Austin City Council
MINUTES
For

SPECIAL CALLED MEETING - FEBRUARY 7, 1984 - 4:00 P.M.

Council Chambers, 307 West Second Street, Austin, Texas

City Council

Ron Mullen
Mayor

John Treviño, Jr.
Mayor Pro Tem

Council Members
Mark Rose
Roger Duncan
Sally Shipman
Mark E. Spaeth
Charles E. Urdy

Jorge Carrasco
Acting City Manager

Elden Aldridge
City Clerk

Memorandum To:

Mayor Mullen called to order the special called meeting of the Council scheduled for 4:00 p.m., noting the absence of Mayor Pro Tem Trevino. Mayor Mullen announced the purpose of the meeting is for discussion regarding status of the South Texas Project, funding of the progress payments, financing alternatives and problem of default.

COMPLETE TRANSCRIPT OF MEETING FOLLOWS:

ADJOURNMENT

Council adjourned its meeting at 7:00 p.m.

Special Called Council Meeting - 4:00 P.M.

A. *Discussion regarding status of South Texas Project, funding of the progress payments, financing alternatives, and problems of default.*

MAYOR: I'd like to call this meeting to order. It's a work session on the South Texas Nuclear Project. The public -- It is not a public hearing so I want to make sure that if anyone is here to speak that they realize that it's not a public hearing, but a public work session. Mr. Carrasco.

JORGE CARRASCO: Mayor and members of the Council, I would like to start today's session on the South Texas project by first of all introducing the staff and the financial and legal advisors that have been assisting us in preparing the presentation for today's work session. With respect to legal matters that will be presented this afternoon I would like to first introduce Mr. Tom Heiden with the firm of Miller, Canfield, Paddock and Stone, Mr. Bill Vernon with Fulbright and Jaworski, Mr. Rick Porter with McCall, Parkhurst and Horton, Mr. Jim Gilley with First Southwest Company, the City's financial advisor, Mr. Jim Baxter with Merrill-Lynch. Merrill-Lynch is handling the City's divestiture effort. As far as the City staff, the individuals involved have been Mr. Ed Aghjayan, Director of Public Utilities; Mr. Paul Isham, the City Attorney; Mr. Frank Rodriguez, Administrator of Management Services; and Mr. Bill Derryberry, with the Management and Budget Department.

I would like at this time to have Mr. Tom Heiden make a brief statement before we begin the actual presentation for the Council.

TOM HEIDEN: Thank you very much. Good afternoon. We spent last Thursday in court discussing matters relating to these legal struggles and Bill Vernon and I spent all day yesterday in Bay City and Matagorda County in connection with the lawsuit against Brown & Root & Halliburton. And I understand that you want to have as much free and open discussion about where the South Texas Project has been and where the City of Austin can and ought to go with respect to the South Texas Project this afternoon, and I applaud you for that. But let me make a couple of cautionary statements, if I can, at the outset. At the moment the City of Austin has a 16 percent interest in hundreds of millions of dollars of concrete and steel and equipment down at the South Texas site. In addition to that you have at least a 16 percent interest in some claims against Brown & Root & Halliburton and an interest in some claims against the project manager, Houston Lighting and Power. The defendants aligned against you with respect to those claims would like to pierce the deliberative process which has been at work here. We are trying to protect and preserve those claims because it may well be that those claims someday turn out to be worth more than all that concrete and all that steel and all that equipment. That deliberative process hopefully can remain intact. The privileges that the lawyers always talk about in closed session of work product and attorney-client privilege must remain intact and I will try to limit my comments to the extent that you asked for comments this afternoon and so will Bill Vernon from Fulbright to try to leave intact those privileges so that your deliberative process won't become open and subject to attack by these defendants. In addition, there is an order from the lawsuit down in Matagorda County, which was sought by Halliburton and Brown and Root, of preventing us from discussing publicly with you or with anybody else what we have learned during the course of that lawsuit. And we are under pain of perhaps having our claims dismissed if we violate the terms of that order. And that order thus relates to a very important and very valuable claim that the City has. With those caveats and those sorts of cautionary statements of -- Bill Vernon and I will be happy to participate and give you our views on where you've been and where you can go. Thank you.

(Everybody talking at once)

HEIDEN: I'm sorry, Mayor.

SPAETH: Yes, I have a question. With that caveat of the gag order and I have some questions and some things I'm going to want to discuss today would you for myself and I don't know if anybody from the Council, but, you know, what can or can we not discuss -- or what, you know, I think I personally need some guidelines today in your opinion as to what would be a violation of that gag order today.

HEIDEN: We, of course, didn't ask that gag order be imposed upon anyone. And as a matter of fact, you asked us -- you collectively asked us to ask the Texas Court of Appeals to relieve us from the burden of that order. We did that and argued that down in Corpus Christi before the Texas Court of Appeals last Thursday. We haven't heard anything from the Texas Court of Appeals. So at this moment the same order that was in effect before remains in effect. There is no prohibition whatsoever on my telling you anything and everything that I have learned and that Bill Vernon has learned during the development of this lawsuit in closed session. So any question that you want to ask, any question that Mayor Mullen wants to ask or Councilman Duncan -- they can ask and we can answer freely in closed session. You are subject to the same probitions however, that I am subject to in terms of discussing with anyone not directly affiliated with the City. Factual information that has been learned during the lawsuit. For instance, if I told you that we had learned Fact A during the deposition that was taken from the defendants last week. Neither you nor I can disclose in this meeting or disclose anyplace else other than in conversations back and forth between us or other people from the City, Fact A, the implications or ramifications of Fact A. Does that help you?

SPAETH: Well, it confuses me a little bit more. To be honest with you, I. What you're saying is -- let me see if I understand. Anything that we have discussed in Executive Session we cannot discuss today?

HEIDEN: No, I'm sorry. There is no prohibition from that order attaching to any facts, any information, any considerations other than those that we have learned directly through the discovery processes of the lawsuit -- from depositions taken in the lawsuit -- from interrogatories answered in the lawsuit. It's only information that we learned through that manner that we can't talk about publicly.

SPAETH: Well, how do. I don't know then how we can determine with the information that we've gotten, what is or hasn't been obtained that way.

I mean, we've talked about so many things that I

CARRASCO: Councilman, one thing that I would like to point out is that all the information that we will be presenting to the Council this afternoon will be information that obviously can be presented publicly and can be discussed and Mr. Heiden has had the benefit of reviewing that to make sure that whatever constraints that gag order imposes on the City are not in anyway affected.

SPAETH: Mr. Carrasco, I'm aware of that, but what I'm saying is Mr. Heiden, no one has reviewed with us what we may want to ask or what we may have discovered and it may not have been in the same process and something that we may bring up -- then I don't want to violate the gag order, but I spent a week of a lot of miles and a lot of time trying to come up with some determinations -- so I've got some serious concerns that something I say and I didn't obtain it from you -- what if there's some notes that I have and something that I may want to bring up -- how do I know that it's not something that was done through the discovery process by you all but not by me. Well, I guess discovery by me, but how.

HEIDEN: Discovery in the lawsuit context is a term of ours.

SPAETH: O.K.

HEIDEN: It relates only to the so-called formal inquiry processes under the Court rules.

SPAETH: (Inaudible) I was not a part of that process with you and did not obtain it that way, am I free to disclose that today?

HEIDEN: Yes, you are.

SPAETH: And I would not violate the gag order?

HEIDEN: You would not violate the gag order.

SPAETH: Okay, thank you. I just don't want to go to jail.

HEIDEN: I don't want to go to jail either. I don't want you to go to jail and I certainly don't want to put this claim, which I think is worth a lot of money, in jeopardy of being dismissed. I think we can undertake to do one more thing for you, if it gives you any comfort at all, and that is that if Bill Vernon or I during the course of this afternoon, hear anything that we think might even be getting close to an area that might be covered by the order issued by the Court, we'll just jump up. Sorry for intruding at the beginning.

CARRASCO: Thank you, Tom.

CARRASCO: I would like at this point to distribute a report on funding alternatives, which Mr. Frank Rodriguez will be distributing to Council.

The purpose of this report is to outline for the Council the amount of available bond funds, when they will be depleted, and what other sources of funds are available to the City in order to continue our progress payments.

As indicated in the report, the City's current bond authority for the South Texas Project will be depleted as of April 28th of this year. In addition to that the City does have available $11-1/2 million in operating funds that were previously appropriated in September of 1983 and that could be used to continue to make progress payments on this project. This amount would carry us through June 2nd of this year. However, I would like to caution the Council that if these operating funds are used, they cannot be repaid from bond proceeds, and using them will require replacing them by way of a 3.2% rate increase in September of 1984. There are basically six scenarios which I would like to examine briefly with you which will be covered in more detail during the rest of the presentation this afternoon.

Those six scenarios include No. 1: Default on payment obligations under the participation agreement. No. 2: Seeking a court order allowing the City to either halt payments until the conclusion of the litigation involving the participation agreement or place the City's and the other participants' progress payments into an escrow account to be administered by the Court, in effect placing the project in receivership. A third scenario is raising electric rates, and we will cover that in more detail in just a few minutes. Item 4 is to call an election to authorize the issuance of bonds. Scenario 5 is to issue additional short-term obligations, and Item 6 is to consider instituting a revenue bond validation process.

There are some additional courses of action in addition to the six scenarios that were outlined. These include asking the Attorney General to render an advisory opinion as to the authority of the City to issue revenue bonds. In addition, we could make application to the Public Utility Commission to study the conversion of STNP to a coal fired plant and to conduct hearings on the economic and technical viability of the South Texas Project. I would rather add that meetings could be held with business and civic leaders and members of the media to ensure that the public is aware of the consequences to the City of a default under the participation agreement.

I would like at this point to begin reviewing each of the items on the Agenda that was passed out to the Council and which all of you have copies of and we would like to start by having an overview of the South Texas Project which will be made by Ed Aghjayan, Director of Public Utilities.

ED AGHJAYAN: Thank you, I'm not going to belabor the time we have by going over a review of the report that we issued several weeks ago, but really focus on some of the more significant contractual and financial findings, talk about our recommendations and maybe clarify some issues.

-- Among the findings that we came to is regarding cancellation. The contractual finding is that the City of Austin alone could not effect cancellation of the South Texas Project. That per the participation agreement, Austin required the cooperation of the other three partners if it wished to cancel the plant.

Next, that default on the South Texas Project payments should not be considered a viable alternative for withdrawal from the South Texas Project. That is an item we'll go into more detail later on.

Third that the Austin rate-payers are currently affected by repayment of debt used to fund STP construction costs and face impacts due to growing future repayment of debts for South Texas Project. Now let me amplify what I'm talking about. Currently there are really two major types of payments we make on the South Texas Project. One is the progress payments which we make to build the project. These are the payments that come right now to approximately $10 million a month. In the past we've always funded these out of long-term revenue bonds and they are not built into the rate base per se by themselves. These funds are bonded. A second payment that we make that's connected with the project are the interest and principal repayment on those bonds -- primarily interest. That amount is in the neighborhood of some 48 million dollars this year and is currently rising at the rate of 13 - 14 million dollars per year. We expect that -- well right now out of your rate base -- out of every dollar of rates that a customer will pay 14.7% goes to pay interest on the project. That will rise to some 18.2% in fiscal year 1988. Lastly, that we had concluded that the sale of the share of the South Texas Project does not appear currently imminent. That's not to say that we're not continuing to work on that. Merrill-Lynch has a contract to try to sell the project, but right now we don't have any legitimate buyers lined up. The three major recommendations that we had on the report I'd like to go over each of them. First of all, that the South Texas Project should be further evaluated with the assistance of an independent entity which can represent the interests of the rate payers affected by the project. In our report we talked about the Public Utilities Commission being one alternative for that kind of a review. The Electric Utility Commission went one step further and recommended that a comprehensive risk assessment of continuing the South Texas Project and assessment of the alternatives to continuing the project be conducted. Further, that it be funded by the STP managing partners or the City of Austin. If in fact that the City Council wished to approach that we could approach the managing partners of the project, and also be conducted by a firm experienced in fossil and nuclear fuel generation and not currently employed by the project or the partners. Our study was really a basic analysis of project completion versus industry standards. It was a statistical comparison of what has been done and what needs to be done and based on looking at projects that had -- nuclear projects that have been built since 1972 and giving the projects frankly some benefits in terms of assuming that future projects will go along in a reasonably expeditious manner or when will it be completed. A detailed risk assessment of it would anticipate that we would find a firm that could get in and get access to a good deal of information and be able to make the assessment of whether the project is likely to be completed and likely to be operated. Now this particular analysis would be important. It would be very difficult to perform, I might add, without some overview agency or some independent agency helping us in this process. Particularly in light of the current bad news that's coming out of the nuclear industry. Recently several projects have been in trouble in the news. The Zimmer Project, for example -- the owners of that project have voted to convert it to coal. Now that is a project that had approximately 1.7 billion dollars invested in it and was stated to be 97% complete, and when a stop-work order was issued, several-month survey of the project was done and the conclusion was that it would take another 1.8 billion, or more than had been invested in the project altogether to finish what was purportedly the last 3% of the project. Marble Hill is a project in Indiana that is currently in trouble. The Governor of Indiana appointed a blue-ribbon panel to study the benefits of completing the plant. The results indicated that the plant should be cancelled. Public Service of

Indiana has stopped all construction and is trying to find a buyer for the entire plant. That is not the only problem in the nuclear industry. Shoreham Nuclear Power Plant on Long Island, Byron Unit No. 1, Seabrook in New Hampshire are all projects that have had a good deal of difficulty and a good deal of severe financial impact on rate payers that impact it. And our recommendation is really frankly based on the fact that our report could not make that kind of detailed risk assessment. It has to be done by an expert agency and we suggested that it be kind of an overview agency to look over that to make sure that the rate-payers' interests -- all the rate-payers interests are protected.

The other two recommendations we had dealt with payments of the South Texas Project progress payments. We recommended that Austin should immediately arrange funding future STP payments until such time as the disposition of the STP can be resolved. And lastly we recommended that we should make immediate plans for providing additional generation capacity including methods of financing construction costs. Now as far as I've gone, I'm open to any questions. That gives you kind of a brief overview of where we are right now. Questions?

DUNCAN: Just one. The -- you did not put a dollar -- you said in your report that you thought the plant would be late -- unit I would be as much as 18 months late. Perhaps Unit 2 would be six months -- did not put a dollar figure on that at that time. Yesterday a member of the staff of the Public Utilities Commission looking at this put a figure of 7.8 billion dollars on it. Currently, Bechtel's report is 5.6 billion. You think that 7.8 billion is way out of line?

AGHJAYAN: I think the 7.8 billion dollars probably includes interest during construction. We're comparing apples to oranges. I've heard that number before when I've looked at it it takes a look at the project -- adds -- takes the progress payments adds interest during construction and then comes to that number. I think that equates to the 5.6 billion dollars in progress payments. Now to take the 5.5 billion and extrapolate it out to what it would be if our prediction came true -- and we're just using a corporate -- a computer model. We really don't know what the time delay on it would be. Generally speaking the rule of thumb is about a million dollars a day on these projects for delay. On the other hand there's about something less than 600 million dollars in reserve funds that are currently available to absorb some of that extra cost. So we really don't know where it would end up, but obviously if it's going to be late there is a great likelihood that it will cost more.

DUNCAN: O.K. Thank you.

CARRASCO: Mayor, members of the Council, the next presentation will concern the funding requirements on the project and the amount of bond authority remaining and Mr. Frank Rodriguez, Administrator of Management Services will make that presentation.

FRANK RODRIGUEZ: I'd like to give you an overview of the sources of funds for the project as well as...

MAYOR: Frank, excuse me a second. Does anyone here know what the situation is on that 600 dollar -- 600 million dollar reserve fund? What the legal ramifications of that fund are if we were to default or we were to attempt to cancellation (Inaudible). Has anyone looked at that fund to see if -- it's the kind of situation of whoever has the fund is the owner?

AGHJAYAN: The fund isn't a real fund in that there is no money really there. It's built into the 5-1/2 billion dollar estimate and what it simply does is take a look at unit costs and construction rates and material costs and make an estimate of what each entity will cost and as the plant gets completed, they compare certain contracts and certain purchases to what the estimate was. And to the extent that the actual completion is less than the projected completion then the reserve fund goes up. To the extent that it's more then the reserve fund comes down, but there's no money there. It's just a number that's built in as a hedge in the 5-1/2 billion dollar figure. 200 million of that is basically a management reserve. It's for unspecified kinds of things that would happen. The rest of the money is built into unit costs.

MAYOR: Is that fund -- you're saying now that that fund -- from 600 million dollars is projected to be there when the project is finished or not?

AGHJAYAN: If none of that reserve fund were used up and that project were to be completed on schedule and all of the budget estimates were to go on and there was nothing unexpected -- there was no new kind of activities that were ordered by the NRC or any other agency then that 600 million dollars would be left. That plant would be built for less -- 600 million dollars less than the 5-1/2 billion dollar figure.

MAYOR: Thank you.

RODRIGUEZ: Just to give you an overview of the financial status in terms of sources of funds and disposition of those funds. The nuclear bonds issued inception to date -- and I'm going to have the table passed out to you that'll provide this information which have been issued to date is a total of about 377 million dollars in nuclear bonds. Additionally, there's 30 million dollars that were issued in certificates of obligation and then 64 million dollars in revenue bonds. That combined is about 470 million dollars. The uses of the fund inception to date in terms of expenditures, the total is about 439 million dollars, and that's of yesterday.

CARRASCO: Frank, we might caution the Council that the figures we're providing you do not include interest. O.K. If you add interest that number obviously would be greater than the amount that Frank has just stated.

RODRIGUEZ: I was going to mention that the amount of interest paid and accrued on the project or on these funds as of the end of January totaled 126 million dollars. So the total indebted cost is 565 million dollars. I want to make just a note about the 67 million dollars from the proceeds of the revenue bond issue. These were 2 year fixed-rate notes and they mature in two years. They are payable from the next revenues of the utility system and the proceeds from the dale of revenue bonds. During the negotiations,

SHIPMAN: I've lost you on that. You said 67 million?

RODRIGUEZ: Yes, ma'm.

(Inaudible)

SHIPMAN: Okay, I don't have a 67.

RODRIGUEZ: The 64 that I mentioned.

SHIPMAN: 64. O.K.

RODRIGUEZ: The 67 includes 64 plus the 3 million dollars in reserve funds.

SHIPMAN: O.K.

RODRIGUEZ: For a total 67.

SHIPMAN: Those are the revenue notes.

RODRIGUEZ: Yes, ma'm.

SHIPMAN: O.K.

RODRIGUEZ: During the negotiations with the bank which provided the credit support for the notes there was concern expressed as to how the City intends to retire the revenue notes. And because of that concern the City was required to covenant that no future short-term obligations would be issued without the consent of the bank and the majority of the bank holders. So it's the opinion of the City's financial advisors and you'll hear more about this later -- that it's extremely unlikely that the City will be able to issue another series of short-term obligations until steps are taken to arrive at a solution to the financing problem and issues. To retire these 1983 obligations alone would require at least a rate increase of 18.5 percent for one year and that's not a risk the banks are willing to take.

SHIPMAN: Mr. Rodriguez, when you step back I'm lost again.

You just said that the rate increase required to pay this 67 would be 18 percent for one year -- did I understand correctly?

RODRIGUEZ: That's correct.

SHIPMAN: The banks are not willing to take that kind of risk?

RODRIGUEZ: That's right.

SHIPMAN: How were they going to be paid back?

RODRIGUEZ: They were supposed to be taken out with long-term financing -- that is bond financing. They were supposed to be refunded.

CARRASCO: The balance of --

SHIPMAN: I understand, but that still comes from the -- that would still come from the rates anyway, but over a longer period of time.

CARRASCO: That's correct.

RODRIGUEZ: As you recall the voters approved 97 million dollars in revenue bonds in January -- on January 15th. There's been a lengthy court challenge to the validity of the authorization, and that, of course, has delayed the sale of those bonds. When the legal obstacles are removed 97 million are supposed to be used to refund those revenue notes. The 97 million dollars is tied up in litigation. The balance of available funds is 31.9 million dollars. That is what we have to meet our progress payment requirements. And I'm going to provide you a cash flow chart, but in March we draw down to 21 million. In April it's 11 million and in May it's -- it would begin going into a deficit--in terms of available funds. We do have budgeted 11.5 million dollars that was budgeted as a temporary measure and in anticipation of some emergency situation where we couldn't make our progress payments. We have deferred use of those funds -- that 11 1/2 million -- 11.5 million dollars. But in May it would be necessary to use those 11-1/2 million dollars. And to restore those to the operating fund of the Electric Utility will require about a 3.3% rate increase. So we start using as the ending balance of the electric utility in May. After May the deficit grows from 12 through the remainder of the year culminating in a total deficit of about 77.4 million dollars in December. Are there any questions about what I've presented?

DUNCAN: How much do we have left if we were to fund for the rest of the project under the current estimates, which I don't have a lot of faith in -- but under the current estimates, how much money would we have to raise to complete our share?

RODRIGUEZ: For the total project?

DUNCAN: Yes.

RODRIGUEZ: Including reserve funds -- prefunding the reserve -- it would be about 605 million dollars.

DUNCAN: 605 million

RODRIGUEZ: That includes legal costs, fuel costs, construction costs.

DUNCAN: And so far we have put in -- authorized at least -- 470 million and we would need an additional 605 million to complete.

RODRIGUEZ: That's correct.

DUNCAN: Thank you.

MAYOR: Mr. Carrasco, I still don't understand what you mean here on the -- you say this is a risk the banks are not willing to take.

CARRASCO: I think Mayor that the point that we're trying to make there is that based on discussions that we've had with the banks that were involved in the short-term obligations that were negotiated earlier -- they would feel more comfortable with some kind of long-term plan on the part of the City to continue to meet our funding obligations and the impression that we get is that they would feel more comfortable if we were not having to rely on a massive rate increase in order to satisfy the need to continue to fund those short-term obligations and maybe Jim Gilley can elaborate on that.

JIM GILLEY: I would like to state it even more strongly -- it's -- in my mind there's no doubt that any bank financing that would be arranged would require some form of permanent financing for the banker to be willing to accept the risk of undertaking that loan.

CARRASCO: Well, in a rate increase of 18 percent, for instance or 18-1/2 percent for those short-term obligations that we need to fund would not be a desirable alternative from their standpoint?

GILLEY: If I were a banker I would -- I would not be -- I would say that's correct. It would not be desirable for the reason that these -- these investors and bankers recognize that it's politically unaccepted -- unacceptable to raise rates beyond a certain reasonable limit. And I think that's what you'd be finding -- that's what we found when we negotiated the letter of credit with Texas Commerce Bank. They were very concerned about how the City was going to permanently finance these notes once they mature. Our existing arrangement is that -- that if for some reason the City has not financed these notes with long-term bonds that we fall back into a five-year equal paydown at 67 million dollars at a prime rate loan. We felt like -- we did a yeoman's job in getting them to concur with that. What the bankers wanted was a -- an immediate acceleration of the 67 million dollars in the event that the notes weren't paid so that they could protect their rights with creditors -- other creditors.

MAYOR: Thank you.

URDY: Clarify the statement about the 67 million dollar short-term notes would require an 18 percent increase to repay those notes for how long a period of time? That was not clear to me.

GILLEY: I did not make that calculation.

URDY: I think that came from Frank.

RODRIGUEZ: That would be for one year.

GILLEY: That would be for one year.

URDY: That would repay the entire note?

GILLEY: Under the pay down schedule that would be sufficient to fund the payout of the note over the five-year period. This is what I understand that rate to be.

BILL DERRYBERRY: Councilmember, the 18-1/2 percent would generate 67 million dollars in one year.

URDY: In one year?

DERRYBERRY: Yes, sir.

SPAETH: And that 67 million would go where again?

DERRYBERRY: That would go to pay off the short-term notes.

SPAETH: O.K. so you're going

DERRYBERRY: That would go back -- buy back the short-term notes.

SPAETH: Let me tell you -- you know we talk about politically wrong and you know, not wise -- you know -- how about humanely. You know. We're looking at 18 percent. We've just had a rate increase. We're looking at an increase because of the interest in July. So you know even if you look here at this worst scenario -- unacceptable scenario of 64% by next summer, then this 18% is in addition? (Everybody talking at once)

CARRASCO: Councilmember, we have no problems with using the term "humanely" in lieu of what descriptive terms we've used in there. The point is that there is a substantial impact on the rate payer, and, in addition to that consideration, there is an impact from the standpoint of our ability to negotiate any future short-term obligations.

SPAETH: Okay, what I'm trying to get at, though, is you're talking about -- and I'm going to call it unacceptable to me scenario of 64%, then we're going to add 18% potential on top of that. So you're talking about...

GILLEY: 82.

SPAETH: 82% increase?

GILLEY: I concur. I agree with you.

DUNCAN: Mr. Gilley, these people are obviously not politically unsophisticated since that seems to be a factor in their decision. They're also aware that if we were to move to issue the short-term notes that in all probability which we will discuss later there would be litigation which would stop the issuance of those notes and would be tied up for a very lengthy period of time. That is a more attractive alternative to them. Is that what you're saying?

GILLEY: No, well -- if I -- I'm not sure I understand your question. But what I'm saying is I don't think we can negotiate any kind of short-term financing under the -- what we're constrained by State law to repay that financing within five years. I do not think we can negotiate any kind of short-term financing absent a permanent solution -- a permanent financing plan and I think you're the -- the memo that Mr. Carrasco has passed out has addressed -- well, I should say -- also the Electric Utility Department's report has addressed those solutions to that permanent financing plan.

URDY: You're saying that we were able to negotiate the 67 million because we had a long-term financing plan for that through the bonds that were passed the previous time.

GILLEY: Because of the 97 million bonds that were authorized we were able to convince the bankers that indeed the City had the conviction and the ability to go ahead and issue those 97 million dollars when they're free from litigation and take out the 67 million dollars in notes but without -- without any bonds authorized the City will have some kind -- offer some banker some permanent solution in order to induce him to commit to the kind of risk he might perceive that he would have. Because he does not want to fall back on a prime rate loan -- he does not want to find himself in a situation where he's making a prime rate loan -- to any City of requiring of -- which would require major increases in rates.

SPAETH: Would a commitment to issue revenue bonds to guarantee that if -- as a guarantee that -- could that be a scenario if we were to go ahead and go for short-term money and then guarantee revenue bonds at the end rather than rates?

GILLEY: I think that's what it would take at the miniumum.

DUNCAN: And they would accept that as something that is politically feasible?

GILLEY: They would not accept my word but if the City Council took some formal action to express that intention, I think that

SPAETH: But take our commitment.

DUNCAN: Based on the history that led us to borrow the short-term notes in the first place, I really wonder why they would accept that. And if I'm understanding you correctly, the 97 million that we borrowed -- we have every intention of paying back when the litigation is concluded over that.

GILLEY: That's correct.

DUNCAN: And given that there's no other need to do anything else is there? I mean -- assuming that we successfully conclude the litigation on the 97 million and then issue those bonds which are voter approved, to then pay back the short-term notes, the banks have no problem with that do they?

GILLEY: No. If you --

DUNCAN: So you're assuming then that something is going to occur that -- you're assuming, I guess, that we will not be successful in that litigation.

GILLEY: No. I am assuming that -- the lawyers have told me that we will be successful in the litigation. We've already cut the deal with the banks for the 67 million dollars. The notes were issued in November and that was the way we were able to convince the bankers that they had no risk for being repaid out of the bond proceeds, because we had 97 million dollars authorized by the voters. With the City Council's policy of not issuing bonds without a vote -- the -- because of concern with the City Charter, you have a problem of convincing any banker, any rating service -- Mr. Baxter from Merrill-Lynch was the underwriter who placed those notes, and I suspect he will tell you exactly what I'm telling you.

MAYOR: I think where the Council may be having a problem that I would think anyone listening would have a problem on is why would we issue short-term revenue bonds if we have decided to issue revenue bonds? And there are some reasons for that and you might go into those.

GILLEY: Well, one good reason is that it makes sense to absent questions that in a broader sense issuing short-term notes makes some sense in mixing up your financing to avail yourself of different segments of the market to reduce your borrowing costs because with an ascending yield curve the short-term notes can be borrowed at a cheaper rate. Furthermore, short-term notes can be issued in a shorter period of time than bonds because I suspect we'll have some bond validation procedures. I expect we'll attract litigation if the City proceeds to issue revenue bonds under any circumstance.

MAYOR: Hasn't the interest been cheaper on those than the long-term revenue bonds from the last issue?

GILLEY: Yes, the 67 million dollars were issued at the 6-3/4 percent interest rate. The long-term revenue bonds would probably would sell at --

MAYOR: 50% higher.

GILLEY: I would say 300 basis points higher -- 9-3/4 to 10-1/4 percent interest.

MAYOR: Which is about 50 - 60% higher than the short-term, if that would help us solve the problem, which to me is a good reason for discussing these in detail in and of itself because you save interest rate -- save on your interest costs.

SPAETH: Can I back up a second. Is -- Is -- what I'm hearing is it really getting down to revenue bonds approved or not approved vs. higher rates? Is that --

GILLEY: That's my conclusion. We have examined every alternative that we can think of and I can go --

SPAETH: Then why don't we just say -- you know -- Council, it's getting down to the line -- you know -- we're going to have to have revenue bonds or we're going to have to raise rates.

MAYOR: I think that we've said that.

ROSE: I came in here knowing that.

MAYOR: I said that last time we had an election.

DUNCAN: We've said that for a long time. Well, the question is

SPAETH: Let me tell you something. We've said it, all right, we've said it. The voters having given it to us then are we going to be brave enough to do it? Now, or raise the rates -- and I'm not prepared to raise rates.

DUNCAN: I don't even remember asking the voters for this latest round. I'm sorry.

SPAETH: For revenue bonds. We've been turned down.

DUNCAN: I'm sorry. When was that election that we asked for revenue bonds and was turned down? (Inaudible) I don't think we have.

SHIPMAN: Not on the nuke.

SPAETH: Right after we came on the Council we issued certificates of obligation --

(Inaudible)

MAYOR: That was the election that I was talking about that Roger and I particularly were working so hard on to be sure it passed, and saying either we're going to pass the revenue bonds or we'll go up on electric rates. The voters passed that election 2-1. They passed it 2-1.

SPAETH: In lieu of the electric rates?

MAYOR: Correct. But then we were called into court on awarding of the bond election and so we then went to the short-term markets and had those bonds issued to cover that. Now what they're saying is that the banks --

SPAETH: That was the January election before we took office -- this Council?

MAYOR: What they're saying is that the banks were comfortable with paying that because they felt like they were going to get their money from those 97 million dollars that were coming sooner or later through the issuance of long-term revenue bonds. So that's where we are -- waiting for that litigation still then to pay them off.

GILLEY: I'm prepared to briefly go through the -- what I think would happen in the event of default. Do you want me to proceed at this point?

SHIPMAN: One more question about the 97 million that's tied up in litigation. What is the timing on that? It's been going on now for what? a year? Where are we now?

PAUL ISHAM: I think I can probably respond to that. The suit moved all the way to the Supreme Court by their denial of an application for writ of error. A mandate was issued on December 2 -- I believe that's the date -- 2nd or 3rd. The only thing that's holding it up now is the possibility of a writ of certiorari being filed in the Supreme Court of the United States. In order for the applicants to file that they would have to post a bond and file their writ by March 2 or 3 -- whatever that date is. So we're fast -- quickly approaching the period of time which we think we can go out with that 97 million dollars which will essentially refund the 30 million CO's and the 67 million bond anticipation notes.

SHIPMAN: So we're talking about less than 30 days.

ISHAM: Possibly. Plus whatever it takes to -- I'll have to kick it back to him what it would take to actually issue those bonds.

GILLEY: Probably another 90 days.

ISHAM: O.K.

SHIPMAN: So it would be 90 days under the optimum scenario -- it would be 90 days plus a month that the banks could be repaid.

GILLEY: That's right. But I don't think the banks are worried about getting repaid now or tomorrow. I think that they're comfortable with the arrangement we have made which is we will pay them back at the end of two years or take them out of their liabilities within two years. It's arranging new financing that --

SHIPMAN: I understand. Thank you.

GILLEY: Now, I've been asked to comment on the implications of a default under the participation agreement and I think the answer is very simple and clear -- there's six -- probably seven pretty major consequences. One -- which is the first thing is that Mr. Heiden will probably tell you and it's in your memo to the City Council that default would expose the City to potentially huge claims that have been threatened to be made -- to be filed by the other participants in the project agreement. Secondly, a default would eliminate any serious effort by the City of Austin to divest itself of its project -- of its interest in the project -- which I think is also important. Third, something that's been talked about quite regularly is immediate suspension of the City's bond ratings -- not only on its revenue bonds but on all bonds. The reason for that is because of the potential liabilities that were mentioned in the first item above. The bond rating services would be concerned of the potential liability that the City might have and would look at a worst case scenario whether -- regardless of the circumstances. Four: with the withdrawal of the credit rating the City would be immediately closed out of the credit markets -- long-term bond markets -- for all bonds. Not only for City bonds, but for contract bonds such as MUD bonds. As a result the City would be required to finance its needed public improvements on a pay-as-you-go basis and I think you can -- would certainly expect as a result of that higher electric rates, higher water rates, higher sewer rates, as well as higher taxes -- or a deferral of needed capital improvements. Now, anyone of those scenarios to me would result also in the economic vitality of the City of Austin if we couldn't provide the intrastructure -- if you want to use the buzz word -- for accommodating growth -- or just for meeting the needs of the citizens -- parks, streets, drainage and so forth. Pay-as-you-go basis, I think would be very expensive. Lastly, in the event of default under the participation agreement is defined as an event of default under the 67 million note indenture with the bank. Which means that we would be potentially in a situation where if we did not pay that 67 million on time that they could foreclose on our loan.

DUNCAN: Wait a minute. The 67 million that we're planning to pay back by bonds that we would issue after the litigation is settled -- in other words you're saying if we won the lawsuit, which we expect to do, we would then not be able to issue those 67 million?

GILLEY: That's correct. Because you would be closed out of the credit markets. No one would buy a City of Austin bond for the reason that the -- very much like what happened with WPPSS in Washington State. The rating services are very concerned with an entity's willingness to pay -- not only its ability to pay, but its willingness to pay; and if you've got this cloud of uncertainty over you the rating services will pull the rating very quickly. In fact I've had this confirmed by informal conversation with one of the rating services.

In addition there's the possibility that's been mentioned before that some default scenario would result in the City being supervised by an outside agency, similar to what happened with New York City and that situation will probably occur for many years -- be in place for many years to come. So I think what I'm -- I hope I can convince any of you who may feel like it's a viable alternative that default is really no alternative at all and I feel this is a very serious thing for the City of Austin to even consider and thank you very much.

MAYOR: What did you mean by -- did you have a question, Dr. Urdy?

URDY: Yes. Just for clarification. I think there's some confusion out in the community in general on the difference between cancellation and default. Would you make it quite clear what a default action on the part of the City would be.

GILLEY: Well, as I understand the participation agreement, that the City could not unilaterally cancel the project by declaring that we don't want it. We want out; therefore we want the project cancelled. As I understand it -- as I understand the participation agreement, that would constitute a default under our contract.

URDY: So anything that we did unilaterally that resulted in our not making those progress payments would be a default.

GILLEY: And I think even things like were done in WPPSS in Washington State where payments were made to a court in escrow and withheld from the project would be viewed by the bond rating community -- the bond rating services and investors as a repudiation of your willingness to pay. To perform under that agreement and I think that would probably lock you out of the credit markets.

ROSE: Let me ask you this

GILLEY: And cause withdrawal of your rating.

ROSE: What predictions will you make for our credit rating if we stay in this project and we don't make any effort to guarantee its fiscal responsibility? What's going to happen to our credit rating then?

GILLEY: Well, I -- I'll be very honest with you. I think that's a concern that we face. I think that's a very good point. As a matter of fact, Standard and Poor's has expressed concern to me that "What's the City's long-term generation plan now that the voters have defeated the Fayette participation project?" And I think this is representative of the diligence that needs to be implemented in developing a long-term generation plan and a long term financing plan and so forth.

SHIPMAN: Wait a minute.

(Inaudible - Everyone talking)

DUNCAN: I don't think that's -- maybe I'm wrong -- I don't think that was the gist of Mr. Rose's question because I was about to ask a similar question. We read everywhere, I mean Standard and Poor's has made statements about it. Moody's has made statements about it, all the Wall Street major financial firms have all declared that utilities that have a heavy investment in nuclear are a risk, and the risk has grown greater -- even a couple of years ago they started advising bond buyers to not buy utilities that had nuclear. I think the question is -- and like I say I read that everywhere -- but I've never heard that from our own advisors. And it seems to me if we stay in the project at at some point -- and especially if the project is late according to our own scenario or has other problems, that our bond rating is going to go down.

GILLEY: It's possible. I don't know what credit services will do. We right now have an A-1 rating from Moody's on our bonds and an A+ from Standard and Poor's, which is, I think, a pretty good rating. I gave that example of the Fayette Project because I think it's relevant to the uncertainty that's associated with nuclear projects, but I think the reason we have a quality rating and we've been able to so far, hang in there is because the City has a diverse economic base as far as payment of its electric combined utility systems revenue bonds. I think that -- but I do think that the nuclear project -- I think you're absolutely right -- it represents some potential to affecting our bond rating.

(Inaudible - all talking at once.)

DUNCAN: Especially if it doesn't get an operating license.

GILLEY: Well, that's true.

ROSE: Have you asked that question?

GILLEY: Of Whom? Of the rating services?

ROSE: The same rating authorities that you were talking to about what happens if -- I, I don't advocate under any circumstances -- you know, default. I think it's an absolutely ludicrous idea and totally irresponsible but I also don't want to sit here and make everyone think that if we continue to make our payments regardless of the fashion and stay in this project and don't look at the fiscal responsibility of the managing partners that too might not affect our bond rating.

GILLEY: Well, it's almost ironical that the only way that I can see that you can enhance your ability to get out of that project is to ensure that you provide permanent financing because I don't think anyone is going to negotiate with you in earnest if there is a project -- there that they know that you're in default and you're not willing to make your payments under the progress participation agreement and so forth.

(Inaudible - no volume)

__________: O.K.

AGHJAYAN: I've asked that question of a rating agency and other financial advisors and basically it boils down to whether you make a wise business economic decision. In some cases nuclear projects have been cancelled and the participants have had their credit ratings raised. In other cases the project has been cancelled and the participants have had their ratings lowered. It's whether it's a wise decision or not and any activity that we embark on has to be sound fundamentally good managerial decision-making process. If we think it ought to be cancelled and we think it ought to be cancelled and others agree with us I think the rating agencies would react well to that. If we stay in a project that everyone else says is bad I think they would act negatively to us and -- Mr. Rose?

ROSE: Since you stepped into the box, you get my follow-up question. The follow-up question was going to be: you know, is there not a distinction between starting an initiative for cancellation or serious investigation of cancellation for the project or study cancellation of the project and non-payment of our contract obligation. Is there not a distinction?

AGHJAYAN: Sure. If you concluded that on the basis of the report that the staff presented to you and the recommendations in that report that it required a detailed risk assessment and that it ought to proceed further along those lines, that's a reasonable approach.

ROSE: Thank you.

CARRASCO: Mayor and Council, the next part of the presentation is a discussion of the legal consequences of default. Mr. Tom Heiden will make that part of the presentation.

HEIDEN: Thank you. I'll try to keep this short and brief. My firm, and I believe Fulbright and Jaworski have in the past given you detailed legal opinions on what we believe are likely to be the consequences of the City's failure to make its required weekly progress payments. And I won't repeat those contents for everybody here this afternoon. In addition there are a number of consequences of "default" which are spelled out in the participation agreement itself and I will not repeat those here this afternoon. Maybe the shortest and maybe the most eloquent way of listing some of the legal problems associated with default is simply to repeat some of the things that your partners have said can happen if you default. And they -- they say if they can foreclose on your 16% interest in that concrete, and steel and equipment. They say that they can file claims against Austin for future payments, for delay, for all kinds of excess project costs associated with our default. And I think it's not beyond the pale to see perhaps even a little darker side to all of it. Let us suppose for a moment that there was a player -- that there was a participant -- who wanted to cancel or defer all or part of this project. He might hope that one of his partners went into default. Then he could go forward with his effort to cancel or defer the plant and then he could blame everything -- or attempt to blame everything -- on the partner who ran out of money.

SPAETH: Well, let me ask a question -- you know -- it gets to a point of running out of money or just stopping payment. The threat of foreclosure when we've offered -- I believe this is correct -- we've offered the project to our partners with no money and they said "no" so what you're saying is then they won't take a gift; but they'll foreclose and claim it's an asset?

HEIDEN: Well, they certainly claim that they have a right in the event that you stop making your progress payments to foreclose on your interest in that steel and that concrete and that equipment.

ROSE: And sue you.

(Inaudible - several people talking)

SPAETH: Well then you say that they

HEIDEN: And they also claim that they have a right, excuse me.

(Inaudible - several people talking)

SPAETH: Then in layman's terms is that what you're saying -- that they won't take it as a gift, but they'd foreclose and come against us legally?

MAYOR: Excuse me, but before we go too far with this scenario -- it's never been offered to them as a gift. Let's make that clear. It's been offered to them with them taking up our payments, and that's the problem.

SPAETH: Well, that's a gift.

MAYOR: No it's not. (Laughter)

DUNCAN: They didn't see it that way.

MAYOR: If you think that's a gift, then we ought to keep it because we have 605 million dollars of obligations -- if we give it to them they have to make. And that's why it's not a gift.

SPAETH: O.K. You're offering it to them with obligations.

MAYOR: Well, there's no other way to offer it to them.

DUNCAN: Well, unless we were going to pay the additional 605 million.

SPAETH: Wait a second. Let's look - you know - we've heard today that our lawyers say we're probably going to win the lawsuit. How much is in that lawsuit?

HEIDEN: I don't know what time I got to the meeting, but in the point of the meeting that I've been here for I haven't made any prediction that we're going to win the lawsuit against Brown & Root & Halliburton, and in case I'm even less articulate than I sometimes think I am, let me please disavow any intention to say anything publicly about whether or not I think we're going to win or lose the law suit down in Matagorda County because that's the kind of thing that the defendants down there would hope and pray that myself or Bill Vernon or somebody else would say publicly.

SPAETH: I was led to believe by a previous speaker that the law suit -- you know -- looked good.

HEIDEN: Oh, I'm sorry, Council member Spaeth. I think that that conversation was some sort of prediction as to the ultimate outcome of the bond election contest suit.

SPAETH. O.K. I'm sorry.

DUNCAN: Oh, I thought you were talking about the Halliburton suit. I was wondering why you were reluctant to say that we had a good case.

HEIDEN: I'd be happy --

SPAETH: So the good case is not on Halliburton, it's on the --

MAYOR: He's trying to tell you that it would be best not to discuss this any further. (Laughter)

HEIDEN: I simply can't tell you publicly without perhaps going down to Matagorda County and spending the evening in Jail of what I think of the law suit against Brown & Root and Halliburton. I'll be happy to tell you privately or in some executive session.

SPAETH: When we -- well -- I -- I -- don't care to hear the figure. Let me just -- let me paint this. I don't know what you're talking about dollar-wise, either, but if we took that figure versus what we have invested in it then possibly that could offset the obligation -- could -- could retire the obligation that we have.

MAYOR: Let's make the assumption that -- let's just take a figure that is absolutely pulled out of the air.

SPAETH: 500 million.

MAYOR: It has no relevance. O.K. a billion dollars. We own how much of the billion dollars? -- 16 percent. That's a 160 million dollars. Now if you can come to some resolution to our problem of 605 with owning 16 percent of a billion dollar settlement then you're better -- you know -- that's how you got rich, I guess. (Laughter) You make things like that happen, but I don't know how we can make it happen. That's the problem. And I think that figure of a billion dollars is a lot of money. If you want to consider a lot of money in the settlement.

SPAETH: Let me educate myself a little bit. We are the only persons suing. Is that correct? I mean -- we're the ones -- we're the ones that initiated the law suit on behalf of the project -- I mean -- that's what I'm trying to determine. Did we initiate the --

HEIDEN: That I can respond. I guess at the moment there have been at least three law suits which have been casually referred to this afternoon. One is simply a law suit here in Austin over whether or not the election to authorize the issuance of bonds last January was proper or improper. The second law suit is a law suit which is pending in Matagorda County. In that law suit the plantiffs are all four participating utilities -- Houston Lighting and Power, Central Power and Light, City of San Antonio, and the City of Austin. The defendants are Brown & Root and Halliburton.

SPAETH: O.K.

HEIDEN: The third law suit which is pending in the Travis County Court here in Austin. In that law suit there are presently three parties. The City of Austin is the plaintiff, Houston Industries, the parent of Houston Lighting & Power is the defendant and Houston Lighting and Power is the defendant.

SPAETH: I guess I was confused over the two Houston -- so those are two different entities.

HEIDEN: Yes, and those are two different law suits -- one in Travis County, one in Matagorda County. The one in Travis County -- we are the only participating plaintiff.

SPAETH: You know, and Roger, bear with me. You are aware of this and I saw, you know, you're -- you're kind'a wondering -- you know -- that -- I'm leading to this, but you know, I'm as frustrated as the people out there that are paying. This is a learning process for me. You know a lot about it. You've been through it. So -- you know-- if you'll be a little patient maybe I can step the people and myself through this and then I -- and it's important that I understand all of it. You know we've heard so many stories. We've been so briefed. There have been so many executive sessions on it and you know the charter put it in one picture. So with the three law suits and with the one that looks good is the -- on the original one where the money was tied up on the bonds --

HEIDEN: Yeah, that wasn't my comment but I think one of the other speakers had volunteered that appraisal. Whether that was his opinion or somebody else's opinion, or it came to him in a dream, I'm not sure. It was that first law suit I think I (inaudible)

ISHAM: Maybe the best way to put it is that the City has prevailed at all levels to date in that particular law suit.

HEIDEN: That's correct.

SPAETH: Then, the other thing is then that Houston Power and Light -- Austin has been asking for a cost benefit ratio study, and we've been asking the PUC to investigate this and I understand now that they've come public now and said with the rate increase that's coming from Houston's request in March, they're going to do a study for the first time that we've been requesting. Am I -- is that -- am I correct on that? All right. Then, what would happen -- let's just say that -- and if the PUC recommends cancellation or cancels it.

DUNCAN: They cannot do that. Excuse me, I'm sorry, but --

SPAETH: Now, wait a minute. If the PUC investigates and finds -- you're going to tell me the PUC cannot cancel the project?

DUNCAN: I'll clarify it real quick like, I think. The Public Utilities Commission does not have the authority to tell the partners to cancel the project.

SPAETH: But they can recommend to the NRC --

DUNCAN: No. The PUC can -- in their determination of the rate base -- and what is recoverable through the rate base -- determine that it is not in the public interest for construction work in progress payments to be included in that rate base. So, in other words, they could tell Houston or Corpus that you cannot include in your rate base the money to continue to build the South Texas Project.

Inaudible -- several people talking.

DUNCAN: That's not the same as saying you've got to cancel.

MAYOR: They can go out and sell more stock or something else and raise the money a different way.

SPAETH: What happens when it gets a big crack in it, then who tells them to cancel? No one?

Inaudible -- everyone talking at once.

SPAETH: O.K. so then -- so then -- but if we're the intervenor in HL&P's rate case and we can show that Houston needs capacity and we don't, would we be in a better position to negotiate with our partners out?

AGHJAYAN: I'd like to answer your question, but let me kind'a first put on

SPAETH: Or can't you -- you know -- am I back at

AGHJAYAN: I'd like at first to kind'a put on at least on the record what our current posture is with that recommendation on the PUC. There has been no formal request passed on the PUC for handling this case. There are two avenues by which we could present information...submit this report for formal consideration by the PUC. One is to intervene in a rate case that Houston may or may not file in the upcoming future before the PUC. We could attempt to intervene in that case, file legal intervention....

SPAETH: Wasn't it just in the media that the PUC announced that they were going to investigate ...

SHIPMAN: They said they're ...

Inaudible - everyone talking at once.

SHIPMAN: I thought the news cast last night said they're investigating data for the rate increase that they're anticipating.

Yes -- they're anticipating....

AGHJAYAN: I think they're anticipating of a filing within the next month or two for rates by HL&P and in that process they're going to take a look at the South Texas Project. They haven't filed yet. We haven't intervened yet and we haven't asked to intervene yet. So our involvement in that process would have one stage left.

MAYOR: Nor have we asked to cancel and nor have we asked them to study cancellation or anything else.

AGHJAYAN: No, that's correct.

DUNCAN: We haven't formally asked anything?

AGHJAYAN: We haven't formally asked anything.

MAYOR: That's right.

AGHJAYAN: And secondly there is another process by which we could get involved. There are current rules under the PUC by which we could file a petition and ask for hearings on the South Texas Project and that hasn't been done yet. Our staff report simply went to the point that we needed an independent agency who had the interest of the rate payers at heart. The PUC was that kind of agency. There are other agencies that could perhaps -- that could provide that, but whatever study that's going on now has not been formally requested by the City of Austin. I'm going back to your point is that -- it's kind of a hypothetical question that if we did intervene in a rate case, we could show that they needed capacity and we didn't need capacity. I don't think that's an issue that the rate case would address. I think the rate case is simply a matter of whether or not they can justify certain costs to the Houston rate payers and the PUC would make decisions with respect to that and not look out necessarily for the interests of the City of Austin. We could intervene, but I don't think that they'd be looking out for our rate payers' interest in that proceeding.

CARRASCO: The next part of the presentation is a discussion -- discussion of electric rates as a financing approach and Ed Aghjayan will also...

AGHJAYAN: We drew straws for this and I got the short one. Everything you've heard up to now is the good news. Now this is the bad news. As I talked about earlier, there are really two major ways we pay for South Texas. One is in the interest payments which are already built into the rate structure, and the other is in the progress payments which are not currently built into the rate structure. We've calculated that in order to make those progress payments -- particularly now we're accelerated schedules and rolling four tens have resulted in higher costs to all the participants. that a rate increase in the magnitude of 30-35 percent would be necessary.

Now when I'm talking about rates I'm talking about impact on bills -- the bills would go up 30 - 35 percent on top of the increases already approved to go into effect. One is in effect already. The other will go into effect March 1 on top of 21%. Now if you want to take a look at that on a summer to summer basis and taking a look at the compounding effect of a 35 percent increase on a 21% increase, our average winter residential usage rate would go from $33.34 per month to $48.51 per month. On a survey of the 15 major electric utilities in Texas we would go from the lowest winter residential rate in the State to the second highest of the fifteen. Summer usage -- average usage of 942 kilowatt hours -- and that kind of takes a look at all kinds of residences spread out over the May to October period -- would go from $59.80 to $94.81. That would bring Austin among the 15 Texas utilities from the second lowest in the State to the highest in the State. Large commercial industrial rates, already among the highest in the State, would become so much higher that it would cause serious economic consequences. There is a cascading effect that takes place when rates of this magnitude get implemented. For example, since the Water and Wastewater Department depends heavily on electrical power for pumping, water and wastewater rates would go up some four percent. Since the General Fund usage -- civic center, buildings, outlying buildings that encompass general city usage use a great deal of electricity, taxes would have to be raised 2 1/2 cents to balance off this kind of increase. Austin, because of the impact on business and industry, may become noncompetitive to industries currently located here, and industries viewing Austin as a potential site would certainly be discouraged from locating here. And, in fact, businesses that are marginally profitable, such as small businesses, may go under as a result of a rate increase of this magnitude. Any questions?

CARRASCO: Thank you, Mr. Aghjayan.

SHIPMAN: Clarify not what you just said, but clarify under the other scenario where we're paying about 15 percent right now for the interest payments on our monthly bills to the nuke.

AGHJAYAN: That's right.

SHIPMAN: You said that would go up to 18 percent by '88?

AGHJAYAN: That's right.

SHIPMAN: We still have no power. Nothing on our return just going on down there, and we haven't gotten into the ultimate cost yet? I mean....

AGHJAYAN: That's correct.

SHIPMAN: So what are we looking at over the long term for increases that are going to happen because we're staying in?

AGHJAYAN: I'm not sure I understand that question.

SHIPMAN: Because we're....I'm trying....well, this is if we started funding the total amount out of our monthly obligation out of the utility rates. What is, what would be, what is the percentage going to be anyway if we're just funding it out, of bonds? Out of our utility rates?

AGHJAYAN: Well, the 14.7 percent out of current revenues that goes to pay the South Texas Project payments, that is just for interest payments.

SHIPMAN: I understand. That's why I'm asking what else there is going to be.

AGHJAYAN: And if, in fact, we had to pay the progress payments, then you should anticipate another 30 to 35 percent on top of that. So you're talking 50 percent.

DUNCAN: I think the question is, what's going to happen to our rates if we issue bonds and stay in? Which is the recommendation of our financial advisors. They're going up, aren't they?

AGHJAYAN: Yes, they are.

DUNCAN: As a result of that.

AGHJAYAN: And that program that we outlined that's being at 14.7 percent now and rising to 18.2 percent in 1988 anticipates that interest payments will rise as bonded indebtedness rises and as we continue to float revenue bonds. So that number has that circumstance built into it.

SHIPMAN: So it's really 18 percent plus -- 18 percent just gets us through the next four years.

AGHJAYAN: Yeah.

SHIPMAN: The plant isn't delivering any electricity and we're still paying so that will be -- so that -- we're looking at -- we're looking at rate increases regardless -- to continue our payments.

AGHJAYAN: That's correct.

CARRASCO: Ed, but she compared the 18 percent to the 35 percent.

(Inaudible)

SHIPMAN: No, I wouldn't try. I understand.

CARRASCO: I just want to make that clear.

MAYOR: No, it's 35 compared to 4, sort of isn't it? If you're going to talk -- we're already paying 14 percent -- I mean we're talking about apples and oranges there, really.

AGHJAYAN: I think we've got the right answer here if we can only find the right question for us.

(Inaudible - Everyone talking)

MAYOR: She was just trying to compare the raise in the electric rates but she was talking about the 14 percent of the rates now are for the project.

AGHJAYAN: That's right.

MAYOR: Well, that does not compare or even relate to 35 percent raise and so there's no

AGHJAYAN: There's no comparison between the two. One's for progress payments -- the other's for interest payments and they're additives.

SHIPMAN: I understand, but I'm thinking about our stack of letters that we have from rate payers who are enraged because their rates are going up. And, you know, are saying can we afford to stay in this project? No, we can't afford to stay in it. We're going to have to continue -- we're going to have to pay more, but the legal ramifications -- and I really, you don't question that at all just based on our own research. They're there and ....

URDY: Excuse me. You were saying we are anticipating going from about 14 percent to about 18 percent in four years so are you saying that if we continue to finance through bonds we are anticipating about a one percent per year increase in rates to continue to finance those bonds but is that like an increase roughly of that -- and I don't mean exactly....

AGHJAYAN: Yeah. It's more complex than that because in our analyses we anticipate a growing sales level, so when we take a look at the sales level since Austin is a growing community and there are more customers and there are a higher sales volumes, the amount of interest payments rises rapidly -- more rapidly than that one percent rise. It rises actually in the -- because we anticipate about 13 million dollars annual rise in interest payments, and that would amount to about 3-1/2 percent on the rates or 4 percent on the rates alone -- if nothing else -- if we had no operating cost increases and just had South Texas Project and had no growth then we'd have 3-1/2 to 4 percent rate increases annually just to pay for the increasing interest payments on the project, assuming that we continue to fund the project the way we are and do not capitalize interest. So as long as we keep paying interest out of the rate base that's what happens to it. Since we're growing that diminishes that impact somewhat. I mean new customers will pay more money into it so the impact is -- as you say -- it is about a one percent rise per year.

URDY: But that compares correctly, then, to what we are anticipating a

35 percent, taking into account of growth, if we have to raise the rates and pay out of current revenue.

AGHJAYAN: 35 percent is -- I'm not sure what it would be over the long run, but 35 percent is what we have to do right now. We're haven's run that out over five years. That may be different.

URDY: But, it wouldn't decrease next year. If we raised it 35 percent this year....

AGHJAYAN: I would expect it would decrease slightly for a couple of reasons. One is that after a couple or three years, you go off rolling four tens, and the construction schedule kind of diminishes, so the payments start to drop, and the second reason is that as our rate base grows then that 35 percent figure could be a smaller figure since it's basically fixed right now at its highest level. But it probably would be always over 25 percent. That would not be -- you know, we're talking 30-35 percent now and it might drop over a period of time to about 25 percent.

URDY: And we would pay that throughout the -- until we've paid our full participation agreement?

AGHJAYAN: We didn't run that out over five years because if we felt that if we had to go that kind of a short-term rate increase that most of us wouldn't be around here on the long-term.

(Laughter - inaudible)

URDY: You're probably right.

CARRASCO: Mr. Jim Gilley will cover the topic concerning bond authority as a financing approach.

GILLEY: I'm in a clean-up position and what I hope we've done here is to address these scenarios that you have facing you. Mr. Duncan and Spaeth stole my thunder. Basically, we have two alternatives facing us -- two options -- viable options -- one are rates, and the other are revenue bonds and I would suggest to you as a closing remark that with respect to revenue bonds that I would urge this Council to make a decision quickly because any delay in determining -- in making a policy determination about the use of revenue bonds will automatically put us in a rate -- in a position where we will require the rate increase posture.

DUNCAN: Mr. Gilley, I suggest we may already be in that posture, and I know that we all sit here and say gee, it's down to issuing the bonds or a rate increase and I think that we all have to realistically acknowledge that there will be litigation tying up any revenue bond issue that is not approved by the voters, and well, in the last case, even bonds that are approved by the voters. There'll be litigation typing them up.. And I submit that we may not have that alternative, that indeed it might be down to a rate increase or some actions that we've looked at previously and discarded. So,

GILLEY: If there are no more questions I'll turn it back over to Mr. Carrasco.

CARRASCO: There's one additional item that's not on your agenda that we would like to cover and that's an opportunity to explain how the bond validation process works and I would like for Mr. Rick Porter to assist in reviewing that process for the Council at this time.

RICK PORTER: Thank you. Article 717-1 of the State Statutes authorizes political subdivisions to file a petition in District Court in Travis County requesting that the authority of the issuer to issue securities or bonds be litigated along with the authority to levy rates and charges to pay those obligations and any other matters relating to the securities. Any other actions filed in that court or any other court can be joined with the validation suit so that all matters may be heard at one time. The Attorney General's Office must be served with notice of the suit and the Attorney General is a necessary party to the proceedings and would appear and offer testimony as to the legality and validity of the securities sought to be offered. The judgement, if rendered in favor of the City, is a final judgement on all matters contested or which could be raised in the proceedings, and in fact the statute provides for the imprinting on the bonds of a statement which says that the bonds have been validated by an order of the District Court and any actions contesting the legality of those bonds is enjoined. If I may run through very quickly the procedures and the timing. If the Council was to decide to file the validation or file the validation process on unvoted revenue bonds, the procedures that would be followed would be for the Council to first pass a resolution giving -- directing the publication of notice of intention to issue bonds be given. That notice must be published for two weeks. Following the expiration of that time the Council would need to pass an ordinance authorizing the issuance of bonds and filing of the suit. That suit would then be filed in District Court and the judge would immediately issue an order calling a hearing for the first Monday following 20 days after the -- his order. In addition the judge would order that notice of the hearing be given once a week for two weeks with the first notice at least 14 days prior to the hearing. In a matter such as this and with Austin's history, it's anticipated that the hearing could take up to a week. Hearings of this sort normally take about one day -- maybe a couple of hours, but it's possible that it would take a week and so we've plugged that amount of time in. In addition, we've allowed in the time schedule for approximately one week for the judge to render his order. Again, it is customary in these validation proceedings for the judge to enter an order immediately following the hearing. But to give you a conservative time frame in which to operate, we think it's prudent to plan on two weeks there. There's an appeal period of 30 days following the entry of the judgement, after which the matter is not appealable. There is -- as I believed you discussed, or at least some of you discussed on the lawsuit involving the 97 million -- the election contest -- there is a procedure in the statute whereby the City could ask the judge to set a bond for any contestants. The amount of that bond would be an amount equal to the damages anticipated to be suffered by the City as a result of the delays caused by the contestant. In this case, based on what you've heard, that bond would at least be in hundreds of millions and maybe billions -- I don't know that the -- we haven't had any discussions on what the size of that -- those damages might be. That -- it gives you the validation procedure pretty quickly. I'll be glad to answer any questions.

CARRASCO: Rick?

PORTER: Yes.

CARRASCO: One point that I would appreciate it if you could clarify. Under one of the scenarios that's outlined in the report you discussed the option of having an election to authorize bonds, and in that we indicate that the City probably would not be in a position until September the 4th to receive the bond proceeds. Could you please outline why we feel that amount of time would be required before we could --

PORTER: Yes. The --if -- I believe -- if an election were called and then the validation proceedings commenced following the election -- I think it's an area we were talking about. In order to hold the election as you're -- well, number one. I think that was assuming that the election was held in April as had been suggested and in order to hold an election you must give two weeks notice of the election and then there's a 30 day contest period following the election. It would only be after the contest period that the validation proceedings would then commence. You would not have to give notice of intention to issue the bonds in that instance since the bonds had already been voted. But 30 days after the election is when you would then need to pass an ordinance authorizing the issuance of the bonds and the filing of the lawsuit and start that 80-90 day period running.

MAYOR: Mr. Duncan.

DUNCAN: The bond validation process -- the final outcome of that process if the City were successful -- that judgement would not apply just to the bonds that we were issuing in this instance, would it? Wouldn't it be a general judgement that the City had the authority to issue revenue bonds -- ?

PORTER: Yes, sir. I think.

DUNCAN: Any type -- water and wastewater, electric, airport revenue bonds --

PORTER: The legal issues decided would be exactly the same. The judgement would relate only to those specific securities validated in the procedures utilized in that instance. But the legal principle would certainly be established that the City did have the authority to issue revenue bonds without elections.

DUNCAN: So the Charter question that we've all been discussing would in essence be resolved at that point?

PORTER: That is correct.

DUNCAN: And in essence the Charter would have been either changed or invalidated at that point?

PORTER: Yes sir, I believe that's correct.

DUNCAN: Okay.

CARRASCO: Mayor that concludes our presentation.

MAYOR: Council have any other questions? I have one.

SHIPMAN: Yes, I do, too.

MAYOR: Who did you want to ask?

SHIPMAN: Merrill-Lynch.

MAYOR: Okay, let me ask you a question before you sit down, please, about the.... In the event the election was held and then and passed, we couldn't receive the money until september 4th, but we could still go back in and issue temporary or short-term bonds, because the voters had approved the bonds. Is that not correct? Or maybe I ought to ask....

PORTER: That question I think you should direct to Jim.

MAYOR: Mr. Gilley are you there? Oh, there you are.

GILLEY: Yes.

SPAETH: What if they were issued without voter approval, I noticed the Mayor said with approval, would the same thing apply?

GILLEY: Yes.

SPAETH: Okay.

MAYOR: Ms. Shipman, yes, thank you.

SHIPMAN: Yes, We haven't discussed at all efforts to sell the project.

We haven't talked with Merrill-Lynch since we entered into the contract and I'd like to find out where we are...or what has happened. How many people have --

CARRASCO: Mr. Jim Baxter from Merrill-Lynch is here to answer any questions.

JIM BAXTER: We have been working with the Director of Public Utilities for -- since the end of the summer when we were asked to work with the City to help to find avenues for disposition of the City's interest in the South Texas Project. During that period, as you all know, I think, we have faced a barrage of horrible publicity about nuclear projects in general and about the South Texas Project specifically. We have continued to work on the project, however. We have watched with interest as the Electric Department's staff has completed their study which was recently released. We are, in light of that, continuing to follow up some avenues for disposition. I can't tell you now that there are a lot more bright opportunities than I could when we started. But I would say that we feel that it is still worthwhile to continue working on getting rid of the City's interest in the plant and I would say specifically in light of what's been said today and the problems that you're facing that as I think Mr. Gilley said ironically it is essential to any possibility of disposing of your interest to have a realistic firm plan for financing and carrying out your obligations with regards to the South Texas Project during any negotiations that would go on. Because otherwise nobody would seriously go into these complex negotiations with the City if it looked like the City or anybody else is going to throw this thing into chaos.

MAYOR: More chaos.

SHIPMAN: O.K. I still wanted to know if anyone has expressed an interest in buying the project.... or any entity.

BAXTER: We have -- We do not have any offers to buy the project.

MAYOR: We had an offer here. A guy came up and offered us a dollar oh - ten dollars, I'm sorry.

DUNCAN: But he wouldn't pick up the payments.

(Inaudible - everyone talking)

BAXTER: The 605 million dollars of future payments would be certainly a serious offer to start talking to somebody about if you have anybody who's offering that. I think, as has been indicated, there hasn't been any offer on our part on some discounted basis or otherwise. We are indicating that I think clearly in these circumstances that we would be happy to talk about a lot of different structures and not just a 100 percent cash payment that we're talking about. We have developed a number of ideas for project financing structures where we help the buyer to come up with the money. We have not given up on the continued development of these and we do have some additional prospects to -- quite a number of additional prospects to continue to work with. It's a slow process -- we think it's still worthwhile to continue working and we're going to continue to do so with Ed Aghjayan and his staff.

MAYOR: In all your discussions have you always -- felt like you're talking about the City recovering the 400 million we have in now?

BAXTER: That has been our goal.

MAYOR: Okay. I think the Council may be in a mood to let you begin to look and see if we can give up 400 million and someone take up the payments. And that's a pretty substantial difference from where you've been negotiating from.

BAXTER: I think that's a very interesting development.

MAYOR: Well, if we're talking about cancellation on a serious basis, then we should be able to talk about what I just said.

BAXTER: One of the reasons that I'm here today has been to answer any questions that someone might want to ask me, but also to really listen to what you all are saying and what your other consultants are saying and just basically have a better feel for where we are. Because I think it....

MAYOR: The down side of all that is I don't know if we can get out of our liability.

ROSE: That's right.

MAYOR: The contract I don't think will let us out of our liability no matter what.

DUNCAN: Yes, it would require an amendment.

SHIPMAN: Well,....

MAYOR: But, if they can still make the payments then....

BAXTER: I think if you stopped making payments and have no obligation to make payments from now on you know -- having a secondary or contingent liability for something while still monitoring your partners....

SHIPMAN: Well, here's a second to what the Mayor just said, and that's what's leading into my next question, is the possibility of offering it at a substantially discounted price -- like a dollar and assume that the monthly obligations -- 10 million -- even if we still incurred the liability we're not making 10 million dollars a month, and if we just saved 20 -- 30 -- 40 -- 50 million, we're that much further ahead. And who knows by that time the project -- I mean

DUNCAN: 605 million

SHIPMAN: We don't want to talk about the possibility because we're trying to make a sale.

BAXTER: Well, one of the problems that -- with any sort of sale is as I say the general bad publicity about nuclear plants and a lot of the negative things that have been in the press and people have said about this project -- and that continued litigation. It takes a very brave person on the other side -- in this atmosphere to -- a clear-headed approach, I think, too, to evaluate this thing and see whether there is some value there that is worthwhile for them.

MAYOR: I think that the adjective may be misplaced. I think rich would be better than brave.

SHIPMAN: Well, one thing that keeps coming -- and I understand -- the thing that keeps coming back to me is this that there's been a lot of bad publicity. There's been a lot of financial disasters in the industry. But the other three utilities are not budging at all and are making those payments and obviously want to move forward. So there ought to be somebody else out there that also is interested in that kind of venture. It's high risk. No one questions that. All of your trade journals say just that.

BAXTER: That's true.

SHIPMAN: You know -- and we said we no longer want to bear that risk.

BAXTER: I think you're right. None of the other partners have expressed publicly a desire to do anything other than continue their obligations and complete the plant. T think that distinguishes Austin in the partnership. I think that -- it was said earlier that it's very important for Austin to get on with the business of working out a long-term of electric generation plan. The voters have indicated in Austin that you would like to get out of South Texas, so presumably it's up to Austin to get out of that and also go forward with some other long-term plan which I think any diminution -- reduction -- avoidance of payments that you now are going to have to make in the long term for South Texas are payments that you can apply to the new plan, which will be an alternate to that. And I think that's what we're working on. I think this fits in with the efforts of your Council and the litigation as well. We're all trying to get you out of the thing so that you can go on with the business here.

SHIPMAN: Well, we were just trying to share a reading with you. If you want it since this is our first time to communicate with you. But it appears the Council is most willing to offer it for sale at a you know....

BAXTER: And I think that's....

SPAETH: Have you done a prospectus? Do you have an offering done on this?

BAXTER: We have an offering brochure which has recently been completed to reflect the staff report which we received a few weeks ago which, as was indicated earlier during this proceeding differs somewhat in some of the conclusions from the Bechtel projections.

SPAETH: Is this the first prospectus or anything that you've done? We've retained you, what early, I guess, over a year ago.

BAXTER: We've really had a sort of working document and we've been working with it as developments change -- as the facts change.

AGHJAYAN: There have been several project financing schemes which we've put together. Merrill-Lynch has spent a great deal of time to gather in formal brochure form that have been part of a specific proposal that has been made. I also wanted to add that in terms of of offering -- offering terms -- whether it's a 100 cents on the dollar or 50 cents on the dollar we haven't stipulated what the price -- we've never gotten that far. We have not turned down any offers -- and well, we're like the vacuum cleaner salesman that gets the door slammed in their face. I mean you haven't gotten to price yet. So bear in mind if you want to take a policy position on the fact that you're willing to take a substantial discount on it that is something that I think Merrill-Lynch would -- could react to and would hear, but that has not stopped us from finding any buyers right now.

(Inaudible - Everyone talking)

SPAETH: I share Council Member Shipman's -- you know -- concerns. This is the first we've heard from you and I -- I'd like if you do a prospectus -- or something drop one by my office.

ROSE: I'd like to see what you're offering or how.

BAXTER: I have been reporting really through Ed Aghjayan, as I believe I was asked to do at -- to start with, but I would be very happy to comply with any instructions from the City. I would also be very happy, I think -- while I'm happy to talk now about these things. I'm interested to hear what the Council's views are on this process. I would also be very happy to discuss in executive session in more detail some of this because I think that there are elements of negotiating strategy which are probably best worked out in privacy.

SPAETH: I don't know. Are you based in New York or here?

BAXTER: I'm based in New York.

SPAETH: O.K. Well, I think this is one council member who would prefer to hear less in executive session than more. To be honest with you, have you in your negotiations -- have you dealt with our partners at all -- and has there been a top level contact or has it just been through negotiators or partner's lawyers.

BAXTER: Mr. Aghjayan and I have met with the Chairman of Houston Industries and also have met with the President of Houston Industries and with senior officers of each of the other partners.

SPAETH: Well, you know, I think that we're, and it's something that's been indicated to me, is that we've kind of been like Peck's bad boys, the bad guys on the block in this and we're the ones wanting out and I think our negotiations have kind of stalled. I know that we haven't had the top level people I don't believe at our recent meetings, is that true? And so, you know, maybe just like today -- on Friday we did get a message out to our partners that this was going to occur. If we had our partners more involved with our problems and maybe they would be more sensitive and we would be -- I'm not saying we've been offensive but somehow I'm getting a feeling after visiting with some people that they're not annoyed that's not the right word, but it's just like when you have a partner that you don't get along with you tend not to communicate too well with them. So I think our posture if it included the partners more, we could deal top level and we want more from a positive let's accomplish something than a negative that we've got a bad problem.

MAYOR: Well, I will speak to that in a minute but before we do I'd like Mr. Rose to say something.

(Everyone talking at once)

ROSE: Well, I'm also going to say that I don't think that first of all that I don't give a dang about being Houston's bad boy, I'll tell you that right now. Secondly, I don't think they're going to come here, Council Member Spaeth, in an open forum and negotiate a sale of the South Texas Nuclear.

SPAETH: I didn't recommend that.

ROSE: I don't know that I appreciate that comment. My question is directed to Mr. Heiden. I'll tell Merrill-Lynch that your professional reputation in my opinion is not going to go down if you are unable to produce a buyer for this project.

BAXTER: Thank you.

ROSE: Mr. Heiden. I was thinking this morning this project has a long history. When this project first started and was first brought to the

City Council of Austin -- I was in high school. I was a senior in high school. And I think a lot of what we're talking about here today is that this project and our involvement in it is going to continue to be with someone for quite sometime. What I wanted to ask you to go over, if you would, because we have not talked about it are some of the specifics, you know, assuming that the project is completed and for that matter you can assume that it is completed on time and at Bechtel's cost projections. I would like for you to review what the licensing process for this project is going to be -- some of the problems within the limits that you can discuss concerning that licensing process and what we could be talking about because I'm fairly convinced that even if this project is completed that it very well may never be licensed or would be many, many years before that licensing process is completed and the only alternative that I can see is President Reagan completely changing the NRC process of licensing nuclear power plants. I don't see that happening. So with that dark introduction -- if I'm wrong, tell me I'm wrong. If I'm right -- expound upon it please.

HEIDEN: There are basically two kinds of permits that the Nuclear Regulatory Commission issues with respect to nuclear power plants. The first is a so-called construction permit. They won't let you get out there and design and engineer and build a plant without a construction permit. The project has had a construction permit for a long period of time. I think it got its construction permit in 1975 -- if that's possible. I think it is possible. I think it's true. It also ultimately needs an operating license. The fact that the NRC has authorized you to construct the plant does not necessarily mean that the NRC will later authorize you to operate the plant. Commonwealth Edison in Chicago at the Byron plant learned that to its 2-1/2 billion dollars chagrin three weeks ago. The plant doesn't have an operating license, but the plant doesn't need an operating license yet, and under the Bechtel forcast won't need an operating license for a considerable period of time. There are a number of issues which are submitted to the Nuclear Regulatory Commission in its licensing process in connection with the issuance of an operating permit. I won't bore you with all of the details of the licensing process -- and I'm not sure that I know all of the details of the licensing process -- because to a large extent that has been handled by the project manager -- by Houston Lighting and Power. We have, however, at the City of Austin, supported all of the licensing efforts to date for this plant. The construction permit licensing process has had at least one thing broken out of it that you ought to know about.... and that is a sort of a separate docket, if you will, was put together by the NRC in connection with the question of the competence or fitness of Houston Lighting and Power as the project manager to get a license to operate that plant. There was an extensive factual hearing before the NRC which was completed on that issue more than a year ago, and there has never been a decision handed down by the administrative panel of the Nuclear Regulatory Commission which heard that hearing on that question of the fitness and competence of Houston Lighing and Power to get an operating license and I don't think that anyone will give you -- that is anyone from Houston Lighting and Power a prediction as to when the Nuclear Regulatory Commission is going to reach a decision on that portion of the licensing. I wish I could be more helpful, but I think that's pretty accurate summary of the current status.

ROSE: Thank you.

DUNCAN: I have a -- question for Mr. Aghjayan.

(Inaudible)

DUNCAN: Go ahead Mayor.

MAYOR: You were talking and I just want to discuss this. There's not any doubt that the perception of the partners of us is not good. And I don't know how it could be otherwise. The thing that I want to be sure that we discuss openly in this community is the fact that Houston Lighting and Power has a PR firm that they hire and they pay to disseminate information in this community. That they have sent over teams of people to discuss with leaders of our community Houston Lighting and Power's position. And that they continue to push....

ROSE: They're here today.

MAYOR: I hope they're here today because we invited them at Mr. Spaeth's recommendation, which I think is an excellent one. He suggested that we make sure that our partners know what we're doing, and I think that was good. But whenever you have a partner that wants to get out of the deal and not make their payments and puts pressure on the other partners to allow that to happen, you're not going to have good relationships. But I do want you to know that we have entered into discussions from the beginning of this administration with an open mind, tried our very best to find a way for a solution to this problem. Mr. Aghjayan knows this is true. Mr. Duncan knows this is true. It was always very friendly very -- went along very well, except nothing ever happened -- nothing ever happened and nothing is going to happen in my opinion because as long as we keep making our payments and discussing it -- nothing is going to come to a conclusion. So when you start trying to make something happen, then your partners are going to get upset and that's what they are now. They're going to be upset from now on in my opinion, because we're going to continue to push to make something happen, I believe. Now if I've misstated what you....

DUNCAN: I think you hit it right on the head and we have tried every means possible. We've offered to meet any time, any place with our partners as often as they wanted to. We've laid proposals out on the table. We've done everything in our ability to work agreeably with our partners and my -- I agree with the Mayor, I don't think it's gotten anywhere. And, in fact, I'll have some recommendations on that later.

MAYOR: After our last meeting, which was not a friendly meeting because of the fact that our Electric Utility Department released a report for the citizens of Austin and for the City Council that was not a positive report. It was a negative report. Because that was released then the last meeting we had was a very unfriendly meeting. It was a tough meeting and we did not hear from our partners for quite some time and I am the one who took the initiative several weeks ago to call them and say when are we going to meet again? Because I do want communications to continue I do hope we come to a resolution. I don't like for us to continue to pay -- make payments and fight and argue. I want it to be resolved as much as you do, Mr. Spaeth. But I can assure you that with the billions of dollars that we're talking about in suits, we are suing Houston Lighting and Power. That surely doesn't make for a very friendly relationship. So, you may have some other information on this that we need to discuss publicly, and I'd really cherish the opportunity to do that.

AGHJAYAN: Can I jump into this and say all the while we've been involved in these discussions in trying to resolve the lawsuits, to sell our share of it, we have fully participated in the building of that project and made our payments and participated in every management committee meeting every month and have been full part of being a responsive, responsible participant because we wanted to maintain the value of our equity in that project and I can think of no instance when we were obstructionist in any way. But it's been clearly made -- the point has been clearly made over and over and over again -- not only by myself but by the Mayor, and Mr. Duncan during the settlement discussions -- that we're interested in selling it. We think they know that by now.

DUNCAN: Mr. Aghjayan, the question I had related to coal conversion. You pointed out that Zimmer Plant has just made the decision to convert to coal because of their problems. We've discussed this before. Could you -- and I understand that we do not have a study back on it yet, but could you in very general terms say whether or not that's even possible and whether or not there might be some advantages to it or what.

AGHJAYAN: When the subject came up when we read about the conversion of Zimmer -- the proposed conversion of Zimmer -- we asked the firm who's currently working on our generation plan, the Charles T. Main Company, in Boston has experience in power generation to take a quick first level look at coal conversion and they're in the process of writing a brief report. It's not an extensive report and obviously would be followed up. We expect to get copies of that by early next week -- late this week or early next week. I think what they're going to conclude is that if you just look at the economic costs and take a look at the project completing and compare it to converting to coal -- completing the project assuming everything goes right is more economical. I mean I think that anyone will tell you that. We said that in our report that it's more economical to complete it. However, there's a risk factor with nuclear projects -- a risk factor that has been brought out in -- again in

Zimmer and Byron and Marble Hill and other projects that something bad could happen and you never know when it's going to happen or what it's going to be and if you factor that risk factor into it and if you look at the project a little differently. In fact, if you look at it instead of in comparison to completing it -- in comparison to cancellation then the economics take on a slightly different ring. I don't know what they're going to come out with, but preliminarily I've been told that about 20 percent of the structure is usable. The infrastructure is usable in a conversion. The site is there. It's a 12,000 acre site. It has a 7,000 acre reservoir that it's ready to use. It has rail facilities. Transmission lines are in and built. If Austin's generation plan is going to consist of getting out of the nuke and into coal or lignite as we once said we were, but now into coal, then maybe a more viable alternative for Austin is conversion, and it ought to be looked at further. Now the economics for the various participants would be different, I'm sure, and they would view it differently. But it is something that warrants further -- study.

DUNCAN: Thank you.

SPAETH: Also, I think we have a sales job and we've got partners to get to agree we're back to square one. Just like everything else we've been talking about.

MAYOR: And a long-term situation.

SPAETH: The payments continue until we get them to agree, because you don't get out and say let's go back in with coal.

DUNCAN: Are we ready to get down to it?

MAYOR: What are we going to get down to?

DUNCAN: Suggestions

MAYOR: Let's go - yeah, sure.

DUNCAN: All right. There are a lot of options. I mean it looks like we're really bound in here, but in actuality part of the problem is that there's a lot of different things to do. Let me tell you where my feelings are at right now and what I think we -- the direction I think we should be going in. First of all my opinion is that the plant is never going to be fully licensed and operate efficiently for 30 years. And all the economics that we hear about completion of the plant and such are based on that assumption that it'll get an operating license, that in fact it will come in somewhere close to Bechtel cost and schedule and that it will operate efficiently for 30 years. And I just don't think that's going to happen. There's nothing in the history of the project that leads me to believe that. If we go on that assumption and secondly, another assumption is backing up what the mayor said earlier, I don't think the settlement talks are going anywhere and that -- and we haven't discussed this fully, but we have worked hard we've been available. We've tried time and time again to offer possible solutions for settlement and if they're progressing at all, it's at a snail's pace. And given those two things, I think we should look at doing several things. First, I think we ought to proceed with cancellation of the project. We ought to proceed with hiring a consultant to do that -- provide the information to the Public Utility Commission that they're going to look at cancellation, support them in that effort. We have less than half the money in the project. We've put in 470 million and we're looking at another 605 million to complete it. I don't think, given the conditions of that plant and the probably future of that plant that it can be said to be a wise decision to double our money in that investment and we're being asked to more than double our money on the bet that the plant will get a license and operate efficiently. So I think we ought to pursue vigorously the cancellation of the project. At the same time I think we ought to pursue the coal conversion option. If that is a more economic alternative to cancellation, then that's the way we ought to go. It obviously is not impossible. Zimmer reached the same conclusion. Third, you know, if the partners don't like either one of those options -- either cancelling or converting it to coal -- they always have a third option. They can buy us out. I think the Mayor has made it very clear that we are willing to extremely discount our price down to the point of asking them just to pick up our payments in the future. That's certainly an option for them -- an option to cancellation or coal conversion. If the partners won't agree to either of those or buying us out, then I still think we should vigorously pursue both cancellation and coal conversion even to the point of going to the Public Utilities Commission and requesting of them that they look at the rate bases of the private utilities and really determine if it is in the public interest to continue construction work and progress payments. In line with the discussion on settlement talks, In really don't think they're going anywhere without violation of the gag order. I'll simply say that in my opinion I think we've got a good case and I always have thought that. And I'm ready to go to trial. I think we may recover quite a bit of our losses through litigation.

(Inaudible)

MAYOR: Be careful how far you go.

DUNCAN: I understand and that's all I'll say. It's just my opinion -- I think we ought to go to trial and I'm ready to cut off the settlement talks, because I don't think they're going anywhere. As to what we do in meeting our immediate crisis on funding, I don't think we've exhausted all of our options yet. I think we need to go to the court and ask the court for relief from our progress payments. We have a case pending before the court for reformation of the contract -- complete reformation of the contract that includes the default provision. And I think we ought to ask the court to relieve us from our progress payments until the question of reformation is settled. And we should do that immediately. If we're not successful there, then I think we ought to look at going to the voters again. And under either circumstances, I am not willing to go down the road of a bond validation process that will settle -- that will change the Charter of this City without a proper charter revision election.

ROSE: May I ask you a question?

DUNCAN: That's it.

ROSE: What's your position on default of the contract payments?

DUNCAN: Well, I know that we have -- you know -- for years around here I've heard that default would be slightly worse on Austin that a direct nuclear strike. I'm not sure I'm in agreement with all the opinions that have been expressed and I think more weight should be given to what's going to happen to our bond issues if they fail. However, I do not consider default a viable option.

ROSE: I think that the Public Utilities Commission is perhaps the proper body to look at cancellation. I have said it before that I think as far as this project is concerned we have the rate base of Corpus Christi and Houston and San Antonio and the City of Austin involved in this project and if that's not a Statewide issue then I simply don't understand what a Stateswide issue is. One thing that I will add to your prediction that this plant will, in fact, never be licensed or that we may very well never get a meaningful settlement. You know this -- jump up, Heiden, if you have to here -- but, you know, it appears to me that our successful conclusion of that suit would all but guarantee that there would never be an operating license for this plant, because so much of what we're alleging against our partners directly ties to the competence of the design and the operation of the plant in its origination. And that is a basic flaw that runs through that plant. I will agree with your scenario of moving down the line here. I have stated before under no circumstances would I -- would I consider default because I simply do not -- I do believe it's tantamount to a financial nuclear strike. I think that's a good analogy. I don't think this City could function under that scenario because of litigation that would -- that would come directly to our utilities. I can't for the life of me imagine why anyone would rate or buy a City of Austin bond when you had litigation pending against our utility to the magnitude that it would be if we defaulted under those payments. I certainly would not. I would agree to the provision to go to court if we can get a reading that can be done in an expeditious manner. Because if it cannot and it just prolongs the agony of the basic decision of whether or not to go to the voters or issue the revenue bonds in some other manner I think we first need to establish and I'd like somebody to go through exactly what that scenario of going to court would mean and how quickly that could be done and also there were some rather strong statements in here in the information we got that going to court was almost the same as default, and I'd like somebody to explain that statement.

DUNCAN: I think Mr. Heiden could probably address the court scenario.

MAYOR: Mr. Heiden, could you come up to....

(Inaudible)

SPAETH:.....just can't be taped.

MAYOR: We need it on tape.

HEIDEN: I can't conceive, Council Member Duncan, that there's any meaningful portion of the discussion about suspending progress payments by order of a court that I can do in public session without either violating that order or violating some attorney-client privilege. And I apologize for that, but I just don't see how I can do it.

DUNCAN: I understand. Thank you.

MAYOR: Well, we need to discuss that as part of the scenario so we will have to go into executive session.

DUNCAN: We'll have to go into executive session.

MAYOR: Anyone else want to speak? Yes?

URDY: Yes.

MAYOR: Go ahead, Mr. Spaeth. You were first.

SPAETH: I don't think the negotiations are necessarily over. Maybe we just change our tactics. And I'd like for us to think possibly of involving 20 or 25 of the top chief executives of this City together and let them pick five or three or whatever their number of chief executive officers. It could be a negotiating team on behalf of the City to go talk to our partners in a board room -- direct eyeball to eyeball and let them be like a task force and -- and I think we've been close to it. I know the Mayor's been with it for seven years -- 7-1/2 years -- Council Member Duncan in the second term and I'm not questioning their negotiating. I'm not -- that isn't part of it. I'm just trying to think if the negotiations are stalled, then you come up with something that can get them back on center.

DUNCAN: This might do that.

(Inaudible)

DUNCAN: That is exactly why this is being proposed.

SPAETH: What are you referring to?

MAYOR: Why don't you go ahead and finish.

DUNCAN: I'm sorry.

SPAETH: Well, go ahead. What are you referring to?

MAYOR: Why don't you go ahead and finish.

DUNCAN: The scenario

SPAETH: I think the scenario is fine, Council Member Duncan, but how do we make the payments during all of this? So I think then I mean, you're right back to the point of the problem of why we're here. So, you know, if we have a change of anything in a negotiation, and you've told me yourself that -- you know -- they stalled. We have some tremendous top executive talent in this City that I think we could get to step into -- that is used to this negotiation everyday and say -- you know -- we're in a stall, can you get it started? And let's go ahead -- and it's just an idea. I believe that this is a work session and it's for ideas. And I could be all wet. But, you know, I think it's a good idea and I want to share it.

MAYOR: Before we respond to that did you have any others that you wanted to add to that? Go ahead you started to respond.

DUNCAN: I just don't share that position. I have had direct eyeball to eyeball talks with the chief executive officer of HL & P two years ago. I think the problem -- and I think the Mayor will verify this in recent settlement talks that we have not been able to get the CEO's of the other partners to sit down at the table and the CEO's of the prople that we're litigating against. And ---

SPAETH: Do you know why? I mean, could we maybe come up with the question, and I don't know why. But, I mean there's got to be an answer. Why we're willing to be there and they're not.

MAYOR: I'll tell you what.

SPAETH: So maybe if we changed some of the players.

DUNCAN: Maybe the Mayor can answer that, I think he's got some of the same answers as mine.

SPAETH: All I'm saying is if we could change some of the players -- maybe the game would change.

MAYOR: We would be very glad to have their top CEO's show up. As a matter of fact I will share with you that that's what happened. I said to Mr. Duncan and to the other partners why is it that we show up here to negotiate in good faith and you all won't send anyone that can make a decision. I'm tired to talking to attorneys. I'm tired of talking to people that can't make decisions. When you all want to negotiate, let's all sit down and talk to people who make decisions, and that's where we've left it. And that's not because we didn't want to negotiate it's because they don't want to send the people to talk. I don't think they want to do anything right now is the problem. But if that's incorrect, we're wide open for discussions on this. But we haven't been told this. Tom, are we getting off on the deep end?

HEIDEN: I think that there are -- as a matter of judgement or discretion there are some bounds in terms of settlement discussions -- I haven't participated in them so I don't know what has happened at the settlement discussions, but just seems to me that we ought to exercise some judgement in terms of how much discussion we permit in public about settlement discussions to date. I'm sorry.

MAYOR: I didn't want to go into the details of what happened in those discussions or who offered what or anything else, but I'm talking about an attitude, and I appreciate that. We'll stop there but if -- I guess I will reiterate, Mr. Spaeth, so that we can go back to the subject, and that is we have spent hours and hours and hours trying to work with the other folks. We will continue to do that if they would like to do it and I may be totally incorrect. As a matter of fact, I must be fair and say that some people told me they had the flu and some other things and that they're wanting to get back to the discussion table. And I think that probably in the next few weeks something like that might happen. But my question would be what getting a large number of CEO's together, what that does. I seems to me like the CEO's that negotiate -- negotiate from a basis of knowledge. And if I'm going to negotiate the sale of a company or something like that, that's fine. But to ask the top CEO's of this City to come in and negotiate on this item would require a great deal of education on what this item is. You serve on the Council and you're right with it. But you, too, have seen how broad it is how technical it is, how massive it is and how hard it is to even get a handle on it, and you're here for hours and hours and hours every week. So how can you take a person like you who's the top CEO of a company and bring them in cold and expect them to negotiate with the limited amount of knowledge that they have on this subject?

SPAETH: Do you want an answer?

MAYOR: Sure

SPAETH: O.K. I think that you get your chief executive officers together. You determine who's the best in negotiation in town. Who is the best in acquisition. Whether you acquire or sell, you have to learn knowledge fast, and you learn your hit points. And so there's got to be a hit point man or two in this City that can do board room negotiations. And I think by changing that posture at this time, that I think that we could throw -- not really a curve -- but a different slant on the whole thing. And I'm not saying the existing negotiating team does not exist and maybe have them report and strategize. but it would not take someone long to come up to par who is used to coming up to par when something is put before them and they have to make a decision as to how they're going to act -- whether it's a loan committee on a 10 million dollar loan on a massive building. There's certain buttons and certain things that occur in an area like that, and I think that's the arena we're in. I think the negotiating team has done a tremendous job and I'm glad I wasn't on it because it's been above me. And I don't have the experience in it, nor do I have the knowledge, but I think somebody with the experience we can give them the knowledge and I'm not saying that this 20 men, then five, but, you know, we get in general, who do you all think? And it's going to narrow down to 2 or 3 it's going to be non-partisan, non-involved. They've going to be fresh and they're going to be able to go to one of their counterparts and say O.K., Sam, you know, Austin is going to do something about this and this is the way it is and so there's got to be a point that you can negotiate and we can settle this. I've seen it happen time and time again and I think that's reasonable and I just would like to see it and I -- and you say yes, you inferred earlier that I've made money, yes, but I've always done it through negotiation -- never litigation and it's always been that I've gone to the other people that have not necessarily known what I was talking about, but they've come up to par pretty quick and I've either let them give me -- let me be the hit point man with their knowledge or I've said, okay, I'd rather have you go do that and I think there are people in this town that would do it, and I think at no expense I think for the City try to negotiate.

ROSE: I couldn't disagree with that more. I really couldn't. But that is an absolute abdication of the responsibility of public service, and I would never under any circumstances turn the responsibilities of my office over to the corporate board rooms of Austin under any scenario.

SPAETH: Just existing negotiating team, Council Member Rose.

ROSE: Just so you understood that, I mean, we don't really, I think, need to spend much more time on it, but I fundamentally disagree.

SPAETH: ....negotiating team. So I don't know -- we're going -- when you go and ask for help from the people that are being affected is making you derelict in your duties.

MAYOR: Well, let me suggest this. There is nothing that would stop you from going ahead and proceeding with that kind of scenario and I for one would be extremely pleased to sit down and talk with them and get their ideas. As I will with anyone, and I really mean that. I'm not saying that lightly and I think, I know, I don't think Mr. Duncan would be the same way with Ed Aghjayan and take any suggestions or ideas or anything to the table that they can think of. I think that we have one item here that you've got to realize though and that is that I don't believe that the partners want to negotiate right now...period. Now they may come to a place where they do want to, but right now I don't think so.

SPAETH: Well, according to Mr. Duncan with the scenario he's painted I would say that if he's right they will and I'm not sure -- if I agree with him. But you know then if he's saying he's right then they've got two choices, you know, negotiate or we're going to navigate through you, and I don't think that, you know ....

DUNCAN: You interpreted it right. I agree with the Mayor. I don't think that the position they're in right now is to negotiate -- I think they would welcome a restructuring of the negotiations talks and set a schedule that would run us for the next few years, in my opinion.

MAYOR: And without being harsh, and just this is totally an assumption. Please take it for that, please.

SPAETH: And the Mayor tells me to read lips.

MAYOR: No, I just .... But, I would not be surprised if that scenario didn't come out of one of our partners.

SPAETH: What is that?

MAYOR: To restructure to change who is trying to do the negotiating now because the negotiating is not going to the liking of some partners and that it would be better for that negotiation to go back to some folks that may be more favorable towards keeping the project, not selling the project, etc. And if we turn it, there are certainly people in town that feel like that we should go ahead and continue to keep this project and would negotiate on that basis, I suppose. But as far as I'm concerned until the voters tell me differently, we're trying to get out of it.

SPAETH: I agree, and I think your assumption is a little tainted.

MAYOR: Not tainted, it's an assumption to start with. I made it very clear. Did you want to say something, Dr. Urdy?

URDY: Yes, just briefly, you know, I can support, I think, most of the things that we've heard. Certainly the attempt at coal conversion, cancellation or continued settlement with our partners. We do know that those things would require some agreement on the part of our partners, though. Certainly we should proceed to try to sell it. We can ask for relief. We can do all of those things. None of them are going to happen next week. And I think that from what we're hearing from our staff is that unless we proceed to do something that by the first of May we're going to get just exactly what all of do not want, and that's default. I certainly do not favor defaulting. I think what ultimately is going to happen to the project is that it is going to be cancelled, but that's not going to happen before the first of May, either. And I think that unless we find some rational way of continuing to make the payments then we're going to get just exactly what nobody wants. I think the next worst thing to default on the part of the City is raising the electric rates 35 percent. Because even though that will keep us out of default, it will cause a lot of our citizens to go into default, and especially a lot of small businesses who are almost already there now with the last 20% increase in their electric rates. We cannot do that. At least I don't think we can. And so I think what we have to do now, and staff again said we have to start doing something if we're going to meet this May 1st deadline is to find a way that we can -- that we can use revenue bonds to finance this project. This is the way we've been financing those projects as long as I can remember, and to change to financing out of credit revenue would be a big change also and I'm talking not only about proceeding with an election -- I certainly will favor that and I -- you know, I don't know I don't know if the voters would pass them or not, but we're talking about making a significant change if we consider raising electric rates significantly and paying for such a long-term project out of current revenues. That's on the same order of magnitude as a change in the Charter to me, and I think the impact on the citizens if we adequately explain we're talking about now -- 35% increase in electric rates on our citizenry for, who knows, how long? I don't know. Then I think it just would be absolutely devastating. I think anything that would be, you know, maybe if default is a nuclear holocaust. I think a 35 percent rate increase would be a conventional war holocaust. All of those other things I'm for proceeding and trying to accomplish them as you know, to the best of our ability, but I think the ultimate thing is that we've got to find very shortly some way to continue to pay our payments into this thing and I don't see raising electric rates that amount as a reasonable alternative.

DUNCAN: Dr. Urdy, let me suggest then that the scenario be that we proceed to court immediately to ask relief from our payments and that hopefully that we might get a decision from the Court within a relatively short amount of time -- if not that we do proceed on the basis of an election to ask the voters for approval and then -- I think we have to exhaust both of those options before we look at the rate increase, or the issuing of bonds without voter approval.

URDY: Someone, I'm not sure whether it was an attorney or bond council or whatever said that they at least they did not feel, and I'm not sure who said that exactly how strong a statement it was that relief from the Court would not relieve us from default. Did someone remember saying that?

BAXTER: Yes, sir, I think that those are a similar fact pattern to what happened in WPPSS and I think it's alluded to in the memo that was passed out here in public.

MAYOR: Anyone else?

CARRASCO: Would you like us to go over that, Council?

URDY: Yes.

PORTER: I might mention one other thing just from a timing standpoint. The, I think our report indicates a rate increase would have to go into effect May 1 and any election if you're going to go on to -- if you assume that you would not prevail, and I don't know what the chances are of succeeding in the Court fight that you're talking about -- but if you assume that you might not prevail, then you are assuming that you're going to have to go to the rate increase mechanism before you -- because if you try to issue the bonds .... have an election and then go through that process -- you'd be well into the summer, possibly the fall, before you'd ever get money. So I think you'd be looking at a rate increase over the summer of while you went through the process of getting your bonds out.

DUNCAN: Yes, I also assume that would happen under the other scenario. If we attempt to issue revenue bonds without voter approval, it goes into litigation we're not able to use that money until that litigation is settled -- which could be a long time. Even under the bond validation process you were talking about what -- four months?

PORTER: Yes, hopefully that between three and four months. So, ...

DUNCAN: So you're into the summer, either way.

PORTER: You're back -- you're into -- if -- on the long end of it you're into June where you would be looking at the option of either having the rates go into effect or using the 11-1/2 million dollars which would cause the 3.3% rate increase -- or whatever the number was.

CARRASCO: Council Member Urdy, to answer your question concerning seeking relief through the Courts -- as outlined in the report that we transmitted to the Council -- it's the feeling of our legal Counsel that if we were to go to the Courts and ask them to either halt our progress payments or to place these payments in escrow pending resolution of litigation on the participation agreement, but under either situation this would be tantamount to a default and would not be well received by credit -- by the credit rating services or the financial markets and for that reason we did not feel that there's any resolution if we go that route. And I think the comparison was made with Washington Public Power Supply System where we actually have a real situation where that kind of technique was attempted, and it was met with very negative consequences as far as the credit market was concerned.

MAYOR: Could I ask you a question of Mr. Heiden or I don't know who would ask this. This is a hypothetical question just to try and find out the information. In the event that we found out that a partner had been syphoning off a million dollars a month into their own private coffers and that we didn't have any way to stop that. What recourse would we have? Continue to make the payments and just say "bleed"? At what point do you have the right to say, "Look, this isn't the deal we made when we started -- it's a different scenario. We made a deal, and it's all changed now. And we don't want to pay anymore."

HEIDEN: Mr. Mayor I don't have to answer that hypothetically

MAYOR: O.K.

HEIDEN: But I think I can answer that briefly without violating anything. If you were to go back and read the complaint that you and the rest of the City Council authorized us to file a year ago this time against Houston Lighting and Power, you would find that to paraphrase the substance of that complaint we said "Hey, look, the deal that we are involved in now is so different from the deal that we signed up to participate in 1973 that we ought to be entitled to some judicial relief in the nature of the court sitting down and rewriting our contractual obligations with or to Houston Lighting and Power." That's what we plead. That's the relief that we asked for, and that's on file.

MAYOR: And that's what we're waiting till when to hear on?

HEIDEN: And that's one of the two cases that haven't been tried yet.

(Laughter)

SHIPMAN: So the answer to the Mayor's question, yes, you have to continue 10 million a month?

HEIDEN: Now, that question is one of the ones that I tried to bail out on the -- bail out on 10 or 15 minutes ago. I will be happy to address that for you -- I have addressed it in the past. I'm going to address it this evening, but I just don't think that I can answer it publicly, and if I do I don't think that I'm doing you a favor.

MAYOR: Okay.

SHIPMAN: All right -- what -- what I -- what we keep coming back to, and hopefully we can profit from what's happened with other utilities. It is the question of timing at this point. I agree with -- I think Dr. Urdy did an excellent job of pulling the whole scenario together. The question of timing as to when this project is cancelled, and the PUC may well bring that about when they look at the Houston construction and progress payments. So it seems like we're not this evening -- we're not looking at an additional 600 million dollars. We're looking at a lesser amount because there are too many unknowns about the next year, and there are too many unknowns about the industry. I mean who would have thought four weeks ago that how many plants? .....three.

SHIPMAN: Three large -- with horrendous investments you know -- I I think -- I think that we ought to -- I think we out to publicly say and request intervention in the Houston rate case. I think we ought to do it. I think we ought to do it today. I think we ought to actually authorize Merrill-Lynch to -- you know to proceed with -- with selling at -- take up the payments. Buy it for a dollar. Respond. We want to hear in thirty days. Take it or leave it -- that's it. The deal's off in thirty days. You know -- maybe 60 days because it well -- if -- if we're going -- if this is appearing before the PUC in March I think that's .... again, I'm looking for timing and if we can discuss that, let's do it but let's lay out the timeline we're under, because the litigation -- what I hear you keep saying is that's a very long time line before we recoup our investment or have the potential to recoup it. Is that correct?

HEIDEN: Only one of the two cases is presently set for trial. The case against Brown and Root and Halliburton is presently set to begin trial in March of next year.

SHIPMAN: So that's '85?

HEIDEN: Yes, March of 1985.

SHIPMAN: And under the best case scenario it would be sometime in '85.

HEIDEN: It would be sometime after March of '85.

SHIPMAN: Right. Okay. Well, is there any more information on timing? I just -- you know, because I keep hearing that May -- that's 90 days out, you know, folks it's all over.

SPAETH: Well.

SHIPMAN: And if we have to go to an election and we need to allow proper timing for that. If we violate the law through issuing revenue bonds, we've got to have time for that. Can anybody draw me a time line?

SPAETH: Well, I think, number one, Sally -- what I -- I support you strongly as I said earlier. I think we should be the intervenor as soon as possible if this is -- when it is filed because I think that we can show that -- and I think it will make a difference that Houston needs capacity and we can show -- you know -- Austin's capacity is adequate for Austin today. I do not believe Houston, and also I think for a certain amount of time I think that we will place much better in the rankings. And also I think the cost benefit ratio study that the PUC will be doing and the investigation -- I think we've got a lot of things going for us but once again, you know, how long a time frame -- but I think once we decide certain things that we're going to do we can get a time frame from the different people involved.

MAYOR: Council have anything else before we go into Executive Session?

ROSE: I want to get something clear. Is there anybody on this Council that thinks we don't have to pay? And is there anybody on this Council that thinks that we can finance the rest of this project out of the rate basing?

MAYOR: I don't think that, go ahead.

ROSE: No, you know, because I think -- I think we need to make that, you know, very clear as we proceed because, you know, under the scenario of switching back -- or having an election on the revenue bonds. And I heard the comment coming back well, it will go to court, and we'll have the election, you know, and then we'll come back to the rates, you know, and I hadn't heard that in the first part of the discussion. As a matter of fact, I heard statements to the contrary so just, you know, I want to make sure that what everyone said about default not being an option and financing the rest of this project through the rates hasn't changed here because we seem to be -- I'm concerned that maybe I'm hearing some different things now.

DUNCAN: What I said was I -- if we can get the Court to agree to relieve us of our progress payments then, yes, that's the one scenario which I would accept as not having to pay, and that's why I've suggested go to the Courts. Failing that, then I'm in agreement that we've got to pay. Now as to whether it's done by rates or revenue bonds my statement was we don't have that option. But if we choose the option to issue revenue bonds that we can't do it in time before the money runs out. That we will have to raise rates.

ROSE: Well, there's a different scenario as to whether or not you use rates as an interim basis pending litigation on the revenue bonds or whether or not you, you know, I think you do have that option.

MAYOR: And let's talk about that. Let's don't let that escape, because I think you do. And here's the way it would work. If the Council makes the decision to issue revenue bonds without voter approval, it is the opinion of the -- of the people that I heard speaking that then we could go and have the banks issue short-term money as long as the Council has agreed that those bonds can be....

ROSE: Or if you issued the revenue bonds with an election and there was litigation on that you see that you still have alternative financing.

MAYOR: Either way. But I was thinking of the scenario that....was talking about and I do believe what I heard that they could get short-term money from the banks.

SPAETH: The question I asked was revenue bonds -- with or without -- voter approval would be acceptable to the banks and the answer I was given was "yes".

DUNCAN: But if the litigation could stop the issuance of the notes from the bank -- the short-term notes.

MAYOR: Whether or not we go to .....

DUNCAN: But, I don't see a difference in issuing revenue bonds without voter approval and have that tied up in litigation or trying to issue short-term notes through the banks and having that tied up in litigation. So that's why I was saying that I don't really think that the action.....

URDY: Well, you know, litigation can cause a rate increase too. We've gone through that....

DUNCAN: I think that that's probably the one thing that it would be hard to litigate on. I don't think our right -- our authority to do such things, unfortunately, is questioned.

ROSE: You don't think that a rate payer could file suit to say that the City has an alternative financing mechanism -- that the City could have issued bonds?

DUNCAN: Could be.

ROSE: You don't think that a rate payer could bring that suit?

DUNCAN: Could be.

ROSE: Or that a large user would bring that suit?

DUNCAN: Could be. That could get....

ROSE: But it would not be to his absolute economic....to bring such a suit?

DUNCAN: Well then, we get down to the point that there is no physical way.

(Laughter)

MAYOR: We're finally there. Well, we still haven't heard all the legal stuff that Tom as talking about, and some other questions that need to be answered, and we also, unless there is some other discussion.

DUNCAN: The only thing I would add to that discussion is that the scenario that you're laying out is that I will not, you know, I personally will not go along with the bond validation process that will meet that time line that in my opinion effectively changes the City Charter without -- I don't think that's the proper way to change the City Charter, and I'm sure that all of us will want to discuss it a lot further.

ROSE: Mayor, I want to make one brief comment on executive sessions. Each of you has gotten a memorandum. Since there's been a lot of talk about it. In terms of executive council sessions and this Council having executive sessions and the number that we've had. Since taking office on May 15th, the present City Council has held 50 public work sessions on various topics through January 30th. In addition to this, the present City Council has met in executive session 36 times and 9 of those meetings have been identified as relating to the South Texas Project. During its two years in office, the preceding City Council held 15 work sessions and the preceding Council held 81 executive sessions -- 28 of which were related to the South Texas Nuclear Project. I think this Council, considering the magnitude of the litigation and the complexities that the attorneys....has done as best of a job as we possibly can as discussing in public that which we have been told is proper to discuss in public and in dealing in executive session that which we have been mandated through the litigation to discuss in executive session. And I think that the ratio certainly indicates that.

MAYOR: I might also say that I had asked the City Clerk to check and see on those....did you say we had 28 executive sessions? How many of those were on Boards and Commissions and that was....?

ROSE: Now, you had 81 executive session....

MAYOR: No, I was talking about this Council.

ROSE: This Council has only had 36 exective sessions and 9 which have been identified as the South Texas.

MAYOR: I'm curious as to how many of those were just for Boards and Commissions.

ROSE: I imagine, they were either Boards and Commissions or real estate acquisitions or other litigation.

MAYOR: Okay. The City Council will go into Executive Session pursuant to the Texas Open Meetings Act, Article 6252-17 of the Texas Civil Statutes to discuss the pending or contemplated litigation related to the South Texas Project, Section 2, paragraph e. And discuss contemplated litigation with regard to Coastal Corporation's take over bid of Houston Natural Gas and the possible violation of the settlement terms of Railroad Commission GUD 500, Section 2, paragraph e. This item is due consideration as an emergency due to the possibility that the City of Austin may have to intervene on a short notice in a lawsuit filed by the Attorney General against Coastal Corporation. After such closed or executive session, any final action, decision, or vote with regard to any matter considered in closed or executive session shall be made in open session should such action, decision, or vote be necessary.