

City of Coral Gables City Commission Meeting
Agenda Item J-1
September 26, 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)

Sergio Fernandez

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

Status report regarding enforcement actions relating to FPL.
(Sponsored by Mayor Valdes-Fauli)

Mayor Valdes-Fauli: Okay. The next item is status report on enforcement actions relating to FPL, and that is my item. And, let the record reflect that Commissioner Quesada is not here. We've been -- we've seen pictures. We have seen residents' complaints. We've seen what happened. We have seen the 60-year-old transformers, the cracked poles. We've discussed in a

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very constructive discussion regarding the undergrounding of the lines, the starting of a long process, but hopefully, it will get us somewhere. And the problem we have had with FPL has been that they really don't respect us and they really don't pay attention to us. From broken promises as to when the electricity is going to be restored, which maybe that was beyond their control, but also, they're telling us the Thursday after the hurricane that they couldn't restore electricity, because we had to clean the trees that were leaning on the lines. And the City Manager and I very much concurred, telling our people not to touch those lines until FPL brought their dedicated crews to clean those trees, because we didn't want any electrocuted City employees. And, this was a cease and desist order that the City Attorney imposed on FPL. We're looking for service from FPL. We're not looking to litigate FPL, but my impression -- and I think our impression -- and I think the Administration, the City Attorney agrees with me is that we will get FPL's attention if we threaten litigation. Our aim -- I repeat, for the benefit of the Commission -- it is not to litigate, but our aim is to get their attention and threaten litigation in order for them to pay attention to us. We don't want preferential treatment. We don't want to be -- we're not better than anybody else in Miami-Dade County. But, they have called us frivolous. They've called our demands ludicrous and they're in the press, and they've been on television calling us frivolous and ludicrous and we're not frivolous and ludicrous. We speak for our residents, and we represent our residents. And, we are sick and tired of being taken for granted. They had a 23 percent rate hike on June 17, 2016. They've had rate hikes in order to take care of our infrastructure. What did they do with that money? I don't know what they did with that money, but certainly not replace the 60-year-old transformers and rotten poles. The purpose of this litigation is to get their attention. And once we get their attention, the litigation will go away. We're not aiming to persecute them or pursue the litigation, except to get their attention. And to the extent we get it, then we will sit down at a table and discuss with them how they are going to service Coral Gables the way they should and in the manner we're paying for. I'd like to call now Sergio Fernandez, of 1510 Urbino Avenue, to discuss this matter with us. Sergio.

Sergio Fernandez: May I now?

City Attorney Leen: Of course.

Mayor Valdes-Fauli: Now, he can talk, yes.

Mr. Fernandez: Thank you, Mr. Mayor.

Mayor Valdes-Fauli: Yes.

Mr. Fernandez: Thank you, Commissioners.

Mayor Valdes-Fauli: He has been patient.

Mr. Fernandez: And frankly, I'm very encouraged by what I hear today. But, I will tell you a couple of things -- and I'm sure you know this and just I think it's very important that we keep in mind. We were hit with what is, at best, a CAT-1 hurricane. Had Irma hit us at CAT-5, that eye had come through Dade County, we would have been in the same position that our citizens -- our fellow citizens in Puerto Rico are today, total, total chaos. We cannot afford to do that, Commissioners. We must hold Florida Power & Light accountable to provide the service that they have committed to do. Whether we do it through working with them by putting the underground lines -- by the way, I'm a retired CPA, but I did some numbers. You know, I did 30 -- \$250 million over 30 years with a 25 percent contribution. It's \$6.5 million, not a big number for a city like Coral Gables. A big number, but not a big number for a city like Coral Gables. But I think we need to go beyond that. I think we go to the Public Service Commission and demand that the Public Service Commission does its job of holding the monopoly that they have in Dade and South Florida accountable. And furthermore, I think we need to go and see if they have violated our franchise agreement and see if there's an alternative. Because, trust me, as a public company, \$63,000 -- billions of dollars in revenue, \$63,000 is not going to do the trick. What's going to do the trick is when we really bring pressure on them and their financial

statements and their shareholders stand to lose. Otherwise, they're not going to do anything. Thank you for listening to me, Commissioners.

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

Commissioner Lago: Thank you, sir.

Mayor Valdes-Fauli: Thank you. Sergio was also a bank president, yeah.

City Attorney Leen: So, you ready?

Mayor Valdes-Fauli: Yes, sir.

City Attorney Leen: So, I prepared for each of you a packet of just materials that you might want to look at over the next few days. Let me just give you all of them. And, I would like to thank Cristina Suarez for putting this together for me. This has just a number of different legal documents, in case you're interested. It has our franchise agreement. It has the 2005 resolution. It has some photos. It has the easements. It has FPL's line-clearing program, some relevant statutes, et cetera. So, the current status of the enforcement action is that the City did issue a cease and desist letter as to FPL. Part of that cease and desist letter was focused on City trees that had -- that were in the right-of-way that the City wanted to clear, but couldn't clear because there were wires in the trees. And the City took a strong stand and said that those need to be removed by 5 pm on the day the letter was issued. My understanding was there were 13 trees the night before, 13 instances that we had identified, and there were 6, I think, when the letter was issued, because they had started to work with us. Remember, the day before, I contacted the general counsel's office and let them know that those needed to be dealt with. And that day, they did come into compliance, so we issued no fines related to that particular part of the cease and desist letter. As to the second part of the cease and desist letter, which was that power needed to be restored by Sunday, at 11:45 pm, the City was using FPL's promise, which it made to its

residents. And my understanding is that they recognized that maybe they shouldn't have made that promise in retrospect because people relied on it. But, we were using that as the date and time, which was FPL's own date and time as to when power needed to be restored. Power wasn't restored by that date and the fines, as were mentioned, are approximately \$63,000 related to that. The City has made it clear on the citation that any such fine would go to Hurricane Irma relief, donated to charity, so the City's not receiving any funds related to this and I wanted to make that clear. We have received a -- oh, before I tell you what FPL has done, I should also tell you that we've hired special counsel, the firm of Kozyak Tropin and Throckmorton, and in particular, Cori Lopez-Castro and Javier Lopez. And, they will be working with us to bring this action. Now, when I say bring this action, I want to be clear that although I believe that the resolution the Commission has passed authorized enforcement action, I do plan to bring the matter back to you before we file any lawsuit. I want to make that clear for the public record. What we're doing right now is trying to put together a very practical and illustrative document, a complaint that goes through all the different issues that need to be corrected. There's a number of transformers -- we have a lot of photos of old transformers, as the Mayor has mentioned. Those transformers exploded. Sometimes that led to a line falling down. In fact, that even happened in my own backyard. A transformer exploded and a line fell down. So, we were hearing lots of stories about that. And, many of the different individual houses could not be brought back right away because of that. In addition, there's a lot of wooden poles. So, wooden poles need to be replaced at some point, and a lot of them are very old wooden poles. In addition to that, there's a degree of redundancy, where you may need to have poles and things removed from the right-of-way. In addition to that, there's foliage in the easement, in the right-of-way, which the City is not allowed to tell residents to cut back. That's something that FPL has to do, and there's been a dispute between FPL and the City relating to that particular issue. And so, one thing that we will put into the lawsuit is a particular statement that says that the -- that basically, when you have a declaratory judgment action, that's when two parties disagree as to the applicable law and there's uncertainty between the parties as to who has what rights. Well, this is a good example of that. FPL has taken the position that -- at least publicly, that the City is at fault for having trees that are interfering with their lines. The law is that FPL is responsible to

cut back those trees and has the right and the obligation to do so, particularly in the easements in the back. So --, and the City has no ability to even go into the back to do that. Moreover, the City shouldn't be cutting trees near powerlines, because people can be electrocuted and we're not trained to do that. So, that's really FPL's responsibility. I'm hoping that they will walk back their comments and simply agree that that is their responsibility, but right now, they haven't. So, that will be part of the complaint as well. So, we're going to make -- we're going to put together a complaint with very specific issues that apply throughout Coral Gables and we believe apply throughout South Florida. All of us -- almost all of us lost power, I would say, in Coral Gables. And the issue is not that we lost power or that the City wants special treatment. What the City wants is what it's entitled to under its franchise agreement and under applicable law, which is basically a power grid -- an infrastructure that is adequate to deal with a foreseeable event, which is a hurricane. And I would like to indicate that my understanding is that the -- what went through Coral Gables and our surrounding communities was not a hurricane. It was a tropical storm and it's obviously caused a tremendous amount of issues with the power grid. So, our position is that we would like to have that addressed. And so, that's the position we've taken with FPL. And I have -- like I mentioned Kozyak Tropin is working on a complaint that they will file -- pardon me, that they will file with the Commission, and we will have a hearing. And hopefully, FPL will attend and then I'm hoping FPL will agree to sit down with us in a settlement discussion and work out these issues. I'm sure they have issues with us, too. They keep saying they do. So, I haven't seen one specific yet where we've done something incorrect, but we're willing to listen to them. And to the extent that we have issues, we're going to address them. In fact, we have a Blue Ribbon Committee that's going to be looking at all sorts of things to try to address. So, we're certainly open to that. It's going to be presented to the Commission, and then the Commission will decide whether to file the lawsuit or not, but there will at least be a public document showing that this was not just smoke and mirrors or us rattling sabers. This was a legitimate complaint based on our franchise agreement and based on the duty of FPL to maintain their infrastructure. And I would like to mention a couple other issues related to it. You know, we've talked about undergrounding and the City undergrounding is a different issue - - and so, I'm going to put that aside. There may be a duty of FPL under their franchise

agreement to look at undergrounding in certain instances and things like that, to address the fact that sometimes -- look, if they have the duty to maintain, which we believe they do under their franchise agreement and if preexisting trees exist and they're not going to cut them back as they're required to under the law, then they need to underground. You know, so then that -- they may have a duty to do so, so we have to look at that as well. We're going to put this all together into a complaint, bring it to the Commission, and then the Commission will decide how to proceed, so I want to be clear about that. Lastly, I want to mention that the resolution did indicate that we would also be going to the Public Service Commission and raising these issues at least to review whether we would do that. When we bring the complaint to you, we'll bring that issue to you as well. And then, finally -- I guess I said finally once, but one other finally. I did receive a letter yesterday, which I published to the Commission. I was requested to do so, but I would have done it anyway, from Alvin Davis, who is a well-known attorney in town. He's representing FPL, and he sent a letter. It was a colorful letter. I mean, he took some shots at the City. I didn't agree with the letter, but I also noticed in the letter that there was an indication, one, that they would -- it appeared to me -- go through our administrative process, if necessary, although they don't want to. And two, that they might be willing to sit down with us and talk about these issues. So, I'm choosing to take it in a positive light, and I called Mr. Davis today and we had a good discussion. And, I mentioned these issues to him and I told him there were three items on the agenda. He'd be welcome to come address the Commission whenever he wished, and that I do think that the Commission's will and certainly, my desire as your attorney, is to try to work this out if we can. It's not to get into protracted litigation with FPL, but we need these issues addressed because, you know, as the Commission has indicated in the resolution and in talking to you individually, what I can tell is that this Commission cares deeply about its residents, that if this happens again -- and particularly, if it's a Category 2 or a 3 storm -- which, you know, a Category 5 storm catastrophic and those only so much you can do to prepare for that, but it's very possible to have a Category 2 or 3 storm -- and my understanding from Peter Iglesias is that the Building Code actually is supposed to have structures be able to resist Category 2 and low Category 3 hurricane force winds. So, we believe that FPL's infrastructure should be able to survive that as well. It's already required by the Building Code, and that really

is going to be the touchstone of our position, that FPL needs to harden its infrastructure to be able to survive a Category 2 or low Category 3 storm, similar to the Building Code. Mr. Iglesias.

Assistant City Manager Iglesias: I don't know current, but the design manual that I reviewed for -- when a lawsuit was with Miami, the loads are -- the Building Code loads are 45 percent higher than what FPL uses for their distribution system. So, I don't know if that's changed since that lawsuit, but I did have a copy of the design manual, and it was at least 45 percent to almost a hundred percent, depending on the application. So, that's why we have so much failure at such a lower load that -- if you look at what they say, it doesn't relate to their failure rate. So, they're saying the design for here, their failure rate is way higher. So, when you look at the design manual, it shows why. They're designing for anywhere from 50 to 100 percent less load than the Building Code would require in their distribution system.

Mayor Valdes-Fauli: I'm going to call on the Commissioners, but let me say something first. And I am sure that all of us got many, many calls from residents about, you know, restoring power and what happened, fallen trees, fallen wires on their properties; 5600 Granada Boulevard, et cetera. I think we owe it to our residents to pursue this matter, not the litigation necessarily at this point, but to pursue the possibility of litigation in order to force FPL to sit down and negotiate with us. When we broached the subject, they called us frivolous and they called the City of Coral Gables' demands ludicrous. You have 60-year-old transformers. We have a 60-year-old infrastructure for the most wonderful city in South Florida, in Miami-Dade County. Our aim is not to pursue litigation. Our aim is to bring them to the table. And, I would like to speak for -- and I'm speaking for our continuing down this path in order to force them to sit down with us and stop calling our demands ludicrous and calling us frivolous. Madam Vice Mayor, you want to...

Vice Mayor Keon: No. I agree with you. I mean, we saw too many poles that snapped and too many transformers that came loose from their poles for the amount of wind or whatever that was generated through this storm. And you know, so frequently when we talk to people that lost

power, we tell you that they -- every time there was much of a stiff breeze, they would lose power, and it was because of the transformers or for whatever reason.

Mayor Valdes-Fauli: Flickering lights.

Vice Mayor Keon: Yeah, flickering lights frequently and often. And, then those actually went out in the storm. So, you know, I think it's -- you know, we do need to have that conversation with FPL, and if that's what it takes to get their attention, I suppose that's what this takes. I think it's -- I don't think it's appropriate that they would refer to us as frivolous or anything else. I think that that is...

Mayor Valdes-Fauli: Ludicrous.

Vice Mayor Keon: Ludicrous and frivolous, I think, is an insult from a corporation of that size and magnitude toward an elected body here that represents the people of this city. So, I think that that is wrong and I would certainly go forward with this to begin that conversation.

Mayor Valdes-Fauli: Thank you very much.

City Manager Swanson-Rivenbark: Commissioner Lago, you had asked about permits, and there was accusations that the City had delayed permits. We did go back and look at tree permits. We had issued, over the last ten years, 4,100 tree removal permits. We looked under Next Era. We looked under Asplundh. We looked under Florida Power & Light. We looked under FPL. There were no permits that had been -- we don't believe that they are required to issue any -- get any permits under the easements. The only time that we stopped a tree removal was work on Sunday, and that was associated with -- adjacent to the University of Miami. So, we were not able to find any tree removal requests that we had denied that we had halted.

Mayor Valdes-Fauli: Thank you, Madam City Manager. Commissioner Lago.

Commissioner Lago: Thank you for bringing it up, and I appreciate that. It's -- that was actually brought up to me on several occasions by different people involved with FPL. I echo the sentiments of the Mayor. I think you put it perfectly. And, I just wanted to make a comment that, you know, the City Attorney stated, which is that this wasn't a hurricane. You know, we've all -- I, at least, have been saying Category 1, Category 1. When you hear that it was a tropical depression, it even exacerbates the frustration of people in reference to -- I was out of power Friday, the day before the hurricane. Most people, for example -- I think Commissioner Mena and the City Manager were out for two weeks almost, right, or 12 days, it was.

Commissioner Mena: Yeah.

Commissioner Lago: You know, that's a tough pill to swallow. So, I mean, I'm fully on board. I support you. I think this is the right direction for the City. We need FPL at the table. It's -- right now is the moment to take a stand on all fronts.

Mayor Valdes-Fauli: Commissioner Mena.

Commissioner Mena: I just want to touch on something that Craig mentioned a few moments ago, which I think is really important here. You know, I've been very -- I know a word I would use -- but disillusioned by some of the response that has come out of this entire episode since our last special meeting. I've heard insults and people calling us entitled and things like that.

Mayor Valdes-Fauli: Yeah.

Commissioner Mena: In the year 2017, yes, we're entitled to electricity. We're entitled to it not because it's some God-given inalienable right.

Mayor Valdes-Fauli: (INAUDIBLE)

Commissioner Mena: We're entitled to it because we pay for it and because we have a contract, and because there are laws that apply to this. And so, all we're doing is asserting our legal rights. It's not personal. It's not an attack on FPL. It is us asserting our legal rights, which is our obligation to our residents. And the reaction that we've gotten from FPL started, frankly, with Mr. Leen having the courtesy before sending the first letter of reaching out to their attorney to try to speak to him, which he responded to with an unprofessional response and didn't give you the time of day, frankly. He wouldn't get on the phone with you, so you sent your letter. In response to the letter, they put out a public statement. I think the adjective they used was "self-entitled" to refer to everybody on this dais. Why are we being personally insulted by a large corporation? We didn't insult them. We asserted our rights under a contract on behalf of our residents. It's not personal. I represent big companies every day in litigation. They don't respond to complaints and demand letters from the other side by lodging insults. They just assert their legal position and they go forward with what litigation is, which is a dispute resolution method. That's all it is. So, now we received what, I think, Craig very politely described as -- because you're a gentleman -- a colorful letter in response to your original letter. I would say it was lot more than colorful. I would say it was somewhat unprofessional.

Mayor Valdes-Fauli: Offensive.

Commissioner Mena: They called, you know, the claims in your original letter unprofessional and said you didn't assert them because of any legal basis, but as a -- some sort of political tactic. That's, again, a personal attack on you. You're a licensed attorney with the Florida Bar. You're a professional and ethical person. And insinuate that you had some other motive for sending the demand letter is offensive. And so, we need to get to the business of communicating with FPL in a manner that leads to results. And I tell my clients every day, you know, litigation -- and I think the Mayor touched on this -- really should be a last resort. You should try to resolve things amicably, if you can. We have an administrative process here, which I think we should exhaust while you go about the process of preparing a complaint that may or may not go forward. But

you know, we need to bridge the gap in communication here, and we need FPL to step up and to start speaking to us with some respect and attention that we deserve, not because we're entitled, but because we have a contract with them, the way that a company would treat any customer if it operated in a true free market. That's all we're asking. So, you know, I think it's important that we get to doing that. I think the photos, Mr. Mayor, that you showed earlier in the meeting are -- you know, they speak for themselves.

Mayor Valdes-Fauli: They're shocking, yeah.

Commissioner Mena: And so, -- and I don't think it's ludicrous or whatever other label you want to put on it for us to say, hey, look at this infrastructure. Something went wrong here. Let's figure out what we do to get it right. And, the last thing I want to say is -- and you touched on this in your Op-Ed in the Miami Herald yesterday, I believe -- none of this is really an attack on -- certainly, not on the crews that were out helping get our community...

Mayor Valdes-Fauli: No, no.

Commissioner Mena: Back in order. That's obvious. But, those are the type of things you say when you're trying to offend people, rather than address the substance of the comments. But the other thing is, it's not even that much about the recovery part. The question is, why were so many people out of power to begin with, not that it took a week or eight days or ten days, in some of our cases, to get power back. But, why were we -- so many people without power to begin with?

Vice Mayor Keon: Ninety percent.

Commissioner Mena: Was it because they failed to maintain the trees on the lines pursuant to their rights under this easement? Was it because they didn't abide by their obligations under the franchise agreement? Well, we'll figure that out as we move forward with this action and with

this dialogue. But, it's not a personal attack. It's not a political tactic. It is merely us doing our job and representing our residents and asserting our rights under a contract and under the law.

Mayor Valdes-Fauli: Thank you.

Commissioner Mena: So, the narrative that this is anything other than that needs to be set aside, and we need to get forward with the business of how do we resolve this.

Mayor Valdes-Fauli: Thank you very much, Commissioner Mena. I would -- the Chair will entertain a motion that we instruct our City Attorney to proceed with the formulation and the drafting of a complaint to bring to the table before we file it, I think, for further discussion and with the aim of bringing FPL to the table.

Vice Mayor Keon: I'll move it.

Mayor Valdes-Fauli: I'll hear that motion.

Vice Mayor Keon: I'll move it.

Commissioner Mena: Well, I don't know. Is there a motion to be made? I think we already did that, didn't we, last time?

Mayor Valdes-Fauli: Let's do it again.

Vice Mayor Keon: I'll move it.

Commissioner Lago: The motion was made. I'll second the motion.

Mayor Valdes-Fauli: Okay, there's a motion and a second. Will you call the role, please?

Vice Mayor Keon: Yes.

Commissioner Lago: Yes.

Commissioner Mena: Yes.

Mayor Valdes-Fauli: Yes.

(Vote: 4-0)

Mayor Valdes-Fauli: Thank you very much.

DRAFT