

DECEMBER 9, 1987

The Board of County Commissioners, Manatee County, Florida, met in SPECIAL/JOINT SESSION with the Palmetto City Council in the Bradenton Financial Center, 1401 Manatee Avenue West, Bradenton, Florida, Wednesday, December, 9, 1987, at 9:05 a.m.

The purpose of the meeting was to discuss Palmetto/Manatee County negotiations on water agreement.

Present were Commissioners:

Edward W. Chance, Chairman
 Kent G. Chetlain, Vice-Chairman
 Westwood H. Fletcher, Jr.
 Patricia M. Glass
 James J. McGrath

Also present were:

Ronald H. Rabun, County Administrator
 H. Hamilton Rice, Jr., County Attorney
 Richard H. Ashley, Chief Deputy Clerk, representing
 R. B. Shore, Clerk of Circuit Court

FOR CITY OF PALMETTO

Donald Olmstead, Mayor
City Council:
 Ron Witt
 Terry Wells
 Shirley VanZant

Steve Odem, City Clerk
 Hugh McGuire, Attorney for City of Palmetto

Representatives of the various news media were present.

The joint meeting was called to order by Edward W. Chance, Chairman of the Board of County Commissioners.

WATER AGREEMENT

Ronald Rabun, County Administrator, referred to the agenda prepared by the Public Works Department which outlined the major points of concern on the latest drafts of proposed agreement by both the City of Palmetto and the Board of County Commissioners.

Steve Odem, Clerk, City of Palmetto, stated that in a joint work session in February the City Council and the County Commission had given both staffs basic direction to come up with a draft agreement. He pointed out that the draft, which was submitted to the attorneys, still refers to attachment Exhibit "A", a service area map, which has never been drawn.

Richard Wilford, Utilities Director, reviewed the major points of disagreement on the contract:

RESERVE CAPACITY

Palmetto's latest draft - Maximum reserve capacity of 2 MGD, derived in two stages. Stage one in an automatic increase of .4 MGD upon execution of the agreement. Stage two calls for incremental increases of .1 MGD, based upon Palmetto's yearly usage exceeding 75 percent of their established reserve capacity for that year.

County's latest draft - Maximum reserve capacity of 2 MGD, derived in two stages. Stage one is an automatic increase of .162 MGD, upon execution of the agreement. Stage two calls for incremental increases of .1 MGD, based upon Palmetto's yearly usage exceeding 90 percent of their established reserve capacity for that year. Palmetto is also provided with the option of making a written request, at any time, for up to 2 MGD of reserve capacity.

Discussion: Reserve capacity as needed; application of facility investment fee; payment in increments vs lump sum.

FACILITY INVESTMENT FEES

Palmetto's latest draft - Palmetto will not be required to pay any Facility Investment Fees (FIF).

County's Latest Draft - The initial increase in Palmetto's reserve capacity (.162 MGD) will not require payment of an FIF; additional increases will require payment of FIF.

Discussion: Method of determining amount of water Palmetto could purchase; contract with Palmetto does not address limitation clause.

Mr. Wilford advised the rate resolution adopted by the Board (in 1983) addresses wholesale customers and that rates would be based on the readiness to serve charge and a reserve capacity charge based on the amount that was set up for wholesale customers, which in Palmetto's case was 1 MGD. No such determination was not included in the original contract with Palmetto.

He noted that reserve capacity was spelled out in the latest contract with Sarasota County; however, in other wholesale customers' contracts that reserved capacity was determined by the rate resolution.

Mayor Olmstead referred to the original contract (July 1966) and quoted the first paragraph, "The County agrees to sell Palmetto all the water which Palmetto shall require for a term of 25 years." He also noted that paragraph 6 as referenced by Judge Dakan (1979) says, "the quantity of water delivered to Palmetto shall be determined from the meter reading made approximately once a month." He said that no amount of volume has ever been discussed except by the County in its rate resolution on which the City is in disagreement.

Mr. Wilford stated that the facility investment fee was established as an impact fee, but it is for investment in future growth for capital expansion, treatment and major delivery systems that impact the whole system. It is the responsibility of the developer or community to install its own water/sewer lines and connect and pay on top of that the facility investment fee.

Councilman Ron Witt said the important thing now is to give Palmetto 2 MGD reserve capacity; that they did not have a problem with following an incremental kind of system as it is provided for in their draft calling for 1.4 MGD immediately; that the point is that the 1 MGD was unilaterally assigned by the County.

Discussion: Resolution establishing rates; existing water contracts with Longboat Key and Sarasota County; facility investment fee (Impact fee) definition; establishment of maximum reserve capacity; readiness to serve charge; Sarasota County not being taxed to expand water supply for future use, but other entities are (Longboat Key, Bradenton and Palmetto), etc.

READINESS TO SERVE CHARGES

Palmetto's latest draft - Palmetto not to be required to pay Readiness to Serve Charges (RTS).

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County's Latest Draft - Palmetto is required to pay RTS charges for any increase in reserve capacity.

Mr. Witt contended that Palmetto should not pay FIF or RTS (on 2 MGD) because they are already being paid through ad valorem taxes (referendum) for Estech, etc.

Discussion: Implication of waiving facility investment fee; rate changes; new terminology established to make future growth pay for itself.

Mr. Wilford explained there is a State requirement for a consumptive use permit; that to give a block of capacity would require approval of the Southwest Florida Management District, and it has to be established that it is within the framework of the permit.

Recess/Reconvene. All members present.

CITY OF PALMETTO PROPOSAL

Mr. Witt proposed that the County and the City of Palmetto develop a contract whereby

- = the reserve capacity for the City would be set at 2 MGD;
- = no facility investment fee will be charged for that 2 MGD;
- = Palmetto receive 1.4 MGD now and go in increments;
- = Palmetto would pay County those sums due and owed that have not been collected (in escrow);
- = Palmetto will pay RTS charge and receive credit from County based on the charge that would be paid on the readiness to serve charge by the increment that Palmetto is using at this time.

Mayor Olmstead said that in reference to the money that Palmetto has escrowed presently and that Mr. Witt is saying Palmetto will give the County at this time, Palmetto wants that money to be applied to their readiness to serve for the future as of today. If not, they will keep it and will pay on a monthly increment.

It was the general Board consensus that lump sum payment would be preferable to monthly increments.

LEGAL OPINION

H. H. Hamilton Rice, Jr., County Attorney, advised that the County cannot waive the RTS.

In summary, he noted the dispute between the City of Palmetto and the County with respect to the manner in which the rates assessed by the County in 1983 were imposed. Palmetto claims that under the terms of the contract they were not properly notified of the rate changes at the time it occurred. In an effort to settle that dispute, the City of Palmetto is now offering to pay a sum of money which will be applied to RTS for additional grants of water to them. The County is willing to forego the FIF and to leave uncollected those rate differentials that have existed since the imposition of the 1983 rates and the present. In his opinion the offer of the City of Palmetto to pay the RTS as a general proposition can be done.

He pointed out that it was not known how much more the County would have to pay if the dispute goes into litigation and it is found that that their claims are correct and they are entitled to an unlimited amount of water.

Discussion: City of Palmetto's proposal and its impact on contracts with other wholesale users.

Mrs. Glass suggested to move forward to the public hearing and to address the matters with the State that the County proposes to set the reserve as requested at 2 MGD; that the disputed claim to the monies be settled; that the County credit the FIF against the RTS charges.

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Hugh McGuire, Attorney for the City of Palmetto, requested that for the purpose of the lawsuit that all of this be considered to be negotiation and to agree that none of the statements made by any of the respective representatives will be admissible should both parties be required to go back to court.

Mr. Witt clarified that whatever is in the escrow account should be the disputed amount that should be paid to the County.

Discussion: RTS to Palmetto; monthly charge; terms/length of negotiated contract; incremental schedule; RTS figure subject to constant change; termination clause.

Mickey Palmer, Assistant County Attorney, advised that the RTS charge must be calculated upon the new reserve capacity which is 1.4 MGD and not their existing. The new contract should be started with the 1.4 MGD reserve capacity and the RTS will be calculated on that figure. If reserve capacity changes the new RTS will change.

TERMINATION CLAUSE

Palmetto's latest draft - There is no time limitation in the agreement except for the County's ability to terminate upon five years written notice and Palmetto's ability to terminate upon one year written notice.

County's latest draft - Public Utilities Department recommends contract term of no more than ten years.

Mr. Witt noted that City's last draft did not provide for a definite termination date of the contract, but provided year-to-year unless cancelled by either party upon whatever notice requirement is determined. It would be preferable for County to give them five years notice to cancel because they would like to reserve the right to be able to terminate if they were to pursue their own well field.

Upon question Mr. Wilford advised that the contract term with Sarasota and Longboat Key is 40 years.

Mr. Witt pointed out that the reason for the 1992 date is that it will give them five years they can rely on under the existing contract. Otherwise, if is taken out, it is just a year to year with a five year notice provision to terminate.

(Enter Mr. Chance)

Discussion: Continuance under existing contract; service area; time involved to develop well field.

Motion (County Commission)

Mrs. Glass moved to authorize staff to pull together the negotiated points into an agreement that can be brought to both governing bodies and to bring those documents so that at that time a public hearing can be set. Motion was seconded by Mr. Fletcher and carried unanimously.

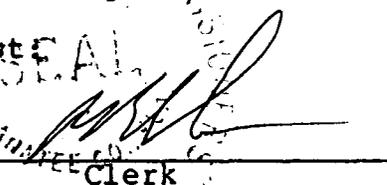
Motion (City of Palmetto)

Mr. Witt stated as far as City Council goes he would make the same motion. Following second by Mrs. VanZant, and call by Mayor Olmstead for vote by Palmetto City Council, motion carried unanimously.

MEETING ADJOURNED

There being no further business, the meeting was adjourned.

Attest:


Clerk

APPROVED:


Chairman 2/2/88

Adj: 12:00 n