

MINUTES OF A SPECIAL MEETING OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, THE CITIZENS' ADVISORY COMMITTEE OF THE CITY OF FORT PIERCE, FLORIDA, AND REPRESENTATIVES OF FLORIDA MUNICIPAL UTILITIES ASSOCIATION, HELD IN THE MUNICIPAL COURTROOM, 435 NORTH SEVENTH STREET, FORT PIERCE, FLORIDA, ON TUESDAY, AUGUST 24, 1971 AT 7:30 P.M.

Those present: Mayor Pro-tem Nelson, Commissioners Caynon and Padrick; City Manager Davis, City Attorney Brown and Deputy City Clerk Lowry. Those excused: City Clerk James. Those absent: Mayor Summerlin and Commissioner Lait. (Mayor Summerlin and Commissioner Lait were excused from this special meeting by motion on August 25, 1971).

Also present: Members of the Citizens' Advisory Committee, Chairman Millar, Members Bembry, Brown, Holtsburg, Kane, Myers, Crist, Newbern, Saraduke and Longino; and Representatives of Florida Municipal Utilities Association: Mac Cunningham and Attorney Tracy Danese.

Mayor Pro-tem Nelson called the meeting to order, and recognized Mr. Hudson C. Millar, Jr., Chairman of the Citizens' Advisory Committee, as the first speaker.

Mr. Hudson C. Millar, Jr., Chairman of the Citizens' Advisory Committee, read his statement, as follows:

"The members of the Citizens Advisory Committee, as appointed by the Mayor and elected by you, the City Commissioners, serve without pay or other compensation, often spend their own monies in phone calls, gasoline, use of the offices, supplies and secretaries of their various businesses, and give their time, all for one purpose - to study and analyze the problems facing our city and community and to make recommendations for its betterment to either you or the City Manager, or both of you.

We have another function, in that H.U.D. requires each city to maintain an active Citizens Advisory Committee in order to gain approval of the workable program, thus no federal funds for improvements or other projects through H.U.D. would be forthcoming to the City of Fort Pierce unless the city maintains such a committee.

H.U.D. further recommends that the Citizens Advisory Committee, after it studies a need of the community and formulates a plan of action, actively campaigns in the community in support of their recommendations.

For the past five months the Citizens Advisory Committee, has undertaken a study of the feasibility of a Utilities Authority for the City of Fort Pierce. This report will hopefully be presented to you this week. As part of our study, we reviewed the work being done by the Fuels Committee of the Florida Municipal Utilities Association. As a result, our committee submitted to you two resolutions both of which called for strong unilateral legal action on behalf of the people of Fort Pierce, who are suffering from having to pay monstrous light bills.

We pointed out in our resolutions that it was our opinion that the attorneys for the Fuels Committee of the F.M.U.A., in whose costs Fort Pierce has participated to the sum of some \$10,000 or more, were scatter-shooting instead of pursuing direct legal action to seek relief for the citizens of Fort Pierce. During the nine months the F.M.U.A. has employed Mr. George Spiegel, a Washington attorney who specializes in power cases, no suit has been filed by him before a Florida Court seeking to void the contract between the City of Fort Pierce and Florida Gas Transmission, no suit has been filed by

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him in the Federal Courts seeking treble damages under the Anti-Trust Laws. No complaint has been filed by him with the Federal Power Commission requesting a hearing and challenging the right of Florida Gas Transmission or its parent, Florida Gas Company to hook the price of gas to fuel oil, no complaint has been filed by him before the Florida Public Service Commission on similar grounds.

Instead, Mr. Spiegel has chosen to file as an intervenor in three cases, that is asking for permission to enter a case already before the government body. There is nothing wrong with this action, but it is a skirmish instead of a main engagement. If Mr. Spiegel had filed as an intervenor in these three cases in addition to filing a suit in the Florida Courts, in addition to filing suit under that Anti-Trust Laws in Federal Court, in addition to filing a complaint to seek relief under both the Federal Power Commission and the Florida Public Service Commission, the Citizens Advisory Committee would have no grounds to complain.

Let's look at the results. Mr. Spiegel filed as an intervenor before the Federal Power Commission, opposing Florida Gas Transmission's petition to enlarge its facilities. The hearing examiner quickly ruled that Mr. Spiegel's petition was the wrong forum and that he should file a complaint before the Federal Power Commission if he sought relief for his clients. Mr. Spiegel filed a petition as an intervenor before the Federal Power Commission to intervene in Humble Oil's request to increase its Florida Jay field sales and to transport gas to Louisiana. Obviously the main thrust of this case is to prevent Florida Natural Gas from being transported out of the state, itself a very worth cause. I don't believe the hearing examiner has rendered a decision in this application of the Fuels Committee. At least our committee has not seen such a report. However, it should not be very difficult to prognosticate the examiner's decision in regards to the contract calling for the price of gas to be hooked to fuel oil. It will undoubtedly be the same as in the former petition, the wrong forum.

But this doesn't end Mr. Spiegel's strategy. As we understand it, he is now preparing to file an appeal before the U. S. Court of Appeals in the District of Columbia. Obviously this was his aim all along. Admittedly no one knows what the judges on this court will do. At times they seem to not only bend the law, but to rewrite it to suit their own personal, sociological, economic and philosophies, at least I have found that to be so in regards to the Communications Act. There is a chance that this U.S. Court of Appeals could reverse the Federal Power Commission, who will undoubtedly uphold the decision of their examiners. Still, this action is a long shot, and as we have said, if it was part of the total action, it would be commendable, but as the main action, it is questionable.

Perhaps the most important work Mr. Spiegel has performed for the Fuels Committee is in helping prepare and guide legislation through the Florida Legislature. We have no idea of how much work he performed in this area. However, if he performed substantial work, then in our opinion, he is properly paid. On the other hand, if he only drew up the proposed legislative revisions and acts and only filed three petitions, two unsuccessfully and one still pending, it is our opinion that his \$25,000 fee during the past nine months is excessive and he is overpaid, certainly in comparison to attorneys who practice before the Federal Communications Commission and the Securities Exchange Commission as employed by our firm, and assure you we employ among the largest and best in the land.

The Citizens Advisory Committee is not opposed to the City of Fort

Pierce remaining in association with the Fuels Committee in the employment of Mr. Spiegel. In fact, we recommended that besides hiring competent attorneys to fight our own battle, that we either terminate participation with the Fuels Committee or continue, for such value as will be received, which we must admit could be substantial. We must ask, however, why Mr. Spiegel didn't file a similar case in the Florida Courts, as is now being filed by our Attorney General, Mr. Shevin. If Mr. Shevin feels he has a sufficient case, why then did not Mr. Spiegel and the Fuel's Committee feel they had a sufficient case nine months ago. Another thing, we are not challenging Mr. Spiegel's competence. His past record of excellence in this field speaks for itself. We are only submitting that our direct employment of Mr. Spiegel or a similar competent attorney to represent the City of Fort Pierce would have a better and quicker chance of bringing us relief. How do we know the politics of the other participating cities and the restraints they have placed or will place on the Fuels Committee and Mr. Spiegel's actions, nor how active these cities will be in commanding Mr. Spiegel's time and attention to the cases.

This brings us to the crux of the situation. The people of Fort Pierce want relief from their monstrous electric bills. They don't want skirmishes. They want head on, hard fighting action. They want every avenue explored and exploited, not next year, not six months from now, but right now. They want and are entitled to a suit being filed in the courts of Florida.

Where, we must ask, are you going to find more friendly judges? It would appear that if there is any basis of civil law to break the contract between Fort Pierce and Florida Gas Transmission, this is the arena where the battle should first be fought. We should ask the Florida courts to order Florida Gas Transmission Company to set aside in a special bank account all funds charged on fuel escalation beyond a certain date, pending the outcome of the suit. Should we win in the lower courts, then the burden of proof would be on Florida Gas Transmission Company, and we just might be surprised to see a change in their greedy, money-grabbing hearts and the offer of a reasonable gas contract, as it is not unusual to settle suits out of court. And we might add here, - that no one is going to fight your battles for you, like you will fight them for yourselves. It is well known that the client of an attorney, who gets the action is the one who bugs him the most. If we, the City of Fort Pierce, are that client and not an association representing, it makes sense that we are the ones who will get the action we need and must demand, to give relief to our people.

The Citizens Advisory Committee recommends the immediate employment of a hard fighting Florida Attorney and a hard fighting Washington attorney, the latter authorized to practice before the Federal Power Commission, and that said attorneys be instructed to file a suit in Florida Courts to break the contract for natural gas as hooked to the price of fuel between Fort Pierce and Florida Gas Transmission, as well as to seek damages. And furthermore to file a second suit in Federal Court under the Anti-Trust Laws to seek triple damages. And in addition, to file complaints and to seek a hearing before the Federal Power Commission and the Florida Public Service Commission to force Florida Gas Transmission to refund all monies for charges based upon the price of gas being hooked to the price of fuel oil and to order Florida Gas Transmission to issue new contracts based solely upon the cost of buying gas at the well head, the cost of transporting said gas and a reasonable profit thereon, without discrimination against one utility and deity as to another. Any such action won't be a short battle. It could take years. But the longer we put off starting the main battle, the

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longer away is relief. The jackpot, gentlemen, is damages - refunds to our people who are paying those monstrous light bills. Sure it's going to cost money for the best attorneys. But the people are entitled to whatever it costs to make whatever effort it takes to break the contract with Florida Gas Transmission and to recover damages. The City owes it to the people to tighten its belt and practice an austerity program, if necessary, to take this kind of action.

Now, there is one other thing that the Citizens Advisory Committee is forced to bring up at this time. The Executive Director of the Florida Gas Municipal Utilities Association, Mr. Mac Cunningham, came to our fair city of Fort Pierce last week and cast public remarks of a disparaging nature of the members of the Citizens Advisory Committee. Mr. Cunningham's avid belief in the work of the fuels committee and his wrath at the challenge of the Fort Pierce Citizens Advisory Committee is certainly understandable. But, in our opinion that doesn't give Mr. Cunningham the right to come over to Fort Pierce and attack the motives and question the sincerity of the members of the Fort Pierce Citizens Advisory Committee, who as we previously stated, serve without compensation and freely give their time and often certain of their monies to seek to build a better community. Mr. Cunningham stated publicly, which was carried over a local radio station and we not only quote him, but with the use of modern technology, hereby play for you a tape of Mr. Cunningham's exact words:

(TAPE)

'The news reporter on the tape, stated the Executive Vice President of the Florida Municipal Utilities Association, Mr. Mac Cunningham, today spoke to the Southside Kiwanis Club of Fort Pierce on the fuel escalation that seven cities are fighting in Florida. Treasure Coast news asked Mr. Cunningham how much longer that fight may go on before it is resolved. Mr. Cunningham replied, 'It will be a long process. It might take a year or two'. The reporter said with that in mind, they asked his opinion of the advisability of individual cities getting their own attorney in Washington to fight it. He expressed surprise that anyone would seriously consider that, and quoted a case of some ten cities three or four years ago, that individually couldn't get anywhere in a rate battle with Florida Power & Light. They then banded together, got themselves a savings of some five million dollars in a three year contract for power through the use of one attorney, the same one the Association is using now. We quoted the Citizens' Advisory Committee report to him that recommended the individual attorney route and he commented, 'I read that too, and they overlooked, didn't know about the ten cities he (Attorney George Spiegel) represented here in wholesale electric rates. I noticed that was very conspicuous by its absence. In fact, I read that report and to me it looked like one of the best, a very good sales pitch of an attorney wanting a client.'

As Mr. William E. Myers, immediate past president of the Citizens Advisory Committee and one of its most active members, stated: 'As Mr. Millar said, we are flattered by Mr. Cunningham's remarks that he considers the work of our committee on par with that of an attorney wanting a client, but we must take exception with these remarks which impute our sincerity and motives. Gentlemen, to our knowledge not one of the members of the Citizens Advisory Committee is an attorney, nor has attended law school. None of the reports presented to you have been drawn with the aid, nor in consultation with an attorney, except from time to time, an opinion of the City

Attorney has been sought. The resolutions drawn in regards to the Fuels Committee of the Florida Municipal Utilities Association were purely the work of the members of the Citizens Advisory Committee and no attorney was consulted, nor saw the resolutions prior to their being drawn and submitted to you. We feel that Mr. Cunningham was very much out of place in his attack on the sincerity and motives of the seventeen fine members of the Citizens Advisory Committee. We furthermore question whether it is one of his duties as Executive Director of the Florida Municipal Utilities Association to attack the citizens of the cities he and his association supposedly represent. We thought the relationship was the opposite and that he was, in fact, employed by the City of Fort Pierce to represent us through our membership in the association.

Certainly Mr. Cunningham doesn't show the usual humbleness of such a relationship. We are sure that the commission realizes that an attack on the sincerity and motives of the Citizens Advisory Committee, a legally constituted body of the City of Fort Pierce, as created and elected by you, is none other than an attack on the sincerity and motives of the City of Fort Pierce itself. We, therefore, recommend, that you request Mr. Cunningham to publically apologize to the people of Fort Pierce and to the Citizens Advisory Committee, and should he fail to do so, that the City of Fort Pierce resign from the Florida Municipal Utilities Association."

Mayor Pro-tem Nelson stated he would like to ask whether or not he (Mr. Millar) believes the City of Fort Pierce should join with Attorney General Shevin in the suit he has initiated.

Mr. Millar stated he had not seen the suit, and he could not answer unless he saw a copy of the suit. He didn't know what the main thrust was.

Mayor Pro-tem Nelson remarked, "Then I would like to ask City Attorney Brown if he would look into it so he could make a recommendation."

City Attorney Brown advised he talked with a staff member of Attorney General Shevin's office today and requested he forward to him a copy of the suit. He did not want to advise the Commission that they should or should not join in the suit, if that avenue was open to them without seeing the contents of the suit. The Assistant Attorney General assured him he would send him a copy in the mail, and he was hopeful he would receive it tomorrow. As he understands it, the suit is against the Florida Gas Transmission Company and the City of Tallahassee which he believes is a member of this municipal group which Mr. Shevin represents. He will be in a better position to advise the Commission after he receives the copy. There is some possibility, and he hasn't explored this any further, that Tallahassee may seek the aid of other municipal cities that own their own plants.

Mr. Millar stated this had been discussed by their committee. Their committee avidly feels that if they can get other cities to join in a main thrust of suits being filed in Florida courts, of suits being filed in Federal courts, of complaints being filed before the Federal Power Commission and Public Service Commission in the State of Florida, then it would be all to our advantage. He didn't think they could depend on the hope the U. S. Court of Appeals might reverse the Commission or agency of the government and then set it back, say for a year.

City Attorney Brown remarked there is a possibility, which he can

not extort in detail until he sees the cotton-picking thing, but there might be some basis for the City of Fort Pierce to intervene in the suit and file a cross claim against the gas company. At least, it would shorten the time element in a way. The Assistant Attorney General with whom he had spoken today, had not been in conversation with the officials in Tallahassee as to what they claim to do. He didn't know if they would file a cross-claim or what action they would take, so he will explore that.

Mayor Pro-tem Nelson announced that Mr. Mac Cunningham had just arrived at the meeting. He came in late and did not hear all of the statement from the Citizens' Advisory Committee.

Mr. Mac Cunningham apologized for being late. As he arrived he heard his name being mentioned. He imagined the remark made had reference to the letter Mr. Millar had written to the City Commission demanding they pass a certain resolution. He had read the full epistle they sent to the City. He stated he would like to tell right now what his position is.

Mr. Millar interrupted to say, "My Committee is not interested in discussing anything with Mr. Cunningham unless he apologizes to our Committee. I'll be glad to read that section to him."

Mayor Pro-tem Nelson commented, "Mr. Cunningham, if you will allow Mr. Millar to read a section of his presentation that pretains to you, then we will continue."

Mr. Millar then read page 4, 2nd paragraph through page 5, 2nd paragraph, from his previous statement.

Mr. Cunningham replied, "Okay, now you have brought me up to date. Now, there are 34 cities in Florida that belong to the FMUA. This fuel question came up. There are eight cities involved in this fuel question. As far as the legal action, the cities finance it in proportion to the kilowatt hours they sell. The Association, on this particular case, as on our ten cities case as referred to in the letter, acts only as a clearing house. This was presented to the City Commission, and I was asked about it when I was here last week when I addressed the Kiwanis Club. I made the statement, and as a layman, I am not an attorney and I am not trying to get a client for an attorney. As you well know, the people on the radio and the newspapers kind of ask you very pointed questions. I gave them what I thought was sincere answers. It appeared to me that was what it was. You have an elected City Commission here. The City Commission has already by vote, decided to join with the other cities on this fuel negotiation, or whatever you might call it. The other cities have all stayed together. The cities can do what they please. It doesn't mean a nickle in my pocket. It doesn't mean a nickle in the Association's pocket. If the cities want to pull out and fight this thing by themselves, that's their own privilege. But the thing about it, they want to bear in mind that they are dealing with a company that has unlimited resources compared to the resources of Fort Pierce. It might cost you several hundred thousand dollars and drag on for years and years. This letter from this Committee seems to take Mr. George Spiegel to task, saying that when he represented Moore Haven, as an individual city, they got some relief there for the high rates they were charging. What I said was a very obvious oversight when mentioning that Mr. George Spiegel represented ten of our member cities that buy power wholesale from the Florida Power Corporation and they were being charged an exhorbitant rate for wholesale power compared to what the REA's were paying. The ten cities stayed together and Mr. Spiegel represented

them. The result of that was that the ten cities got back a quarter of a million dollars in gross overcharges that the power company had made, together with the wholesale power contract to save them. I think it was around three million dollars over a five year period. The City of Fort Pierce, in this fuel negotiation, is a complicated affair. I imagine even your own City Attorney, if he was going to Court on something, he wouldn't publicize the facts about the methods he was going to use, and that kind of irked me a little bit, because as I say, I am not trying to get a client for this attorney. I have seen him work before and I have seen what he has done for our members. Now, don't blame the whole association, even though I am the Executive Vice President of the Association, of which Fort Pierce is a member. This particular thing with the fuels committee is something aside and apart from other Association work. There are cities being charged exorbitant rate for natural gas from the contracts they have signed. As far as any apology, I am not an attorney, I read that letter as a layman, I was asked my opinion of it, I expressed my opinion then and I feel I owe no one an apology. I am not trying to run down the Committee you have here. As far as our Association is concerned with our meetings with the City Commission, we did not have any remarks from them stating they would want to do otherwise. If they had, that was their own privilege, they could do what they please."

Mr. Millar reiterated, "Mr. Chairman, we feel we are entitled to a public apology. You have heard the words of this gentleman. He came over here and attacked the motives of this Committee. You can't interpret it any other way with what he said."

Mr. Cunningham interjected, "I would like to interrupt here. We have not attacked the motives of the Committee. I was asked by your radio reporter, they all had microphones and they were stuck in my face, what I thought of this thing. I didn't bring it up, they asked me what I thought of it and I made the statement then. I see no reason to retract it because I still feel that's the way it is."

Mr. Millar inquired, "Do you feel this is a normal statement for you to make? I read that report and to me it looked like a very good sales pitch for an attorney wanting a client. Do you think that is a normal statement for the Citizens' Committee to make in regards to?"

Mr. Cunningham replied, "I was not talking about the Citizens' Committee. The Citizens' Committee to me, are the folks that brought this thing up. I was asked my opinion of the statement the Citizens' Committee had made. Now, if the City Commission wants to take issue of that, that's their privilege. I had never heard of the Citizens' Committee until I saw that. Nobody is trying to run the Citizens' Committee. It did look that way to me."

Mayor Pro-tem Nelson related, "Gentlemen, I don't believe we are accomplishing a thing. We have heard the recommendation from the Advisory Committee. There is only 3/5 of the City Commission here tonight. If you see fit to take that action tonight, of course we will take it. In the meantime, I, as one member, will take no action until I have had a report from our City Attorney as to the suit that is being filed by Attorney General Shevin, as to whether or not we should participate in that suit. Mr. Cunningham I don't know specifically why you are here tonight. He is not in the mood to apologize, and Mr. Millar and his Committee are not in the mood to accept his recommendation without an apology, so we are accomplishing nothing."

City Manager Davis stated, "I am responsible for Mr. Cunningham being here, knowing of the statement he has made and the feeling of the Citizens' Advisory Committee. I was in hopes, that Mr. Cunningham would see fit to discuss the route his attorney Mr. Spiegel has taken, but he has already stated he will not."

Mr. Cunningham stated, "Since this thing has come to somewhat of a tempest, with the sanction of the City Commission and the Citizens' Advisory Committee, I have with me tonight Mr. Tracy Danese, an attorney from Jacksonville who has represented our Association during the past session of the Legislature. He is retained by the Association for the next year to represent us in the Legislature. As you well know, the Legislature is not a two months deal every two years like it used to be, it is almost a 12 months deal. Mr. Danese has been close to this problem on the wholesale power and with the Commission and the Committee's approval, I would like for Mr. Danese to bring you up to date in a lawyers terms as to what the situation is. He is pretty well versed in the avenues the attorney, Mr. Spiegel, plans to take. I think all of you realize when you are in a court suit, and I think your own City Attorney over there will back me up, you don't tell your opposition what course you pursue."

Mr. Millar advised, "We are interested in the main object here. Our fight with Mr. Cunningham is a side fight. We will take this under advisement at our meeting on Thursday and if we see fit to issue a formal petition resolution to the City Commission, we will do so. We do not wish to hear Mr. Cunningham, since he will not apologize, but we will hear anyone else."

Mr. Tracey Danese stated he could have thought of a lot of worse situations to walk into with just a few minutes of briefing. He said he could tell by the Chairman's comments of the Advisory Committee that Mr. Millar and his committee had put in a lot of time with a high degree of integrity and diligence. They are approaching a problem with a view towards making recommendations to the City Commission, which in turn, is faced with the ultimate solution of a very serious problem.

Mr. Danese continued, "Gentlemen, if you will accept me as a newcomer to this dispute and let me start off that way, I will appreciate it. First of all, the problem you are talking about, and I assume we are talking about the high price of electric rates which are due primarily to the fantastic increased cost of fuel. Perhaps some of what I am saying is old hat, because obviously you men have looked into it and you are familiar with it. This particular problem was first known to the Municipal Utility in May of last year. At that point, it could not be analyzed in depth because no one could know what the draft would show for Bunker C fuel oil, which as you all understand is the gauge for the cost of natural gas under the contracts the eight cities are involved in. I was retained by the Municipal Utility Association in February of last year, just before the Legislative session started. I have to confess that I, rather naively, assumed the Legislature would look at this problem and immediately see what it was doing to individual electric consumers in the State, and I naively assumed we would pass remedial legislation. Having confessed my naivety, I will now tell you we fell short of achieving remedial legislation by one vote in the House of Business Regulations Committee, and by one vote in the Senate Commerce Committee. This problem of fuel escalation is a portion of a fantastically large international problem. You have about seven oil companies that control the oil supply of the world. I believe five of those are U. S. companies, and two of them are

foreign companies. There is a very substantial degree of interlocking ownership between oil companies and gas companies. I have seen an article that stated something to the affect that 80 percent of the gas company ownership was owned by 70 percent of the oil ownership. On top to that you have oil companies buying coal fields, and if you had a way of checking you would find they are also buying uranium deposits. Gentlemen, with the exception of Hydro-Electric and Solar Power, coal, oil, uranium and natural gas are the four basic energy fuels. As you know, when they tied the price of natural gas to Bunker C, it was on contracts that were entered into at various times over the past 10 to 12 years, and there has only been natural gas in any great demand in this state for about 12 years, since about 1959. At that time it was a normal pricing mechanism in the energy fuels industry to gear competitive fuels together. I don't understand why, but I have heard it so many times from the industry that I have accepted there was such a mechanism. I don't accept their reasons for its validity. The contracts then tied Bunker C, on what they call the oilgrams. There is Platts Oilgram Tampa and Platts Oilgram Jacksonville. As the price of Bunker C fuel oil fluctuated, so did the price of natural gas. In normal market times, Bunker C kinda goes like this, and natural gas goes right behind it, but we have reached a totally unanticipated, unforeseeable situation here where the price of Bunker C in the last 10 months has risen astronomically, not just in little peaks going up, but in a climb on a chart that looks like a 90 degree upturn. As it went up, it pulled the price of natural gas up. The reason it can pull the price of natural gas up to a consumer such as Fort Pierce Electric Company is, that we are what is known in the regulatory field, industrial consumers. The gas we buy is unregulated gas. It is called non-jurisdictional gas and that means that neither the Florida Public Service Commission has jurisdiction to regulate the sale of that type of gas, nor does the Federal Power Commission. The Federal Power Commission at various times, the last of which I believe was under the chairman before last, I am not sure, I think it was Lee White, had requested such jurisdiction of the United States Commerce Commission. Needless to say, the industry vehemently opposed it and it never even got off the ground. I'm not sure the bill was ever introduced to Congress.

Since the problem that I was dealing with was statewide, and affected just the State of Florida, and with the advise and council of Mr. George Spiegel, we filed a bill that would have placed direct sales of natural gas to industrial consumers under the jurisdiction of Florida Public Service Commission. We were a voice in the wilderness. The Association, Mr. Cunningham and myself were in Tallahassee the entire 60 days and I remained up there continuously until next to the last day of the second extended session. We told everybody we could, we even stopped cleaning personnel coming down the halls, taxi drivers, legislators, aids, administrator assistants and secretaries. We got the ear of a number of people, one of which was Representative Chuck Nergard, who supported our bill and supported it strongly. Senator Boyd introduced the bill in the Senate. The short and long of all this is, it was a complicated problem for the Legislature to grasp. They did not take the time nor have the inclination to correctively believe that what we told them was going to take place. It is ironic, but the last week of the session, we gathered facts and figures from the Tallahassee Municipal Electric Utilities and we projected what the increased cost for the State Government for Tallahassee would be, and at that time Senator Boyd told the Senate Commerce Committee that Florida State University's electric bill would increase in excess of \$250,000. Every single penny of which is attributeable purely to the fuel oil escalation. He told them the bill for the Florida A. & M. University would

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increase \$67,000, and he told them the bill for the Capital Center Complex would increase \$113,000. Those figures were so staggering in the last days of the Legislature, that they did not penetrate. The Senate Commerce Committee voted 6 to 5 to kill our bill. I, personally, tried to tell certain members of the Governor's staff. They were too concerned with Corporate Income Tax and Sales Tax. Prospects of court action were considered by the Association, again, with Mr. Spiegel being our primary advisor on that.

Mr. Shevin's law suit came as a total and complete surprise to us. It had a complete touch of irony in it as far as I was concerned, in that they named the City of Tallahassee as a defendant when the City of Tallahassee had been ardently fighting for the passage of the bill which would have remedied the situation. I, like your City Attorney, Mr. Brown, have not seen a copy of the complaint. I have found the worst place to form an opinion about a law suit is on what you see extracted from the newspaper. I anticipate that further very close study will be made by the Fuels Committee Association. There will be a meeting on this point about two or three weeks from now with Tampa. At that time, a decision will have to be made as to whether or not the Fuels Committee, representing the member cities, will attempt to join in Mr. Shevin's law suit. This represents a legal problem, and Mr. Brown will bear me out, where one of our member cities is in there as a defendant, we want to get in as a plaintiff. I don't quite know how we are going to do that. You don't normally just swap sides of the table in a law suit.

On August 31, the Cabinet will hear a special report from Chester Blakemore, who is head of the General Service Administration, which report is in turn compiled by Reynolds, Smith & Hills, Consulting Engineers. This report will go back to the Executive Branch when all of a sudden they realize, after Mr. Blakemore advised them, that the fantastic increase in cost has taken place. They hired this Engineering firm and the firm will make its report to them as to what can possibly be done. I don't know what that report will be. I talked to a member of that firm who called me to ask for information. I know that Mr. Dykes in Tallahassee has given them information as they called and asked for it. The Cabinet will be exposed collectively to this probably for the first time, although I know they are aware of it now because I had lunch with Mr. Jim Athorpe last Friday, who is the Governor's administrative assistant, and he allowed as to 'yes, the electric bills have certainly got their attention' and they wanted to know why.

There are two possible avenues of relief. One, through the judiciary court action; the other through the medial legislation, placing jurisdiction over this type of utility in the hands of the Public Service Commission. The primary concern, I am sure with the Citizens' Advisory Committee and with this City Commission is how to get the relief to the people fast. I believe we all could agree on that. I can not tell you what a timetable would be in a State suit or a Federal suit. If you go into a Federal court and if it takes on the nature of an Anti-trust Action, I would say off the top of my head, maybe two years if everything went well. In the State courts, I can assure you the Florida Gas Transmission Company is not going to rest at trial court level. I can assure you they will fight this all the way and it will go to the State Supreme Court at least, but what type of relief you would get at the Supreme Court, I don't know.

A second thing I might add is, these type of law suits are very expensive. Expert witnesses must be obtained and engineers must be retained to go into gathering the factual background. These are an absolute necessity. It would seem to me since Fort Pierce, along

with the other seven cities that are so violently affected by this, have already started on the road of finding a solution for this, but I believe you are further along the road to solution now than you would be if you were to start afresh. You can ask me any questions regardless of how pointed they might be."

Mr. Millar commented that as it was pointed out in his brief he read a few minutes ago, they had said one of the problems is they never know the politics or what method or channels or problems will arise among the various cities that might be to the detriment of Fort Pierce. One has obviously arisen. One of the members of the Association's defendant, as Mr. Danese has pointed out, for him to switch to become a plaintiff, might become quite a legal entanglement.

Mr. Millar continued, "If the City of Fort Pierce has sufficient funds, the first priority, in our opinion, must be given to filing suit on our own. If we can file a partner suit with Mr. Chevin, I think it would be very adviseable if the suit is of the nature to give us relief. If it is not of a relief nature, then I think we must go it on our own. Another thing I would like to bring up now is that Mr. Danese said tying the price of gas to the price of oil was a natural mechanism for a normal contract."

Mr. Danese reiterated, "I said it was an historic pricing mechanism. I don't consider it natural at all."

Mr. Millar stated he would like to read something from a report to enlighten the City Commission as follows: "Of the industrial companies with no fuel escalation clauses in their contracts for natural gas, there are 17 major companies in the State of Florida. Of those industrial companies with unlimited fuel oil escalation clauses, there are two. The Municipal Electrical Utilities with unlimited fuel escalation clauses, the sky is the limit, there are seven, including Fort Pierce. Among the Municipal Electrical Utilities with limited fuel escalation clauses, that means they have a limit, are Gainesville, Orlando and Vero Beach. Vero Beach can only be charged up to 6½¢ per therm; Orlando can only be charged up to 6¢ per therm."

Mr. Millar stated it seemed to him that out of 28 industrial companies, they have 17 that were able to negotiate a contract with no fuel escalation clause, then there were three cities that negotiated a limited contract. He believes this is basis for a suit in that the gas company monopoly is charging the same type of energies different rates. It does not seem to be a usual contract, it seems to be who can negotiate with less contractual terms.

Mr. Danese agreed that was absolutely true. That is what happens when you deal with a public utility who is granted the privilege to function as a monopoly and is not regulated as to the rate he charges; that is, inevitably the result. There is discrimination and partisan which Mr. Millar has just pointed out. Mr. Danese said if they were asking him why some cities got limited and others could not get escalation clauses, he did not know the answer, other than the fact they had to have natural gas and the only place to get it was Florida Gas Transmission Company. When you are in that type of position, the supplier is usually in charge.

Mr. Larry Bembry inquired if this could be the basis for breaking the present contract.

Mr. Danese did not think they could just unilaterally break the contract, even one such as this, for the simple reason it is a contract. It is conceivable these contracts border on what has now

become perhaps, in the old phrasing, "unconscionable contract". If they did chose to break the contract, it would have to be in court, or else they would have to get their fuel somewhere else. They couldn't get natural gas anywhere else, realistically speaking. Their other choice would be to get it from Bunker C. To give them an idea of what they would be up against there, the City of Jacksonville had a contract with Bunker C for two years for \$1.92 per barrel. They just opened up their new bids a week or ten days ago and the new price is \$3.94 per barrel. That raises the total fuel cost to Jacksonville from eight to sixteen million dollars. Eight million dollars in Jacksonville is roughly 5½ mills of advalorem tax.

Mr. Bembry asked if Mr. Danese could recall how many companies submitted bids, and Mr. Danese replied, "Only two." One of the companies was Eastern Seaboard Petroleum. He could not remember the name of the other company, but he knew both bids were rejected. He is not with the City of Jacksonville but gathered this information from a member of the Association.

Mr. Millar asked if there is any possible credulous to the fact that in the Federal Power Commission presidings, the William Ellis Rule that the manner in which the Florida Gas Interruptible Tariff is written is vitally defective and its lack of clarity opens the way for unlawful discrimination. He did that in February 6, 1970 in the docket center before Florida Gas Transmission in the case. He said that it would appear that the tariff was defective and that we have contracted on the basis of the conducted tariff in order that we might have some legal basis.

Mr. Danese said he could not intelligently comment on that. First of all, the order that you are talking about, if the Examiner said that, he heard evidence before he said it. Mr. Danese stated he is not that much of a regulatory lawyer but his primary concern is with the representation of the Florida Legislature and his information he has is strictly as a result of this one bill.

Mr. Danese added, "You brought up the fact I had already mentioned one problem that died as a result of possible conflicting political situations among the cities. You said that already we find that Tallahassee is on the other side of the law suit. I will point out to you that Tallahassee is factually in the same position as you are. I don't see how you are going to have law suits around the state with people in the same factual situation being on different sides. I don't see how a court could afford relief. You couldn't rule for the defendants because you have some defendants that look like plaintiffs, and you couldn't rule for the plaintiffs because you have some plaintiffs that look like defendants. Since your contracts are basically the same and you are in the same position as these other cities, it would seem to me that in unity there would be a lot more strength, both politically and in the prosecution of the judicial procedure.

Mr. Don Brown asked if it were possible during the time all this is going about, that the fuel companies kept on escalating their prices on and on. Mr. Danese said he believed the price was frozen now as a result of the President's wage freeze. Mr. Brown then asked if there could be an injunction put on it to make sure.

Mr. Danese replied, "Obviously, if you did go into court, the first thing your attorney would ask for is an injunction at this stage."

Mr. Brown then asked if it could be a roll back. Mr. Danese explained, "It might be. If you were to prove discrimination, in other

words, if you were to prove these exorbitant rates were illegal from their inception, yes, I could see where there could be. If you prove it here, somebody else will be proving it in another Circuit Court. Mr. Shevin has stated the State Court action and the Fuels Committee is supposed to determine, hopefully by next Tuesday, whether or not to go ahead into that suit representing all the cities involved, and try to get this thing focalized. Since Tallahassee is the seat of State Government, it has become an extremely hot issue up there because of the fantastic increases in rates, and since the Cabinet is also involved and you have every branch of the government in the act, so to speak; it would seem to me that with a concentrated effort made there with all these other cities being represented, the relief that is afforded will run to all of them. One, you could expedite it, and two, you would have the energy that is necessary to present this type of situation.

Mr. Holtsberg asked if the Attorney General is familiar with the situations that exist in the other seven cities, that is, a similar situation with Tallahassee, and if the fuel committee brought to the Attorney General's attention that we are in that same price discriminatory situation and maybe something else could be resolved.

Mr. Danese noted he had not talked with the Attorney General because he only found out about this last Friday.

City Attorney Brown stated he might be able to clear up in the minds of you who does not understand what happens in a court of law and why a particular person or persons may be named as a defendant. In this instance, he believed the City of Tallahassee, as municipal plant owner, sells fuel to the State of Florida for the universities and other government buildings. In all probability, there must be a contract. In his opinion, without having seen the complaint, that is the reason why the City of Tallahassee is the defendant, because they have a contract in the State of Florida to furnish the electrical power. They, in turn are also including the gas company who sells the gas to generate that power. He was sure that Tallahassee was in the suit completely involuntarily, and not of their own choice. He did not know if there was any way to turn the thing around, other than by cross-claim by the City against the gas company, which in effect, would put them on the same side as the Attorney General's side. He didn't know if there might be another avenue of approach at this point.

Mr. Holtsberg inquired if this injunction has been filed against the City of Tallahassee and the Florida Gas Transmission Company.

City Attorney Brown answered that was his understanding from talking to the representative in the Attorney General's office.

Mr. Holtsberg remarked it would seem like if the cities could get with the Attorney General, and if the State itself would now realize what is happening with this price escalation in these cities, and the Fuel Committee could get with the Attorney General, maybe relief could be brought to cities like ourselves and other cities even under a limited fuel escalation clause, so that a general price structure be given to ALL cities based on the distance the gas would have to be conveyed.

Mr. Danese believed Mr. Holtsberg was right and said that's why he is hoping before the end of next week, they will have an opportunity to discuss this matter with the Attorney General. What Attorney Brown said sounded absolutely correct to him and that coincides with

the drift of information he has received. The City of Tallahassee had to be in the law suit somewhere, they weren't bringing it, so they said, "Okay, you are not on our side, you are on the other side". Where they will wind up, he did not know. Mr. Shevin had not talked to him about it. He found out about it when Mr. Cunningham called him and told him to read page 5A in the Tampa Tribune. Ironically, this followed Mr. Blakemore's announcement about ten days.

City Manager Davis asked if the City of Tallahassee was represented by the Fuels Committee, and Mr. Danese replied, "Yes, sir". Mr. Davis then inquired, "Then are they not indirectly represented by the Fuels Committee in their fight against Florida Gas Transmission?"

Mr. Danese answered that the Fuels Committee is not representing the City of Tallahassee in that law suit, because as a City it was sued individually. As far as all of their efforts collectively, towards the solution of this problem, yes, Tallahassee is one of the primary people. It is very very adversely affected by this type of escalation contract.

City Attorney Brown added, "I haven't had a chance to mention this to the Commission yet, because I wasn't able to reach the representative in the Attorney General's office until late this afternoon. I did ascertain the name of the City Attorney in Tallahassee, and I plan to call him in the morning to see if he will tell me what their plans are to see if there is some way it might help us."

Mr. Millar suggested the Commission take under advisement to have the City Attorney draw up an outline of the type of suits, and what should be undertaken in those suits for the protection of our citizens to give them relief. If this suit filed by the Attorney General and if the suits filed by the Fuels Committee satisfy the requirements set forth by the City Attorney, then we would have adequate relief, but if these suits are not filed, then we would not have adequate relief and we should then undertake suits on our own. He also proposed that they were talking now about joining Mr. Shevin's suit, and would not, if the City filed a specific suit seeking relief for us, which looks like a very good suit, would not other cities join them?

Mayor Pro-tem Nelson stated to finalize this discussion they need to wait for City Attorney Brown to determine what action they should take insofar as Mr. Shevin's suit is concerned in view, more or less, of what Mr. Millar has just suggested. Until the Commissioners know if this is the desirable route for them to take, they will have to sit by and let nature take its course.

Mr. Millar said he agreed, providing the course of nature does not linger too long.

Mayor Pro-tem Nelson added, City Attorney Brown has talked to one gentleman today and will talk to another tomorrow and at the Special Meeting tomorrow night, after he has had a chance to talk with Tallahassee, he will ask him if he has reached a decision and will continue to ask at each meeting thereafter until they reach a conclusion.

Mr. Danese commented they would try to finalize some recommendation after the Cabinet meeting on Tuesday night.

Mayor Pro-tem Nelson remarked this had come to the point where they are going to participate in some definite action, but they cannot finalize what route to take. He did not believe the Commission could do anything now only wait for Attorney Brown's recommendation.

Mr. Holtsberg advised, "We, as a Committee feel it would be wise to go ahead on our own. I don't think perhaps, everybody on the Committee has that feeling. I think one of the things that has been brought out at a Committee discussion of this was the individual cost to the City, which if it lasts two or three years, may run up to \$200,000, \$300,000 or \$400,000. I was wondering if any approach has been made by us to contact City Attorneys in other cities who have signed up under this fuel escalation clause, and possibly through the Board of Municipal Association, to have some kind of group meeting with these other City Attorneys, with the Mayors and the Attorneys, with the City Managers and the Attorneys to find out which direction would be the best to take and perhaps find out the benefit of sticking together."

Mayor Pro-tem Nelson commented he hated to put the pressure on our City Attorney, but hopefully, he can do the very thing that Mr. Holtsberg has suggested, and talk to some of the City Attorneys but this will take time. They will have to wait for the City Attorney's recommendation, and for theirs.

Commissioner Padrick noted that back in February there was a meeting of similar nature to Mr. Holtsberg's question, held in Tallahassee, of which he attended. Mr. Cunningham, Mr. Danese and members of the Fuels Committee were also present. There were a number of Attorneys there. At that time, the fuel escalation was not an explosive issue as it is now. Mr. Padrick asked Mr. Jack Smith, Superintendent of Power Plant, if this matter was first brought to the attention of the City Commission back in October, and Mr. Smith replied, "That is correct". Mr. Padrick related that Mr. Spiegel was there at that meeting and he did outline the procedure of avenues, of which he thought were the best methods to pursue. He was quite impressed with what Mr. Spiegel had to say. He thought he was very thorough in the courses of action which he wished to pursue. He believed it was time for another meeting of this type to be held with Attorneys, Mayors and City Managers with the members of the Fuels Committee to revamp their plans and update them.

Mayor Pro-tem Nelson reiterated they would all have to wait until some determination was made by each whether or not they are going to join in Mr. Shevin's suit.

Commissioner Padrick stated he was talking to Mrs. Hawkins, the Assistant Attorney General from Municipal Affairs, one afternoon last week. He spoke with her about 15 or 20 minutes asking about such things as this, unknowing about Mr. Shevin's suit. She didn't even know about it and she has worked in that office for several years. It was right after he finished talking to Mrs. Hawkins, that someone else called him from Tallahassee and informed him of Mr. Shevin's suit, so they are not at all well versed on it in Tallahassee yet.

Mr. Trent Ebner, President of Fort Pierce Jaycees, stated that they are now in receipt of this complaint that Mr. Shevin has filed. If City Attorney Brown would like to have it, he could get it for him this evening. He explained the Jaycees received it immediately after it was filed.

Mr. Millar commented he wanted to thank the Commission for taking the time to listen to their views.

Mayor Pro-tem Nelson informed Mr. Millar that is the job of the Commission to listen to them or anyone else who wants to be heard.

Special Meeting

-16-

August 24, 1971

There being no further business, Mayor Pro-tem Nelson declared the special meeting adjourned.

Adjournment

ATTEST:

Mr. J. Lowry  
DEPUTY CITY CLERK

Lee Nelson  
MAYOR PRO-TEM