



City of Davis
Utilities Commission Minutes
Remote Meeting
Wednesday, April 15, 2020
5:30 P.M.

Commissioners Present: Gerry Braun, Olof Bystrom, Linda Deos, Jacques Franco,
Lorenzo Kristov, Elaine Roberts-Musser, Johannes Troost (Chair)
Matt Williams (Alternate)

Commissioner(s) Absent: None

Council Liaison(s) Present: Lucas Frerichs, Dan Carson

Staff Present: Mike Webb, City Manager
Ashley Feeney, Assistant City Manager
Zoe Mirabile, City Clerk
Tracie Reynolds, Property Management Coordinator
Stan Gryczko, Public Works Utilities & Operations Director
Adrienne Heinig, Management Analyst

Also in Attendance: Nancy Price, Alan Pryor, Scott Ragsdale, John Johnston,
Martin Hermann

1. Call to Order and Roll Call

Chairperson Troost called meeting to order at 5:32pm.

2. Approval of Agenda

Prior to the approval of the agenda, O Bystrom requested Item 5D be removed from the Consent Calendar and included as a regular item.

O Bystrom moved to approve the revised agenda, seconded by E Roberts-Musser. The motion passed as follows:

Ayes: Braun, Bystrom, Deos, Franco, Kristov, Roberts-Musser, Troost

Noes:

Absent:

3. Brief Announcements from Staff, Commission Members, and City Council Members

- E Roberts-Musser provided four articles for review:
 - Public Policy Institute of California - *A Reality Check on Groundwater Overdraft in the San Joaquin Valley*
 - The Rotarian - *The Plastic Trap*
 - Public Policy Institute of California - *Wastewater Treatment Kills Most Pathogens, Including COVID-19 Virus*

- Public Policy Institute of California - *Why the Big Drop in California's Colorado River Water Use*

4. Public Comment

None.

5. Consent Calendar

Prior to the approval of the Consent Calendar, Item 5A was pulled for discussion.

B. Update on Loose in the Street (LITS) Yard Material Collection

C. City of Davis Water Sources & Water Shortage Planning

E Roberts-Musser moved, L Deos seconded, to approve the Consent Calendar. Approved by following votes:

Ayes: Braun, Bystrom, Deos, Franco, Kristov, Roberts-Musser, Troost

Noes:

Absent:

A. UC Draft Meeting Minutes – February 19, 2020

A few minor corrections were made to the minutes. These changes include:

- Item 6A, second bullet after the section titled *Discussion included the following*: Likely uses for recycled water at the Yolo County Landfill, use in summer on the farm, or on organics, as landfill runs out of their own water.
- Item 7A, Long Range Calendar, First bullet:
Item from Commission member:
An item had been submitted from M Williams on Drought Emergency Preparedness with a request to include the item as a standing agenda item for six months.

L Kristov moved, L Deos seconded, to approve the minutes as amended. Approved by following votes:

Ayes: Braun, Bystrom, Deos, Franco, Kristov, Roberts-Musser, Troost

Noes:

Absent:

D. City of Davis Response to COVID-19 (Report to City Council on April 7, 2020)

Pulled by O Bystrom to express the need to include a discussion of how the City will look to protect ratepayers, and actions that can be taken to avoid rate increases as a result of the COVID-19 impact, in a time when incomes are dropping and job losses are mounting. Have to look at utility costs and have Council instruct staff to avoid expending money on capital projects if at all possible, and also avoid operations and maintenance costs that can be temporarily avoided. Discussion included the following:

- The need to understand how forgoing or postponing rate increases will impact utilities, and the repercussions.

- The importance of acting quickly - waiting for staff reports on the topic would take too long.
- Staff are in alignment with these goals, and have already met with management teams to have the same discussion - any motion by the Commission would dovetail with current work underway.
- Cost of Service studies underway will give in-depth info about what is necessary, what can be delayed, and will aid in understanding the impact. Reviewing revenue will be important as well.
- Councilmember Frerichs discussed the Council action on a moratorium on water shutoffs and waiving late fees for city utility bills.

Public Comment

- Nancy Price – appreciate the issue of cost, spoke to remind commission members that when cost goes up and water is shut off, there is a fee to turn the water back on, a fee which disadvantages low-income households.

Motion: Recommend that the city council request staff to consider immediate actions to reduce the impact of COVID-19 on our community, including:

- Freezing rates (if feasible)
- Avoid or postponing all capital projects that are not necessary for daily operations
- Reducing O&M costs wherever possible in order to guard against reductions in revenues

Moved by O Bystrom, seconded by L Kristov. Approved by following votes:

Ayes: Braun, Bystrom, Deos, Franco, Kristov, Roberts-Musser, Troost

Noes:

Absent:

6. Regular Items

A. BrightNight Lease.

Commission Chair began the discussion by dividing the item into two topics for discussion: 1) the process, and 2) issues related to the staff report and option agreement presented on March 24, 2020. This item also included the following:

- A discussion of the outline of the process by City Manager Mike Webb, Assistant City Manager Ashley Feeney and Public Works Utilities & Operations Director Stan Gryczko.
 - Initial timeline discussion prefaced by staff to indicate that a specific timeline was not immediately available for the Commission meeting.

- In late 2019, the Wastewater Treatment Plant (WWTP) was approached by owners and operators of PVEL (located off Poleline/Co Road 102), looking to expand their testing facility. With the recent operational changes at the WWTP, land was potentially available. Staff was also asked about the need for power at the WWTP to offset costs.
 - Had some discussions and provided some information around power bills
 - Discussions went silent for a little while, while they crunched numbers.
 - In December, staff attended meeting to chat about potential ideas. BrightNight and PVEL and Valley Clean Energy were having discussions about what might be potentially available.
 - Discussions started with Council December 17 regarding a potential opportunity for a property arrangement, with property out at the plant.
 - After the December meeting, BrightNight had been talking to staff in and around their ideas. Discussion occurred on items that may be of possible interest to the Council.
 - BrightNight's first proposal offer came in on January 27th. Staff took it to closed session the next day. Council directed staff to refine the terms, and the revision came back to Council on February 11.
 - On February 11, Council reported out a pending option to lease agreement, and that a negotiated lease would come before Council.
- Further staff comments on:
 - The description of the PVEL/BrightNight genesis, clarification that the proposal was reviewed by Council on January 28, 2020 when they went into closed session to discuss terms and provide direction, and the item was brought back at the February 11, 2020 meeting and reported in open session.
 - In land negotiations, the City is wearing the hat of property owner, and has many leases with private companies and non-profits. In looking at leases, there are a couple of pathways that Council can take; 1) a competitive process, or 2) sole source/Council decision. The City Council has prerogative to engage one on one in regard to negotiations. To seek

advisory input is at the discretion of the Council. In some cases, timelines can be an issue.

- Closed session is intended so Council can consider agreements that are not timely for public consideration.
- The Commission motioned to bifurcate the public comment section into two parts, to follow the separation of Item 6A into two parts.

Motion: The commission agrees to suspend the rules on Item 6A to bifurcate public comment for the item into two parts to align for the structure of the conversation, separated into process and contract.

Moved by O Bystrom, seconded by L Kristov. Approved by following votes:

Ayes: Braun, Bystrom, Deos, Franco, Kristov, Roberts-Musser, Troost

Noes:

Absent:

Discussion included the following:

- The question of whether there ever was a time during the process that staff recommended that the City undertake a public solicitation process.
- The question of whether there are opportunities for ending, or rescinding the contract; and if the contract is to move forward, if it was anticipated that the Utilities Commission would be able to weigh in on the terms proposed for the ground lease.
- Clarification of the 30-day window required for land lease negotiations.
- Discussion of the notice for the December 17, 2019 Closed Session meeting on the topic, and the request for follow-up from the City Attorney to determine if the noticing was done appropriately to abide by the Brown Act.
- Commissioners wanted to know if the lease price was already decided or negotiable.
- Frustration that the Commission was not notified of the discussion by staff.
- Discussion of the role that Closed Session plays for the City, and staff rules regarding disclosure of Closed Session discussions.
- Questions related to the potential revenue of the solar activities, and if that revenue would stay in the Wastewater Utility or go to the General Fund. Staff said they did not know, but would get back to the Commission with an answer.
- Some members of the commission indicated at various points in the discussion that staff do not have the experience necessary to engage in the type of negotiations

involved with the BrightNight project, as the negotiations are not within their regular course of duties.

- Clarification if Council was aware of the on-going discussions by the Natural Resources Commission, Open Space and Habitat Commission, and Utilities Commission about the possible uses of the overland flow and pond sites at the Wastewater Treatment Plant, and whether alternative uses were considered, e.g. organics processing, solar installation, wildlife habitat.
- Questions around the choice to go into an “arms-length lease” and if the City consulted County staff.

Public Comment

- Alan Pryor – asking a process question, he stated he was concerned about misstatements of staff and council members. He said it was clear staff indicated they were not approached until after first of the year, and staff had claimed the closed session meeting was properly noticed. Yet both the address and the name of the other negotiator were not listed on the notice. The discussion should have been disclosed in open session. Staff stated the deadline had to be made April 1, but at the council meeting the date was not there. Staff stated, sorry unclear, now the date is April 1-15. The experience of BrightNight was grossly exaggerated; they have zero megawatts of solar experience as a company; the CEO named is not the driving force, he was bought out of his company two years ago.
- Scott Ragsdale – stated that the subject matter is of importance; what happened appears to be well-meaning staff without experience who were misdirected by BrightNight; a team was rapidly assembled to make a decision. The process the city used worked against the public, and Council. The public needs to know how do we get out of this deal.
- John Johnston – current chair of NRC, spoke not on a specific topic, but to offer comment that Council can choose whomever they want to listen to. He considers this to be a flawed choice, the Council didn’t get benefit of experience/concerns of the community and could have shaped this in a way that benefitted all citizens and the city. He emphasized the need to assess highest/best use. The project has a fatal flaw, in regard to an existing city asset. When the city is in need of money, it is important to consider the fiduciary responsibility of Council and staff to make the highest and best use of city assets, but in this case, it didn’t happen.
- BrightNight (Martin Hermann, CEO) – stated that he hears the Commission and community concerns, and takes them seriously. His intent is to be a good partner, and he has done that with previous companies and will continue to do so. His company was founded in 2018. BrightNight is producing 2.5 thousand MW in the USA, with 5 thousand MW at the end of this year. He stated they invested in this small project looking to locate a research & development site in California. His

companies have had 100 contracts for solar land, all from unsolicited offers to land owners, as that is how land leases are procured in the industry. All uses need assessment by engineering studies before taking on a land lease.

Further Discussion included the following:

- Discussion of the investment from the city, over a decade of political capital time (including staff time and money) to have electricity generated locally to the community; the legislation the City sponsored (under SB 43) which enabled community solar; the City put the community choice program in place with the primary benefit of being able to have community solar, but the Community didn't hear community solar was involved in discussions before staff and BrightNight.
- The negative response from some in the community - issues were raised because the process was not transparent, did not follow established processes that had been in place, that led to the feeling of "shooting ourselves in the foot" by taking the first offer that came along.
- Council made a mistake, but it is not too late to reverse the decision, and to rescind would be the right thing to do.
- The Council had previously acknowledged three members of the Utility Commission, Olof Bystrom, Gerald Braun and Lorenzo Kristov, for their outstanding work for the environment, and acknowledged them as leaders in the energy field, so why hadn't the City Council asked any questions of them or the commission?
- Clarification that the action taken by Council was by a Council majority, not a unanimous vote.
- A motion was made by L Kristov: Commission urges council to rescind approval of BrightNight contract and engage with commissions in a public process to consider maximum value uses for city property aligned with our goals as a city. Seconded by O Bystrom.
- During discussion of the motion several commissioners argued there was a need for the Commission to try to be unanimous in its recommendations to Council on the item, due to the importance of the issue, and that the Commission members needed more time to consider what actions they would like to take.
- The motion was rescinded by the mover prior to a vote.
- Whether the process was "open, transparent, robust" or not.

Motion: Complete public comment on both parts of Item 6A [process and report questions], complete discussion on process and calendar items of critical importance to Council at a special meeting (scheduling the rate discussion first, and lease terms second).

Moved by E Roberts-Musser, seconded by L Deos. Approved by following votes:

Ayes: Braun, Bystrom, Deos, Kristov, Roberts-Musser, Troost

Noes:

Absent:

Abstain: Franco

B. Wastewater Cost of Service Study Consultant Selection and Study Scope Review

By action of the Commission, the item was tabled until a future meeting.

No formal action was taken on this item.

C. Solid Waste Annual Fund Review and Rate Recommendation

By action of the Commission, the item was tabled until a Special Meeting to be scheduled.

No formal action was taken on this item.

D. Review of Charge for Subcommittee to Review Self-Generation Opportunities for Collaborative Development by the City of Davis and Valley Clean Energy (VCE).

By action of the Commission, the item was tabled until a future meeting.

No formal action was taken on this item.

7. Commission and Staff Communication

A. Long Range Calendar

By action of the Commission, the item was tabled until a future meeting.

No formal action was taken on this item.

8. Adjourn

O Bystrom made a motion to adjourn the meeting, seconded by L Deos. The motion passed by the following votes and adjourned at 8:40pm:

Ayes: Braun, Bystrom, Deos, Franco, Kristov, Roberts-Musser, Troost

Noes:

Absent: