

City of Coral Gables City Commission Meeting
Agenda Item J-1
October 24, 2017
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Raul Valdes-Fauli
Vice Mayor Pat Keon
Commissioner Vince Lago
Commissioner Frank Quesada
Commissioner Michael Mena

City Staff

City Manager, Cathy Swanson-Rivenbark
Assistant City Manager, Peter Iglesias
City Attorney, Craig E. Leen
Deputy City Attorney, Miriam Ramos
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia

Public Speaker(s)

Cori Lopez-Castro
Alvin Davis

Agenda Item J-1 [0:00:00 p.m.]

Request for authority regarding filing of proposed civil complaint by the City of Coral Gables against Florida Power & Light, for declaratory and injunctive relief regarding enforcement of the City's franchise agreement with FPL, and related claims for relief.

Mayor Valdes-Fauli: And I would like to call our City Attorney item...

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Agenda Item J-1 - Request for authority regarding filing of proposed civil complaint by the City of Coral Gables against Florida Power & Light, for declaratory and injunctive relief regarding enforcement of the City's franchise agreement with FPL, and related claims for relief.

City Attorney Leen: It's J-1.

Mayor Valdes-Fauli: FPL, right?

City Attorney Leen: Yes. This is item J-1.

Mayor Valdes-Fauli: J-1.

City Attorney Leen: This is a request for authority to file a lawsuit against FPL, the City of Coral Gables v. FPL. I've provided to each of you a copy of the complaint -- the proposed complaint in the matter, and I'm also providing a copy to the City Clerk. I emailed it to him last night, and I'll give him a hard copy after this discussion. The first thing I need to note is that Commissioner Quesada is recused from this matter. He's out doing something today. He had a meeting or something he had to attend, but he -- even if he were here, he would have to state on the record that he has a conflict of interest. That conflict is because his law firm has brought a claim against FPL. He is recused from both matters. So, he's recused from his law firm's matter, and he's recused from the City's matter, so he is not allowed to consider this matter or to vote on it. And, he will fill out the form when he has an opportunity...

Mayor Valdes-Fauli: Okay.

City Attorney Leen: To do so.

Mayor Valdes-Fauli: Let me...

City Attorney Leen: Yes.

Mayor Valdes-Fauli: Let me then start the matter.

City Attorney Leen: Mr. Mayor, may I say a couple more things?

Mayor Valdes-Fauli: Yes, please.

City Attorney Leen: Thank you, sir. I provided each of you a copy of the complaint, so you have it. So, the -- this is based on a resolution that this Commission adopted authorizing enforcement action against FPL. The City went forward at that point and issued a cease and desist letter, and then a citation to FPL. FPL has appealed that citation. It's presently pending as an administrative proceeding before the City of Coral Gables. I'm not going to be speaking about that matter today. The second component of this is a lawsuit/complaint, which would be raised with either the circuit court or with the Public Service Commission. We've looked at the jurisdictional issues here, and we believe that the appropriate place to bring the action would be in the circuit court. But if that -- for some reason, if the court disagrees with the jurisdiction, then that matter would be brought in the Public Service Commission. And, we're asking for authority today to bring this action wherever it's appropriate. We want to make sure that the matter is heard. I'm asking the Commission to vote today to authorize the City to go forward with a lawsuit or administrative action against FPL. This is being done pursuant to Section 2-201(e)(3) of the City Code. Because four of you are voting, you might ask what is the vote necessary to do that. It would still require three votes under the City Charter.

Mayor Valdes-Fauli: Okay. Let me -- are you through?

City Attorney Leen: Not quite.

Mayor Valdes-Fauli: Okay.

City Attorney Leen: I just want to -- Mr. Mayor, I would -- you're going to be the first person to speak. I just wanted to say a couple things. The complaint brings a contract claim and a

declaratory judgment and injunction claim. And so, because of that, we believe the jurisdiction is appropriately with the circuit court. I want to just cite a couple cases for the record. Florida Power & Light Company v. Albert Litter Studios, Incorporated. This is a 3rd District case from 2005. In the case, the court specifically mentions although the Commission acknowledges its lack of jurisdiction over tort or contract claims, in that particular matter, the Commission itself filed an amicus brief stating that it did not have jurisdiction over tort or contract claims. I haven't actually seen the amicus brief, but I'm just seeing how the court has construed it, and this is a decision of the 3rd District, which is a binding court in this jurisdiction. In addition, in a footnote, it said in its amicus brief filed in the circuit court, the Commission concedes that it lacks the authority to issue injunctive relief. So, two of the things that we have sought here, basically a contract claim and injunctive relief, are things that the -- are remedies that the PSC cannot provide. So, because of that, this action has to be brought in circuit court. In addition to that, we are also asking for a declaratory judgment. What that is, is we're asking the court to declare the rights of the two parties under a contract. Based on that, once again, that is not an issue that the Public Service Commission can resolve, because it's a contract claim. So, based on that, which is essentially a common law claim, which courts have jurisdiction over, not an administrative body -- so, because of that, this action has to be brought in the circuit court. I want to also mention that in -- I'll mention one other case, Winter Springs Development Corporation v. Florida Power Corporation. This is a 5th District case from 1981...

Mayor Valdes-Fauli: Wait, Vice Mayor, you can't leave.

Vice Mayor Keon: I'm not. I'm just going to stay right here.

Mayor Valdes-Fauli: Okay.

City Attorney Leen: It says that we find that Florida Power's assertion of a failure...

Mayor Valdes-Fauli: We don't have a quorum if you leave. Okay, we've lost her.

City Attorney Leen: Okay.

Mayor Valdes-Fauli: Okay, we've lost our quorum.

City Attorney Leen: Why did they leave?

Mayor Valdes-Fauli: I don't know.

City Attorney Leen: Okay. I would like everyone to hear what we're saying too, so...

Mayor Valdes-Fauli: Yeah.

City Attorney Leen: We'll just wait.

City Manager Swanson-Rivenbark: Would you like me to go out and...

Mayor Valdes-Fauli: What?

City Manager Swanson-Rivenbark: Would you like me to go out and round them up, sir?

Mayor Valdes-Fauli: Yeah, please.

City Attorney Leen: I mean, traditionally, I could continue speaking. It's just we need a quorum to vote, but I think we should have everyone here. Okay, so...

Mayor Valdes-Fauli: Okay, let's go on.

City Attorney Leen: It says that we find that Florida Power's assertion of a failure to exhaust administrative remedies does not apply in this action. Actually and essentially, this is an action on a contract and not a claim that Florida Power failed to perform some duty placed by law as a public utility. This was, once again, an appellate case. I have other cases as well, but I will not get into them now. But, those are just two examples that this is well-established law that the Public Service Commission does not have authority over contracts of this nature, like a franchise agreement, which is basically what we are raising here. So, we believe that the jurisdiction is appropriate in the circuit court. We plan to bring the action in the circuit court -- if it's authorized today -- and we will strongly assert jurisdiction. If necessary, we could take that up to the 3rd District Court of Appeal, if the circuit court disagrees, and we can go to the Florida Supreme Court. Or alternatively, if the circuit court wishes and we determine that it's appropriate, we could bring the matter in the Public Service Commission. Either way, we have to bring in one of the two jurisdictions. We believe the appropriate one is the circuit court, and that's how we plan to proceed. So, in addition to that, I would now like to introduce special counsel, Cori Lopez-Castro and Javier Lopez. They are our counsel with Kozyak Tropin, who are our special counsel in this matter. They're going to introduce to you the complaint after you speak, Mr. Mayor. In addition, we have, from FPL, Alvin Davis, who is their outside counsel. My understanding is he does not plan to speak today. He's going to listen. But we do appreciate you being here, Mr. Davis.

Mayor Valdes-Fauli: Alright. Can I speak now?

City Attorney Leen: Yes, of course, Mr. Mayor.

Mayor Valdes-Fauli: Okay.

City Attorney Leen: It's your meeting. Sorry, sir.

Mayor Valdes-Fauli: Yeah. I'd like to make a few comments as to what this whole thing is about. But, I will start by saying what it is not about. This is not about the City trying to obtain some sort of vengeance against FPL, like an allegation was made. We have a franchise agreement with FPL that provides that they have the exclusive right to provide electricity to our residents. In order for the agreement to work, however, both parties to the agreement need to agree on rights and responsibilities. This is especially important when we're talking about providing electricity to residents, all residents incapable -- I mean, incapacitated residents, residents with oxygen and most other residents. The most recent storm exposed that the City and FPL are not on the same page. Can we get on the same page again? Absolutely, we can. We absolutely can, and the City is committed to having a productive dialogue with our partner, FPL, and the rights and responsibilities of each party under the franchise agreement, but not when they're calling us arrogant and vengeance and whatever. This is not about money. Under a proposed complaint that is being considered, we are simply asking for declaration of rights under the franchise agreement and the ruling that the agreement has been breached -- has been violated. And finally, we would like for the court to require FPL to comply with its obligations. This is not -- and this is nothing at all to do with the fine heroic efforts of many employees of FPL and other companies to restore power after Irma. We truly appreciate their efforts. We truly appreciate their efforts. I'll say it again. The City and FPL now need to come together and work smarter together and resolve what appears to be a disagreement as to who shall maintain the trees, the age of our transformers, the age of our poles that broke, and other items. Our goals, Hurricane Irma exposed some serious issues that can be avoided if we press the reset button. The City and its residents were spared from catastrophic damage this time and it doesn't behoove us to wait until we do have a Category 1 or more storm to examine what happened and how it can be avoided. Some of you may question whether the lawsuit is the right way to accomplish the goal. I think it is the right way to accomplish the goal, because it is the only way we have to bring FPL to do what it is required to do under the franchise agreement. FPL's failure to maintain or replace outdated transformers -- some of our transformers are 60 years old. You all have seen pictures, and if not, they're -- we have hundreds of pictures available with old, rusted, fallen, whatever it is, transformers, 60-year-old transformers. Remember the rotary phone? That

was 60 years old. We had those transformers serving Coral Gables. Its failure to manage the vegetation around distribution lines. How many of you have had lights flickering? That's your transformer in the back of your house that's 60 years old. Lights flickering -- and they will replace the transformer whenever people complain a lot, but that's not what we want for Coral Gables. And, they have the duty to trim the vegetation. It's their duty under state law and we allow them to go into the easement in the back of the house to trim the vegetation. When's the last time you saw an Asplundh truck in Coral Gables? Two years ago, three years ago? We had a 23 percent rate increase last year to pay for this, and they are taking it into their profits and not serving us. What about the electrical poles? Again, we have dozens of pictures of electrical poles broken in half, full of termites, rotten, whatever because they didn't replace the poles. They are neglecting Coral Gables and the purpose of this lawsuit is to ensure the safety and welfare of our residents, who are put at risk by the storm and in the aftermath of the storm as a result of downed powerlines, because of broken poles. FPL's dereliction of duties in maintaining its transformers, that's what this lawsuit is all about. They accused us of not trimming our trees. We have six -- count them -- six full-time crews trimming our trees. You know how many the County has? The County has two; we have six. We have done our duty and FPL hasn't, and that's what this lawsuit is all about.

City Attorney Leen: So, thank you, Mr. Mayor. With that, I would ask our special counsel to come up and talk to you briefly about the complaint.

Cori Lopez-Castro: Good morning.

Mayor Valdes-Fauli: Careful with the pumpkins.

Ms. Lopez-Castro: Good morning.

Commissioner Lago: Morning.

Ms. Lopez-Castro: I'm trying to find the right place to stand. Cori Lopez-Castro, Javier Lopez, from Kozyak Tropin, special counsel. Really enjoy representing the City, and I feel privileged to do so. Mayor Valdes-Fauli, thank you for setting the stage for what this lawsuit is about and what it's not about, because it's very important. I think the residents need to hear it. I think FPL needs to hear it. We have a franchise agreement with very serious obligations. There's a disagreement. There's no doubt about it. If you see how we have phrased the issue or framed the issue in the complaint, we believe it's well-founded. I don't believe that the PSC has jurisdiction over this matter. Special counsel -- I mean, City Attorney Craig Leen has alluded to some of the cases that hold that. But, I think the circuit court will take jurisdiction over this matter. He's described the three counts. It's not about money. It's about coming together and agreeing on what the responsibilities are. We're available to answer any questions you may have. But, we have worked hard with Mr. Leen to put our best foot forward on that complaint. I think the parties need to get together. And I -- unfortunately, it seems to me, as counsel for the City, that a lawsuit may be necessary to force that dialogue. Irma was, in some ways, an opportunity, because it exposed some serious issues or disagreements under the franchise agreement. Now, as the Mayor said, we have the opportunity to get together as partners under that franchise agreement and agree as to what are the responsibilities, so next time we do better and we don't suffer that catastrophic damage that the Mayor talked about.

City Attorney Leen: Yes, Mr. Mayor. Our goal is to protect our residents from a future storm. We're concerned that if this had been a Category 3 or 4 storm in Coral Gables, that it would have devastated the grid. And that, yes, there's always going to be some degree of significant damage that occurs with a major hurricane, but that it is too much here. That better transformers, better maintenance of the easements behind people's houses, better poles...

Mayor Valdes-Fauli: Poles that don't rot, yeah.

City Attorney Leen: All of those sort of things would help our residents in the event of a future storm. That's what we're trying to do here. This is a forward-looking complaint. We believe it

will also help residents throughout Florida, although this is about Coral Gables because your jurisdiction is only in Coral Gables. We do believe that this could be a precedent-setting case and it could help the state of Florida -- the residents of Florida, and in particular, the residents of Coral Gables. But you know, if we could bring this on behalf of the state, we would, but our jurisdiction is Coral Gables. That's why we're doing it in Coral Gables.

Mayor Valdes-Fauli: And let me emphasize. We're not seeking money. We're not seeking revenge as they -- or vengeance, as they alleged. We're seeking for them to update their infrastructure, the poles -- no more rotten poles. No more termite poles, even if it's treated wood, but they're so old that that's -- the treated wood lasts ten years and these poles are 20, 30, 40 years and they broke in half. Trans -- 60-year-old transformers. How many of you are still using princess phones or rotary phones in your homes? We want modern transformers. Two years old, three years old, I don't know how old transformers are, but not 60 years old. And, we want them to trim the -- as it is their responsibility to trim the vegetation around their poles, and that's what they have to do under our franchise agreement. Again, we have six tree-trimming crews and they cannot lay the blame on us. Again, we're not looking for revenge. We're not looking for money. We're looking for them to update their infrastructure and get them to the table in order to -- for them to agree to do this. And, the only way to get them to the table because, frankly, they are a little dismissive of Coral Gables. The only way to get them to the table is with this lawsuit.

Commissioner Mena: I have a question.

Mayor Valdes-Fauli: And I fully support it.

Commissioner Mena: Can I ask a question? And, I don't know if the question is for Mr. Leen or Ms. Lopez-Castro or Mr. Lopez. But at the last meeting, I made clear that I would hope that this would be our last resort that I wanted to see if you could reach out, try to resolve this amicably in some fashion, get the parties together. You know, I'm reading the complaint here, the draft of

the complaint and it basically asks for them to specifically perform their obligations to maintain the transformers, electrical poles and the vegetation around the distribution lines. That seems to me a pretty straight-forward request. And, I'm trying to understand if there's been any conversation between the parties that would -- might avoid the necessity of a lawsuit. And, if FPL feels that it's not required to do those things, maintain its transformers, electric poles and the vegetation around its distribution lines, that we understand why it's taking that position. Because, I'm -- it's pretty unclear to me, and it -- again, given that this is not a money damages lawsuit, that it's just asking for that type of declaration and specific performance, I'm trying to understand what the resistance is to that and whether or not there's been any dialogue so that, again, I want to -- if I'm going to vote on proceeding with a lawsuit, I want to feel comfortable that it's -- we're at the end of the line. This is it. We've tried to reach out. We've tried to talk to them.

Commissioner Lago: And if I may, I just want to add on something that's basically running the same course as your questioning there. It's always been my understanding that, as a resident, we could not stop FPL from coming into the rear of our property and tree trimming...

Mayor Valdes-Fauli: That's right.

Commissioner Lago: As a result of whatever's required. So, what's concerning to me, as I also read the complaint, this is standard operating procedure the way that they should conduct their business and the way that we expect them to conduct their business as per the franchise agreement. So, I see an excuse being used on multiple occasions saying that, again, Coral Gables tree canopy. It's a major issue, you know, it's overgrown. The City hasn't done their part, even though we have six crews out there on a regular basis working to make sure that our canopy is under control, and the County only, from my understanding, has two. I find it perplexing, just like you do, that we're basically begging them to do their job when there's a franchise agreement in place, which allows them -- basically, a monopoly. And, the residents in

this community have paid billions of dollars just for their power and ask for the same type of representation that -- not only that they expect, but that they deserve.

Mayor Valdes-Fauli: Commissioners, in answer to your question, they have been very, very dismissive about our complaints. They say that we wanted preferential treatment over communities around us in order to get the power restored, without realizing that the reason the power failed or to the extent it did was the obsolete infrastructure that they have for us. We have tried to get them to sit down with us, and they have dismissed us. And, the object to this is to try to get them to sit down with us.

Commissioner Mena: Understood.

Mayor Valdes-Fauli: And, we're not seeking anything else than get them to sit down and comply with the franchise -- our objective is to get them to sit down. That's our objective, and we have been unable to accomplish that without this.

Commissioner Mena: Listen, I understand, and I referenced those public statements they put out last meeting or whenever we last discussed this, which, again, I think we were called self-entitled was the adjective that FPL thought they should use, thought that was appropriate. Again, you know, we're not self-entitled. We are entitled to electricity, because we pay for it and we have a contract.

Mayor Valdes-Fauli: And, we're not seeking money damages. We're not seeking revenge. We're seeking to bring them to the table.

Commissioner Mena: Well, but what I want to understand is if, since then...

Mayor Valdes-Fauli: No, there hasn't.

Commissioner Mena: There's been any discussion...

City Attorney Leen: We have engaged...

Commissioner Mena: Between the attorneys about what's being requested here and whether or not there's any willingness on the part of FPL or as representatives here, as well as their attorney, to sit down and talk about these things before the lawsuit proceeds or not.

City Attorney Leen: We have engaged...

Ms. Lopez-Castro: I can respond to that, if you'd like.

City Attorney Leen: I will in a second. We have engaged in dialogue with FPL, both Pat Bryan, who's their in-house counsel, and also with Alvin Davis. And, I'll let special counsel talk about the parts with Mr. Davis. I -- but remember, I reached out to FPL even before we did the cease and desist letter -- or at least before we cited them. It was some time in that time period. I reached out to them, I believe, before we even took action, although don't hold it to me exactly.

Unidentified Speaker: You did, you did.

City Attorney Leen: I remember they did not want to -- yes. And, they did not want to speak with me at the time, so...

Mayor Valdes-Fauli: And Mr. Davis, who's here to speak, sent us a very dismissive letter.

City Attorney Leen: But -- so, just to -- you know, so we did reach out to them. We had a couple conversations. I asked them, look, we just want to sit down with you and go over this. I, frankly, am like all of you. When I look at this, I think these are things that they should agree to.

So, it doesn't seem to me that it should require a lawsuit, but I'll turn it over to special counsel to talk about it.

Ms. Lopez-Castro: Before I embark on a lawsuit on behalf of a client, I always ask what are the goals and are they achievable. I believe in the Colin Powell doctrine. Don't go into battle unless your goals are well defined and you can achieve them. So, when I ascertained what the goals of the City were, I was like, this is very achievable. I think we can do this. I think, in providing context to your question, I think that after the storm, there was stress. I think words were said, and somehow, people -- maybe both sides dug in their feet. So, we reiterated in a conversation, let's sit down. Let's talk. They said, at this time, we're not going to do so. And, Mr. Alvin Davis just asked us if he could speak as well. So, we've made that request because I think it is in the best interest of the parties to sit, but we have not -- from my perspective, they're not interested at this time to speak. So, when the Mayor started setting the stage before we got up here, he said, you know, the lawsuit is necessary in order to force that productive dialogue, because that's what we want. We want a productive dialogue. You saw the goals. They're very achievable. They have the exclusive right to trim trees where the easement was granted, so it's a little perplexing. And obviously, there's a disconnect and we need to get on the same page, because this is relating to electricity to the residents of the City of Coral Gables. It's extremely important. So, I hope I've answered your question.

Commissioner Mena: Thank you.

Mayor Valdes-Fauli: Mr. Davis, you want to say something?

Alvin Davis: Good morning, thank you.

Commissioner Lago: Good morning.

Mr. Davis: I think it's clear that hurricanes don't bring out the best in our diplomacy. And, things have been said on FPL's side. They had people out there working 40 days straight and took offense to the notion that they weren't working hard enough or they didn't do what they were supposed to do. Let me just...

Mayor Valdes-Fauli: Mr. Davis...

Mr. Davis: Yes.

Mayor Valdes-Fauli: I'm sorry. Can you get closer or speak louder or something?

Mr. Davis: Yes, I'm sorry.

City Attorney Leen: Or speak from the other -- okay, there you go.

Mr. Davis: Alright.

Mayor Valdes-Fauli: Thank you.

Mr. Davis: I tried to speak softer to soften the image that we apparently have. But, I want to address two issues. One, will we sit down and talk? Yes. So, if you want to know will we talk before you need to file anything; yes, we will talk. We had conversations with Mr. Leen. The focus of that one was undergrounding, which is an issue that the City is interested in. And, we indicated that we would be able to talk to them about undergrounding and we'd be able to do something more than the customary 25 percent support. So, that was one of the items, but we're willing to discuss anything you wish to discuss. I can't say that we will agree on some of the things you've requested, but as you suggested, I think we should talk first. And, the -- I'm here because we got a complaint. We were intending to have the FPL external affairs people, who are the ones who talk, be here. But once the complaint was floated, then they thought that I should

be here, since I would defend the complaint. So, the first point is, yes, we're willing to sit down and talk. I would suggest you defer filing anything for some brief period of time until you've exhausted that. The second point is, it's interesting to me that the case that Mr. Leen cited was the case that I argued in the court of appeals. And, the result of that case was that the matter was dismissed, because it was Public Service Commission jurisdiction. And, what the case held was it doesn't matter how the complaint is characterized, it's what the relief that's being sought. Respectfully, I believe that the relief that is being sought here falls squarely within the jurisdiction of the Public Service Commission. And if you're intent on filing anything, I would suggest that rather starting with the circuit court, where you'll be met with a motion to dismiss based in part on the Litter case, that you start with the Public Service Commission, if you want the relief. Going through the public -- going through the circuit court is just adding, in my view - - and I am respectful both of the City Attorney and of the outside counsel, one of whom worked for me at one time and who's an excellent lawyer and will do a wonderful job for the City, both of them will. But, we handled two class actions against FPL as a result of the hurricane already. They spring up as soon as the electricity comes back on and the word processors work. I have defended five of those. They have never gotten past the motion to dismiss stage. This is an artfully crafted complaint. I still believe that it will be dismissed, because of this jurisdictional issue. So, if you intend to file something after we have talked, then I would recommend that you go to the Public Service Commission. And, if our communications were offensive to the City, I apologize. We -- they were issued in the heat of battle. I think that there could be offense taken on either side, and that no purpose is served by nurturing the offense that anyone felt. So, I would suggest that Mr. Leen contact Mr. Bryan and initiate conversations, and that the Commission either defer voting on this issue, or if you are inclined to vote on it still, that you vote to send it to the Public Service Commission. And I appreciate your time.

Mayor Valdes-Fauli: Thank you, Mr. Davis. Any questions of Mr. Davis? Thank you, sir. Thank you very much.

Vice Mayor Keon: Is the full Public Service Commission intact? Are there members still to be appointed to the Public Service Commission? They're awaiting confirmation?

Mr. Davis: I'm sorry. I didn't hear...

Vice Mayor Keon: Are there -- is the Public Service Commission fully appointed, or are there members that are still awaiting confirmation from the Senate to be appointed?

Mr. Davis: I'm sorry. I don't know that.

Vice Mayor Keon: You don't know?

Mr. Davis: No.

Vice Mayor Keon: Okay.

Mr. Davis: But, if it goes to the Public Service Commission, it will go to the staff initially. The staff will deal with it, and then there'll be a recommendation to the Commission. So, if you wanted to start the process with the Public Service Commission, there would be no reason to delay that because of the appointments that may be open.

Mayor Valdes-Fauli: Yeah, and good luck to us in the Public Service Commission...

Commissioner Lago: Yeah, that's -- I was about to say that. I mean, I...

Vice Mayor Keon: Right. And the Public Service Commission has -- right.

Commissioner Lago: I value and I respect your opinion and I think you're a great lawyer, but I mean, I would under no circumstances move in that direction because, I mean, we've seen what

the Public Service Commission has done for the entire state of Florida in reference to transmission lines, utility lines. I mean, it's just been...

Mayor Valdes-Fauli: Solar power.

Commissioner Lago: Disastrous. Solar power -- I mean, what they've done for solar power. By the way, my house runs on solar power, just so you know. What they've done for solar power has been an abomination to this community. So, I personally -- again, I leave it up for the attorneys on this dais. I know we're missing one of them. But, I would not move in the direction that we're being guided.

Commissioner Mena: I would -- listen, I would say -- first of all, I would defer to our attorneys...

Commissioner Lago: Yeah.

Commissioner Mena: On that decision. That's their decision -- a jurisdictional decision for them to make based on the law, but I appreciate your comments, Mr. Davis. I mean, my thought would be to vote to approve with moving forward with this and maybe set it out two weeks or whatever appropriate amount of time for the parties to get together before then. Mr. Davis has indicated they're willing to sit down and talk, but already give you, Craig, the -- you know, the approval that if those talks do not lead to any sort of productive dialogue, that this, you know, complaint is otherwise approved by us to proceed at a point in time...

Mayor Valdes-Fauli: Could I...

Commissioner Mena: That you think is appropriate based on those discussions.

Mayor Valdes-Fauli: But, let me suggest...

Commissioner Mena: That's my recommendation.

Mayor Valdes-Fauli: And it's a very good recommendation, but it's not contradictory to our approving this and get them to the table, you know, because we have filed this and we don't -- as I said, we're not seeking anything other than getting them to the table. But, Mr. Davis is here and they are willing to talk because they have this complaint.

Commissioner Mena: Sure.

Mayor Valdes-Fauli: And I would ask for a motion or...

Commissioner Lago: Why are they waiting to the 11th hour?

Mayor Valdes-Fauli: Yeah. Let's file this and then let's see...

Commissioner Lago: Well, no, I mean, again, we're here.

Mayor Valdes-Fauli: Let's sit at the table.

Commissioner Mena: For the same reason everybody else does. That's how litigation works. I mean, listen, I understand. We can file it tomorrow. We could still have the same discussion.

Mayor Valdes-Fauli: Yeah.

Commissioner Mena: I get it, but there is some aspect of giving some sort of gesture of good faith.

Commissioner Lago: You're the litigator. Was this -- did this just spring up this morning or no?

Commissioner Mena: No.

Commissioner Lago: I mean, this has been on the agenda since Wednesday, correct?

City Attorney Leen: I did send them the complaint yesterday.

Commissioner Lago: When did you send...?

Mayor Valdes-Fauli: No. We discussed it...

City Attorney Leen: I sent them the complaint yesterday.

Commissioner Lago: But, I'm saying -- but we -- this has...

City Attorney Leen: Yes. They...

Commissioner Lago: They've known.

City Attorney Leen: They know that we...

Commissioner Lago: They've known this was coming.

City Attorney Leen: Were going to bring up this item.

Mayor Valdes-Fauli: And we discussed it weeks ago.

Commissioner Lago: And I agree with you. Listen, I always want to extend an olive branch. I just don't understand -- and I want to get our City Attorney's opinion on this matter and his guidance. Did we not reach out...?

City Attorney Leen: Yes.

Commissioner Lago: To FPL's counsel and say let's sit down and have a discussion and they said under no circumstances? I read the email...

City Attorney Leen: Yes.

Commissioner Lago: That the gentleman before us wrote, again, and I...

City Attorney Leen: Just, you know, my opinion is that I appreciate Alvin coming here and saying this.

Commissioner Lago: Of course.

City Attorney Leen: Mr. Davis saying this. And, I think that we should -- I would ask you to authorize us to go forward in either the circuit court or the Public Service Commission.

Mayor Valdes-Fauli: Make a motion.

City Attorney Leen: My current view is that we go forward in the circuit court, because I just don't believe we can bring a contract claim on a franchise agreement in the Public Service Commission. I don't think they would want to take jurisdiction over every franchise agreement in the state of Florida. So, I just don't think it's going to happen there. I think it's going to happen in the circuit court, but I would accept -- I would ask that you authorize this going forward in either, and I'd ask you that we go forward with a bona fide settlement effort with FPL

first. And when I determine that, that is not working, I will notify the Commission and go ahead and file the lawsuit.

Mayor Valdes-Fauli: Alright.

Vice Mayor Keon: I would make that motion.

Mayor Valdes-Fauli: Will you make a motion?

Vice Mayor Keon: I'll make that motion.

Mayor Valdes-Fauli: Is there a second?

Commissioner Mena: I mean, I want to make sure -- hold on, you know. I mean, you guys expressed sort of some concern with that approach.

Mayor Valdes-Fauli: No, no.

Commissioner Mena: Listen, my thing is I want to be able to tell our residents we did everything we could before this was filed, because the reaction or sentiment that I got from people is that, you know, we kind of rushed into it. It was in the middle of the hurricane. I understand that. So, it's been some time now. Time has passed. Cooler heads prevailed. We're having a dialogue. Mr. Davis has indicated a willingness on the part of FPL to talk to us. Let's talk. Am I optimistic it's going to lead to a settlement? Probably not. We're probably going to end up proceeding with the lawsuit, but it's at least a sign of good faith towards them that we're willing to talk. And if the lawsuit proceeds after that, so be it.

Vice Mayor Keon: I also think that the issue has been framed properly and -- so that, hopefully, the residential community will understand precisely why we are taking this action. So, I think

now that the information has been disseminated to the community, Mr. Davis, you know, thank you for coming. They seem to be willing to talk. I would like to make the motion to give him -- to authorize...

Mayor Valdes-Fauli: To proceed.

Vice Mayor Keon: The City Attorney to file this law -- this action after a bona fide effort or discussion with the parties and to see what happens as a result of that...

Mayor Valdes-Fauli: And we will sit and talk.

Vice Mayor Keon: If it doesn't, then we will file the suit.

Commissioner Lago: I think it's perfectly fine. I agree. The proof is in the complaint. Four point five million out of four point nine million residential homes in Florida lost power on a less than Category 1 hurricane. And if you go to page 9, FPL's stating they spent over \$3 billion on hardening. Something doesn't add up.

Mayor Valdes-Fauli: Not in Coral Gables.

Commissioner Lago: No, no, of course. But something doesn't add up. So, I agree with you. The last thing I want to do is, you know, unleash a lawsuit which is going to cost "X" amount of money. If we can somehow come to an agreement and resolve this issue amicably, I'm all for it.

City Attorney Leen: So, Commissioners...

Commissioner Lago: Let's exhaust every opportunity that we have to bring everybody to the table.

City Attorney Leen: The Vice Mayor...

Mayor Valdes-Fauli: Okay.

City Attorney Leen: Made a motion...

Commissioner Lago: So, I second.

City Attorney Leen: Mr. Mayor.

Mayor Valdes-Fauli: It's been moved and seconded. Will you call the roll, please?

Commissioner Lago: Seconded by Commissioner Mena.

Commissioner Mena: I'll second it.

Mayor Valdes-Fauli: Oh.

City Attorney Leen: So, it's -- the Vice Mayor made the motion, Mr. Mayor.

Mayor Valdes-Fauli: Yeah. Will you call the roll, please?

Commissioner Mena: Yes.

Vice Mayor Keon: Yes.

Commissioner Lago: Yes.

Mayor Valdes-Fauli: Yes.

(Vote: 4-0)

Mayor Valdes-Fauli: Thank you very much, everybody. Thank you.

Ms. Lopez-Castro: Thank you.

Mayor Valdes-Fauli: Thank you, Alvin, for coming.

Commissioner Lago: Thank you.

Vice Mayor Keon: Thank you, Mr. Davis.

Commissioner Lago: Thank you for coming.

Mr. Davis: It was a pleasure.