



**City of Davis**  
**Utilities Commission Special Meeting Minutes**  
**Remote Meeting**  
**Wednesday, April 22, 2020**  
**5:30 P.M.**

Commissioners Present: Gerry Braun, Olof Bystrom, Linda Deos, Jacques Franco (left after Item 4A/returned during Item 4B/left after Item 4B), Lorenzo Kristov, Elaine Roberts-Musser, Johannes Troost (Chair) Matt Williams (Alternate)

Commissioner(s) Absent: None

Council Liaison(s) Present: Lucas Frerichs

Staff Present: Ashley Feeney, Assistant City Manager  
Tracie Reynolds, Property Management Coordinator  
Stan Gryczko, Public Works Utilities & Operations Director  
Richard Tsai, Environmental Resources Manager  
Adrienne Heinig, Management Analyst

Also in Attendance: Alan Pryor, Richard McCann, Martin Hermann

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**1. Call to Order and Roll Call**

Chairperson Troost called meeting to order at 5:30pm.

**2. Approval of Agenda**

G Braun moved to approve the agenda, seconded by O Bystrom. The motion passed as follows:

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

Noes:

Absent:

**3. Public Comment**

None.

**4. Regular Items**

**A. Solid Waste Annual Fund Review and Rate Recommendation.**

Received presentation on the Solid Waste Fund annual update and rate adjustment recommendations from staff. Also included discussion of possible revenue impacts of COVID-19, adjusted rate increases to respond to the crisis, and outline of changes due to SB 1383 implementation. Discussion included the following:

- Clarification on the City's recent action to suspend the collection of late fees on unpaid utility bills – the bill amount is still due in full, but additional penalties will not be applied during the emergency declaration period.
- The suggestion to swap the rate adjustments for Year 2 and Year 3, implementing the 8% increase in June 2020, and the 10% in January 2021, the review of staff-presented scenarios for rate adjustments in the coming years, and the suggestion that future rate increases could be moved around to delay impact on ratepayers.
- Clarification on the loan repayment terms for the \$3 million loan from the Wastewater Fund (Interest-only payments, consideration of starting principal payments with original recommendation of a 10% increase June 1, 2020).
- Staff noted that it was important to focus on near-term impacts now, as the Commission will have additional opportunities to review fund and make rate recommendations throughout the current Proposition 218 term.
- Discussion of cost of street sweeping.
- Request to include two additional columns on future cost of service study staff reports: fund balance estimates for the end of the FY, and the balance of the interfund loan.
- Discussion of Recology options for possible rate adjustments.
- In a discussion of the aggregate impact of all utilities rates on ratepayers, staff noted that there currently are three cost of service studies underway – Stormwater, Water and Wastewater. No scheduled increases on other utilities occurring within the next six months. Staff will work with the Commission to complete the studies over the next few months to better understand impacts, and are actively looking at large projects that can be suspended or postponed.
- Discomfort with the implementation of a rate increase in June, especially considering the job losses. An alternative would be to look to use reserves.
- The estimated impact of delaying the planned increase in rates on the fund reserve development, and the balance between protecting the fund, the smallness of the increase from an actual dollars and cents perspective (\$3.90 per month), and reducing the impact of increases on the ratepayers.
- Clarification that the Solid Waste Fund has not yet developed a reserve fund commensurate with the reserve fund policy approved by Council.
- Commission will review fund status again in October, and will have the opportunity to see impact on the reserve fund and recommend an increase for January 1, 2021.

- Discussion of the value of signaling to the public that “we care about you in your time of uncertainty”.

**Public Comment**

- Alan Pryor – stated that any rate increases should be put off until after June 1. It would be best, as the city would be coming out of a tough period in May/June, and citizens will not want to see a rate increase.
- Richard McCann – stated this is why the city has reserve funds, for these kinds of unusual circumstances. Money is available if the city needs to borrow from other utility funds to cover expenses, until the city can determine a time when revenue can be increased. Should be delaying increase until there is more information. It is possible to take out a loan from another utility reserve to fund deficit in operations if needed.

Motion: Approve staff recommendation to implement 10% increase in solid waste rates on June 1, 2020

Moved by E Roberts-Musser, seconded by J Franco. Prior to the vote on this motion, a substitute motion was offered.

Substitute Motion: Approve Scenario A, regarding the rate increase for June 2020 [postponing the implementation of a 10% rate increase on June 1, 2020]

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

Ayes: Braun, Bystrom, Deos, Franco, Kristov, Troost

Noes: Roberts-Musser

Absent:

*Substitute Motion passes*

\*Request from Commissioner Franco to consider question of solid waste fees sent via email, and to revisit the rates of surrounding jurisdictions (*left meeting after Item 6A discussion*)

\*Announcement from Councilmember Frerichs that the request to record and post commission meetings during the shelter-in-place order was moving forward.

**B. BrightNight Lease**

Chair Troost provided a short summary of the discussion of the item to date, outlining the prior meeting discussion and the division of the item into two topics: a discussion of the process, and a discussion of the staff report and option agreement presented on March 24, 2020. The item also included the following:

- An announcement from Commissioner Bystrom that following the Utilities Commission meeting on April 15, 2020, he was contacted by the CEO of BrightNight (by phone). Stated he tried to explain why the project was a hot topic,

and provided suggestions on how BrightNight could get engaged with the public process.

- The CEO of BrightNight emailed the Commission at 3:30pm today, requesting to provide a presentation. Staff and the Chair sent responses - As a presentation from BrightNight was not included in agenda for the meeting, it would not be possible this evening. The Commission could consider including a presentation on a future agenda.

#### Public Comment

- Alan Pryor – stated that he has written before on this topic, and outlined fundamental problems, including a process largely misrepresented by staff and BrightNight. Stated there were conversations taking place last year that would have given time for commission to be involved, and that alone would be a reason to rescind the agreement. He stated misrepresentations by BrightNight constitute fraud, and urged the Utilities Commission to recommend rescission of the contract to Council.
- BrightNight (Martin Hermann) – thanked the Commission for the opportunity to provide comment. He stated that there is a benefit to having a community solar plant next to a city center, and a benefit to citizens. He discussed BrightNight’s intent to work with City and VCE on the power purchase agreement. He discussed an RFO opened by VCE this week. He said having site control demonstrates that site control makes the response from BrightNight to that RFO more competitive.
- Richard McCann – stated that he is co-authoring articles with Alan Pryor on issues related to the lease and project (and stated there was more to come in the near future). He stated that he personally knows how to extract more value in the deal. He outlined that if BrightNight doesn’t win VCE bid, then potentially the project has no benefit, for a pittance of a lease payment, and the City could get better lease terms for something else. He reiterated that the deal was problematic, that there are other issues to address, including misrepresentations like the deadline, and participation in previous auctions by developer, and these issues call into question this agreement.

#### Discussion included the following:

- Terms of the lease option agreement, including the five-year timeline to determine if the proposed project is feasible on the site. Staff discussed desire from both parties to have a solar farm with power that stays local, being a competitive bid on the VCE RFO, and to look to negotiate to receive power for city facilities. Staff also discussed need for BrightNight to obtain all necessary approvals, including CEQA clearance. The intent is to see if the project will work at the site and is feasible.

- Question on ability for the City to rescind contract, at what cost, and if the cost could be made up on another deal.
- Multiple questions related to the Closed Sessions held by the Council, and if Council specifically stated that staff could not consult with Commissions on the project, or if staff only inferred that they could not discuss the project with Commissions. (*Staff have reported that they are unable to answer questions about Closed Session discussions*).
- A discussion of the timeline of the process in advance of the March 24, 2020 vote to approve the option agreement by Council. This discussion included the following comments/questions:
  - Discussion of BrightNight at Closed Session on December 17, 2019 – when were Council brought into discussion, and were they briefed in advance of the meeting?
  - That on December 17 was the first time the Council heard that there was a discussion of the property, first time to discuss intent, including what was on the property, what were the possibilities, etc.
  - The initial interest with PVEL regarding a test facility, discussions with Mayor, shifted to staff to look at the power needs of the Wastewater Treatment Plant (information request).
- A reiteration that the Commission should focus on questions related to the project and option agreement, rather than focusing on process.
- A question on the Q&A released by the City on April 15, 2020, Question 3: *How was the lease rate determined?* Was the 22.5% share of the revenue run against what BrightNight will get out of the solar options. Staff declined to answer that question, reiterating their description of the Ag Land comparables process they had followed.
- Questions about what the property will be used for (discussion included comparison to a lease rate for orchards for nut crops). Staff response included a statement that they looked for comparable rates for uses allowed in the Public/Quasi Public (PQP) zones (solar is an approved use, agriculture is another), looked for comparable solar leases in Yolo County (as Central Valley leases are not comparable), area appraisers advised valuing the lease of the land to a long-term orchard lease.
- Appreciation for the project, and for the opportunity for the City to move forward and follow through with work done over the last decade, moving in the right direction in terms of the City's energy future, consistent with the Climate Emergency Declaration. Glad to see the collaboration between the City and VCE,

it is important as the project is discussed that the Commission keep in mind what the City needs to see in the future. Specifically, would like to see assurances that the property would remain in the City's control, and that the generated energy would be delivered by VCE; without this assurance, we have missed the boat on the focus.

- Concern about the cost to the City should the Council rescind the contract, and the importance of considering the best course of action if the City is liable for attorney's fees and possible revenue losses. Consider approaching the Council with a recommendation that the contract include the language that VCE and the Wastewater Treatment Plant be recipients of the solar energy. The commission could continue to argue, however, the emphasis on moving forward now is important, as likely the Council would not rescind the contract (as it would be too costly).
- Debate on if the recession of the contract would result in substantive damages, given that there has not been a great deal of work over the last two months, and the City should be willing to take the risk.
- Wanting to see a strong provision in the lease going forward that the VCE and the Wastewater Treatment Plant get energy at the lowest price legally possible for a government entity.
- Important to consider other options moving forward, as the City needs to secure local power being produced. The contract should be rescinded, an RFP/RFO released specifying local power as a requirement, collect the bids on the land, which would include power and lease offers from bidders, which would be an open and transparent process with competitive bids.
- Discussion of the Council solar facility built under a different business model.
- Discussion of size limitations for solar arrays under current Yolo County zoning.
- Acknowledgement of commissioner concern about the implications of rescinding agreement, while underscoring the unsatisfactory process and expressing the feeling of being held hostage to the agreement because of the unsatisfactory process. Press release emphasized that the project would bring solar power to Davis, however there is nothing in the agreement stating that will occur. Concern that there may be conversations or agreements that are not part of the public record.
- Frustration that the Commission has received no answer on why the Commission and other city commissions were not consulted, and why staff or Council wouldn't reach out to experts in the field (as acknowledged during the Environmental Awards by Council).

- Outlined concerns with the Closed Session agenda language, including the use of the APN and lack of relevant information in the item description, and an emphasis on the need to provide specific recommendations to Council on how to improve the process.
- Staff acknowledgement of the frustrations and concerns around the process, reiterating the short timeline, and that the lease terms are favorable to the city. Lease option is to determine if project can be implemented in Davis, and there will be opportunities to go back and work on the agreement to have provisions agreeable to both parties. Project will provide local benefit, and an opportunity for the City to deliver power locally. The Commission is encouraged to provide feedback on the lease terms, as the lease is not negotiated yet, so the Commission can engage on how we can better inform the lease.
- Discussion of the vision for the use of city properties, given that the current budget will be crushed by COVID-19 shelter-in-place order. A vision of properties should be in place to guide offers for land use in the future, a public vision to achieve highest and best value.
- Further discussion of the Brown Act, and what constitutes a topic that is permitted to be held in closed session, and what does not (specifically things that are “sensitive, embarrassing, or controversial”).
- Reiteration that the process was missing due diligence, and action should not be taken based on fear of the cost of litigation, as the assumption is being made on information that is being withheld. Approval of the agreement is a rubber stamp on a process where information is being withheld, and is unacceptable.
- Commission consensus on the concerns with the process, e.g. process was too fast, but nothing indicated that the process was nefarious. While the commission is disturbed by how it happened, it is up to the Council majority to rescind the contract. The Commission has the right to give a recommendation on the action taken by the City Council, but should offer suggestions in case the Council does not rescind the contract. It is not giving a rubber stamp of approval on how things were done to recommend terms for the agreement - much rather come up with some sense of guidance on what the Commission would like to see in the future.
- The Commission is not looking to advise on lease terms at the current meeting, would look to discuss again in May, after taking time to think about how to craft future direction.
- All of the City’s land leases need to be reviewed and looked at on a broader level.
- Recommendation from staff for the Subcommittee to Review Self-Generation Opportunities for Collaborative Development by the City of Davis and Valley

Clean Energy (VCE) to submit charge (when approved by Commission) and planned projects to Council for review.

- A motion was suggested to the commission to request comments from the community to the City Council on the BrightNight agreement from March 19, 2020 through current (failed for lack of a second)

Motion: Recommend that the City rescind the March 24, 2020 decision to approve the BrightNight lease option agreement and terms sheet and any agreements with BrightNight and its affiliates regarding the designated City property.

Moved by L Kristov, seconded by J Franco. Approved by following votes:

Ayes: Bystrom, Deos, Franco, Kristov, Troost

Noes: Braun, Roberts-Musser

Absent:

J Franco left meeting again at 8:30pm

## **5. Adjourn**

L Deos made a motion to adjourn the meeting, seconded by E Roberts-Musser. The motion passed by the following votes and adjourned at 8:34pm:

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

Noes:

Absent: Franco