MINUTES
SPECIAL MEETING
DESTIN CITY COUNCIL
SEPTEMBER 13, 2018
DESTIN CITY HALL
ANNEX COUNCIL CHAMBERS
5:30 PM

The Council of the City of Destin met in special session with the following members and staff present:

Destin City Council

Mayor Gary Jarvis
Councilmember Skip Overdier (by phone)
Councilmember Rodney Braden
Councilmember Parker Destin
Councilmember Chatham Morgan
Councilmember Tuffy Dixon
Councilmember Prebble Ramswell
Councilmember Cyron Marler

Destin City Staff

Interim City Manager Lance Johnson
City Clerk Rey Bailey
Finance Director Bragg Farmer
IT Manager Webb Warren
City Attorney Jeff Burns

CALL TO ORDER

Mayor Gary Jarvis called the meeting to order at 5:30 PM. Chaplain Larry Carter from the Okaloosa County Sheriff's Department gave the invocation; which was followed by the Pledge of Allegiance.

NEW BUSINESS

1) Negotiations of Franchise Agreement with Gulf Power

The City's Special Counsel Schef Wright provided a brief update on the current status of the negotiations between the City of Destin and Gulf Power, detailing the concessions the City had already made in an effort to reach an agreement with the power company:

- The City asked Gulf Power for a reasonable concessions regarding undergrounding; to give the City the same provision that other major utilities in Florida provide. Gulf Power refused and the City withdrew the proposal
- The City asked for rate protection against further rate increases. Gulf Power refused, and the City withdrew the request from the supplemental agreement
- The City withdrew the request for Gulf Power's support for new high school in Destin
- The City withdrew the request for Gulf Power's support for renewable energy and sustainability initiative

- The City asked for protection against costs overrun associated with Kemper and Vogle plants; which are Gulf Power's sister companies. Gulf Power refused and the City withdrew the request

According to Mr. Wright, they sent the franchise counter proposal to Gulf Power as directed by the Council at their last meeting. Gulf Power sent back another proposal, thereby further limiting the City's ability to purchase the utility beyond what was already in the current franchise. He stated that Gulf Power's counter-proposal takes away the City's ability to purchase the power plant; which is irrelevant since Gulf Power does not have any power plants in this area It takes away the City's ability to buy transmission lines; which is not a big factor because the City may not want to purchase the transmission lines anyway. Gulf Power wants to take the City's ability to buy the substation; which is an integral part of the distribution system. Mr. Wright pointed out that a new substation would cost the City between $2 million and $4 million each. Gulf Power would like to limit the City's ability to exercise its right to purchase solely on the fifth anniversary and the fifteenth anniversary of the franchise agreement; not as a vesting right to purchase. Also, according to Gulf Power, any agreement with the City would have to be approved by NextEra Energy, the company that is in the process of purchasing Gulf Power from Southern Company.

Mr. Wright also noted that the expiration date of the current extension to the franchise agreement was September 21, 2018. He stated that absence of an acceptable franchise agreement, the only way the City could protect itself is to exercise its right to purchase before that period expires; otherwise, it would lose its right to purchase as well as its ability to protect the citizens and businesses of Destin from high electricity rates, which is one of the highest in Florida.

The City Attorney noted that the City's three options are to execute the resolution exercising its right to purchase, accept the current counter-offer from Gulf Power, or to continue to negotiate with Gulf Power and try to come up with an agreement before September 21st.

Councilmember Morgan inquired as to the value of the City's electrical franchise with Gulf Power.

Mr. Wright opined the Destin franchise is quite valuable; possibly with a dollar value well into the nine-figures. He also pointed that according to the WHH Feasibility Study that was conducted for the City, the City would draw approximately $6.8 million a year if they were to take over the electric utility and charge Gulf Power's rates.

Councilmember Morgan asked if Gulf Power has negotiated in good faith with the City of Destin.

Mr. Wright stated there is not an easy answer to that question because a good faith or a bad faith negotiation is all about facts; and that he feels the negotiating team from Gulf Power has done the best they could with the instructions they receive from those in the position of higher authority in their organization. But, he also feels the City of Destin has made a lot of concessions, that that Gulf Power has not given anything of meaningful value in return.

The Mayor stated that Gulf Power agreeing to allow the City to exercise its right to purchase on the fifth and fifteenth year of the franchise agreement seemed like a compromise and could prove they

are acting in good faith. He also pointed out if the City decides to exercise its right to purchase, conducts its due diligence and forensic analysis in order to put together a product they could sell to the citizens, they would have to start that process way before the fifth year of the franchise anyway. He added that having a clear idea of the costs and the risks involved is paramount to making the right decision.

There were some discussions relative to Gulf Power not allowing the City to purchase the sub-stations. The Mayor asked if there have been any cost calculations made in this regard.

Mr. Wright assured the Council that purchasing a new sub-station would definitely cost a whole lot more than taking over an existing one.

Councilmember Destin opined that Gulf Power is attempting to make the process so expensive by adding in some last minute changes to the franchise agreement, hoping that the City would never be able to practically exercise its right to purchase, making it meaningless from the leverage standpoint. He stated he has been in the middle of this negotiation for the last six months and it does not seem they are getting anything of value from Gulf Power; that that the only way they could protect their citizens is to preserve the purchase provision as much as possible. He also noted that Gulf Power representatives had previously stated it is a bad business model to allow the City to exercise its right to purchase at any time from the fifth to the fifteenth year; the same business model that has been in effect since 1996. He feels Gulf Power is doing its best to make sure the City will never be able to exercise its right to purchase; which is why he cannot support the franchise agreement as currently written.

Councilmember Overdier (on the phone) stated that he has discussed this issue with a lot of his constituents and has yet to hear from anyone who is in favor of the City owning its own electric utility; adding they have all been satisfied with the services provided by Gulf Power. He also added he would prefer staying with Gulf Power.

Councilmember Dixon expressed concern that if they vote to exercise their right to purchase, citizens would be filing a petition against this action. He was also concern there could be four new council members elected into office in18 months that may not agree with their decision to purchase while at which time they are already several months into the process and with a lot of money already invested in it.

The City Attorney opined that the citizens' petition would not apply in this situation because they are dealing with procurements, which do not fall under the petition route under the City charter and State statute. He also stated that any referendum on this particular issue would only be suggestive and not binding.

At this time, the Mayor asked if any member of the public wishes to comment on this issue.

Mr. Bob Earl, a Destin resident, stated that the Gulf Power issue is just another excuse to increase taxes; and that a lot of other people feel the same way.

Mr. Jim Wood, a Destin resident, stated he has been against the City purchasing the Gulf Power utility for several years. He pointed out that his average electric bill just a few years ago was between $375.00 and $425.00. He asked Gulf Power to conduct an energy survey on his home, and it was

determined the bulk of his energy was going to his old and not very efficient air conditioning system. He then replaced the system and his electric bill was nearly cut in half; and then it went down even further when he decided to participate in the flat rate system. He added he does not know of anyone in the City that is in favor of purchasing an electric utility; and that he feels the action the City is currently considering borders on socialism and communism.

Mr. Scott Fischer, a Destin resident, stated that as the previous Destin Mayor he has been involved with the negotiations with Gulf Power. He feels the City has a great opportunity before them, but it would be to their advantage to get the community behind them. He stated there have been some publications in the State of Florida that talk about the growing monopoly of the power business. It is a State-wide problem as Florida Public Service Commission sets the electric rates. A thousand kilowatt hours cost Destin residents $131.38; which is about 30 percent higher than Orlando's monthly rate of $99.00. He continued that this Council's goal is to give the citizens of Destin a 30 percent rate decrease; but they need to consider whether or not they could run an electric utility company efficiently. He stated it is going to be a huge undertaking as the City has a very low tax base and it does not have the staffing necessary to do it. He also noted that according to earlier appraisals, the cost to purchase the Gulf Power system was $70 million. Destin is about 3.4 percent of Gulf Power based on the number of residents. The current purchase offer for Gulf Power is $6.48 billion, and that 3.4 percent of that amount is $200 million to $220 million. The City could have bought the utility a year ago for only $70 million. He added they have a tremendous opportunity before them to increase the value of Destin, reduce the amount people pay on their electric bills, and possibly set Destin on a new direction.

Ms. Marcie Bell, a Destin resident, noted that she has a degree in Finance and she very much understands the discussion relating to the present and future value of an electric utility. She asked the Council to take into account their answers to the following questions when making a decision on this matter:

- *If you own a home, why did you choose to buy rather than lease the home?*
- *How old were you 30 years ago?*
- *How old would you be 30 years from now?*

Ms. Bell added that the decision the Council will be making today will directly impact the younger people in the community in the future.

According to Councilmember Ramswell, she reviewed the 1986 franchise and finds that the structure of that contract is very similar to what they see today. She continued that section 3 of the agreement discusses the right to operate, with the City having the right to erect, suspend, install, extend, renew, repair, maintain, and operate the system.

Mr. Wright clarified that section 3 describes Gulf Power's rights under the franchise agreement; and that section 5 pertains to the rights of the City of Destin.

Councilmember Ramswell stated that they want the best deal possible for the citizens of Destin. Gulf Power has the third highest rates in Florida. The feasibility study that was completed in August 2017 was very thorough and provided a lot of information. It provided some very good relevant numbers which answer a lot of questions in terms of costs and value. They have to consider what

makes the most sense and what would be the best and fair outcome for the citizens of Destin. She also stated there have been a lot of misconceptions out there. When they talk about exercising their rights to purchase, people automatically assume the City will take over and run the system even though they have previously indicated it is not what they plan to do because they do not believe they are in a position to run a power company. It is an opportunity for the City to purchase it and then have other companies such as Duke Energy or CHELCO to run it. She feels exercising their rights to purchase is their best option at this point.

Councilmember Braden noted that most of the people he had spoken to about this issue did not have all the facts; only the negative publicity they have been receiving from Gulf Power. However, they support the idea of the City exercising its right to purchase once he explained the current situation to them.

According to Councilmember Marler, the $70 million cost estimate to purchase the utility is way too low. It would most likely be $100 million to $200 million, and it is a way to bankrupt the City. They would not be able to afford to cut rates because of the amount they have to pay for the purchase of the electric utility. They would still have to pay another entity, possibly Gulf Power, for the power source because they do not own a power plant. He also stated that Gulf Power and the other power companies are part of a union; and they make sure union members make a lot of money. He does not feel purchasing an electric company is going to work.

Councilmember Morgan believes Gulf Power is an incredibly expensive energy company by State and national standards; and that he does not appreciate the way they have negotiated by employing Washington DC lobbyist.

Councilmember Destin stated that this is not an easy decision. They are doing their best to get the best value for the citizens of Destin. He supports operating the power utility through a third party, but it has always been his preference to exercise their rights to purchase and then sell the company to one of Gulf Power's competitors and try to get a more favorable franchise. He continued that it is quite profitable to sell power within the City of Destin. Gulf Power is trying to take advantage of the City, and they should not allow it to happen.

According to Councilmember Braden, there are at least 6 places where they could purchase power.

Mr. Wright stated that they could purchase wholesale power from Gulf Power, Southern Company, Duke Energy, Tampa Electric, Seminole Electric, City of Tallahassee and many other places; and that that there are other companies that would also be interested in running the system for Destin. He also stated that the City of Destin could hire employees to run it; similar to what the City of Winter Park has done. They used some of their surplus revenues to continue their ongoing undergrounding project; and that during the first 10 years, the average customer paid about $975.00 less than the comparable Duke Energy and Progress Energy customers.

Councilmember Braden noted that if CHELCO runs the power company, Gulf Power would still be receiving some type of fee from the power coming over the transmission lines for Destin.

According to Mr. Wright, Gulf Power would be getting a fair regulated compensatory rate for the use of their transmission lines to get the wholesale power to Destin as regulated through Federal Energy Regulatory Commission.

Councilmember Dixon stated that he did not appreciate the tactics employed by Gulf Power, especially during the City election, as well as the way they have treated the City. He wants to make sure the decision that they make tonight will take care of their children's future, and gives them the same advantages as they now enjoy. He wants to make sure that if they decide to exercise their option to purchase tonight, they would still be able to continue negotiating with Gulf Power for a better franchise agreement.

Mr. Wright noted that an option to purchase is different from a right to purchase; and that the cases they received from Gulf Power all involved options to purchase. He continued that the City of Destin has the right to purchase. The contract does not stipulate that once the City exercises its right to purchase that it is irrevocable. There is no reason not to continue negotiating with Gulf Power after they exercise their right to purchase. He also remarked that the City's electrical system is very valuable; or Gulf Power would not have devoted the efforts and resources to keep the City from exercising its right to purchase.

Councilmember Marler stated that he opposes the idea of exercising their right to purchase because he does not feel they have done the due diligence necessary to make that decision. He does not believe that a city with lower than $14 million annual budget and does not have its own police department and fire department ought to get involved in running a power company. He wants to make sure they are able to inform their citizens how much they will have to pay for electricity based upon the due diligence they conduct and not what other cities are doing.

Councilmember Overdier stated they do not have to make a decision tonight. He suggests they obtain inputs from their citizens before making any decision.

Councilmember Ramswell noted that with regards to power rates, the data from the feasibility study indicated a rate of 55.20 per megawatt hour; which is below the current Gulf Power rate.

The Mayor asked if the rate reduction was taken into account.

Councilmember Ramswell noted that the study was conducted prior to that announcement.

Mr. Wright explained that the $8.61 rate reduction is a flow back of unprotected accumulated deferred income taxes that came about as a result of the tax cut and jobs act in 2017. The rate reduction is applied against the fuel charge and goes away at the end of December this year. There are a couple of new smaller credits that will take effect; but, overall the tax cut benefits will go away and rates will go back up. It is unknown at this time what the new rates will be effective January 2019.

Mr. Wright also stated that he agrees this issue needs to be fully vetted in public. He continued that with regards to debt service, a finance expert who spoke about this subject at a Council meeting stated that the revenue from the electric system, not the City's general revenue, backs up the City's debt; and so owning the electric system is not going to bankrupt the City. He further stated that the City has a lot of options in terms of what to do with the extra revenue. They could give it all back to the

customers by lowering their power rates way down and not do the undergrounding; or use part of that revenue to lower rates and some for undergrounding.

According to Councilmember Destin, they have to be cautious in adopting this contract as Gulf Power is trying to limit the City's ability to exercise its right to purchase. According to the current proposal, Gulf Power is offering the City one opportunity, at the 5th year of the agreement, to exercise its right to purchase; otherwise, they would have to wait until the 15th year to do so.

Councilmember Destin also stated that contrary to what others believe, they cannot rely on NextEra to help the citizens of Destin by lowering their power rates. They are paying a huge amount of money to acquire Gulf Power. They own other power companies, and that they are probably trying to consolidate power within the State of Florida.

The City Attorney noted that the City has one other option in addition to the three options he mentioned earlier; which is to try to extend the franchise for another two years.

According to Councilmember Marler, he prefers negotiating for another extension to make sure they are doing the right thing; and that they could conduct a better feasibility study if necessary during that time.

Councilmember Destin inquired as to the consequences of delaying their decision to exercise their right to purchase until the regular Council meeting on Monday, September 17th.

Mr. Wright replied there is no immediate danger as the expiration date for the current franchise extension is Friday, September 21st. By that time, if the City does not exercise its right to purchase, obtain a new franchise extension, or have an absolute iron-clad, fully warranted and unequivocally binding franchise agreement, they would lose their leverage with Gulf Power.

The Mayor stated that Gulf Power's current offer seemed warranted and binding.

Mr. Wright noted that it is not warranted; adding that the letter they received from a Gulf Power representative indicated that any agreement they make requires approval from NextEra Energy.

Councilmember Braden moved to exercise the City's right to purchase; seconded by Councilmember Ramswell.

The Mayor stated that it might be a political suicide for the 7 members of the Council to make a decision of this magnitude. He continued that the current offer from Gulf Power, though it is not yet warranted, would give them the time line they need to do forensic analysis and to be able to put together a product that they could take to the citizens of this community; apart from the propaganda that took place during the last City election. They could also weigh and evaluate everything and make a good conscientious decision on what is best for the community. He also stated there ought to be some discussions of their intent to purchase the electric utility, whether it is to increase the City's revenue or pay for City debts; and if they intend to tax the citizens on their electric bill. He also stated they are not being honest with their citizenry with their discussion about lowering the rates. With the cost to purchase the utility and undergrounding at approximately $250 million, they will not have the ability to

lower rates. It would not be worthwhile spending all that money unless they know the value of the utility is going to be a net windfall for the community; and that it would help pay for the City's debts and with the undergrounding of their electric utilities. He further stated that exercising their right to purchase is not a bad thing; but, they need to know what their chances are of being successful as well as the risks involved in that decision. He added they should be able to put together a packet of information that would give the citizens all the facts and allow them to evaluate this monumental decision and cast their vote at the next election.

The City Attorney asked Councilmember Braden to include in his motion the adoption of Resolution 18-31, exercising the City's right to purchase.

Councilmember Braden amended his motion to pass Resolution 18-31, exercising their right to purchase; and also to have the ability to conduct workshops, educate the public and get the public's input. Councilmember Ramswell provided a second to the motion.

According to Councilmember Braden, his motion does not necessarily mean they would just move forward and purchase the electric utility and stopping all negotiations with Gulf Power.

Councilmember Ramswell noted she has been a member of the Council for nearly 5 years and has sat through several Council meetings and workshops where this issue was discussed with the public and gave them the chance to provide their input. They have also had presentations from Mr. Bill Harrington, who conducted the feasibility study, and a representative from the City of Winter Park, providing specific details and statistics regarding this issue. She added they have made a concerted effort to get the public involved in this initiative.

Councilmember Marler wants to know if Gulf Power has warranted another two-year extension.

Mr. Wright reiterated that the letter from a Gulf Power representative had made it clear that any decision they make has to be approved by NextEra; which is disconcerting to him. He continued that as the City's lawyer, his job is to protect the City. He does not want the City to believe they reach an agreement with Gulf Power when in fact it has not been validated by NextEra.

Councilmember Marler offered a substitute motion to delay making a decision on this matter until their regular Council meeting on Monday, September 17th to find out if there is a possibility to obtain a two-year extension on the current franchise. Motion died for lack of a second.

The Mayor called for a vote on the original motion, which passes 5-1 (Council members Destin, Morgan, Dixon, Ramswell and Braden voted "yes"; Councilmember Marler voted "no"; Councilmember Overdier was not physically present at the meeting and was not eligible to vote).

Councilmember Destin suggests they allow the City's special counsel to reach out to Gulf Power representatives to see if they could continue negotiations on a potential franchise while going forward with the process involved in tonight's decision by the Council.

Mr. Wright clarified that it would only be a fact finding effort and not a negotiation.

Councilmember Destin stated that since it is not going to be a contract negotiation and that he still has Council's authorization to conduct a fact finding mission to explore various contract proposals from Gulf Power, he would reach out to Gulf Power and try to come up with something both parties could agree with, and then bring it back to Council Monday night.

ADJOURNMENT

Having no further business at this time, the meeting was adjourned at 7:15 PM.

Gary Jarvis, Mayor

ATTEST:

Rey Bailey, City Clerk