you make your studies and sit down to negotiate with the company. Everything may be fine except the price for some of the back up and things like that may be too much. In that case if isn't economic. He stated he worked this out with Florida Power Corporation in 6 months which he felt was darn good considering it was a first. It can be done in 6 months. More likely it would take a year before this group would be presented and vote to spend the money. Mayor Bryan said Florida Power Corporation was in a bind, were they not? Mr. Speigel said it was partly that and it was partly that there were some good relationships developed between Florida Power Corporation and the municipals and cooperatives they do business with. About 3 or 4 years ago litigation and arguing terminated. They are willing to do business on that basis.

Mr. Fenn said as long as Mr. Speigel is saying that the Authority is not obligating itself to the plant itself and that we're just going to use our privilege of intervening and letting them know that we are interested, he doesn't see why we couldn't go ahead and intervene. Mr. Menge said if this had been done some five years ago on unit no. 1 we would be in on that now.

Mayor Bryan asked what is involved in intervention in terms of what we obligate ourselves to. Mr. Speigel said when you're intervening, drafting the petition isn't too expensive a proposition, although it is becoming a more expensive document. The big question is, is it going to go to hearings and what kind of hearings are they going to be. It is difficult to know. Very few of them have gone to hearings. Some have gone to hearings and they've been long and difficult. There are a number of other cities in Florida that are considering intervening. If that would happen, the cost would be split among them. Basically, you're intervening in good faith with intention of pursuing the matter. On

the other hand, realities being what they are, if you're faced with a long, expensive hearing procedure, you have to re-evaluate how deeply you want to get into the proceedings. He would say they're committing themselves to an intervention and to the cost of a relatively short hearing, not 100 days of hearings. Mayor Bryan asked how much Mr. Speigel is talking about. Mr. Speigel said if there is a group it would cost about the same thing. Intervention is talking about 2 - 4 thousand dollars. There'd be some additional pleadings and then there'll be contracts. With all preliminaries and everything else, you'd probably get up to maybe \$10,000 for all the cities participating. Generally speaking, most of these cases have been resolved, depending upon the position the Justice Department takes. He can think offhand of three cases that have gone to lengthy litigation, two of which his firm was involved. One of them in Louisiana, they were able to confine to a relatively short hearing. One in Michigan couldn't be confined and went to 70-80 days of hearings. What they did in that particular proceeding was to put testimony in and didn't appear at the hearings. They put in their case and told the Administrative Law Judge that it was fine if the Company and the Department of Justice wanted to go into an intellectual bit of research, but they just couldn't spend the money. If you go to a reasonably appropriate hearing you're talking about costs in the order of 40 - 80 thousand dollars, legal and technical personnel. He would say, he should be able to answer this question more briefly. Lawyers always expect other people to answer to the point. He thinks in terms of immediate commitment, it's in the neighborhood of 5 - 10 thousand dollars spread among a group of cities. Mayor Bryan said as an individual city, if we decided to do this, could we pull out at any time we wanted to with no further obligation. He asked if that would be correct or not. Mr. Speigel said he would think it's correct, subject to what lawyers know. You make a good faith representation, but that as general, is the experience. That's the understanding among the groups.

Mr. Settle said he is not willing to concede a sale to Florida Power and Light at this point because we haven't seen proposals of any kind and don't even know if they're interested. In light of that and what the Mayor has said over and over and what he fully concurs with, that it seems that atomic power is the only way we're going to be able to go to get this rate down, he would make a motion that we file for intervention in the South Dade Atomic Plant of Florida Power and Light. Mr. Fenn seconded the motion.

Mr. Baldwin asked Mr. Speigel if it would be necessary to have a fairly comprehensive study made before we intervene, deciding the amount of electricity we'll need. Mr. Speigel said this would not be needed. Generally speaking, we know enough facts. Mayor Bryan asked what the deadline on intervention is. Mr. Speigel said it is April 14th. Mr. Baldwin said that is the last he heard, too.

Commissioner Caynon asked if they should have an appraisal made on the plant before they start out and see what they have to work with.

Mr. Settle said right now we're talking about buying, not selling our plant. Mr. Menge said we're talking about buying them out now.

Mr. Daniels of Florida Power and Light asked if it is permissible to make a comment. Mayor Bryan said he would like to hear from him. Mr. Daniels said he would like to bring out a couple of things for his own clarification if for nobody else's. One thing is you are talking about an intervention in some proceedings in Washington. He isn't a lawyer so he asked everyone to bear with him. It is his further understanding that what you are talking about would require bringing a suit essentially alleging anti-trust actions; that is, that Florida Power and Light is having dealings that are inconsistent with the anti-trust laws. Mr. Speigel said that is only partly correct. Basically, whether the situation and circumstances may be inconsistent with the anti-trust laws -- you may not be doing anything, but you may have from an economics point of view, the kind of monopoly, which even though, personally, you're not doing anything you shouldn't do, you have obtained such a monopoly, would be an issue. There are a number of actions on occasion which they have taken an issue with, with Florida Power and Light. Mr. Daniels said he knows that. His point is that just a simple statement of voting for intervention is, in his view, a little bit more than signing a "me too" petition. That is you are going to essentially bring those thoughts against FPL which says that they are in their dealings with Fort Pierce, inconsistent with those laws dealing with anti-trust.

359974

Mr. Fenn said he didn't understand it that way.

POOR ORIGINAL

He felt Mr. Speigel was saying that as a municipal owned utility, that we have the privilege of buying into the South Dade Nuclear Plant. We missed that opportunity some years ago with the one on Hutchinson Island. Sometime ago when we contacted a certain agency, they told us we were too late to negotiate to buy into the Hutchinson Island plant. There is another nuclear plant which will be built in South Dade. As he understands it we have until April 14th to show our interest in buying into this plant. In order to do so we have to go through the procedure of intervening, saying to the Department that in good faith we want to buy into this plant.

Mr. Speigel said he would see if he could clarify this. Basically, the opportunity of local utilities, smaller utilities, to participate in the ownership of a large nuclear generator is considered implicit in anti-trust laws in these kind of circumstances. You have a dramatic example here today, where you are suddenly faced with a situation where your oil costs have gone up and you don't have any nuclear energy, you're put in a disadvantageous position. This is not because you don't have a good system or because you didn't use foresight, but total circumstances result. The concept behind the nuclear act was that this new form of cheap energy which had been developed at great cost by the government and taxpayers, would put large companies who are in a position to put together the tremendous aggregate of capital necessary to build the Turkey Point or St. Lucie, in a position where they could put everybody else out of business. He hears people say we have to sell out the Fort Pierce system because we have oil and not nuclear. This statute was design and he wasn't involved in the drafting, but was involved in its modifications, and the concern was that smaller utilities like Fort Pierce should have an opportunity to participate in nuclear development with the big companies as a means of being able to stay in business because it was felt that, basically, even in the utility business, competition is a fundamental principal underlying this economic society. The concept of courts have said that they have to preserve as much competition as possible, because if you wipe out the small systems and turn the state over to one or two big companies, then they don't have to compete and then they don't have to be efficient. What's involved here is that. The reason there is on the face of it, an anti-trust question which justifies intervention, is, as he understands it, because Florida Power and Light is refusing to permit the smaller systems to participate. He thinks that is really the basic proposition. He thinks that is fundamental to it. The problem of litigation could be easily resolved if Florida Power and Light, and he is sure the Department of Justice would support our position, offers an opportunity to the various cities to participate.

Mayor Bryan said what concerns him in light of Mr. Daniels' remarks is that he thinks we're approaching this intervention more in an effort to obtain information on this as a comparison. If it costs 80 million dollars to acquire the portion of the plant that was needed, and we're sitting with 30 million dollars worth of bonds on a plant we already have and we have more power than we need, that it might well be that after intervening for a while, that would be eliminated as an alternative or as a reasonable alternative or somewhere along the way we might find out that we couldn't. What the Mayor would hate to see happen then is to have some other parties take our own pleadings if we have to allege anti-trust action of some sort to get in there, and use that to block the negotiations for the sale of the system which we now have, to Florida Power and Light. This business of buying power is certainly something that needs to be explored, but we're sitting here with a plant that can at least for the conceivable future as soon as the generator goes on line, make more power than what we can use. It is an expense that's going to be there regardless of whether we are going to be able to come up with solutions to buy power at a cheaper rate from Florida Power and Light. We've still got the bonds on the plants, the employees at the plant and the plant to maintain. As he understood the proposal that was being made, was that we needed to explore alternatives and he agrees with that, but he doesn't want to explore an alternative which is going to knock us out of the ballpark then on what may well be the most reasonable solution to the problem and that would be to sell the plant. He would hesitate to vote for a motion that would have a chance of knocking us out of the negotiations to sell the plant based on our intervention and pleadings we might make relative to anti-trust violations by Florida Power and Light. He is wondering if it might be better, because it is awful hard to talk in the abstract about pleadings, to have something drafted, a proposal as to what we can do in the form of intervention and what we would be saying in the intervention, what position we would be taking, and look at that and have it to us in time that we could see it and look it over for a day at least and have a special meeting and then vote on what to do.

353975



POOR ORIGINAL

The Mayor doesn't want to get hung on the sale of the system in an effort to get alternatives by exploring an avenue that's reasonable to explore, but he doesn't think it's reasonable to explore something that might knock us out of what looks like a reasonable solution at this point depending on the way negotiations go.

Mr. Daniels asked for a clarification of what Mr. Spiegel said as to your implicit rights to someone else's nuclear unit. He stated that it is his understanding that the law does not say that. It may be implied but it isn't in the law that anyone has a right of access for somebody else's property. He asked if that is true. Mr. Spiegel said the law does not say that. As far as he knows the only people, private companies that have access to other people's property are utilities exercising the right of eminent domain. A utility which has this right is exercising some of the rights of the sovereign. In order for competition to survive, it needs access to this new form of energy which is only available in rather large plants. The conclusion which has been drawn and applied in many cases is in order to maintain a situation consistent with the anti-trust laws, a portion of the plant should be offered to other utilities. Mr. Daniels stated that isn't it really true that since the law does not say that, that the implications are that if 1 utility is in fact inconsistent under the anti-trust laws, then the Justice Department may try to get a settlement to have the other party gain access rather than having a direct right to just say, "Hey, I want a piece of your unit over here," and that's all there is to it. Mr. Spiegel said he agrees with Mr. Daniels in that this is not the law. Mr. Daniels said if he understands what has been said so far, in order to get involved in an anti-trust review of FP&L's application for license, the City would have to bring about allegations of anti-trust to FP&L and be prepared to defend them, because, Mr. Daniels stated, "I can tell you that FP&L will deny them and defend them vigorously." He further stated he is just trying to clear the air here because he doesn't think the Board really understood it that way.

Mr. Settle would like to take opposition to what the Mayor has said. Obviously, Florida Power and Light objects strenuously to us filing this intervention proceeding according to what Mr. Daniels is saying. Mr. Settle thinks it would put us in a much better position to sell to Florida Power and Light if we do file this intervention proceeding. He is not willing to say at this time that that is the best thing to do. He doesn't think any of us can take that position at this point. We have no idea that Florida Power and Light wants to buy this plant and if we do, what they're willing to offer us for this plant. We do know we're putting some \$600,000 a year out of this plant into the General Fund at this point. Mayor Bryan said \$462,000 plus a \$70,000 credit. Mr. Settle said alright - \$563,000. It is close to \$600,000. It seems to Mr. Settle that if we get compared to what they offer the City of Vero Beach which he believes was six and a half million if he recalls, and if that could be -- not will be --- by some future City Commission, seen as a windfall to pave streets and so forth and then the money is gone, then you've got to go into taxes to raise bonds for the general fund. Always 20% of the people pay 80% of the taxes. It would seem to him this is going to have to be studied long and hard as to whether we're really interested in selling. He for one is not willing to take the position at this point that we're interested in selling. He might also point out that Mr. Little was a former employee of Florida Power and Light for many years and is now the City Manager of Vero Beach. Mr. Settle can see where Florida Power and Light would definitely like to buy Fort Pierce and Vero Beach and get rid of this pocket of competition. He would have to take a very, very long hard look at it before he would vote for selling it. Mr. Settle would prefer to vote on the motion on the floor.

Mayor Bryan said the point he was trying to make was if we by passing this motion, take a chance on eliminating the possibility of selling this plant to Florida Power and Light by alleging anti-trust action, then obviously if we go into court and prove anti-trust action on the part of Florida Power and Light in an effort to win the opportunity to purchase 10% or some percent of the plant down in Miami, then the next answer by anyone else who wanted to intervene, if after getting the opportunity to purchase that plant, the determination were made that it were better not to spend 80 million dollars to have a portion of a plant in Miami and that it would be better to proceed to sell the plant to Florida Power and Light or at least have that alive as an alternative, that any interested party opposed to that for whatever reason would then be able to take the position the City had taken in the intervention to establish that based on the City's own pleadings that Florida Power and Light should not be allowed to negotiate with the City because it would further the anti-trust violations which we had alleged Florida Power and Light were committing.

359970

POOR ORIGINAL.

His suggestion was that we defer action on this until we can see what is actually going to be pled in this intervention and have sometime for consideration of this matter to determine what effect the intervention would have, if any, on the continuing efforts to negotiate with Florida Power and Light. He isn't prepared to say that we will sell to Florida Power and Light either. He is prepared to say that he wants to see an offer from Florida Power and Light so that we can and the people of this community can consider that offer and he isn't prepared to vote in favor of a motion that might eliminate the choice of the people of this community to have the opportunity to consider whether or not they want to sell this plant to Florida Power and Light. He is prepared to proceed further to ask Mr. Spiegel or whoever is appropriate to submit to us for consideration at a special meeting before the 14th, whatever effect intervention might have so that we can see. He is sitting here being asked to vote on a motion to file pleadings that he hasn't seen to raise issues that he isn't sure of, but apparently one of them is anti-trust, and without being advised of the ramifications to us of raising the anti-trust issue and the effect that would have on our negotiations with Florida Power and Light and he isn't going to vote in favor of that.

Mr. Settle asked if we could ask Mr. Daniels that question. Mr. Daniels said he would like to clear up one point. He isn't here today to try to get this body not to intervene -- no way -- that is your choice. His only point in being here is to make sure this body understands what is involved. As he said, he isn't a lawyer, but is trying to say what he knows of the situation. Mr. Daniels said FP&L was asked to come and talk with the Authority and make a proposal for the possible purchase of the system. They will do that if that is still what is desired. They are going to look at it very carefully for 3 points. One is, is it good for Fort Pierce, is it good for FP&L and its shareholders and is it good for the customers and employees of Fort Pierce. If those things don't give up, as far as FP&L is concerned if they can't make a proposal suitable to those points, they will probably come and say, "Sorry, we don't think we can do business with you."

Mr. Settle asked Mr. Daniels if he could ask him a question with a yes or no answer. Mr. Daniels said he can. Mr. Settle asked if filing an intervention will cease negotiations. Mr. Daniels said he thinks the Mayor answered that already. Mr. Daniels can't answer that because he isn't an officer of the company and that decision will have to be made by one. Mr. Settle said he didn't get the Mayor's answer. He asked what it was. Mr. Daniels said the Mayor implied that we probably would not feel in the proper posture to try to buy the system while the Authority is litigating against us in an anti-trust matter which would further that anti-trust.

Mr. Settle said as he understands it, if there is such a thing as a friendly anti-trust suit, this would be one of them. Mr. Daniels said he isn't aware of any of that type. Mr. Settle said FP&L is creating a monopoly in the south Florida area. He thinks it would be argued on that basis, especially if Vero is sold to FP&L. He understands Daytona Beach is considering at this point going back into their own system since their contract has expired. Mr. Daniels said it will expire. Mr. Settle said it will expire next year. Personally from his own standpoint as a businessman and not as an attorney, if he were Florida Power and Light, he might negotiate more anxiously if intervention was filed.

Mayor Bryan said if you are in a dangerous position relating to anti-trust and there are civil and criminal actions which can be taken against you for anti-trust and allegations are made that you already have too much of an area, you might very well feel that you can't negotiate for anymore of that area once that allegation is made by the party with whom you are supposedly negotiating.

Mr. Settle said he understood there would be no criminal charges, simply a civil charge. Mayor Bryan said for anti-trust there are civil and criminal charges that could be made. Mr. Settle said there are, but in this particular case, would there be criminal charges? Mr. Spiegel said no. Basically, we would be stating facts which show on the grounds of principal, why what they're doing may be inconsistent with the guidelines of the anti-trust laws. This is altogether different from a case in court. The problem can be easily solved if Florida Power and Light offers some fair share, a relatively small share, by making a proposal to share the nuclear plant.

There was one comment Mr. Spiegel noticed earlier by Mr. Daniels. This is the occupational hazard of his business when he said something to the effect that they're not going to give up easily.

353977



Mr. Speigel would like to have \$04 for everytime he's heard that from a major utilities company. Many major companies have succeeded in carrying their point just by impressing upon somebody that disagrees with them the fact that it may be long and expensive and difficult to prevail. Mr. Speigel has been surprised how rapidly the situation changes very quickly. When you go ahead and do it all of a sudden you find that it happens. He thinks he can probably probe his memories when he's heard this even from Florida Power and Light before. That's an occupational hazard. Mr. Speigel takes his work very seriously. If they find in their opinion that the company is unreasonably dragging it out, then they begin working at lower and lower rates. They've discovered the answer to what Mr. Daniels was implying, is to hang in as attorneys even if they have to work for nothing. He is never going to sit in a conference room with any utility -- he represented a small city in Florida some 10 years ago when they looked Florida Power and Light in the eye-- and he's never going to be in a position where he says to his client that they've got a righteous cause, but because they're in a position to drag it out and make it expensive, you'd better give up. He'll work for nothing for as many years as necessary to try as best he can to right the balance between the small litigate with the limited resources and a major company, the fifth largest utility in the country, with an unlimited litigation budget, which the customers are paying for. Mr. Speigel stated that he would say this, that if this thing is going to be dragged out and the protection of your interest requires it, he'll work for nothing.

Commissioner Caynon said you've got a deal.

Mr. Speigel thinks this is very important when a private utility comes before a public agency and makes what he thinks was clearly implicit in what Mr. Daniels said.

Mayor Bryan said what concerns him is not dragging it out or how long it's going to take. He's concerned about the initial action and the effect that it would have. If we were not in the process of considering sale of the plant to Florida Power and Light and we were determined to go ahead for sure without considering this as an alternative, if we were to go ahead and operate a municipal plant, he wouldn't be concerned about the procedure of intervention. Win, lose or draw we've still got a plant to operate. He thinks one of the choices being considered at this time by the city and Utilities Authority is the potential of the sale to Florida Power and Light, purchase by them and the sale by the City. He is concerned that the papers filed in this intervention would have an effect on that other choice which might or might not prove to be the best solution for the city, by eliminating it as a choice. He is concerned that if we prove our case too good in the intervention, we might get all done with it and determine it is not economically feasible to go ahead and get a piece of the plant, and so then we say we don't want to do that and decide to go back to "go" and talk to Florida Power and Light and they say, "Sorry, we can't talk to you. You've proven so well the anti-trust allegations you've made that you don't have that as a choice anymore. We can't afford to get into that."

Mr. Speigel said he is very often glad he's not a Mayor who has to be faced with tough decisions. He recognizes there are some tough elements in it. One problem is that you've got a deadline. That's the real problem. If you didn't have to face the reality that Florida Power and Light, unless you do intervene by April 14th, is going to say as they said about the other units, that you're out---if Florida Power and Light's representative is willing to say that even if Fort Pierce does not intervene, they will nonetheless be given the same opportunities to participate in the plant as any other intervener has, then they could get Fort Pierce off the hook in that fashion. If they are willing to work out some other interim arrangement, that would do it. If they're not, Fort Pierce is faced with the problem.

Mayor Bryan said if we could in time to meet the deadline, have a copy of the proposed pleadings and a letter from legal counsel advising us that if these pleadings are filed, that this would not prohibit, win, lose or draw, or effect our ability to negotiate a sale to Florida Power and Light, we could at that time if we had that advice and a copy of the pleadings so we could actually see the allegations relating to anti-trust, be in a position to know what's being filed and have expert advice as to the specific effect of filing those specifics, on the alternative of selling the plant to Florida Power and Light.

359978

Mr. Speigel said they know what it is to have deadlines. If the Commission and Authority desire it, they certainly will get this thing drafted as fast as they can. He would expect that they could get it to the bodies. He would prefer whenever it is possible that the pleadings be reviewed by the City itself before they are filed, because it is the city's action, not his. He doesn't know if they will be able to answer precisely the question being placed before them.

Mayor Bryan said that is the question he's interested in, because if filing of those pleadings is going to eliminate the possibility of negotiating with Florida Power and Light, we ought to know that on the front end of that filing and not file it, rather than come in on the back end and be told we've knocked ourselves out of the possibility of negotiating with Florida Power and Light.

Mr. Menge said he is sorry to say that we've got a couple of members who have prior engagements and they're going to have to leave us. There is a question on the floor. Mr. Fenn called for the question.

Mayor Bryan said he would like to offer a substitute motion.

Mr. Settle said Mr. Fenn called the question. Mr. Menge said the Mayor could offer his motion.

Mayor Bryan said he would like to move that the Authority authorize the preparation of pleadings for intervention in the procedure involving the plant in Dade County for submission to the Authority at the earliest possible date and that a special meeting be called to consider those pleadings and that along with the pleadings, advice be sought as to the effect of filing these pleadings on any potential or prospective negotiations with Florida Power and Light concerning the sale of the electric system.

This motion died for lack of a second.

Mr. Menge asked that the roll be called on the question.

Mr. Fenn, Mr. Reilly, Mr. Settle and Mr. Menge voted yes. Mayor Bryan voted no. Motion carried.

Mr. Fenn exited at this point.

Commissioner Caynon said nobody ever said what this plant would be worth if we were to sell it.

Mr. Menge said that is true and that is the next thing we're going to take up. He is glad to have the City Commission here today because he thinks it's important to have them know what's going on because they're going to be involved in any final decision made.

We have here at the present time a resolution -- one that was presented and one that the Mayor has revised that now gets involved in the sale of the plant.

Mr. Menge asked Mr. Baldwin if there is any particular disagreement with the revised resolution. Mr. Baldwin said he hasn't had time to compare them. He doesn't think there would be any problem. Mr. Menge said basically it's the same thing. There is some change in wording. Mr. Baldwin said he thinks the Mayor has essentially required an estimate of cost. Mr. Menge said it states we will proceed to bring aboard some expert persons, engineers, accounts and so forth, to make an evaluation of our plant so we can find out what we own. You can't sell anything unless you know what you have. Right now he doesn't think any of us know what we do have. We need to know the net worth, market value, potential value, what will happen five or ten years down the road. Mr. Baldwin said Mr. Brown indicated there was no quarrel with the Mayor's resolution. Mr. Settle said the only thing he notices that has been changed is rather than hiring people, that we get proposals. He is in agreement with this. Mr. Baldwin said he thinks Mr. Bryan also excludes the attorneys in the last line. Mr. Bryan said he was assuming, maybe he was assuming wrong, that it would be Mr. Brown. He gathers that may have been an error.

Mr. Settle moved that Resolution U. A. 76-5 be adopted.

Mr. Baldwin said so there will be no question, this is the substitute resolution prepared by Mayor Bryan. Mayor Bryan said he has an original here.

The roll was called with Mr. Reilly, Mr. Settle, Mr. Bryan and Mr. Menge voting yes. Motion carried.

-----  
There being no further business Mr. Menge adjourned the Utilities Authority Special Meeting.

Mayor Bryan adjourned the City Commission Special Meeting.

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairman

POOR ORIGINAL

359980



APPENDIX B