

Background Materials on Utility Governance

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1. Governance Models:

Governance Alternatives White Paper, Colorado Springs Utilities, 2011

Managing Public Utilities: The American Way, Public Utility Research Center, University of Florida, 2011

Chapter 4: Other Governance Models for Municipal Utilities, Governance in a Changing Market: Alternative Governance Structures – The Los Angeles Department of Water and Power, RAND, 2001

Electric Utility Department Competitive Performance Review, Price Waterhouse, 1996

2. Surveys

Texas and Large Municipally Owned Utilities, Austin Energy, 2012

Testimony of the Texas Public Power Association, Senate Business & Commerce Committee, 2012

2010 Governance Survey, American Public Power Association, 2010

Preliminary Information Regarding Governance and Late Fees from Large Public Power Council (LPPC) Member Utilities, 2008

General Utility Information (of Municipally Owned Electric Utilities), Navigant, 2011

Governance Structures of Municipally Owned Electric Utilities, Texas Public Power Association, 2011

3. Other Utilities: CPS Energy (San Antonio, Texas); Colorado Springs Utilities (Colorado); Jacksonville Energy Authority (Florida)

CPS Energy Presentation to the Senate Committee on Business and Commerce, 2012

CPS Energy Governance Structure presentation to the Electric Utility Commission, Austin Energy, 2008

Governance Structure of CPS Energy

CPS Energy Board of Trustees Role & Accountabilities Statement and Invitation to Apply for CPS Trustee, 2012

Governance Structure Review Assignment, presentation to Colorado Springs Utilities Board by the Utilities Policy Advisory Committee, 2012

Jacksonville Energy Authority (JEA) Board Policy Manual, Bylaws and Charter, 2010

4. State Government Code and Austin City Council Resolutions

Texas Government Code Section 1502.070. Management and Control of Utility System

Local Government Code Subchapter G. Management of Certain Encumbered Municipal Electric Utility Systems

Austin City Council Resolution establishing guidelines and financial targets for enhancing the competitive position of Austin Energy, 1999

Austin City Council Resolution directing a Study of Governance Models, 2012

5. Historical and other materials from EUC Member Shudde Fath

Memos and Letters from the EUC and Commissioner Fath, including EUC recommendations on governance in 1996 and 2002

Board Governance of Austin's Electric Utility, Additional Information requested by the EUC Finance Committee, 1996

Transcripts and Notes from EUC Public Forums on Utility Governance, 1996; including historical City of San Antonio documentation regarding purchase of CPS

News articles and excerpts

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CITY OF AUSTIN ELECTRIC UTILITY COMMISSION'S
PUBLIC FORUM

Town Lake Center, Assembly Room
721 Barton Springs Road
Austin, Texas 78704

TOPIC: UTILITY GOVERNANCE

50-51

* * * * *

BE IT REMEMBERED that the above-captioned
matter came on for hearing on the 14th day of May, 1996,
beginning at 5:45 o'clock p.m., at the City of Austin
Electric Utility Commission, located at 721 Barton
Springs Road, Assembly Room, Austin, Travis County,
Texas, held before the CITY OF AUSTIN ELECTRIC UTILITY
COMMISSION, and the following proceedings were reported
by Lydia L. Edwards, and reduced to writing and set out
as follows:

ORIGINAL

THE EDWARDS FIRM
2021 Covered Wagon Pass
Austin, Texas 78744
(512) 707-9093

03-14-96

APPEARANCES

Commission Members: Marilyn Jones, Ph.D., Chairman
Teresa Reel, Vice Chairman
Neal Kocurek, Ph.D.
Shudde Fath
Cedric Grice
Linda Shaw
Jim O'Connell
Caroline LeGette
J. Reynolds Ocanas

Panel Members: Senator Charles F. Herring, Sr.
Ed Adams
Robert Barnstone
~~Roy Butler~~ *not in transcript*
Tom "Smitty" Smith
Jim Marston
Manuel Zuniga
Kirk Watson
Charles Urdy, Ph.D.

Commission Staff: John Moore, EUC Director
Joe Malaski, CFO
Bob Kahn, Assistant City Attorney

Moderator: Sam Graham (FORMER EUC CHAIR)

A G E N D A

Tuesday, May 14, 1996
5:30 p.m.

- I. Electric Utility Commission Discussion with Panel
- II. Communication from Public
- III. Panel Discussion
- IV. Questions and Answers

THE EDWARDS FIRM
2021 Covered Wagon Pass
Austin, Texas 78744
(512) 707-9093

1 MR. GRAHAM: Good evening.
2 We'd like to welcome everyone to our second evening of
3 discussion regarding the future of the Austin Utility.
4 Actually tonight's topic continues to be the type of
5 governance, how it will be governed and should there be
6 a change. Our format this evening will be to -- first,
7 the existing Electric Utility Commission has some
8 comments individually or collectively. Dr. Jones, the
9 Chairman, will lead us through that. John Moore has
10 some staff information in response to their homework
11 assignments. They've been very diligent, and we don't
12 know the content of what they're going to say, but they
13 get an A for getting it back up here. And then after
14 that we'll continue our discussion. Once again, we'll
15 take a break at around 7:00 o'clock, and our objective
16 to end is no later than 8:30; and, frankly, I think we
17 may conclude earlier. There may be more citizen
18 comments tonight. I don't know.

19 We have a new -- two new
20 people with us up at the front tonight. First Ed Adams
21 is here and we welcome you, and I know that you were
22 briefed thoroughly and are right up to speed. Your
23 predecessor promised to do that today.

24 PANELIST ADAMS: He did.

25 MR. GRAHAM: And Lydia

1 Edwards is to my right. She's the court reporter
2 obviously, and she's taking this down so there will be a
3 fast turnaround for the information to be looked at by
4 both staff and the Electric Utility Commission. So we
5 welcome you as well.

6 THE REPORTER: Thank you.

7 MR. GRAHAM: Thank you.

8 It's good to see you again. Any questions for me, Panel
9 Members, before we get started?

10 (No response.)

11 MR. GRAHAM: Dr. Jones, do
12 you want to start now or do you want John to go first?

13 COMMISSIONER JONES: We'll
14 let John go first.

15 MR. GRAHAM: Okay.

16 MR. MOORE: We have a
17 packet of information that looks like this (indicating),
18 that there's some at the back. All of the Commissioners
19 and all of the Panel Members should have received it.
20 This information is our effort to respond to some of the
21 questions last night, and I'd like to take a few
22 minutes, maybe ten minutes or so, to tell you what's in
23 here and talk about it briefly.

24 I'd like to start off with
25 Joe Malaski, our chief financial officer. Joe will lead

1 you through the first four items that deal with the --
2 San Antonio's bond covenants and indenture and how San
3 Antonio's city public service came to be. And then Bob
4 Kahn will pick up and talk about the city charter and
5 the state legislation that governs the board in San
6 Antonio and that is also applicable to the board that
7 Price Waterhouse recommended here, if we want to do
8 something about any legislative change or about any
9 major bond covenant concerns or refunding. Joe?

10 MR. MALASKI: Thank you,
11 John. In your information, we've basically got several
12 versions of an ordinance and indenture -- at least a
13 management section of those indentures that establish
14 the City's -- City of San Antonio's board setup.
15 Originally the system was purchased in 1942 from an
16 investor-owned utility at that time. Basically the
17 ordinance set up the structure as it is today. Under
18 that structure, the governance of the board is
19 established and it's a self-perpetuating board. And the
20 practice of the board in late years has been to submit
21 nominations to the City Council for a selection process,
22 and, in fact, that's how the board members have been
23 selected in recent times. That is not a requirement
24 currently under the ordinance and indenture.

25 And the ordinance and

1 indenture covers what San Antonio has defined as old
2 bonds versus new bonds. The old bonds that have the
3 more restrictive covenants are scheduled to be retired
4 next year. When those old bonds are retired, then the
5 new bond ordinance will take effect. Under that new
6 bond ordinance, the -- there is a requirement that each
7 of the nominations for the City Public Service Board go
8 before the City Council for selection and confirmation.
9 We've given you select pieces of the various indentures
10 from the original 1942 establishment, also, the one from
11 1951. There's very little change in those two sections
12 in management. The new bond ordinance series is the one
13 that has the most substantive change. The Section IV
14 really is a synopsis of stuff that I took out of the
15 most recent San Antonio official statement that I had in
16 my files. It is, I think, a more easy-to-read
17 explanation of what these ordinances do and how San
18 Antonio was established.

19 One other thing that I
20 would say about how the board -- while it is
21 self-perpetuating over the last at least 16 years, the
22 board has had representation from various ethnic and
23 gender groups. I think it has had Black members,
24 Hispanic members, women members, as well as the
25 traditional White male. At least in the last 16 years,

1 that's been the composition.

2 That's all I have
3 specifically on this package. Bob Kahn is going to talk
4 to you about the actual charters of the city and the
5 information on the state legislation on the formation of
6 the board. If you have any questions that I could --

7 PANELIST MARSTON: I raised
8 the issue last night about the makeup of the San Antonio
9 board, and my concerns were in part diversity of
10 ethnicity. But also just people from different walks of
11 life, different communities, that is also a concern I
12 had. It seemed like most of the people there came from
13 one segment of the community. Could you comment about
14 that? I mean, are they basically people who are all
15 tied to the business community or mostly tied to the
16 business community and didn't have other backgrounds?

17 MR. MALASKI: I think
18 that's a fair characterization. That -- under the new
19 ordinance, the new bond ordinance will change and at
20 least have a potential to change. The City Council will
21 be able to select whomever they choose, in essence.

22 MR. GRAHAM: Would you very
23 quickly answer? When you are referring to the most --
24 the easiest-to-read, most-up-to-date attachment, were
25 you talking about this one (indicating)?

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1 MR. MALASKI: Section IV,
2 yes. And that is the one that starts with the -- the
3 cover sheet just shows you where it was copied from.
4 It's the official statement dated October 19 --

5 MR. GRAHAM: Okay.

6 MR. MALASKI: -- 1995.

7 MR. GRAHAM: And when you
8 say "Section IV," you're talking about the fourth -- or
9 behind the purple pages, the fourth item?

10 MR. MALASKI: That's
11 correct.

12 MR. GRAHAM: Okay.

13 MR. MOORE: Those pages
14 have some pretty interesting descriptive information.
15 You see there at the bottom of Page 8 of that
16 document -- well, at the top, you see the current
17 makeup, probably not too different than what we've
18 observed for a number of years, various -- there are a
19 diversity of sex and ethnicity there, although, as Jim
20 noted, they all seem to be business owners. Down at the
21 bottom, there's some description of their administration
22 and personnel. If you move through that, you'll see
23 some other -- let's see.

24 Joe, where was that page
25 that had some stuff about how they're managed? On Page

1 D-7 --

2 MR. GRAHAM: D-7?

3 MR. MOORE: -- there's some
4 more information. Joe is fairly familiar with this
5 information. If you want to ask him now or later some
6 questions as opposed to trying to read all of it
7 yourself at this point in time, we'll be glad to try to
8 do that.

9 MR. GRAHAM: While you're
10 there, I have a question for the statement found in the
11 Price Waterhouse study regarding the factors of bond
12 ratings.

13 MR. MALASKI: Yes.

14 MR. GRAHAM: You're
15 familiar with the factors that are mentioned in the
16 statement?

17 MR. MALASKI: Yes.

18 MR. GRAHAM: Do you -- in
19 your experience, is that -- this relative way to --
20 Attachment C, is -- that is still the current and --
21 this isn't a trick question.

22 MR. MALASKI: Yeah, I know.

23 I --

24 MR. GRAHAM: I got my
25 lawyer voice on, but I'm just wondering, is this --

1 MR. MALASKI: I can't
2 recall what that specifically says.

3 MR. GRAHAM: It talks about
4 relative weight as to bond ratings, government's
5 management 20 percent, financial/legal 20 percent, and
6 it's 2-20 of the small handout that's at the back. It's
7 the next to last page.

8 MR. MALASKI: Those
9 ratings, as I recall, come right out of their rating
10 criteria for all their standard utility to be used.
11 Those are accurate.

12 MR. GRAHAM: And the fact
13 that this board -- that this type of -- I'm sure there
14 are many other factors as to why San Antonio has such a
15 high rating other than the composition of the board,
16 but --

17 MR. MALASKI: Yes.

18 PANELIST BARNSTONE:
19 Mr. Chairman?

20 MR. GRAHAM: Yes.

21 PANELIST BARNSTONE: Just
22 looking at this, the number is an issue, and we're
23 seeing it has operated with five members now for many
24 years. I think it's recommended that we operate with
25 seven. And I think at some point we ought to say five,

1 seven, nine. What are we talking about?

2 MR. MALASKI: One thing
3 that Price Waterhouse was incorrect in that report is
4 stating that you can have seven members using the San
5 Antonio legislation.

6 PANELIST BARNSTONE: You
7 can't.

8 MR. MALASKI: You have to
9 have five members.

10 PANELIST WATSON: That's
11 the statute that's at the back of the packet, right?

12 PANELIST MARSTON: Not more
13 than five.

14 MR. MALASKI: That's
15 correct.

16 PANELIST BARNSTONE: That's
17 how many.

18 MR. GRAHAM: And is that
19 statute broad enough to allow any publicly owned utility
20 to be turned into that type board, or is that a
21 special -- I haven't looked at it. Is that a special
22 legislative -- legislation only applicable to San
23 Antonio?

24 MR. MALASKI: I believe our
25 lawyers think that that is broad enough to be applicable

1 to us.

2 MR. GRAHAM: 1115?

3 MR. MOORE: Bob Kahn will
4 talk a little bit about that some more in a minute.

5 PANELIST BARNSTONE: Does
6 that also mean that the mayor is an ex officio member?

7 MR. MALASKI: That's
8 correct.

9 PANELIST SMITH: Ex officio
10 voting member.

11 PANELIST WATSON: It said
12 to consist of not more than five members, one of whom
13 shall be the major of such city or town.

14 MR. MALASKI: In these --

15 MR. GRAHAM: Is that in the
16 statute, Kirk?

17 PANELIST WATSON: Yeah.

18 MR. MALASKI: In these --
19 in the ordinances, the mayor's role as an ex officio
20 member also includes keeping the other councilpeople
21 advised and apprised of the actions of the board itself.

22 PANELIST ZUNIGA: Our bond
23 rating is 1A negative, isn't it?

24 MR. MALASKI: It's
25 basically an A. We usually ensure to move it to a AAA.

1 PANELIST ZUNIGA: Is that
2 considered low or is that --

3 MR. MALASKI: It's not as
4 high as a AA or a AAA --

5 PANELIST ZUNIGA: It's kind
6 of --

7 MR. MALASKI: -- but it's
8 still an investment grade instrument.

9 MR. GRAHAM: Any other
10 questions?

11 PANELIST ZUNIGA: Well,
12 just one. I guess usually when there's a -- when that
13 grading is published, isn't there usually a short
14 synopsis that explains why we got that grading? What
15 I'm wondering is, in the investment community, are we
16 seen as reasonable, rational or are we seen as
17 irrational and unreasonable or is that just
18 oversimplifying it?

19 PANELIST BARNSTONE: That
20 comes under you have to ask the question.

21 PANELIST ZUNIGA: I'm
22 sorry?

23 PANELIST BARNSTONE: That
24 comes under you have to ask the question.

25 PANELIST SMITH: Well, I

1 think to be fair about that --

2 PANELIST ZUNIGA: Yeah.

3 PANELIST SMITH: -- we're
4 right there with Texas Utilities and HL&P in the mid
5 fifties among the electric utilities in the state. I
6 don't have the list in front of me. Jim does. Are we
7 above or below Texas Utilities and --

8 PANELIST MARSTON: Well,
9 the rank says 54 right next to the actual TU but has TU
10 ranked at BBB rating.

11 PANELIST ADAMS: Uh-huh.

12 And these are the people --

13 PANELIST ZUNIGA: So really
14 it's not a bad rating, you know. That's what I'm
15 asking.

16 PANELIST MARSTON: No. Of
17 course, one thing is kind of -- isn't Washington Public
18 Power Supply System the ones that defaulted on a half
19 billion dollars in bonds and --

20 PANELIST BARNSTONE: Five
21 billion dollars in bonds.

22 PANELIST MARSTON: Yeah,
23 five -- I'm sorry, five billion dollars in bonds. And
24 they're rating AA negative. I mean, these ratings are a
25 little subjective, I guess. Is that fair to say?

1 MR. MALASKI: Well, the
2 bonds that defaulted are not in that rating.

3 PANELIST MARSTON: Well, I
4 understand. I've seen this before. I just always shake
5 my head that somebody who had that kind of a history
6 gets one rating and we've never come close to defaulting
7 on a bond, and maybe occasionally we say we're going to
8 do that just to grab the sabers.

9 MR. MOORE: Those
10 Washington Public Power Supply bonds are, in fact,
11 bondable in that case which I think probably was making
12 a requirement for them to even be --

13 PANELIST MARSTON: They got
14 a federal bail-out to get a rating like that.

15 MR. MALASKI: The problem
16 that -- this is way off the subject, but the problem
17 with the Washington bonds has more to do with what they
18 were backed by more than anything else.

19 PANELIST MARSTON: I think
20 there were nuclear plants they abandoned.

21 MR. MALASKI: And they were
22 backed by production out of those plants specific, and
23 that's why they failed.

24 MR. GRAHAM: Any other
25 questions? You'll be here throughout the night, right?

1 MR. MALASKI: Yes.

2 MR. GRAHAM: Lucky fellow.

3 MR. MALASKI: Yes.

4 MR. GRAHAM: Dr. Urdy?

5 PANELIST URDY: Let me get
6 this clear, that this is -- the only authority we would
7 have to create a board would be under this law, and,
8 therefore, we could only create a board of five members
9 including the mayor as ex officio?

10 MR. MALASKI: Using the San
11 Antonio model, yes.

12 PANELIST URDY: But what --
13 and I don't know if that's a legal question or not. But
14 what does that mean? That means independent --

15 MR. MALASKI: If you get
16 beyond that, it is a legal question.

17 PANELIST URDY: Yes. But
18 for us to create an independent board -- a partial
19 independent board, this statute would prevail?

20 MR. MALASKI: If you didn't
21 choose to seek additional legislation.

22 PANELIST URDY: Okay. I
23 just wanted to make sure I understood that clearly.

24 MR. MALASKI: One other
25 point I want to make sure everybody is clear on is,

1 there's a lot of difference between San Antonio and
2 Austin from the perspective that San Antonio always
3 operated in a board form. They were purchased under the
4 indenture -- the original indenture in 1942. They were
5 never a part of the city like we are. That's a big
6 distinction. So you won't see any of these changes that
7 you would expect to see by and large.

8 MR. GRAHAM: So when the
9 public service board was created, the -- there was an
10 existing utility that the city purchased?

11 MR. MALASKI: That's
12 correct.

13 MR. GRAHAM: Purchased all
14 the -- well, they didn't purchase the employees, but all
15 the employees came in that and became absorbed in that
16 system. Okay.

17 PANELIST BARNSTONE: They
18 were bankrupt and that was during the depression --

19 MR. GRAHAM: Yeah.

20 PANELIST BARNSTONE: -- I
21 would imagine.

22 MR. MALASKI: The original
23 system was purchased fully with debt. There was no
24 equity involved in the situation. That's why the
25 indenture covenants were written, I suspect, the way

1 they were.

2 MR. GRAHAM: Yeah. I could
3 not figure out yesterday why the indentures were so
4 important from the word go. That is an important
5 distinction.

6 PANELIST SMITH: But it is
7 interesting that as far back as 1903 they had in their
8 charter provisions that would allow them to purchase and
9 operate water, gas or electric utilities, and the last
10 time it was amended was in 1914. So it was contemplated
11 at that time that they might be purchasing at some point
12 utilities. Do we know whether or not they had the water
13 utility?

14 MR. MALASKI: I'm not sure
15 about the water.

16 MR. MOORE: There is a
17 water board in San Antonio that operates at least water.
18 I don't know about wastewater.

19 MR. MALASKI: It is not in
20 the same organization.

21 MR. GRAHAM: That's right.
22 It's separate.

23 PANELIST BARNSTONE: And
24 they picked up the gas at the same time.

25 MR. MALASKI: Yes, that's

1 correct.

2 MR. GRAHAM: They picked up
3 the gas with the utility or with the water?

4 MR. MALASKI: With the
5 electric system. Their system is gas-electric.

6 MR. GRAHAM: Uh-huh.

7 MR. MOORE: San Antonio,
8 you'll notice in rummaging through the charter that they
9 have several independent boards. There's an independent
10 library board, for instance, that I wasn't aware of that
11 I noticed in the charter.

12 PANELIST ZUNIGA: Well, we
13 have Capital Metro.

14 MR. GRAHAM: Any other
15 questions?

16 (No response.)

17 MR. GRAHAM: Thank you.

18 MR. MOORE: I'd like Bob to
19 visit with the last four items which will cover a little
20 bit again of what Joe just talked about in the charter.

21 MR. GRAHAM: And while
22 you're being seated, I'd like to greet Councilman
23 Reynolds. We're happy to have you.

24 MR. KAHN: What I'd like to
25 do is just go through the last parts of this package

1 charter was not amended until '48. And if you look at
2 the '48 amendments, as far as we could tell, the city
3 charter was not amended to discuss at all the
4 purchase -- or the formation of this board. It
5 basically still has the same discussion in there about
6 having the ability to purchase utility, regulate
7 utilities. There's basically no difference in the
8 language.

9 Of course, the distinction
10 between that city charter and ours is, we have the
11 utility now and our city charter is set up in
12 departments and our electric utility has to respond to
13 departments. So we're in existence. Back then there
14 was no utility department. They just purchased it
15 outright from the beginning and it was a board from the
16 beginning.

17 The next section we were
18 able to get our hands on was -- as you can see, it was
19 amended in '74, '77 and '91, and there is some reference
20 to the board. Even on a few pages, I put a check mark
21 next to a provision there. They talk about the powers
22 of the city manager and states he shall not appoint or
23 remove officers or employees of..., and it discusses any
24 municipally owned public utility, including electric,
25 gas and water systems. And then the next page talks

1 about, Section 49, boards, commissions, committees may
2 not perform municipal functions except for.... If you
3 go down to No. 6 here, it says boards or commissions
4 formed under state law, which their board would fall
5 under. And those are really the only provisions in the
6 current city charter that we could find that even
7 reference -- came close to referencing the board.

8 MR. GRAHAM: Okay. You're
9 referring to the pages at the very back of this packet,
10 the two pages before the last purple sheet?

11 MR. KAHN: Yes.

12 MR. GRAHAM: And there's a
13 check mark in the margin on the right.

14 MR. KAHN: On Page 37.

15 MR. GRAHAM: Yeah, and then
16 on Page 38.

17 MR. KAHN: And then on
18 Page 38. And I've had some discussions with their
19 attorneys down there in San Antonio. There's really
20 very little discussion in the city charter on the board.
21 Most of it covers indentures back in 1942, and they've
22 kind of followed that format through the years.

23 MR. GRAHAM: It's business
24 as usual without too much discussion of authority.

25 MR. KAHN: Yes.

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PANELIST BARNSTONE:

There's an interesting limitation on the compensation of the trustees. It says it shouldn't exceed five percent of the gross receipts. That's 25 million dollars amongst five people. That's five million dollars a year. That seems --

pANELIST WATSON: We're not going to have difficulty finding someone to serve.

PANELIST BARNSTONE: I don't think we need a recruitment committee.

PANELIST URDY: We'll volunteer.

PANELIST SMITH: I think Robert and I will both serve.

MR. GRAHAM: Any questions?

MR. KAHN: The next section in there, I thought it would be a good idea to include Article 1115 which is what we've been talking about here. This is the state law that we feel like we could fall under. There is another one, 1115a, but we kind of counted that out. That's what we call the Greenville law which we talked about yesterday and discounted. That's the one that would require us to basically defease all of our debt in order to do that. It would be too expensive.

1 But I have this in here for
2 a couple of reasons. One, it points out five members.
3 You have to have five members. The mayor is one of
4 them. And as far as the makeup of the board, there's
5 been a lot of questions about that. If you read on
6 down, it states, "The terms of office of such board of
7 trustees, their powers and duties, the manner of
8 exercising same, the election of their successors, and
9 all matters pertaining to their organization and duties
10 may be specified in such contract of encumbrance." So
11 basically it's up to the city as to how they want to
12 handle those things.

13 One thing we're going to
14 have to do is -- this state law says that at the time
15 you encumber the system you will specify how you're
16 going to govern the utility. Of course, we're way past
17 that. And I talked to the bond counsel and some other
18 attorneys that do commercial work for us, and we're all
19 of the opinion that we could probably go out and get our
20 bond covenants amended and probably even fall under this
21 provision.

22 PANELIST BARNSTONE: Bob,
23 would you touch on that question of why this article is
24 insufficient to authorize us to do it without a charter
25 election?

1 MR. KAHN: I was planning
2 to do that, and I'll do that right now --

3 MR. GRAHAM: Sure.

4 MR. KAHN: -- if nobody --

5 MR. GRAHAM: Sure.

6 MR. KAHN: -- has any
7 questions on 1115. And basically you raised a couple of
8 questions yesterday, you know, is there any way we can
9 contract to manage the utility or somehow run it without
10 a city charter amendment, and there was some discussion
11 about the Brackenridge situation and the Austin Housing
12 Authority. And yesterday I wasn't sure how they did the
13 Brack deal or what the deal was with the housing
14 authority, and I've done some checking up on that.
15 Basically the statutes that Brack fell under or falls
16 under and the housing authority are broad state
17 statutes. The one we're talking about here is very
18 narrow. The Brackenridge deal was a lease agreement,
19 and the state statute that they relied upon allowed for
20 there to be a lease.

21 Basically in our situation
22 here, the city charter specifically prohibits us
23 selling, conveying or leasing the utility. We could
24 lease it to a public entity but only with the City
25 Council election. But in -- so in general that's the

1 factual distinction between Brack and what we're looking
2 at now. As far as the housing authority, there's a
3 state statute that addresses that and it's not even
4 addressed in the city charter, and, you know, we have
5 specific city charter language that addresses that
6 issue.

7 And there's just other
8 practical problems, you know. The city charter
9 specifically says that departments of the city, like the
10 Electric Utility Department, have to follow the
11 personnel policies that are laid out there, financial,
12 legal, purchasing, contracting, and in order to get
13 those over to the board, we would need to amend the city
14 charter to do that. And, you know, we're looking at
15 this -- you know, I was looking at these things. If we
16 can think of a way to get around this, we'll certainly
17 let you know.

18 PANELIST BARNSTONE:

19 Mr. Chairman?

20 MR. GRAHAM: Yes.

21 PANELIST BARNSTONE: On
22 this issue, I think that we can rely on this opinion as
23 fairly conclusive on the subject as to whether or not we
24 need an election. I do want to say just for the record
25 that the only reticence to having an election was the

1 observation that Smitty pointed out, and that's simply
2 that the interests of the party that could fund this at
3 great expense and skew the results in ways that wouldn't
4 be injurious to the City.

5 There's a peripheral issue,
6 and I'd like to suggest that we take it on now. And
7 that is that when we make our recommendation to the
8 Commission and the Council, that we make clear that the
9 language in such a charter change be very narrowly
10 construed so that it permits only the operation of a
11 board and not a sale. In other words, we don't want to
12 tamper with the mechanism that the charter provides
13 prohibiting the sale of the Counsel because I think that
14 another issue that I was concerned about was that if the
15 language was so slippery that people would be suspicious
16 that this might be an election to authorize a sale when
17 we were merely authorizing the Council to establish this
18 board. So I'm suggesting to the group that if that is
19 our consensus that we make our views known on that
20 subject, and the language should be very narrow to that
21 point.

22 MR. GRAHAM: Any discussion
23 of that right now, or do you want to come back to that
24 after we get into our discussion in chief? And Jim
25 Marston also suggested that another reason for an

1 election would be to get clear community approval and
2 the buy-in of the concept of a separate board.

3 PANELIST BARNSTONE:

4 Indeed. I think that there are definite advantages and
5 we should celebrate those.

6 MR. GRAHAM: Now, let me
7 ask you this: If you do not make the transfer to this
8 board of things like purchasing ability, personnel
9 control, do you still need to have the charter amended?

10 PANELIST WATSON: Can I --

11 MR. GRAHAM: And if you
12 don't do that --

13 PANELIST WATSON: Let me
14 ask a question before that --

15 MR. GRAHAM: Sure.

16 PANELIST WATSON: --
17 because you've hit something I want to ask about. List
18 for me those parts of the charter that you think -- I
19 mean, that you feel like you need to rely upon to give
20 that opinion, and you don't need to give me the
21 citation, just -- goodness gracious, I don't want the
22 citation.

23 MR. KAHN: I went through
24 the charter just briefly this afternoon and just looked
25 for things that could cause problems. Powers and duties

1 of the City Manager, we report to the City Manager who
2 reports to the City Council. That wouldn't happen
3 anymore. The Department of Finance is responsible for
4 all financial issues. That wouldn't happen anymore.
5 City Attorney, we normally report to the City Attorney.
6 We always -- excuse me, Andy. We always report to the
7 City Attorney. Purchasing procedures, that we have to
8 do that in accordance with the city purchasing
9 procedures; personnel. So the problem would be is if
10 we, for example, didn't amend the city charter and the
11 board is formed and they approved a contract, we'd have
12 big problems.

13 PANELIST WATSON: I see.

14 Okay. Thank you.

15 MR. GRAHAM: That answers
16 my question.

17 MR. MOORE: I think one of
18 the bottom-line clearinghouses also is going to be our
19 bond counsel. If we issue this debt and try to change
20 covenants and all, they're going to want to have a high
21 degree of assurance that all this -- that every "I" is
22 dotted and every "T" is crossed before they'll give you
23 an opinion. Bob has talked to them, also.

24 PANELIST BARNSTONE: In
25 that particular case, the Council retains final say on

1 bond -- on debt.

2 MR. MOORE: Yeah. But the
3 debt is going to be for certain purposes and issued
4 under certain conditions and authorities, and that needs
5 to be clear.

6 MR. GRAHAM: Are you
7 talking about future issues?

8 MR. MOORE: Yes.

9 PANELIST URDY: Oh, one
10 more question to Robert's question. With regard to that
11 question, I agree with that. The only place now that
12 that question would arise is in the section that it says
13 that the city can't sell the utility. All these other
14 things would not relate to the question of -- directly
15 of selling.

16 MR. KAHN: I'm not sure I
17 follow your question.

18 PANELIST URDY: Well,
19 Robert's question was that we should curtail the
20 language such that it's clear that we only talk about
21 the creation of --

22 MR. KAHN: Oh, I don't
23 think that would be a problem. We could do that.

24 PANELIST URDY: Yeah. But
25 I'm saying that the only place -- the only section where

1 that would be a problem would be in that section -- and
2 we ought to just say let's not structure it so it's --
3 this would be construed as authorizing a sale. And
4 there's that one section that says you cannot sell
5 unless you change that but not the intent --

6 MR. KAHN: Right,
7 Article 2, Section 5 says you can't sell.

8 PANELIST URDY: Right, so
9 unless you change that particular -- but all these other
10 changes would not relate to --

11 MR. KAHN: That's -- we're
12 talking about forming a board, which is totally separate
13 from selling the utility.

14 PANELIST URDY: Right.

15 PANELIST WATSON: But you'd
16 want to make sure that you were very clear on what a
17 conveyance was and a conveyance to the board and that
18 sort of thing so that you didn't leave broad enough
19 language that some other way could be utilized.

20 MR. GRAHAM: Is this --
21 would this truly be a conveyance to a separate entity of
22 the assets, or would it be control, like would it be a
23 transfer?

24 MR. KAHN: I haven't
25 thought all that much about it. I haven't looked at it.

1 PANELIST WATSON: You just
2 need to be clear on your language.

3 MR. KAHN: Yeah. We have
4 to be clear so that there's no question.

5 MR. GRAHAM: Okay.

6 PANELIST MARSTON: And
7 Robert has a real good point. We have a tendency to be
8 real suspicious of anything we're voting on, and unless
9 we're crystal clear, we might get opposition to our idea
10 of an independent board because people think there's a
11 hidden agenda in it and we know there's not. We want to
12 be very clear so nobody can argue that somehow we have a
13 separate, hidden agenda there that would defeat the
14 purpose.

15 MR. KAHN: I'm sure this
16 language will be closely scrutinized before it would be
17 put on the ballot.

18 MR. GRAHAM: Okay. Any
19 other questions? Yes?

20 COMMISSIONER REEL: What
21 are the opportunities and time lines for getting it on
22 the ballot? When is the next opportunity, and when is
23 the opportunity after that?

24 MR. KAHN: August 10th
25 is -- if my recollection is correct, of when we would

1 have the next charter amendment, this August 10th. If
2 we don't amend the charter then on this issue and if the
3 city charter is amended at that time for some other
4 issue, then we have to wait two years.

5 MR. GRAHAM: And what's the
6 window to get that ballot out, to get that --

7 MR. KAHN: We probably need
8 to meet next month sometime to get something going.

9 MR. GRAHAM: Okay.

10 PANELIST SMITH: I'm
11 confused. Is there not some sort of a 60-day notice?

12 MR. GRAHAM: That's what I
13 was getting at.

14 MR. KAHN: There's notice
15 requirements and --

16 COMMISSIONER REEL:
17 Wouldn't June 10th be the deadline to --

18 MR. GRAHAM: Someone is
19 holding up 10 fingers.

20 COUNCILMAN REYNOLDS: 45.

21 MR. GRAHAM: 45.

22 MR. KAHN: It's been a
23 while since I looked at the exact amount of days. It's
24 30 or 45. But I've talked to Elden, and Elden says
25 that's how much time we need for notice, I mean, really,

1 you know, for the draft language and getting it in front
2 of the City Council and give notice and we're going to
3 need more than just the notice.

4 PANELIST MARSTON: So
5 basically 60 days.

6 MR. KAHN: Yeah. We
7 probably in the next few weeks need to get it moving.

8 PANELIST URDY: There was a
9 petition -- a proposed petition floating around
10 someplace. Is that still --

11 MR. KAHN: I heard about
12 that.

13 PANELIST URDY: Does
14 anybody know --

15 PANELIST BARNSTONE:
16 They're still signing it.

17 MR. KAHN: Yeah. And
18 they're --

19 PANELIST URDY: Then we
20 could have a charter election in August anyway.

21 PANELIST SMITH: They are
22 not hopeful, but there's reason to believe they could be
23 very close to having enough to do the campaign finance
24 ordinance, but it's not going as well as they'd hoped.

25 COMMISSIONER GRICE: I

1 would like to --

2 MR. GRAHAM: Yes.

3 COMMISSIONER GRICE: --

4 address one issue concerning if we deviated from the San
5 Antonio model such that if the model that we finally
6 came up with did not fit up under the legislation. What
7 would be the process for basically having the charter
8 amended and then getting something working?

9 MR. KAHN: If we, for
10 example, wanted to have more people on the board, we'd
11 have to have legislation. For example, if we wanted
12 seven people, thought about having more people, we'd
13 have to have legislation.

14 MR. GRAHAM: They'll be
15 here in January.

16 MR. KAHN: Right.

17 COMMISSIONER GRICE: But
18 couldn't we go ahead with the charter election and set
19 up the board?

20 MR. KAHN: I would have to
21 look at that. I think, for example, what Greenville did
22 was, they had a charter election contingent upon
23 approval of the state law or something like that, is my
24 understanding what how Greenville did. I'd have to look
25 at that in more detail. I haven't looked at that as far

1 as the situation here.

2 MR. GRAHAM: And we are
3 operating under the assumption that if this five-person
4 board were created there would not have to be any
5 reissuance or tampering or touching on existing bond
6 indebtedness.

7 MR. KAHN: My
8 understanding, talking to the bond counsel, is they feel
9 reasonably comfortable that that would not happen. We'd
10 have to have the bond covenants amended indicating that
11 the board -- I mean, right now it says the City Council
12 is the one who --

13 MR. GRAHAM: But that
14 has -- the bond covenant amendment has nothing to do
15 with --

16 MR. KAHN: Right.

17 MR. GRAHAM: -- issuance,
18 rates, actual money out of pocket?

19 MR. KAHN: Right.

20 MR. GRAHAM: Okay. Thank
21 you. Dr. Jones, our format was, we were going to
22 discuss with EUC at this point or EUC was going to
23 discuss or bring points forward.

24 COMMISSIONER JONES: Yes.
25 That's what we agreed to. I think Dr. Kocurek is in the

1 back. If he would come up and join us at this time?

2 MR. GRAHAM: He tried that
3 last night, didn't he?

4 COMMISSIONER JONES: Just
5 to show to the Panelists to let you know what the
6 Commission has done in the past, a subcommittee of the
7 Electric Utility Commission met and did discuss an
8 independent board. There was a consensus from that
9 board, I believe, as to what their recommendations were,
10 and they did bring that to the Commission. I think that
11 it may be appropriate for those members of that
12 subcommittee to talk about their recommendations,
13 Commissioner LeGette and Commissioner Grice and the
14 others that served on that at this time and then if
15 there are other commission members that would like to
16 discuss their thoughts. I know that Commissioner Fath
17 had some recommendations, and we will share that with
18 you to let you know what we've done in the past and how
19 we would approach that issue. I think Cedric was the
20 chairman of the subcommittee.

21 COMMISSIONER GRICE: I
22 don't have my -- yeah. We went over some of the same
23 issues that you discussed, had some of the same
24 arguments and some of the same fights that you've had,
25 but we did conclude that in order to be competitive one

1 of the first issues that needed to be addressed was the
2 governance issue. So dealing with that, we came up with
3 a structure. By no means did we -- we haven't taken a
4 vote on this as a commission, as a whole, and it may be
5 because we are not sure that we would have agreed to
6 every point on here, but we will list -- we'll give you
7 an idea of where we're going, a reasonable number
8 between five and nine members. So we weren't 100
9 percent sold on the five members.

10 We did come up with some
11 criteria for the members. We thought about one
12 engineer, a lawyer, an accountant, a banking person, a
13 retired, not-employed person outside the home. In
14 addition, we thought that the members should be a good
15 mix of the different races and sexes and locations in
16 the service area, but, here again, this is sort of
17 general.

18 We also thought that there
19 should be some compensation rather than strictly
20 volunteer, but we didn't come up with any amount of
21 money. We also thought that there should be some
22 requirements based on participation. You couldn't miss
23 a lot of meetings. The members should be appointed
24 rather than elected, and we wanted them to overlap the
25 City Council's term so we could avoid the appearance or

1 the actual presence of politics in their decision-making
2 as much as possible. We thought that there should be no
3 term limits and that the membership should not be
4 self-perpetuating. The Council should pick the members
5 as a whole based on nominations derived from the public.
6 The powers that we agreed upon were that we would not --
7 basically the big three. We wanted the City to maintain
8 those, and the powers that we would basically have would
9 be the ones for picking the executive director,
10 personnel and purchasing, the day-to-day policy
11 operations of the utility.

12 And that sort of is a
13 general model that we came up with. It's very similar
14 to the recommendations of Price Waterhouse with some
15 deviations.

16 I guess I would like
17 everybody to have a crack at this, but one of the issues
18 that I would like to hear more discussion on from you
19 guys -- I don't know that this is the order that we want
20 to go -- is the whole idea of the criteria. I heard a
21 lot of interesting discussion last night about the
22 criteria for picking the board members, and I'm
23 specifically interested in you wrestling more with the
24 criteria for selecting membership. I heard some
25 arguments for geographic location, some arguments based

1 on customer considerations, some arguments that said
2 that we hoped no specific list should be picked from,
3 just do a business approach. I would like to hear you
4 flush that argument out more. And I would pass it to
5 the Chair.

6 COMMISSIONER JONES: Okay.
7 Commissioner Fath, do you want to share with us your
8 recommendations since they were a little bit different
9 from the subcommittee?

10 COMMISSIONER FATH: Well,
11 I'm -- my basic hope is that we have a diverse board,
12 you know, with the various rate classes, having some
13 kind of proportional representation. I wouldn't want a
14 self-perpetuating board. I think, as Robert said last
15 night, go out and recruit applications but also solicit
16 and accept applications from the public and, you know,
17 they'd be elected by the City Council.

18 I do think that we ought to
19 ask the city legal people to begin immediately to draft
20 a charter amendment that covers what you-all are talking
21 about where it doesn't get confused, in other words,
22 there's a provision in the charter against a sale and
23 we're not going to touch that provision. This would be
24 an additional amendment, I presume; is that right?

25 And I think -- you-all are

1 talking about meetings. I think you ought to meet more
2 than once a month, you know, maybe twice a month. Of
3 course, you could cancel the meeting, you know, if there
4 wasn't anything big on the horizon. And we talked in
5 our meeting -- as Cedric said, I don't think we actually
6 voted on this, but some kind of a fee, maybe \$50 a
7 meeting, so somebody could at least hire a baby sitter
8 if they needed to.

9 And I'm concerned. I'm so
10 impressed with this group that Teresa and everybody
11 assembled, and I'm concerned. This is your last night
12 together, and I would like for you-all to somehow stay
13 together long enough to make a report and some
14 recommendations because it's been wonderful to sit here
15 and listen to knowledgeable input.

16 I wanted to say one more
17 thing. We talk about we're not as competitive as San
18 Antonio. The EUC a few months ago asked the staff to
19 prepare a record of everything that the Electric Utility
20 gives to the City. The General Fund Transfer is right
21 at 60 million dollars, but we got this sheet and this is
22 the current year's budget (indicating). They're
23 actually transferring 97 million dollars. The extra 37
24 million is for things like administrative support, you
25 know, legal, vehicles, information services and billing,

1 and some of that undoubtedly -- you know, maybe the
2 billing at least would probably have to be left with the
3 City. But a lot of these things the new board could do
4 in-house -- I mean, the Utility could do in-house, and,
5 you know, we may be in better financial shape than it
6 looks when you compare it with San Antonio.

7 And I would want no term
8 limits. In other words, I think there should be some
9 provision, like Cedric said, for if you miss so many
10 meetings that you're automatically off -- there's a
11 provision like that in the city board and commission
12 ordinances -- and probably some kind of provision to
13 terminate somebody, you know, for some -- whatever just
14 cause that you might want to define.

15 I'm not sure I would want a
16 mayor -- and I'm not being personal -- as a voting
17 member. I'm kind of -- this board needs to be
18 concentrating on the utility, and a mayor has a whole
19 lot more to do than deal with the utility. There
20 probably should be some kind of reporting mechanism
21 between the board and the council, but I don't know how
22 it works in San Antonio. Is the mayor acting as
23 voting -- an ex officio member? Does he kind of
24 rubber-stamp what the other four want to do or what? It
25 seems to me like it would be better to have five active

1 board members.

2 MR. GRAHAM: Does he attend
3 or does he send a representative every time, or she?

4 COMMISSIONER FATH: I don't
5 know. But they are one of the five voting members, and
6 I think that's a little bit -- asking a little bit much
7 of a mayor. But I would like to see some drafts to the
8 city charter, a proposed amendment, real soon defined,
9 like Robert was saying, very narrowly. And we're going
10 to need broad community, you know, explanation and
11 support when it goes before the voters so nobody will
12 think there's a hidden agenda. Thank you.

13 MR. GRAHAM: Dr. Jones?

14 COMMISSIONER JONES: Is
15 there anyone else?

16 COMMISSIONER REEL: I guess
17 first I'd like to thank everyone for participating. We
18 hashed this issue around and haven't quite -- in some of
19 the big issues like composition, I haven't -- couldn't
20 figure out exactly what I wanted to look at. In hearing
21 your conversation about it, it's been real interesting.
22 I would agree with Cedric. That's one we'd like for you
23 guys to spend some more time on tonight.

24 I do think that we need to
25 be sure that in order to achieve what we want, which is

1 for the Utility to be more competitive, we need to be
2 very clear that running the utility like a business and
3 focusing on it as a business needs to be our objective.
4 And, yes, we need to have concern for all the different
5 consumer groups, all the different rate classes, and
6 figuring out how to balance that is something we'd
7 really like your help on. So I'm doubly hoping that you
8 can come up with some more ideas on that for us. That's
9 about all I have. Again, thank you for participating in
10 this.

11 COMMISSIONER JONES: I
12 would like to just very briefly kind of refocus on a
13 couple of things that have come up last night and also
14 tonight, and that's the issue of some type of election
15 or charter change. And consistently, I guess, Neal and
16 I are two people on the Commission that constantly talk
17 about the role of education and what that means to the
18 taxpayers as well as the ratepayers and the other
19 citizens here in Austin. I see the process that we have
20 engaged in tonight being the first step in that
21 educational process.

22 I think it's very important
23 that it is clear to the general public why we're in this
24 process and what it means to them and how it relates to
25 planning for the future of the Utility. But, more

1 importantly, I think it's imperative that -- and I wrote
2 Teresa a couple of different notes in terms of the
3 process as it relates to the people serving on the panel
4 tonight, the role of the Commission, what report comes
5 out of tonight, and any recommendations that we will
6 make. And one role that I see you guys playing is that
7 of -- I don't want to say PR or lobbying, but continuing
8 to promote the concept of we are educating the public
9 about what's happened. I would hate to see it turn into
10 a bond -- well, a charter change at the end of the
11 summer and it fails and then we're coming back two years
12 at the same point. At that time, our competitive edge
13 that we think we have now may not exist at that time.

14 So I would like to urge the
15 Commission as well as our group of people that are here
16 tonight to continue the role that you're in now in terms
17 of educating the general public, if that means visiting
18 with councilmembers, if that means going to neighborhood
19 meetings, if that means going to totally different types
20 of forums, if it means that you have to come back to the
21 Commission during our public communications time and
22 address this issue again so that it just becomes a part
23 of the record. I think there's a very short period of
24 time, a short window that we have to operate under, and
25 I think education is the key. I could -- I'll stop

1 there.

2 MR. GRAHAM: No request for
3 you to. I think Ms. LeGette has a comment.

4 COMMISSIONER LeGETTE: I
5 have a couple of things. One, I'd like you to consider
6 the problem of conflict of interest. A lot of you made
7 the point last night that you wanted members who are
8 knowledgeable about the Electric Utility. You can't do
9 that if you put your competitors on this board. You
10 can't put people who are connected with exempt wholesale
11 generators. You can't put LCRA people on this board.
12 You can put retired ones on this board. But the problem
13 you're going to get is if this is going to be a real
14 meaningful board with real meaningful responsibilities
15 they are going to be exposed to confidential and
16 proprietary information. And so try to figure out how
17 you're going to get these knowledgeable people without
18 opening the door to great, big conflicts.

19 The second thing is, I like
20 the idea of the recruiting committee. I think that
21 takes care of Robert's idea and takes care of a lot of
22 Smitty's concerns if you get people who can also
23 nominate themselves. I'm convinced that one reason I'm
24 on the Electric Utility Commission is because nobody
25 else wanted to do it. That reflects not just that this

1 is not a real glamorous job and it doesn't pay anything.
2 We offer advice, but nobody much listens. Leaving all
3 of that aside, I think what it reflects is that the
4 Council does not have time to go out and beat the bushes
5 to find candidates, but if you put together a recruiting
6 committee -- well, we put together this group in about a
7 week. It didn't take long to find a group like this,
8 and if you have a committee, I think you can get some
9 good people. And that's all I have. Thank you.

10 MR. GRAHAM: Thank you.

11 PANELIST BARNSTONE:

12 Mr. Chairman, first of all, I want to thank the
13 commission members for their gracious comments about
14 this group and also in return to say that I believe that
15 you've done outstanding work. I have never in my
16 experience in Austin -- I've lived here since 1969 --
17 have ever seen so much unanimity of a community coming
18 together to tackle such a difficult subject as we have
19 here today. So I believe that a considerable amount of
20 work has been done. There's an awful lot of momentum
21 and goodwill, and I hope that we can see it through. I
22 think it's wonderful that Councilmember Reynolds has
23 attended tonight and --

24 MR. GRAHAM: Especially
25 after your comment, your headlight comment.

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1 PANELIST BARNSTONE: Did I
2 say something?

3 MR. MOORE: Yesterday.

4 MR. GRAHAM: Last night.

5 PANELIST BARNSTONE: Well,
6 no, no, no. I used to be a councilmember.

7 MR. GRAHAM: A nonasset.

8 PANELIST BARNSTONE: That
9 was self-deprecating. I was up there, remember. So --
10 and the point that Caroline made, I think, is also -- of
11 course, goes to the heart of it. People want to have
12 enormous confidence in this board, not only to the
13 competence but their agendas and so forth. And I think
14 that we shifted through that yesterday. And I
15 believe -- I just don't want to lose sight of the one
16 shred, I think, of the safety valve in here, and that is
17 that it be clearly understood that even if we appoint
18 people representating the industrial class, whatever,
19 that everyone understands that the fiduciary is owned --
20 that the owners of the utility are the taxpayers of
21 Austin. And if they understand that, whether they're
22 present or retired members of another board, or whatever
23 they are, they have a legal duty to put the interests of
24 the taxpayers of Austin first.

25 MR. GRAHAM: Any other

1 comments from the -- yes, sir, Mr. O'Connell.

2 COMMISSIONER O'CONNELL:

3 Just one. Like Shudde, I'm interested in hearing what
4 this group has to say about the qualifications/criteria
5 for this independent board. As you do that, I think our
6 goal and a consensus goal is to make this utility more
7 competitive. So as you list those criteria and
8 qualifications, think about it and ask the question,
9 does this make -- will this make this board and this
10 utility ultimately more competitive on each one of those
11 criteria? And if it doesn't, it shouldn't be up there.
12 So be careful on how you select it. Talk about
13 everything, but before you put it up there, make sure
14 it'll make this utility more competitive or at least
15 help it along that path.

16 MR. GRAHAM: Back to the
17 fundamental goal.

18 COMMISSIONER O'CONNELL:

19 Right.

20 MR. GRAHAM: Yes, ma'am?

21 COMMISSIONER FATH: I want

22 to say one more thing. I'm -- some people may think
23 I've been dragged kicking and screaming to this point,
24 but, you know, I fundamentally believe in democracy and
25 maybe kind of populist and so forth; and I, for years,

1 thought, well, the people owned the utility and we elect
2 the Council and the Council ought to take the heat for
3 the decisions of the, you know, good and bad. But with
4 the new arena of, you know, wholesale competition and
5 probably seeing retail, I now acknowledge and accept
6 that our present system can't move fast enough. And
7 that's really why I supported the board, and, of course,
8 that's why I'm also hoping that it will be diverse.
9 Thank you.

10 MR. GRAHAM: That is a long
11 way from 1977 when you and I, Neal and four other people
12 were on the first board.

13 COMMISSIONER FATH: Yeah.

14 MR. GRAHAM: Any other
15 comments? Yes, sir, Dr. Urdy. I forgot.

16 PANELIST URDY: Just one
17 with regard to Shudde's concern about the size of the
18 board and the mayor being a voting member of that. I
19 have that same concern, but I presume we would have to
20 create this board pursuant to Article 1115 which
21 includes --

22 COMMISSIONER FATH: But we
23 can have five members and not include the mayor.

24 PANELIST URDY: That's
25 included in that statute.

1 COMMISSIONER FATH: Oh,
2 it's in the statute. I'm sorry. I didn't realize that.

3 PANELIST URDY: But it may
4 be a good time to go to the legislature to ask them to
5 strike that part.

6 MR. GRAHAM: Well, that is
7 one thing I was going to ask Bob Kahn. You could, could
8 you not, word your ballot similar to Greenville in that
9 you could have a minimum of five and perhaps seven and
10 then see if you can get legislative approval or a
11 special statute? I know this city and the legislative
12 relationship is not always -- is rocky at times, but --

13 MR. KAHN: I believe that's
14 how Greenville handled it. I'd have to check into that.
15 But certainly if you wanted to do something different,
16 you may go to the legislators and spend some time, do it
17 the way you want to make it look like.

18 MR. GRAHAM: Okay.

19 PANELIST SMITH: I would
20 have some concerns about that. One of the things I have
21 learned over time in messing around with the legislature
22 since 1983 is, you don't want to have -- lose vehicles
23 out there and penalize the City of Austin in any way,
24 shape or form, and I'm afraid that that's what this
25 would become. However --

1 MR. GRAHAM: Especially
2 when it's dealing with something as important to the
3 City as the Utility.

4 PANELIST SMITH: And in a
5 legislative session where electric utility issues are as
6 contentious as they are likely to be, one way we can
7 assure that our electric utility -- we can hijack is to
8 have a caption of a bill relating to an electric utility
9 in the City of Austin, and that's an invitation to
10 theft. It's kind of like leaving the keys in the car,
11 but this time it would be a Lexus instead of a nuclear
12 plant type car.

13 MR. GRAHAM: It would be
14 the end of the session, no utility. Our format tonight
15 is a little different than last night. We are now going
16 to have our citizen communications. So I have two
17 people that have signed up. If anyone else wishes to
18 speak, the sign-up sheet is at the back. Yes, sir?

19 AUDIENCE MEMBER: I just
20 have a question on the matter of number of
21 representatives on the board. Wouldn't it be possible
22 to have nonvoting members, whatever number we wanted,
23 and, therefore, get input from people who wanted to
24 serve on the board but it's still set under the existing
25 statute?

1 PANELIST SMITH: And I
2 would like to echo that. I mean, I was thinking what
3 Shudde and others had said.

4 MR. GRAHAM: Is it
5 technically ex officio or -- he said just nonvoting.

6 COMMISSIONER JONES: Just
7 say nonvoting.

8 PANELIST SMITH: There are
9 a number of people like Shudde and Dr. Kocurek who have
10 been in this process for 20 or more years, and one of
11 the concerns I have is how do we maintain their --

12 PANELIST BARNSTONE: Hire
13 them as consultants.

14 PANELIST SMITH: Yeah. We
15 could hire them as consultants.

16 MR. GRAHAM: Ed --
17 Mr. Adams?

18 PANELIST ADAMS: Well, I
19 think if you have a board you have a board and they
20 vote, and those who vote you hold responsible.

21 PANELIST SMITH: Right.

22 PANELIST ADAMS: And I
23 guess the board should have the right to hire
24 consultants and advisers and others, and perhaps they
25 could even this time pay Shudde or Neal to consult. But

1 I think it would be most inappropriate to have nonvoting
2 members on the board.

3 PANELIST WATSON: And
4 probably the difficulty is in Article 1115. It says
5 that it shall consist of not more than five members. It
6 doesn't draw the distinction voting/nonvoting.

7 And by the way, I flipped
8 back, and if I understood what I was told about the
9 various ordinance -- the various things that we have in
10 front of us, one of the things indicates that the mayor
11 is a voting member. The mayor of the city shall be a
12 voting member of the board and shall represent the city
13 thereon. So one of the questions that was asked about
14 was whether or not the mayor actually votes. I think it
15 sets it out there.

16 PANELIST BARNSTONE: The
17 Council could tell the mayor how to vote.

18 MR. GRAHAM: Manuel?

19 PANELIST ZUNIGA: I just
20 want to make a comment on something that Shudde said.
21 It probably could remain unsaid. It's been implied in
22 everything that we've been talking about, but one thing
23 that this board will help stop is the draining of the
24 assets of the utility. Not only can we not compete, but
25 we are draining the assets, the equity, that we have in

1 this utility by an incredible -- how many millions of
2 dollars did you say, 90? How many?

3 COMMISSIONER FATH: 97.

4 PANELIST ZUNIGA: 97

5 million dollars. And so, I mean, I think that is
6 equally important to take -- to head that off as well as
7 being noncompetitive. I mean, we're hurting ourselves
8 two different ways. On the other hand, that's going to
9 bring up some serious problems for the General Fund
10 because we're going to talk about lessening the transfer
11 later, but now we're also talking about stopping them
12 from, you know, taking it indirectly.

13 MR. GRAHAM: Okay. Let me
14 go back to our format in the sense that now is the time
15 for our citizen communications. I have the names of two
16 people. If you came in late, you may sign up at the
17 back, the table by the door to my left. I'm getting
18 another name, but the first person I have is Greg
19 Powell.

20 MR. POWELL: Good evening,
21 Ladies and Gentlemen, Commissioners. I want to thank
22 you first for the opportunity to address some of our
23 organization's concerns. My name is Greg Powell. I'm
24 the business manager for the American Federation of
25 State, County and Municipal Employees. We are the union

1 that represents City of Austin employees, specifically
2 in this regard Electric Utility Department employees.

3 The comments that I'm going
4 to share with you tonight are more a compilation of the
5 comments and sentiments that we have received from
6 employees and interested groups that we have been
7 meeting with over the last several months, and some of
8 these comments, I think, are quite germane to
9 discussions that you're engaged in tonight. I'm going
10 to shift the order of my presentation, however, from our
11 priority, our primary focus, that being the employees,
12 to a discussion about politics and this board.

13 The prevailing wisdom seems
14 to be that we must act quickly to get competitive, that
15 we must create a board that is free from political
16 considerations so that this utility can compete in a
17 deregulated market. I believe a statement was made last
18 night that a politically driven body cannot run a
19 competitive business. I'm not sure what was meant by
20 that statement, and I'm certainly not sure how that
21 squares with reality.

22 The reality that we know is
23 that when a board of directors convenes, whether it's
24 for a private organization or a public organization, and
25 when they gather to make decisions, that politics is at

1 the heart of those decisions. The executive board is
2 going to weigh the -- in their decisions the
3 imbalance -- the interests of the organization, the
4 finances of that organization versus the interests of
5 the stockholders in that corporation. That balancing
6 scale is called politics.

7 The composition of a board,
8 you're going to have individuals that comprise a board
9 who come to a board with their own unique perspectives.
10 What is a priority to one board member may be very
11 frivolous to another, and the compromise that has to be
12 achieved in order for that organization to move forward
13 is politics. And I don't see how this board or any
14 other is going to be able to escape that.

15 When we say we want an
16 independent board to be free from political
17 considerations, do we mean that we want the board to
18 make decisions without regard to the various interests
19 and various groups that are going to be affected, groups
20 such as ours, for instance, a union that is out there
21 representing the interests of the employees? We want to
22 be free to make decisions without regard to the
23 environmentalists who are affected by -- or concerned
24 about the impact of the decisions on the quality of
25 life. Do we want to be free from the considerations of

1 the working poor and the ratepayers who are struggling
2 day in and day out to make ends meet? Are we talking
3 about being free from the considerations of the City
4 Council who are, in fact, the elected representatives of
5 the citizens? Are we asking to be free of the concerns
6 of the taxpayers of the City of Austin who ultimately in
7 this regard are the stockholders in the Electric Utility
8 Department? Mr. Barnstone's remarks hit that nail
9 directly on the head.

10 These stockpayers -- or
11 stockholders, the ratepayers, the citizens of Austin,
12 have come to expect a dividend on the investment that we
13 have made in this utility. We realize that dividend
14 every year in the General Fund Transfer to the tune of,
15 what, 90 million dollars that is transferred that is
16 generated from the utility.

17 PANELIST BARNSTONE: 60
18 million.

19 MR. POWELL: 60 million.
20 Those are the profits that we are enjoying. They fund
21 the public services that the citizens of Austin have
22 come to expect. Or are we more sensitive to the
23 business community? Are we afraid that the business
24 community is going to be able to flee the system when we
25 deregulate the market and, therefore, we must do

1 everything to protect keeping them in our system?

2 I need to know -- I guess
3 we need to understand what is the prevailing wisdom that
4 is driving these concerns. What is pushing us
5 immediately in making these decisions? The way we have
6 viewed the electric department is that it is a well-run,
7 well-managed organization that's turning a profit,
8 that's well-positioned for growth in an expanding
9 market. What seems to be the problem here? The specter
10 of competition? The competition and legislation that is
11 yet to be shaped?

12 This proposed board, like
13 any other, is never going to be free of political
14 considerations. They'd better not be. They are not
15 only there to oversee the business as far as management
16 and the employees that are going to be running the
17 business. The board is there to represent and protect
18 the interests of the shareholders, and in this case,
19 that's the citizens of Austin.

20 Let's move, if possible,
21 beyond the rhetoric and the soundbites and quit
22 pandering to antigovernment sentiment of those who
23 prescribe that less government is better and that the
24 private sector can certainly do things better than the
25 public sector in running a business. We believe that

1 the vast majority of the citizens of Austin will
2 recognize a shell game when they see one. I'm talking
3 about the pea under the shells of electric rates versus
4 taxes. The citizens of Austin understand fully that the
5 bottom line for them is that we are going to pay one way
6 or the other.

7 You may pander to us as
8 ratepayers by extensively reducing those rates, and you
9 can do that simply enough. Simply stop the 60 million
10 dollar transfer, role that back into the utility and
11 reduce your rates accordingly. And that's very
12 convenient because what you will have done when you do
13 that is punt the political consideration over to the
14 City Council of how we are then going to fund the public
15 services that we have come to rely upon, and the only
16 way we're going to do that is to raise taxes.

17 There's a lot of cliches
18 that probably are applicable here, robbing Peter to pay
19 Paul and put in one pocket -- money from one pocket into
20 another. I think the most applicable cliché here is
21 that you can't beat the shell game, and one way or the
22 other we are going to pay, whether it is through our
23 current utility rates or through higher taxes, and how
24 an independent board is going to resolve that equation
25 is yet to be seen.

1 If it is the specter of
2 competition and deregulation that is driving this change
3 of government, then our independent board's first order
4 of business should be to hire a lobbyist to help shape
5 and protect our interests and help shape the legislation
6 that is going to be considered in the Texas Legislature
7 next year. We have to set up provisions for stranded
8 investments. We'll have to be there to protect the
9 interests of the employees in making sure that the
10 appropriate legislation is placed to protect their
11 retirements. But that all sounds like politics to me,
12 too, and I don't see how we are going to get around
13 political considerations, whether we are doing it
14 through a city council or an independent board.

15 There's been talk about the
16 composition of this board tonight and the drive to get
17 knowledgeable people on that board. We can certainly
18 understand that. However, it doesn't take into effect
19 the changing face of boards of directors across the
20 country, specifically the changing face of corporate
21 America. Where we used to look at boards of directors
22 and see strictly businessmen, typically white male
23 businessmen, we are now starting to see boards of
24 directors that reflect the composition of the community,
25 that represent the interests of the communities,

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1 consumers, environmentalists. Yes, even labor leaders
2 are a part of these boards of directors. We need those
3 interests represented on this independent board.

4 These board members are
5 going to approach their mission from their various
6 angles and their various backgrounds. Some will come
7 with their own agenda, some with their own motives.
8 Maybe it is to position the Utility ultimately for
9 future sale. Maybe it is to fashion it towards a lease
10 to another organization. Maybe they will be operating
11 in the best interest of the citizens of Austin and maybe
12 not. And if not, then what are we going to do about it?
13 It seems to me that we're grappling with that same
14 situation now in our considerations with Capital Metro,
15 and the last thing I would like to see us create here
16 would be a Capital Electro. The same implications
17 apply. The implications that I'm most concerned about,
18 however, are the implications for employees.

19 Our example -- and it was a
20 painful lesson that we learned -- is Brackenridge
21 Hospital. There was the same unanimity of concern and
22 care for the ultimate fate of Brackenridge Hospital from
23 the citizens of Austin. And indeed we participated on
24 that panel to consider the future governance of
25 Brackenridge Hospital, and we discussed and we debated,

1 we had presentations, we weighed the options, we devised
2 a plan, we voted on that plan, and we presented it to
3 the City Council. That plan was to establish an
4 authority.

5 When those negotiations
6 broke down, whether they broke down under their own
7 weight or whether they broke down because one or more of
8 the parties involved was not negotiating in good faith,
9 ultimately what happened was Seton Hospital stepped in,
10 laid an offer on the table that the City Council
11 couldn't refuse, and Brackenridge was gone and all the
12 promises that were made to the employees, the same kind
13 of statements that I'm hearing as I talk to the
14 commission members and councilmembers, that we care
15 about the employees, we're concerned about their fate,
16 we're going to protect the employees. Those employees
17 were sold or, more accurately, leased down the river.

18 A typical example of a
19 Brackenridge employee, 40-year-old nurse, 20 years of
20 service at Brackenridge Hospital, five years away from
21 retirement. The day the lease was signed, that nurse's
22 pension was frozen. Instead of collecting her full
23 retirement benefits in five years to which she would
24 have otherwise been entitled, she will wait 22 years
25 before she collects a dime on her pension. Average loss

1 to the employees of Brackenridge in pension benefits
2 alone, \$155,000 per employee.

3 We talk about the
4 considerations for employees. What are the implications
5 of this board? The implications to the employees on
6 their retirement, on their benefits, on their policies,
7 and on their futures must be considered. And I would
8 hope when we are wading through all the various options
9 that weighing in with those options are the
10 considerations of employees and how they will be
11 affected regardless of what avenue we proceed by.

12 Those are the statements
13 that I wanted to bring to your attention this evening,
14 and we will be a continuing part of the discussion. If
15 nothing else, I want to be able to stand on the outside
16 and be a voice in your ear saying there are 1,100
17 employees involved in these considerations. So please
18 don't forget them.

19 MR. GRAHAM: Thank you,
20 Mr. Powell, and I would remind you that there will be
21 public hearings again -- public meetings next Monday and
22 Tuesday also to discuss the fund transfer.

23 MR. POWELL: Thank you.

24 PANELIST BARNSTONE:

25 Mr. Chairman?

1 MR. GRAHAM: Ms. Jackson?
2 Before we have the next -- we have two more people, and
3 then we're having a break.

4 PANELIST BARNSTONE: I'd
5 like to ask him a brief question.

6 MR. GRAHAM: Robert, yes,
7 brief question.

8 PANELIST BARNSTONE: Have
9 you consulted with CPS, and do you understand the
10 working relationship between AFSCME and the CPS board in
11 San Antonio?

12 MR. POWELL: I have
13 consulted with CPS and the International Brotherhood of
14 Electrical Workers who are with the union that
15 represents those employees and have since 1933, and they
16 operate on a very -- they operate on a level of
17 understanding. They being public employees, they cannot
18 engage in collective bargaining, but they have a very
19 clear understanding that was negotiated in good faith.
20 And for the last 60 plus years that that organization
21 has been in existence, they have -- both parties have
22 been fulfilling their agreement.

23 MR. GRAHAM: I've got a
24 request for a break right now. So we're going to take
25 one. Thank you, Mr. Powell.

1 PANELIST MARSTON: Will
2 there be an opportunity after the break or after the
3 other two speakers to ask questions of Mr. Powell?

4 MR. GRAHAM: Sure, sure.
5 Ms. Jackson and Ms. Guthrie, if you'll -- we'll be back
6 at 7:10.

7 (At this time, a brief
8 recess was taken, after which time the proceedings
9 continued as follows:)

10 MR. GRAHAM: Is Dorothy
11 Jackson here? Ms. Jackson?

12 MS. JACKSON: Good evening.
13 Last night we talked about forming a board, and I see
14 you-all decided that we would form a board that would be
15 appointed but voted on by the citizens. Is that my
16 understanding?

17 MR. GRAHAM: I don't think
18 there's any consensus at this point.

19 MS. JACKSON: Oh, okay.
20 Well, I'm hoping that's what it will be, voted on by the
21 citizens. And last night you also gave me permission to
22 sell the nuke that's mine, and my understanding is you
23 can't sell any part of your electric?

24 PANELIST MARSTON: No.

25 MS. JACKSON: No?

1 PANELIST MARSTON: You can
2 sell the assets, but you can't sell the utility.

3 MS. JACKSON: Okay.

4 PANELIST MARSTON: If
5 you've got an offer to do it, let us know.

6 MS. JACKSON: Okay. That's
7 what I need to know.

8 PANELIST WATSON: And we'll
9 be happy to reconvene at another time for you.

10 MS. JACKSON: All I need is
11 a letter saying from you I have the right.

12 PANELIST ZUNIGA: We'll go
13 to your home.

14 MS. JACKSON: I'll give you
15 my address. Okay. Also, are you separating the water
16 and the wastewater bills and the other from the
17 electric -- from the utility bills?

18 MR. GRAHAM: That is
19 something that was mentioned last night.

20 MS. JACKSON: Right.

21 MR. GRAHAM: There may be
22 further discussion on it either -- tonight, but it's
23 certainly a good idea whether -- no. That's something
24 that if there is a board that would be left to the
25 board, I would think, if there is one really.

1 MS. JACKSON: Yeah, because
2 you're going to have to have some money to operate in
3 the future for this utility.

4 MR. GRAHAM: Yes, ma'am.

5 MS. JACKSON: I mean, it
6 needs repairs now, let alone future repairs.

7 MR. GRAHAM: Mr. Moore
8 nodded at that.

9 MS. JACKSON: Right. I
10 think that would be good. Also, I want to thank each
11 and every one of you. I think it was wonderful for you
12 to spend your time. But I do think that board needs to
13 be paid so that they can be accountable to us. You're
14 not accountable -- unless you're paid, you're a
15 volunteer. Volunteers are not accountable. So let's
16 make them accountable. Thank you-all.

17 MR. GRAHAM: Thank you.

18 Ms. Carol Guthrie?

19 MS. GUTHRIE: Good evening.
20 I heard a lot of discussion tonight and last night about
21 how important -- how important setting up this new board
22 and the structure and the makeup of that board and how
23 it -- at least the consensus that I'm getting from all
24 of you is that it needs to be one of the best boards
25 that you ever set up. Whether or not I support that

1 concept, I really haven't made up my mind. I've heard
2 pros and cons on both sides.

3 But, more importantly, in
4 light of the fact that you-all are talking about trying
5 to take the politics somewhat out of the process by
6 having the mayor -- and this is -- this doesn't mean
7 anything about this current mayor. This is just a mayor
8 in general -- being a voting member of the board I think
9 is very dangerous. I think that having a five-member
10 board is much too small, and I think that trying to
11 force Austin to become San Antonio is not a good idea.

12 I do spend some time in San
13 Antonio working, and I can tell you that the politics
14 and the community in San Antonio is not even close to
15 the politics and the community here in Austin. So if it
16 is the wisdom of the Austin community to move forward
17 with an independent board, then I think that this panel
18 or committee needs to go with a larger structure that is
19 indeed more representative of Austin and that all of our
20 needs and wants, of course, will be met through that.

21 I am concerned that again
22 it appears that we are rushing and that there is an
23 urgent need that something is on fire and that we've got
24 to put it out. I think that this is a major step for
25 this community, and I, too, believe in education of the

1 community and I think that we need to take our time and
2 we need to look at what is in the best interest of the
3 community. And if the legislation that exists right now
4 does not fit what Austin needs, then I think that this
5 panel should move to change that legislation, and I
6 understand some of the concerns --

7 MR. GRAHAM: He's moved.

8 MS. JACKSON: Oh, you
9 moved. -- some of the concerns that we have at the
10 legislature, but to try and fit the San Antonio model
11 into Austin I do not think is a good idea. So if you
12 want this to be the best board possible, I think that it
13 does need to be larger and that the mayor definitely
14 should not be a voting member on this board. Thank you.

15 MR. GRAHAM: Thank you.

16 PANELIST BARNSTONE: May I
17 please, Chairman?

18 MR. GRAHAM: Certainly.

19 PANELIST BARNSTONE: Carol,
20 let me ask you a question. This is an issue that
21 puzzles me a little bit. As Greg mentioned earlier, the
22 AFSCME people were very supportive of the hospital
23 authority when the other -- alternate possibility was
24 the sale of a hospital. And here we're talking about
25 setting up precisely that, an authority, and there seems

1 to be some reticence on your part as I hear the
2 questions of why now and so forth; and I have an answer
3 to that that I think has been amply answered. But if
4 we're laying our cards on the table, I'll just ask you
5 directly, does your position have anything to do with
6 the fact that there is a rival board in -- a rival union
7 in San Antonio, the International Brotherhood of
8 Electrical Workers, as opposed to AFSCME?

9 MS. GUTHRIE: No, sir, not
10 at all.

11 PANELIST BARNSTONE: Then
12 what is your concern?

13 MS. GUTHRIE: Well, first
14 of all, I'm not speaking as an AFSCME representative.
15 I'm speaking as a ratepayer of Austin. But the
16 concern -- my concern obviously as an AFSCME
17 representative are the employees, and when we went down
18 the Brackenridge road, there were many things that --
19 considerations were left out for the employees. And
20 everything that I have heard here tonight, everyone
21 speaking about let's -- we have to do business and we
22 have to do all of these things does not include the
23 employees. We actually dealt with those employees who
24 lost their pensions, who lost their benefits, who lost
25 everything after we were told that that was not going to

1 happen. That is my concern.

2 PANELIST BARNSTONE: Right.
3 And in that case, we didn't set up a hospital authority.
4 The Counsel went in a different direction. So, again,
5 the issue here is that I think this is the solution you
6 were supporting. And if I may just say, the very first
7 question that I believe Sam asked, the very first
8 question asked yesterday, was, what would be the status
9 of the employees with a pension board. The first
10 witness that we had speak was a representative from the
11 employee pension board to clarify the status under the
12 scenario that we're -- so it is very much on our mind.
13 Please don't think that it is not.

14 MS. GUTHRIE: I understand
15 that, but let me just say this: When that was raised
16 during the Brackenridge ordeal, what it took was for us
17 to go and lobby and change legislation so that those
18 employees would be protected, and we did just that and
19 we got that legislation, and they still were not
20 protected. So if I'm a little bit apprehension, I think
21 I have reason to be. I'm not saying that I'm for a
22 board or against a board. I'm saying that based on the
23 discussion that you've had here tonight that a
24 five-member board with the mayor as a voting member of
25 that board is not acceptable to me, Carol, the

1 ratepayer.

2 MR. GRAHAM: Okay.

3 PANELIST BARNSTONE: Okay.

4 I appreciate that. And, again, let me just say that a
5 five-member board is what the state legislation --

6 MS. GUTHRIE: Oh, I
7 understand that. No. I understand that. Change it.

8 PANELIST BARNSTONE: And
9 the reason why we're moving in this direction -- I was
10 having a conversation with Senator Herring, and he was
11 just telling me about when Tom Miller was mayor of
12 Austin and the City Council used to meet once a month
13 for a couple of hours in the afternoon and take care of
14 all the City's business. And things have gotten much,
15 much more complex. Even if we didn't have the specter
16 of competition and retail wheeling and so forth, we've
17 got a big, big enterprise here that needs a head.

18 MS. GUTHRIE: I understand
19 that. And you know that AFSCME is a very strong
20 advocate for efficient government, and I do believe that
21 the utility needs to become more competitive than it
22 already is. I'm just not saying if I agree that this is
23 the right way to do that.

24 MR. GRAHAM: Thank you.

25 PANELIST URDY: Just a

1 comment --

2 MR. GRAHAM: Yes, Charles.

3 PANELIST URDY: -- Carol,
4 on two things. Number one, I agree with your concern
5 about the size of the board, five members with the mayor
6 as one of those members. I think it's too small, and I
7 think that's a legitimate thing for us to pursue with
8 the legislation. I was looking at this -- and I'm not a
9 lawyer. So I may be misreading this, but it seems to me
10 that this legislation was passed in 1911.

11 MR. GRAHAM: Yes, and
12 amended, yes.

13 PANELIST URDY: I think
14 that it's -- to me it seems rather clear, that for us a
15 five-member board that's a mayor and four citizens will
16 not address the concerns that we have, and we should
17 then lobby this and get it changed. I think, though --
18 with regard to your concern about the urgency, I think
19 it is urgent at this point and that we have to go to a
20 charter election, and I think we should pursue and try
21 to go to a charter election as soon as we can.

22 And I asked that question
23 earlier of the attorney, and I assume that what we would
24 put in a charter would be something pursuant to this
25 particular article, which is the article, the state law,

1 that gives us the authority to do this. And if that
2 article is changed, then we would be -- we would still
3 come under the changed article however it is changed or
4 if it is changed. But I don't think we can wait, you
5 know, for that, but I do know that it is something that
6 I certainly would like to pursue.

7 PANELIST BARNSTONE: We've
8 got lots of attorneys here. Let's raise the question
9 one more time.

10 MR. GRAHAM: Thank you.

11 PANELIST BARNSTONE: Are
12 we -- is our sole authority as a home rule city under
13 1115 -- Section 1115?

14 MR. KAHN: In that packet
15 you were handed yesterday, they kind of had a decision
16 tree.

17 MR. GRAHAM: Yes.

18 MR. KAHN: And basically
19 the two statutes in the state that exist today that
20 allow you to set up a board are 1115 and 1115a, and they
21 are referenced in that packet.

22 PANELIST BARNSTONE: When
23 you say "allow you to set up a board," I mean, the basic
24 home rule powers are that unless the legislature says
25 you cannot do something you'll have all the reserved

1 powers, correct?

2 MR. KAHN: That's correct.

3 PANELIST BARNSTONE: Well,
4 if we have all our powers and there's no revision, do we
5 not have inherent powers to set up this board in any
6 configuration that we want?

7 MR. KAHN: No. The only
8 way we can set up a board is pursuant to 1115 and 1115a
9 since the state statute addresses it. If the state --
10 the statute doesn't -- if there was not a state statute
11 on boards, then that might be a different issue,
12 something I might have to look at. But there is --
13 there are two statutes on the books on how municipally
14 owned utilities can set up boards, and that's how we'd
15 have to do it. If we want to do it different, we'd have
16 to write different legislation.

17 MR. GRAHAM: Okay. Robert,
18 you may well disagree with that opinion --

19 PANELIST BARNSTONE: No, I
20 don't.

21 MR. GRAHAM: -- or you may
22 seek other opinions, but for the time being, that's what
23 we have to work with. And, in fact, I just looked at
24 the first sentence again, and it says, "The management
25 and control of any such system or systems during the

time" and in the hands of the city council or a board.

PANELIST BARNSTONE: It's a concern to everyone.

MR. GRAHAM: Yeah.

PANELIST BARNSTONE: And I just wanted to make sure that we were --

MR. GRAHAM: In fact -- any other questions for Bob?

(No response.)

MR. GRAHAM: In fact, I'd like to go back to the question that we discussed last night very early in which we had a consensus that there should be a board created to look after -- or to administer the utility with the big three powers retained by the City Council and see if we still have that consensus, learning as we did tonight that if there is such a board, unless there's a legislative change, that the board would probably be five members. The -- a member of the City Council, i.e., the mayor, would be a voting member, and to change that, we might would -- we'd have to get -- seem to have to get legislative approval, opening up all of the Pandora's box that comes with the City of Austin's relationship with the legislature. Is there still a consensus that that's the way to go at this point?

1 PANELIST ADAMS: Yeah. I
2 think Smitty had another valid point. With the
3 legislative activity that's going to take place during
4 this next session on deregulation, this would be a
5 terrible time to get the City of Austin's business tied
6 up in there.

7 MR. GRAHAM: Okay.

8 PANELIST BARNSTONE: But to
9 answer your question --

10 MR. GRAHAM: Yeah.

11 PANELIST BARNSTONE: -- I
12 don't think that that's a sufficient ball for us to
13 proceed. If we have to live with a five-member board,
14 we're going to get the five best people in this city,
15 but we would like it to be --

16 PANELIST ADAMS: Four and
17 the mayor.

18 PANELIST URDY: Four plus
19 one.

20 PANELIST SMITH: I find
21 myself in the unusual position of agreeing with Ed.
22 We'll have four good people and a mayor.

23 MR. GRAHAM: A generic
24 mayor. This is what we're going to do the rest of the
25 evening, Folks. There will be a discussion among the

1 Panel and then about 8:00 o'clock questions and answers
 2 among ourselves or members of the -- members of the
 3 audience or the public, including Electric Utility
 4 Commission people. Okay. So that's our format. The
 5 major thing I thought we would talk about tonight would
 6 be criteria -- the size of the board, criteria of
 7 membership, and selection. Size of board is probably
 8 gone for a while. So let's get back to -- and we still
 9 have a consensus, as I could tell by nodding of heads,
 10 about -- yes, sir, Mr. Marston.

11 PANELIST MARSTON: May I
 12 maybe just put a few caveats on my position? I still
 13 support the idea of an independent board even if we have
 14 to have it under one of the two articles that have been
 15 referenced. I think the union representatives come to
 16 this with legitimate concerns because I think they're
 17 absolutely right. What happened to some of the
 18 employees at Brackenridge was very unfair. I don't
 19 think, though, we have to make those same mistakes here.
 20 We can avoid those and we're going to be careful about
 21 that, but I guess the first thing I have to say is, if
 22 it appeared that we're going to harm hundreds of
 23 employees or dozens of employees by doing this, then my
 24 support would go away very quickly.

25 MR. GRAHAM: And one of the

1 assets of the utility and one of the stakeholders in the
2 utility identified in the Price Waterhouse study are the
3 employees. Okay. Any other caveats?

4 PANELIST MARSTON: The
5 second caveat I would have is that I do not think that
6 the big three, as we've been talking about, are
7 necessarily the only powers that need to be reserved to
8 the City Council. We might want to reserve one or two
9 more powers in my opinion to the City Council. And I
10 continue to be concerned that we need to realize that if
11 we have a five- or a seven-person board we need to try
12 to build in some kind of assurance that the board is as
13 representative as that number of people can be, given
14 the legal restriction of the number five or some other
15 number.

16 MR. GRAHAM: Representative
17 five. How do you go about getting a representative
18 five?

19 PANELIST SMITH: Well, Sam,
20 I think that there are a couple of questions.

21 PANELIST MARSTON: Well, I
22 guess what I would say is that one way to do that is
23 both with the legal requirement for some class
24 representatives -- I mean, rate class representatives
25 and then maybe beyond legal requirements the fact that

1 we really had the decision-making -- the selection in
2 the Council as opposed to being nominated by the board
3 itself. Our Council, regardless of its philosophical
4 makeup, at least in the 18 years I've been here, has
5 been pretty good about trying to get a broad range of
6 folks, and I'd be less worried about that than if it was
7 a truly self-perpetuating board where people tend to
8 pick people who look and act like them.

9 MR. GRAHAM: Last night
10 Robert made a very good point that we all agreed, that
11 the crucial factor one is Board No. 1, but then how you
12 get what happens next, Board No. 2, and its mutations.
13 And what I think you just said was not a
14 self-perpetuating board --

15 PANELIST MARSTON: That's
16 right.

17 MR. GRAHAM: -- or
18 self-nominating. It's not so much self-perpetuating of
19 the individual members as self-selection of successors,
20 which seems to be the model in San Antonio. Yes, sir?

21 PANELIST ADAMS: It seems
22 to me, if we want to be competitive, one of the things
23 you do is look at your competitors, and I would ask what
24 is the composition of the competitive boards like TU and
25 HL&P. And I don't think that those boards are

1 constructed as a basis of representation but on some
2 other factors that would make the organization
3 productive and profitable.

4 PANELIST WATSON: One of
5 the great advantages to a city-owned electric utility is
6 that there are a number of interests that the taxpayers,
7 the owners of that utility, have in that utility, that
8 if you have a representative board, you have appropriate
9 people there, all of those interests can be considered.
10 The goal is to make it more competitive. The goal is to
11 make it where it is not harmed by competition, but there
12 may be other considerations that a board will want to
13 make at some point that don't just involve the idea of
14 can I outbid to you and build me a new power plant and
15 be able to increase the number of ratepayers I have by
16 building a new power plant. They may want to avoid
17 that. And we've got to be able to protect all of those
18 interests. We've got to look at it in a more complete
19 way.

20 PANELIST ADAMS: Well, it
21 seems to me that there would be processes that the board
22 would use to make sure that all of those interests are
23 taken into consideration.

24 PANELIST MARSTON: But
25 using your model, corporations have stockholders who

1 elect board members, and what we would be doing is, in
2 effect, having the representatives of -- the elected
3 representatives of the stockholders, the City Council,
4 select board members. I --

5 PANELIST ADAMS: Yeah,
6 that's fine. I know it, but I just thought we were
7 talking about the makeup of the board and whether that
8 makeup would be representative or not and whether that
9 should be the highest criteria or should it be trying to
10 benchmark against the competition.

11 PANELIST BARNSTONE: Once
12 again, let's not lose sight, I think, of what we said
13 yesterday, that I think we all agree. Wherever they
14 come from, whoever they are, they owe their duty to the
15 taxpayers of Austin. Now, we've got a problem. We've
16 only got five slots initially.

17 PANELIST WATSON: That
18 becomes a big problem.

19 PANELIST BARNSTONE: So
20 it's very hard to start dividing it. Let me suggest --

21 MR. GRAHAM: There are four
22 slots.

23 PANELIST BARNSTONE: Well,
24 you're right, four slots, which makes it even tougher.
25 I'm not sure what class the mayor would come from.

1 MR. GRAHAM: It varies, you
2 know.

3 MR. MOORE: One of them is
4 already elected. So --

5 MR. GRAHAM: That's right.
6 One member is elected.

7 MR. MOORE: That's right.
8 So --

9 PANELIST BARNSTONE: Let me
10 suggest -- Kirk, you know, I think that everybody's
11 sensibility is that, yes, of course, we want a balanced
12 board, we want people and competent people, of course.
13 Why don't -- since we only have four slots, let's move
14 on this recruitment committee that, you know, Caroline
15 liked and so forth, a mandate to them, look around, give
16 us a balanced board, because it's going to be very
17 difficult for us to do by formula. I think Ed's point
18 is right on. I mean, you can't put it into the
19 legislation. San Antonio certainly doesn't have it,
20 certainly TU. If we tie the hands like that, I think
21 that, you know, we're starting to try to get efficient
22 in a very inefficient manner.

23 MR. GRAHAM: You're talking
24 about a recruitment committee for Board 1.

25 PANELIST BARNSTONE: For

1 Board 1 that has in mind all of these things. And, of
2 course, their recommendations will be outed. In other
3 words, you'll know right away who this guy is and who
4 that guy is and who they represent rather than doing it
5 by strict formula because I think that we'll never do
6 it, especially with only four.

7 MR. GRAHAM: Smitty?

8 PANELIST SMITH: I think
9 there are several models that have been suggested. One
10 had been that we do it by customer class. And let's
11 perhaps make a list of the various groups here, the
12 models. One, we have the mayor, a large industrial, a
13 commercial and a residential consumer, and then last
14 night one of the things we said we wanted was an
15 out-of-city customer as well. And that would take --
16 that would be the four. So you would have the three
17 customer classes --

18 MR. GRAHAM: Out-of-city.

19 PANELIST SMITH: -- and
20 out-of-city.

21 MR. GRAHAM: And what are
22 the other three?

23 PANELIST SMITH: It's by
24 customer class. It's industrial, commercial and
25 residential.

1 MR. GRAHAM: Good.

2 PANELIST SMITH: Another
3 model that was suggested -- and I may need some help on
4 this -- was that we do it by profession and that we have
5 a lawyer, an accountant, an engineer and a banker, I
6 think, were the four professional classes that we're
7 suggesting. And then during the break, there was yet a
8 further suggestion we do it by contributor classes, that
9 we assume the mayor will represent large contributors.

10 MR. GRAHAM: Those breaks
11 are always useful. Did I get all four?

12 PANELIST SMITH: Yeah.

13 MR. GRAHAM: So training.
14 Every time you do this, you immediately see the
15 shortfalls, don't you, or the problems? Do you have
16 another --

17 PANELIST SMITH: Yes.
18 There's another class I'd like to suggest up there, and
19 one thing I would like to see is that we have -- reserve
20 an employee seat on whatever board and that I think it's
21 important that an employee be elected to the board by
22 whatever organization that it represents the employees
23 of the utility.

24 MR. GRAHAM: Charles?

25 PANELIST URDY: Let me back

1 up to your original question, whether or not we still
2 support the idea of the board given the restrictions
3 that we have, and I do. But I want to back up on it a
4 little bit because I come from the same place as Shudde
5 does. I -- you know, I, for a long time, completely
6 opposed a -- any kind of change in our present system
7 because it worked well, I think, under the current
8 conditions, but now the situation is changing and it's
9 changing very drastically and I think it has to change.
10 So I still support it even if we're limited to the four
11 members plus the mayor.

12 But I also support moving
13 ahead, not necessarily rushing and breaking our necks
14 but moving ahead to try to change that legislation, and
15 I think we can do that without jeopardizing our future
16 in any way. I think, number one, we have to move ahead
17 as quickly as possible toward a charter amendment, you
18 know, given -- you know, establish that under this
19 article. We need to do that, if we possibly can, in
20 August, I think.

21 MR. GRAHAM: So --

22 PANELIST URDY: I think it
23 is urgent, given, again, the constraints that we have,
24 because if something passes in August and we don't have
25 this on there, then we're just simply stuck for two

1 years, absolutely nothing we can do for two years.

2 MR. GRAHAM: So what you're
3 saying is, don't lose sight -- when we're down here with
4 the lawyers and the engineers on who should be on the
5 board, don't lose sight of the big picture --

6 PANELIST URDY: That's
7 right.

8 MR. GRAHAM: -- which is
9 charter amendment, possibility of changing the
10 legislation in August or two years later?

11 PANELIST URDY: Yes. Now,
12 with regard to the makeup, it's difficult to try to
13 structure all of that, I think. You know, there's all
14 kinds of ways of looking at it. I think there is a need
15 for, quote-unquote, "diversity" in all respects on this
16 board, and with four it's hard to even think about that.
17 But -- and I know some public utilities don't do that,
18 but the LCRA does. We're a very diverse board and it's
19 a very good board, a very functional board.

20 PANELIST BARNSTONE: But
21 compared to the rest of it, it isn't diverse.

22 PANELIST URDY: Wait, wait
23 wait. I'm not finished yet. I think, though, that I
24 don't know if I would want to specify -- try to specify
25 all of those different things in the legislation. I

1 think what I would want to specify, though, is that the
2 board should be as representative as possible of the
3 customers and the community that it serves. That's a
4 goal. I think it is important that we place in there in
5 the beginning the goal that we want that board to be
6 representative. We can't always reach all of the goals
7 that we have. I mean, what does that mean? I don't
8 know. It means different things at different times, but
9 I think we ought to specify in whatever transition that
10 we make that that is the goal. And you have other
11 criteria. The board has to be whatever it is we're
12 going to specify, but I think rather than trying to
13 determine professions --

14 PANELIST BARNSTONE:

15 Classes.

16 PANELIST URDY: -- or even

17 customer classes that, you know, we might change the
18 designation next week.

19 PANELIST BARNSTONE: You

20 know, what would happen -- if we really put a very rigid
21 form, what would happen is that immediately there would
22 be some balance, somebody -- the engineer or somebody
23 might wind up being the swing vote. And it would be an
24 unfunctioning board because everyone would be so rigid
25 in their position, and they couldn't make a decision

1 unless this one kingmaker, you know, threw his weight
2 back and forth.

3 PANELIST URDY: We couldn't
4 have two engineers on the board.

5 PANELIST MARSTON: Can I
6 ask a related question?

7 MR. GRAHAM: Sure.

8 PANELIST MARSTON: My
9 desire for diversity in lots of ways can be, I think,
10 partially satisfied, as I said before, if the real
11 selection is being made by the Council, and I'd be less
12 worried about setting out slots if I -- if we had some
13 agreement that subsequent boards would be selected on
14 rotating terms by an elected body as opposed to the
15 board itself.

16 PANELIST BARNSTONE: That's
17 fair. And, you know, we've been talking about San
18 Antonio. If I read the handout correctly, the city
19 council nominates the board members of San Antonio and
20 the trustees elect them. So --

21 MR. GRAHAM: Is that your
22 understanding, Bob?

23 PANELIST SMITH: We're
24 chatting.

25 MR. KAHN: I'm sorry.

1 MR. GRAHAM: Oh, Smitty is
2 back there. The question is, do you recall -- does the
3 city council nominate and the actual board elects its
4 own members in San Antonio?

5 PANELIST HERRING: I think
6 it's just the reverse.

7 MR. GRAHAM: The reverse.
8 That's what I was thinking.

9 PANELIST BARNSTONE: Let me
10 just read to you on Page 40. It says, "If the nominee
11 of the City Council is rejected by a majority of the
12 remaining Trustees, the...Trustees shall within 30 days
13 after such rejection elect another nominee to fill such
14 vacancy." So --

15 MR. GRAHAM: Do you think
16 that could be for someone resigning during midterm?

17 PANELIST WATSON: That's
18 what it is, and if they don't fill -- if the Commission
19 then doesn't fill the position, the City Council can
20 then take an action.

21 MR. GRAHAM: Let me go to
22 this --

23 PANELIST BARNSTONE: I
24 think Jim's point is well-taken.

25 MR. GRAHAM: Let me go to

1 this point.

2 PANELIST WATSON: Can I add
3 one thing to that?

4 MR. GRAHAM: Yeah.

5 PANELIST WATSON: I think
6 it is important, whether you write it in -- whether you
7 say, okay, one member has to be industrial, one has to
8 be commercial, one has to be -- if what you're going to
9 do is make the point that you want the diversity of the
10 representation, you leave it where it will be an elected
11 body making those appointments but also provide as part
12 of the outline that you see here, by the way the City --
13 as a good example, the way the City of San Antonio does
14 it, that the goal should be. I mean actually write that
15 in without putting anything rigid about this position,
16 it has to be this position. I think that has to be
17 there. I think you need to make sure that down the road
18 the thought processes are well-communicated.

19 PANELIST BARNSTONE: Well,
20 I'm not sure where you're putting it, but if you're
21 putting it in someplace --

22 MR. GRAHAM: But what are
23 you putting in? Are you putting in this goal, that it
24 be as representative as possible -- and I put these
25 three because those were the three I remembered, but I

1 think there are many others -- or do you put as diverse
2 as possible? What is the goal?

3 PANELIST BARNSTONE:

4 Well --

5 MR. GRAHAM: Yes?

6 PANELIST ADAMS: I think
7 knowledgeable and representative are the two words that
8 you should have in there.

9 PANELIST WATSON:

10 Representative is a little vague.

11 PANELIST ZUNIGA: So is
12 knowledgeable.

13 PANELIST BARNSTONE: There
14 is an important point again here.

15 MR. GRAHAM: Go ahead,
16 Robert.

17 PANELIST BARNSTONE: That
18 when we say representation, we're using who they
19 represent, and that word bothers me a little bit because
20 we're tampering on the question of fiduciary duties.
21 And so the San Antonio indenture agreement is very clear
22 on who they owe their duty to, and we don't want to mess
23 that up. And everyone has been very gracious about this
24 in exchanging views and we're all being very amenable,
25 but let me tell you, that if we set up an albatross --

1 an unworking board, we will go in a very bad direction.
2 It has to be a board of competent people who can work
3 well together, and if it's a rigid formula, it's
4 entirely possible that you could lock in. I don't know
5 if anybody has had any experience with a deadlocked
6 board where people just are dug into their positions and
7 can't move, but it's paralysis.

8 PANELIST MARSTON: I don't
9 think anybody is advocating rigid. The question is, can
10 we have some kind of nonlegally binding --

11 PANELIST WATSON:
12 Direction.

13 PANELIST MARSTON: --
14 directive language that might -- and I'm not sure of the
15 right word. Representative didn't bother me, but you're
16 concerned that people shouldn't view themselves as
17 coming as a -- representating a point of view. But I
18 think Kirk's idea that we ought to have people with
19 different knowledge -- I mean, I would like to have a
20 large industrial customer on the board.

21 PANELIST BARNSTONE: And if
22 the Council does their job right, the selection
23 committee does their job right, that happens, but if
24 they elect bad people, then --

25 MR. GRAHAM: Is there a

1 consensus on the -- you just used the word "selection"
2 as opposed to recruiting or search committee. Were you
3 using it --

4 PANELIST BARNSTONE: No.

5 MR. GRAHAM: --
6 synonymously or --

7 PANELIST BARNSTONE: I was
8 using it synonymously, yeah.

9 MR. GRAHAM: Are we in --
10 is there a consensus among you that there should be a
11 search, selection, nominating, whatever you want to call
12 it, but that the Council is free to ignore or go forward
13 and do whatever they wish?

14 PANELIST BARNSTONE:
15 Absolutely. The Council should retain all the power.

16 MR. GRAHAM: Now, people
17 are all nodding about this. Now, is that affirmative?
18 Okay. I'm putting "Blue Ribbon Committee."

19 PANELIST BARNSTONE: How
20 many of those are we going to have?

21 MR. GRAHAM: Nominees, all
22 right, their charter, their instruction.

23 PANELIST BARNSTONE: I --

24 PANELIST MARSTON: Don't
25 call it Blue Ribbon Committee. Don't do that.

1 MR. GRAHAM: What --
2 search, selection, recruitment?

3 PANELIST URDY: A
4 recruitment committee.

5 PANELIST ZUNIGA: You know,
6 maybe you could do committees, and the criteria you were
7 using before you could use that with committees, you
8 know, in other words, either by rate class or by
9 geography or by profession or something like that. In
10 other words, like the -- if you could get a committee --

11 PANELIST BARNSTONE: That
12 might be handled informally. There's going to be lots
13 of interest groups. They're all going to be funneling
14 names.

15 MR. GRAHAM: Sure.

16 PANELIST ZUNIGA: But I
17 think they should all funnel names, exactly.

18 MR. GRAHAM: Let's go back
19 to what we've talked about tonight because we've got a
20 lot of ideas, and maybe what we -- the best service that
21 you people are providing is by getting these out as
22 opposed to trying to build some consensus in the next
23 two or three minutes. So what you've just gone through
24 is, after our caveats -- oh, representatives of perhaps
25 rate class, one model, customer class, out-of-city,

1 industrial, commercial, residential.

2 PANELIST BARNSTONE: I'm
3 sorry, Sam. Can we avoid using the phrase
4 "representative"?

5 MR. GRAHAM: Sure,
6 absolutely, members of the board.

7 PANELIST BARNSTONE:
8 Members of the board with experience or concerns of or
9 whatever.

10 MR. GRAHAM: Sure.

11 PANELIST BARNSTONE: But
12 "representative" flies in the face of who their duty is
13 to.

14 MR. GRAHAM: What you've
15 been saying for two nights, yeah. Training, you
16 discussed that. Give me a new word here.

17 PANELIST MARSTON: Sam --
18 I'm sorry.

19 PANELIST URDY: Yeah. Go
20 ahead. What's wrong -- I don't understand what's wrong
21 with "representative."

22 PANELIST WATSON: He's
23 concerned if you say you are representative of this
24 class, then when you get on the board that is the only
25 position you will take and not put yourself in a

1 situation where you're capable of becoming part of a
2 consensus or compromise in order to take a broader, more
3 complete view of the utility.

4 MR. GRAHAM: Especially
5 when you have a four or five -- a very small
6 deliberative body. That's the concern.

7 PANELIST URDY: But how
8 does that change the charge of the board? We're talking
9 about the selection process now. There should be
10 something representative, not representing but
11 representative of --

12 MR. GRAHAM: How about
13 experienced?

14 PANELIST ADAMS: Well, they
15 have concerns for the interest of those classes, I
16 think, is --

17 PANELIST BARNSTONE:
18 Experience with.

19 PANELIST URDY: No, no.
20 Wait a minute now. Let's just simply say the
21 representatives of the customers. They're citizens.

22 PANELIST ZUNIGA:
23 Generally. There's a distinction there that's --

24 PANELIST ADAMS:
25 Representative of, not --

1 PANELIST BARNSTONE: May I
2 give you an example?

3 MR. GRAHAM: I couldn't
4 hear what Ed was saying. Ed?

5 PANELIST ADAMS: I said
6 representative of, not representing.

7 PANELIST URDY: Yeah, just
8 representatives of your customers, your city, people.

9 PANELIST ZUNIGA: I think
10 that's a valid distinction.

11 PANELIST BARNSTONE:
12 There's a big debate right now in Chrysler. There's a
13 big stockholder who's name is Kirk ^{KERISORIAN (?)} Coreorean. He owns
14 10 percent of the company, and he says, "I own 10
15 percent of this company. I want representation on this
16 board."

17 The board of Chrysler says,
18 "You can't come on this board even though you're our
19 largest single stockholder."

20 He said, "What do you mean?
21 I own more stock than anybody else. And I can't get a
22 seat on the board?"

23 And their answer is, "No.
24 And the reason is because you're looking out for your 10
25 percent and all you care about is your 10 percent, and

1 you're not looking out for the interests of all of the
2 stockholders."

3 And there's an entire body
4 of law and litigation and history as to exactly who
5 directors owe their duty to. And for any company to
6 work, it has to be clear because that's when you have
7 Bosnia basically, you know, when people start fighting
8 with each other.

9 MR. GRAHAM: Balkanization.

10 PANELIST BARNSTONE:
11 Balkanization.

12 PANELIST URDY: But, see, I
13 don't think it would be unclear to say that that -- the
14 board, then, of Chrysler is representative of the
15 stockholders of Chrysler. That's all this says.

16 MR. GRAHAM: Jim?

17 PANELIST URDY: Not of a 10
18 percent owner or 15 but of the stockholders. They're
19 representative of the customers. That's --

20 PANELIST MARSTON: I may be
21 wrong about this, but I think there could be a possible
22 consensus here. I think at least my opinion of this has
23 changed after I realized we only have five spots, we've
24 talked it through a bit, and put it up there on the
25 board to look how it worked. But we -- I mean, I would

1 suggest that we are for this nominating or search
2 committee. We give them responsibility to try to bring
3 candidates of diversity, including people with different
4 class representative backgrounds or who --

5 PANELIST BARNSTONE:

6 Interests.

7 PANELIST MARSTON: --

8 interests but we not put that in the statute -- or the
9 ordinance, that we do have the board nominated -- or
10 selected, both initially and subsequent boards, by the
11 Council, thinking that would help solve our problem,
12 maybe that there's close to a consensus on that. Maybe
13 I'm absolutely wrong.

14 PANELIST ZUNIGA: No. I

15 think you're absolutely right.

16 PANELIST SMITH: Well, let

17 me suggest another cut at this --

18 MR. GRAHAM: Yes, sir.

19 PANELIST SMITH: -- because

20 I think we all share similar concerns about constraining
21 the Council unduly. I think there are maybe really two
22 levels of suggestions we could make here. One may well
23 be a charter amendment that would say -- would
24 essentially follow the statutory requirements and would
25 say that the mayor and four councilpeople were governing

1 the utility. But the second would be a statute that we
2 would recommend to City Council that would provide for
3 the selection of the members of the utility board much
4 like the indentures in San Antonio do, not using that
5 process.

6 MR. GRAHAM: A selection
7 procedure.

8 PANELIST SMITH: A
9 selection procedure. And that what I think we're all
10 very concerned about is the way that people have
11 oftentimes been selected by city councilpeople is not
12 adequate nor representative in many ways. We're doing
13 better in recent years than we have in times past with
14 our City Council. And perhaps we could recommend
15 statutorily a selection committee be established by the
16 City Council and that it put a list of three times as
17 many nominees as there are vacancies before the City
18 Council and that there be certain criteria that they
19 would have to look at in making those nominations to the
20 City Council so that the statute would be fairly
21 explicit as to what that selection committee would have
22 to look at and that diversity would clearly be one of
23 those, a variety of professional and geographic
24 interests, another, and then having -- coming from --
25 making sure that the membership of the commission is

1 fairly balanced among the rate classes that the utility
2 is at this time serving. And that gets us around
3 another issue which I think we may well not have faced,
4 which is who the utility serves may well change, and we
5 would not want that in either statute or in a charter
6 because there may not be industrial customers per se on
7 the system within two years.

8 PANELIST MARSTON: Wrong.

9 MR. GRAHAM: I added three
10 times vacancies.

11 PANELIST SMITH: Yeah.

12 MR. GRAHAM: And under what
13 you're just saying, if the recruitment committee could
14 be sort of standing, so anytime there's a vacancy,
15 perhaps they would send in a list of three if there's
16 one, list of six or whatever. I've written "Report to
17 Council, Free to pick from list or elsewhere," because I
18 can't imagine that you're going to be able to restrict
19 the Council.

20 PANELIST BARNSTONE: No.

21 No one wants to.

22 MR. GRAHAM: No one wants
23 to. No one has put that forward. Have we answered the
24 representative issue?

25 PANELIST BARNSTONE: I

1 would like to also suggest something else. It's a small
2 thing, but it really is important. It is a practice of
3 the Council to vote on these in public, and I believe
4 state statute under the Open Meetings Act allows for
5 discussion of personnel to occur in executive session,
6 and I think that there's good reason for the Council to
7 make these selections in executive session. You're
8 dealing with personalities. You want people to be free
9 to speak their mind without hurting people. It would
10 assist tremendously in the recruiting process, for
11 example, if you got some heavy hitter who was reticent
12 to put his name forward only to have it bandied around,
13 dis'ed in public, because somebody, you know, said
14 something imprudent or something. So it's just one of
15 those small things.

16 I know Dr. Urdy has some
17 experience doing that. And I always was uncomfortable
18 discussing people's qualifications in public. It goes
19 to their very soul and being, and people do not speak
20 their mind freely. And so if somebody has on a council
21 something good or something bad to say about somebody,
22 they should tell them, say I know this guy is a
23 scoundrel or I know this guy is great and say it freely.
24 So it's a small thing, but I recommend that the
25 appointments be done in executive session pursuant to

1 the personnel exemption under the state Open Meetings
2 Act.

3 MR. GRAHAM: If you can.

4 PANELIST MARSTON: Well, I
5 think it would be a good policy. I think it's up to the
6 Council to decide whether they want to do it publicly or
7 privately, but I think -- as a policy, I think you're
8 giving them good direction.

9 PANELIST SMITH: I think
10 that would have to be part of whatever statutory
11 authorization we created because I may be wrong, but
12 nominations to serve on a board or commission are
13 distinct from personnel matters, which are the hiring
14 and firing of someone who is employed. And I could
15 argue both sides of this coin. I understand what
16 Dr. Urdy and Robert have talked about, the difficulty of
17 doing this, and I would argue this is probably not a bad
18 idea, but I think that it has to be a statutory
19 authorization and may not be constituted -- or may not
20 be upheld by Texas law.

21 MR. GRAHAM: Okay. There
22 is sort of a lull here. Are we at a stopping point?

23 PANELIST SMITH: Well, I
24 think I would like to also suggest -- would like to
25 argue that we do need to have one employee slot on

1 whatever board. And I'd like to put that forward and
2 ask that we get a decision from this council as to
3 whether an employee on the board is a critical component
4 and whether we can reach a consensus on that.

5 PANELIST ZUNIGA: I think
6 you're going to have trouble reaching a consensus on
7 that. You know, even though they're extremely
8 important, to have 20 percent of the representation to
9 such a small group of people, I think, would be
10 difficult to pass.

11 MR. GRAHAM: Jim?

12 PANELIST MARSTON: Rather
13 than pursue it that way, I'd like to go back to the fact
14 that I said my support for a board was contingent -- or
15 at least there was a caveat that we deal with the issues
16 raised by the union representatives tonight. I guess I
17 would like to have maybe, at least coming from me and
18 maybe from others, the idea that before the charter
19 amendment goes forward the issues of making sure people
20 don't lose pension and other benefits is resolved. I
21 would see myself switching my position on the charter
22 amendment and opposing it if we can't resolve those
23 issues before an election in August, and I would like --
24 I think that's something we ought to -- at least I would
25 recommend from a straight political point of view where

1 you don't have the union and me and others at least
2 questioning whether it's a good idea. I would -- one of
3 the things I'd like is more direction from legal or the
4 union representatives how we make sure that those issues
5 are settled.

6 PANELIST BARNSTONE: Jim, I
7 don't know that we can answer it tonight, but I think
8 that your point is well-taken that we ought to have a
9 legal opinion on the continuation of the employee
10 pension benefits through this transition. There ought
11 to be a legal opinion. It ought to be freely
12 distributed to the public and there ought to be by the
13 City Attorney, and I think that that would go a long way
14 to settling that issue if it's in writing and it comes
15 from a city official.

16 MR. GRAHAM: Ms. Reel?

17 COMMISSIONER REEL: One
18 thing I'd say also is not just the pension, but that as
19 part of the charter amendment we're very clear about
20 what the status of those employees are going to be after
21 a board is set up so that that's part of it and clearly
22 defined as part of the package in educating the public.

23 PANELIST MARSTON: That's
24 right.

25 PANELIST BARNSTONE: In

1 other words, the whole gamut of issues that may be of
2 concern to an employee.

3 MR. GRAHAM: Sure. I mean,
4 a wonderfully efficient mechanism is to get rid of all
5 pension and benefits and cut employees by 50 percent.
6 That's not what anyone -- the laymen did not quote they
7 were an advocate of that. That's not what anyone has
8 come anywhere near saying, and that's the fear that I've
9 heard for two straight nights, that sort of, yes, you
10 run it like a business but, on the other hand, this is a
11 community/city-owned asset, and that should not be
12 forgotten.

13 PANELIST SMITH: And
14 besides pension, there are a significant number of other
15 rights and benefits that --

16 MR. GRAHAM: Absolutely.

17 PANELIST SMITH: -- have
18 been guaranteed through the City of Austin's contract
19 negotiation process. And the question of whether this
20 would be an independent board and have the right, then,
21 to create their own contract and rights and benefits
22 package or whether those rights and benefits would
23 transfer for some period perpetually is one that I think
24 we should come to a recommendation to the City Council
25 on.

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PANELIST BARNSTONE:

Well --

MR. GRAHAM: Excuse me just a second. The energy level is running down on the panel, and we still have about 30 minutes in which we're to take questions and answers from the general public as well as the Electric Utility Commission or among each -- ourselves. Senator Herring?

PANELIST HERRING: There's a couple of things I'd like to say. If you're going to have an independent board and tell them what to do exactly, what's the point of having an independent board? And the second thing I'd suggest to you is, by the charter amendment, the state law provides for five members. That could be qualified to say, "or not to exceed seven members if hereafter permitted by state law."

MR. GRAHAM: And that takes care of that, doesn't it?

PANELIST HERRING: I think so.

MR. GRAHAM: Thank you. The board autonomy. If you're going to tell them what to do, how is it really autonomous other than the big three? That's a good point.

1 PANELIST HERRING: If
2 you're going to have an independent board but you're
3 going to write them everything they're going to do, you
4 may as well just not have them serve.

5 MR. GRAHAM: Questions?
6 Participation? Yes, sir?

7 PANELIST BARNSTONE: Does
8 that take care of this issue? In other words, we're not
9 writing any formula?

10 PANELIST SMITH: I don't
11 think so.

12 MR. GRAHAM: You don't
13 think we're writing a formula, or you don't think we've
14 taken care of the issue? I don't think we can reach a
15 formula personally.

16 PANELIST SMITH: Okay.
17 And, again, I think there are people on this board who
18 would recommend that the city employee contract be
19 continued and that the rights and benefits be continued
20 and that that be clearly delineated before this charter
21 amendment go forth.

22 PANELIST MARSTON: Well,
23 let me just say from a straight political point of view,
24 we want this thing to pass, okay, and we want it to pass
25 in August. And I think the politics get more

1 complicated if we start having important shareholders
2 out there opposing it because they think they're about
3 to have Brackenridge happen all over again, you know.
4 That's 1,200 people. That's a -- with the low turnout
5 we have these days, that may be half the electorate.

6 PANELIST WATSON: Well,
7 it's going to influence other folks.

8 PANELIST BARNSTONE: Well,
9 I -- I mean, Senator Herring said it so clearly. I
10 don't know if any of us can say it any better. If
11 you're going to have an independent board, that's
12 exactly why you have it, to have the autonomy to make
13 those decisions.

14 I'm not sure if I'm hearing
15 you right, Smitty. You're not just raising the question
16 about the clarification of employee status. You're
17 actually talking about negotiating a contract before
18 this election happens. That sounds to me impossible. I
19 mean, I don't see how that could possibly be done.

20 PANELIST URDY: Could --

21 MR. GRAHAM: Charles?

22 PANELIST URDY: Maybe we
23 should clarify what the charter amendment would be
24 because my perception would be it would simply be
25 enabling the legislation that would enable you to create

1 such a board under this Article 1115. I don't think the
2 charter amendment itself would create --

3 PANELIST BARNSTONE: No.

4 You're right.

5 MR. GRAHAM: That's

6 correct.

7 PANELIST WATSON: You're

8 right. But the issue that Smitty raises is and Jim is
9 raising is that at the time you go to obtain the
10 authority to do it. There are a couple of things. One,
11 it's just the right thing to do to have clarified what
12 it means to the employees.

13 PANELIST BARNSTONE: No

14 doubt.

15 PANELIST WATSON: The

16 second is, let's just talk raw politics. It's just the
17 right thing to do to know what is going to happen with
18 the employees so that if you want it to pass you've
19 taken care of one of the perceived problems. And that's
20 what I hear.

21 PANELIST BARNSTONE: We're

22 in complete agreement on that. I mean, that's what I
23 suggested earlier.

24 PANELIST MARSTON: And all

25 I was saying is that the first thing that ought to be

resolved is the pension and --

PANELIST BARNSTONE:

Critical. No question about it.

PANELIST ADAMS: I think,

Smitty, you said that in the future all employees shall be city employees? Was that what you proposed? I think that would be under the City's salary structures, et cetera, and I don't know whether that would be reasonable, to hamstring a future board with that caveat.

PANELIST SMITH: And I

don't know what I'm suggesting here. I am suggesting, however, that in many years of evolution the city electric utility has developed a very strong working relationship with the City of Austin. They've negotiated that relationship. And because of the unique skills and qualifications of Electric Utility employees that are much different than someone who is responsible for doing something less dangerous, that they have been well-rewarded, well-trained, well-protected, and due regard in terms of salary for the risks that they face night after night on stormy nights when they're climbing those poles and we're warm in bed has been given to them in salaries and in benefits and in recognition that their descendants when they're killed on those stormy

1 nights and we're not is -- their descendants are
2 provided for. And we as a society, we as a community
3 have said we want to do that.

4 For us now to turn around
5 and say we're dumping those agreements, I think, is
6 wrong, and I think that we say that those agreements are
7 transferred over to this new utility. Now, I haven't
8 worked through in my head. My general gut reaction is
9 to say they stay that way in perpetuity, but I'm also
10 not stupid enough to know that things don't change and
11 that we shouldn't allow the new board to do a better
12 deal, to take care of those employees in better ways.
13 And I don't want to be in a position where I've locked
14 them into doing something which doesn't make it better
15 for the worker.

16 PANELIST ADAMS: And
17 everyone doesn't do dangerous work. Every employee
18 doesn't do dangerous work.

19 PANELIST SMITH: Oh,
20 understood, yeah.

21 PANELIST BARNSTONE: Well,
22 on that point, one of the things that always bothered me
23 when I was on the Council was, there was a sense of that
24 unless the City was able to afford a pay raise for
25 employees in any department they couldn't give a pay

1 raise in any department. And so even though the
2 Utility, profitable, healthy and so forth -- if the
3 General Fund couldn't support a pay raise, then electric
4 workers didn't get a pay raise. And so don't discount
5 for one moment the possibility that the electrical
6 workers will be far better off as part of a healthy,
7 thriving enterprise than if they are -- have a yoke of a
8 council mandate -- because that is the policy of the
9 Council, is it not, Dr. Urdy, that we don't pay -- that
10 we generally give pay raises for everybody?

11 PANELIST URDY: Yeah.

12 But --

13 PANELIST BARNSTONE: So if
14 the planning department employees don't get a pay raise,
15 electrical workers -- if the planning department
16 employees don't get a pay raise, the electrical workers
17 don't get a pay raise.

18 MR. GRAHAM: Jim?

19 PANELIST MARSTON: Because
20 I'm anxious about the San Antonio Spurs game, let me try
21 to --

22 MR. GRAHAM: Don't forget
23 the Bulls.

24 PANELIST MARSTON: -- move
25 this along a little bit. Can we try and have this

1 consensus: One is, before the -- number one, that we
2 want to have clearly protected the pension rights of
3 those who put in services.

4 PANELIST BARNSTONE: Yes.

5 PANELIST ADAMS: Yes.

6 PANELIST MARSTON: And then
7 with regard to the other issues that we think is
8 important for management, maybe the EUC to go deal with
9 the other transition issues of rights and status and
10 work with the union and, I guess, nonunion employees,
11 too, in this interim and try to resolve some of those
12 issues. I'm not saying we can settle all of them or we
13 tie the hands of the board but try to work out those
14 issues and have that as a goal, I think, would be
15 another recommendation I suggest we support.

16 PANELIST HERRING: I think
17 the best way you can protect the employees is to have a
18 strong general manager, because if he is not strong and
19 if they don't have loyalty to him, it won't work. So
20 he's going to be sure to take care of his people, and
21 you can depend on that or he won't be there long.

22 MR. GRAHAM: Okay. And the
23 general manager would again be the responsibility of the
24 board. Any comments -- any questions from the -- Shudde
25 Fath?

1 COMMISSIONER FATH: That
2 page that had the professions with skills that were
3 needed, I'd like to add marketing to that.

4 MR. GRAHAM: Okay.

5 COMMISSIONER FATH: In the
6 competitive -- it's your other tablet.

7 MR. GRAHAM: Oh, it sure
8 is. Thank you.

9 COMMISSIONER FATH: Yeah.
10 Before he leaves that page, in a competitive world,
11 we're going to need marketing skills and power plant
12 skills, and I'm not sure that what we can't hire or have
13 on staff the legal and banker type skills that we need.
14 Do you see what I'm saying? We need to run a good
15 utility, and we need to sell our services to the
16 customers.

17 PANELIST HERRING: May I
18 speak to that just a minute? Your general manager would
19 have in the line item officers one in charge of plant
20 operations, one in distribution, transmission, one in
21 sales and PR under the general manager, and they all
22 have to be good people or he ought to fire them.

23 COMMISSIONER FATH: But I'm
24 talking about on the board. We need some marketing
25 skills to be considered as one aspect of qualified board

1 members.

2 MR. GRAHAM: John, you're
3 just looking.

4 MR. MOORE: Just looking.

5 MR. GRAHAM: If you look,
6 it's dangerous.

7 PANELIST BARNSTONE: He
8 wants a management representative on the board.

9 MR. GRAHAM: Jim?

10 MR. MOORE: I'm not sure
11 that employee that's on the board isn't behind me right
12 now.

13 PANELIST MARSTON: One
14 other issue that I at least want to express my own
15 opinion about with regard to other issues reserved to
16 the Council, the setting the amount of the transfer to
17 the General Fund, though I would --

18 MR. GRAHAM: You won't be
19 here next week. So you want to bring that up now.

20 PANELIST MARSTON: But I
21 don't want us to be on record saying that the only
22 three --

23 MR. GRAHAM: Oh, I see what
24 you mean.

25 PANELIST MARSTON: --

1 issues being -- not the amount but the governance of
2 who -- how that will be decided, I'm a little worried
3 that what you --

4 PANELIST BARNSTONE: Let's
5 raise that question, Jim. Does anybody know again in
6 San Antonio who sets it, the Council or the trustees?

7 MR. GRAHAM: Joe?

8 PANELIST HERRING: It's set
9 by their agreement, 14 percent of the --

10 PANELIST MARSTON: They
11 have a set amount.

12 MR. GRAHAM: It looks like
13 it's a set amount. Yes, sir?

14 COMMISSIONER FATH: 14
15 percent of the gross revenues.

16 MR. MALASKI: What's the --

17 MR. GRAHAM: The question
18 is, is -- the transfer in San Antonio by the public
19 service board, is that a set amount each -- 14?

20 MR. MALASKI: It is limited
21 to 14 percent.

22 MR. GRAHAM: Okay.

23 COMMISSIONER REEL: Who
24 determines at what level it is every year?

25 MR. MALASKI: Well, the

1 council ultimately can lower that amount. The indenture
2 requirement states that it can't be in excess of 14.

3 MR. GRAHAM: It's a
4 not-to-exceed amount, up to 14. Is that of gross
5 revenues?

6 MR. MALASKI: That's
7 correct.

8 COMMISSIONER FATH: And of
9 gross revenues?

10 MR. GRAHAM: Yes. The
11 question is, is it of gross revenues? The answer was
12 that's correct.

13 PANELIST BARNSTONE: But
14 the answer is, the council does it. That's the answer
15 to Jim's question.

16 PANELIST MARSTON: I think
17 that's right.

18 PANELIST SMITH: Of the
19 indenture.

20 MR. MALASKI: The council
21 has an authority --

22 PANELIST BARNSTONE: Up to.

23 MR. MALASKI: -- up to 14
24 percent but not in excess of that. Now, it's not quite
25 that straightforward. It's in two pieces. The San

1 Antonio indenture requires an in-lieu-of tax payment
2 that comes out of the revenue stream prior to a 12 1/2
3 percent amount of gross revenues that they have to
4 commit to invest in the system, and then after that
5 comes the rest of the General Fund Transfer up to an
6 amount not to exceed 14 percent. I make that
7 distinction because there has been legal action in San
8 Antonio regarding that in-lieu-of tax amount.

9 PANELIST BARNSTONE:

10 Concerning who?

11 MR. MALASKI: Well, from
12 the folks who are tax-exempt. They have --

13 PANELIST BARNSTONE: Oh, I
14 see.

15 MR. GRAHAM: School
16 district.

17 MR. MALASKI: -- had a
18 court case, and they currently do not pay any of that
19 in-lieu-of tax amount. So the transfer --

20 PANELIST BARNSTONE: Would
21 you recommend that we have some structure like that in
22 our ordinance authorizing this board or shall we not
23 touch that?

24 MR. GRAHAM: Or you can
25 take --

1 PANELIST BARNSTONE: In
2 other words, we say the San Antonio setup because they
3 bought it near bankruptcy and they needed to make all
4 kinds of pledges to --

5 PANELIST HERRING: I don't
6 think we ought to address that at all.

7 MR. GRAHAM: We should say,
8 or you can -- or Robert can hold that question until
9 Monday of next week.

10 MR. MALASKI: I think it's
11 much more of an issue of financial policy that --

12 PANELIST BARNSTONE: That
13 it should not be --

14 MR. GRAHAM: Be thinking
15 about that because you're going to be asked that again
16 Monday because I'm not giving you time to get an answer.

17 MR. MOORE: Just one point
18 on that, Sam.

19 MR. GRAHAM: Yes, John
20 Moore.

21 MR. MOORE: The council
22 over time is ultimately going to have that authority by
23 their authority to issue debt because it's the bond
24 covenant, and if they wanted a refund or payoff and
25 change that covenant, they could change that.

1 PANELIST BARNSTONE: Right.
2 He listed a whole host of other requirements, 12 1/2
3 percent and --

4 MR. MOORE: All part of the
5 bond covenant, though.

6 MR. GRAHAM: Okay. Jim
7 Marston?

8 PANELIST MARSTON: Why I
9 raise that is that in the recommendation of the
10 consultant they had --

11 MR. GRAHAM: Takes it out
12 of the political arena, I think, is the --

13 PANELIST MARSTON: Yeah.
14 They were doing something that made me -- they did not
15 have -- one of the powers of the city council was to set
16 the transfer amount. That's on 2-13. And then I think
17 they specifically -- well, they don't say who has the
18 authority expressly.

19 MR. GRAHAM: But they -- I
20 got the --

21 MR. MALASKI: The indenture
22 has the authority to set the transfer up to 14 percent.
23 They -- the city council can determine that it can be
24 less than that amount.

25 PANELIST MARSTON: I'm just

1 talking about the recommendation that the consultant
2 made for the City of Austin.

3 MR. GRAHAM: Yeah. Did you
4 have -- my impression was that they wanted that
5 authority to go to the board.

6 PANELIST MARSTON: That's
7 my impression. And I think that is more authority than
8 I think the board ought to have.

9 MR. GRAHAM: We're going to
10 spend two nights discussing that next week. Jim will
11 not be here next week, and the issue he's brought up
12 tonight for us to revisit is whether or not that
13 authority should be reserved to the Council or whether
14 that's something that should be given to the independent
15 board. And that's all the comments we're going to have
16 tonight about it. Okay. Smitty?

17 PANELIST SMITH: One other
18 comment that I'd like to make -- this is about a
19 different subject -- is that I would like to suggest
20 that rather than this being looked upon as an electric
21 utility board that it be an energy utility board for the
22 following reasons: that in the very near term, our
23 charter would otherwise be outmoded, because as time
24 goes on, we will no longer probably be transmitting
25 electricity through wires and generating it in central

Tab 5: Historical and Other Material from EUC Member Shudde Fath

1 suggestion. However, back to Senator Herring's point,
2 if you have an independent board, you have to give them
3 the autonomy. The Council has the autonomy, and I think
4 that under any circumstances the Council will always
5 have that. And so what I suggest is that we make that
6 suggestion just as a suggestion to the Council. The
7 Council, I think, would like to avoid a controversy
8 whenever it can. And it will be -- and if we suggest
9 that they operate this way -- in the same way, for
10 example, that I suggested that they make these
11 selections in executive session, if they want to do it
12 in public, they can.

13 PANELIST ADAMS: Well,
14 Robert, our experience is they've ignored all the
15 recommendations of this council -- of this Electric
16 Utility Commission, and this proposal would be to avoid
17 that tampering that goes on today.

18 MR. GRAHAM: Any comments?

19 COMMISSIONER LeGETTE: I
20 was just going to say, Ed, that before you get too
21 specific on the rate setting, make sure you don't say
22 anything that's going to screw up the bonds because
23 that's still got to be in the Council's hands. And as
24 to them ignoring us, we just take it personally.

25 PANELIST ADAMS: No. I

1 stations. We will be generating distributor systems
2 with fuel cells. We'll be providing alternate systems
3 that will provide for the energy needs, the heating, the
4 cooling, that are much more direct and may not involve
5 transmission of heat into electricity. And I think it
6 would be shortsighted for us to use the words "electric"
7 as the descriptor of the services that this utility will
8 provide, and I would ask and urge this Commission to
9 take a -- or the City Council and the others to take a
10 look at how we might best structure a recommendation to
11 encompass that.

12 MR. GRAHAM: Thank you.

13 PANELIST BARNSTONE:

14 Smitty, I think we ought to call it City Public Service.

15 MR. GRAHAM: Ed?

16 PANELIST ADAMS: I would
17 like to recommend that this board also recommend rates
18 to the Council for the Council to either approve or
19 disapprove but not to tamper with. I think that's been
20 successful in base closings, and tough decisions can be
21 handled with minimal politics if they're handled in that
22 way where it's a vote up or down; and if they don't like
23 it, send them back and come back again.

24 PANELIST BARNSTONE: May I
25 suggest something, Ed? I think that that's a very good

1 shortsighted.

2 COMMISSIONER REEL: Not be
3 a resident of, moving?

4 COMMISSIONER FATH: Or not
5 being a customer.

6 PANELIST SMITH: No longer
7 being a customer may be a better way to say that --

8 MR. GRAHAM: Customer?

9 PANELIST SMITH: -- rather
10 than removing from the service area because our service
11 areas may no longer exist.

12 PANELIST HERRING: You may
13 want to be able to remove them for cause.

14 PANELIST BARNSTONE: I
15 don't know. I mean --

16 PANELIST SMITH: What would
17 you suggest, Senator?

18 MR. GRAHAM: Senator?

19 PANELIST HERRING: I don't
20 know if you can remove a city councilman for cause,
21 because if they had, they probably would have removed
22 some of them.

23 MR. GRAHAM: I was about to
24 say you can always remove for cause. But can you remove
25 for cause other than heinous dishonesty or --

1 think we're saying that the final decision will be made
2 by the Council, but this tampering with the
3 recommendations and doing rate work at the podium -- at
4 the dais should stop.

5 COMMISSIONER LeGETTE:

6 Right.

7 MR. GRAHAM: Comments,
8 comments -- or actually questions, comments? Yes,
9 Councilman Reynolds?

10 COUNCILMAN REYNOLDS: I

11 would like for you-all to address as well the procedure
12 that you want to go through as it relates to removal of
13 a board member by the Council. We -- I think we need to
14 address that.

15 MR. GRAHAM: That was

16 brought up last night, but we never got into it
17 substantively.

18 PANELIST SMITH: Well, I

19 think there was some suggestion earlier tonight that we
20 have some standards and the standards that I think are
21 traditionally there that don't show up. And I can't --
22 and I think there are some other standards in the San
23 Antonio one which include removal from the county in the
24 San Antonio case, and I would suggest it would be
25 removal from the service area in our case. That may be

1 the Council if -- because we at the present time -- I
2 don't think you want to set up a board that continues
3 for two years or three years and the Council has no
4 ability to have some input because we elected --

5 PANELIST HERRING: How did
6 you get the ones on the bus system now?

7 COUNCILMAN REYNOLDS: We
8 appointed them.

9 PANELIST HERRING: Well,
10 you ought to appoint some good people.

11 COUNCILMAN REYNOLDS: And I
12 understand that and I agree with you. But I'm just
13 saying that was one of the concerns.

14 PANELIST BARNSTONE:
15 Councilmember Reynolds, I think -- thank you for raising
16 the comparison with Capital Metro. Let me just deal
17 with that briefly, if I may.

18 MR. GRAHAM: Uh-huh.

19 PANELIST BARNSTONE:
20 Capital Metro is an independent board partially
21 appointed by the citizens of Austin, but its mission is
22 very different than that of the Electric Utility. Its
23 mission is to provide taxpayers subsidized
24 transportation throughout the community. That is
25 inherently a controversial question, and as such it's

1 PANELIST BARNSTONE: What
2 do you think, Senator?

3 COMMISSIONER FATH: Well,
4 you've got -- you're going to have an ethics provision.

5 PANELIST BARNSTONE: What
6 do you suggest on that question?

7 PANELIST HERRING: I would
8 say they could be removed for cause, and cause could
9 encompass a lot of things, conflict of interest,
10 bribery, cheating, thieving.

11 MR. GRAHAM: But not a vote
12 that somebody didn't like.

13 PANELIST HERRING: Not
14 because they make a stupid vote, no.

15 MR. GRAHAM: Right. Who
16 does the removing?

17 COUNCILMAN REYNOLDS: Let
18 me add to that real quick, if I can. You know, one of
19 the complaints that we have is with Capital Metro, and
20 we have no way in which to change policy. And the
21 public is saying, "Respond. You are appointing these
22 people," and we're saying, "We have no opportunity to
23 change that." So the only thing I'm asking you is, do
24 you want to look at something which is like a super
25 majority or a four-fifths vote or something like that of

1 cause is adequate cause.

2 PANELIST WATSON: Is

3 adequate what?

4 MR. GRAHAM: No. That's by
5 the board itself. That's not by the Council.

6 PANELIST BARNSTONE: Oh, by
7 the board.

8 MR. GRAHAM: That's by the
9 board.

10 PANELIST WATSON: By the
11 board.

12 PANELIST BARNSTONE: Well,
13 that's a tough one, a five-member board and you're going
14 to remove --

15 MR. GRAHAM: And you might
16 have by unanimous vote --

17 PANELIST BARNSTONE: And
18 they can't remove the mayor.

19 MR. GRAHAM: Anybody but
20 the mayor. So the other -- the mayor and three others
21 may remove someone for adequate cause. Another proposal
22 would be to give it back to the Council by five out of
23 seven, six out of seven or unanimous.

24 PANELIST HERRING: Well, if
25 the mayor was a member, could the others remove him?

1 going to engender all kinds of debate. This is not a
2 taxpayer subsidy we're talking about, our electricity.
3 This is a commodity. It's an enterprise. The City
4 makes money on it.

5 So there's far less
6 controversy about the mission of the Electric Utility
7 than there will ever be about Capital Metro. In that
8 respect, I think that there will be less opportunity for
9 there to be carping about the actions of this board than
10 there is about almost every action that Capital Metro
11 takes. But even given that, there may be something to
12 the notion that we're getting into this -- we have no
13 experience running an enterprise this way, and we need
14 some kind of a safety valve maybe, maybe initially. The
15 Council needs to have some kind of capability to say,
16 "Whoops! We've made a mistake and we need to do it."

17 MR. GRAHAM: San Antonio
18 has the following provision: "Any member of the board
19 other than the mayor may, by unanimous vote of the
20 remaining members of the board, be removed from office
21 but only for adequate cause." I have no idea what
22 adequate cause is, but it's self-regulating.

23 PANELIST BARNSTONE: Well,
24 as you know, the courts would probably determine
25 whatever the four votes the Council thinks is adequate

1 MR. GRAHAM: Absolutely.

2 But getting five votes out of seven is not the easiest
3 thing to do. Getting six out of seven, you've got to
4 really have done something. Shudde?

5 COMMISSIONER FATH: In
6 zoning, can't you overturn a valid petition? Doesn't it
7 take six votes out of seven?

8 PANELIST URDY: Six votes.

9 MR. GRAHAM: What's the --

10 PANELIST URDY:

11 Three-fourths majority.

12 COMMISSIONER FATH: Well,
13 wouldn't that be a good number to carry forth here?

14 MR. GRAHAM: And what --
15 how do you overturn Planning Commission rulings?

16 PANELIST BARNSTONE: Six
17 votes.

18 MR. GRAHAM: Six votes,
19 right?

20 PANELIST URDY: No. The
21 Planning Commission is just -- the majority can overturn
22 the Planning Commission.

23 COMMISSIONER FATH: But
24 it's a valid petition.

25 MR. GRAHAM: It's a valid

1 MR. GRAHAM: No.

2 Specifically they can't do that.

3 PANELIST BARNSTONE: I'm
4 just suggesting some kind of an omnibus safety valve for
5 the Council to kick in in the event of something extreme
6 happening.

7 COMMISSIONER FATH: Say
8 unanimous vote of the Council.

9 MR. GRAHAM: Unanimous
10 removal by Council?

11 PANELIST ZUNIGA: That's
12 too restrictive, isn't it? Five out of seven.

13 PANELIST MARSTON: I'm okay
14 on that.

15 PANELIST ZUNIGA: Unanimous
16 is pretty tough.

17 MR. GRAHAM: But removal --
18 everyone is -- thinks that removal prior to end of term
19 for adequate cause should be in there whether it's by
20 the Council or by the board. And probably by the
21 Council? Ed?

22 PANELIST ADAMS: I think
23 adequate cause. We certainly wouldn't want people
24 removed because the Council didn't like a vote that they
25 made.

1 drop that one?

2 PANELIST SMITH: No. It's
3 three-quarters to remove somebody --

4 PANELIST WATSON:
5 Three-quarters of the Council.

6 PANELIST BARNSTONE:
7 Period. That's it, three quarters of the Council.

8 PANELIST SMITH: This is
9 serious stuff.

10 PANELIST BARNSTONE: Can
11 three-quarters of the Council remove the mayor? No.

12 PANELIST SMITH: One other
13 thought on that. In terms of the charter
14 recommendation, it may be wise to suggest that the mayor
15 or his designee -- and I don't know if that's legal.

16 PANELIST BARNSTONE: No,
17 no, please, no, no, no, no.

18 MR. GRAHAM: Well, if you
19 have no agenda items to be voted on. The mayor is a
20 voting member.

21 PANELIST SMITH: Right.

22 MR. GRAHAM: Allow the
23 mayor not to come.

24 PANELIST BARNSTONE: You'll
25 have the mayor's aide there.

1 petition.

2 PANELIST URDY:

3 Three-fourths majority.

4 PANELIST ZUNIGA: I think

5 six sounds good.

6 PANELIST SMITH: I think,

7 as Doc is pointing out here, three out of four --
8 three-quarters is the critical issue here because it
9 may -- if you do six out of seven, you may have a
10 vacancy on the Council, and it's three-quarters as I
11 recall.

12 PANELIST ADAMS: Five out

13 of seven.

14 PANELIST URDY: Or the

15 number might change, but three-fourths is six on a
16 seven-member council.

17 PANELIST SMITH: Right.

18 PANELIST BARNSTONE: Okay.

19 So, in other words, we've got two provisions, so one for
20 adequate cause merely by a majority.

21 MR. GRAHAM: No. I don't

22 think I heard that.

23 COMMISSIONER FATH:

24 Unanimous.

25 PANELIST BARNSTONE: Oh,

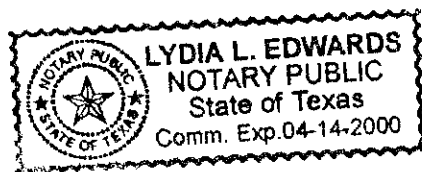
1 STATE OF TEXAS)

2 COUNTY OF TRAVIS)

3 I, LYDIA L. EDWARDS, certified shorthand
4 reporter and Notary Public for Travis County, Texas, do
5 hereby certify that the above-captioned matter came on
6 for hearing before the ELECTRIC UTILITY BOARD OF AUSTIN
7 as hereinafter set out.

8 I FURTHER CERTIFY that the proceedings of said
9 hearing were reported by me, accurately reduced to
10 typewriting under my supervision and control, and, after
11 being so reduced, were filed with the ELECTRIC UTILITY
12 BOARD OF AUSTIN.

13 GIVEN UNDER MY OFFICIAL hand of office at
14 Austin, Texas, the 24th day of May, 1996.



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Lydia L. Edwards
Lydia L. Edwards
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MR. GRAHAM: Other

questions or issues?

(No response.)

MR. GRAHAM: Thank you very much. I've enjoyed this. I especially appreciate the cooperation of all of you. See you next week.

(At this time, the proceedings were adjourned at 8:34 o'clock p.m., Tuesday, May 14, 1996.)

Council's next task: to remove politics from electric utility

Feb 5 Historical and Other Material from EUC Member Shudde Fath

✓ GOVERNANCE
8 EUC
8 rules
8 Fair

The Austin City Council has once again concluded the political ritual of setting electric rates. This year differed from the past five because there was an increase involved, setting competing political interests and ratepayer classifications into motion.

After countless hearings, the council approved a 14.54 percent residential rate increase, while industrial users received a 4.86 percent decrease.

Because everyone uses electricity and because the utility is a significant contributor to the city government's general fund, the esoterica involved in setting rates and operation of the utility take on a political life and significance of their own. Once the electric utility is dragged into the political arena, everyone — or so it seems — is an expert on it.

This year's rate-setting process has also been different in that it has resulted in a discussion of how to depoliticize the management of the city's multimillion dollar electric department. While the solutions are still debatable, some within the city, the business sector and the community in general agree that something must be done about the politics affecting the department.

Diverse interests, including Shudde Fath, chair of the Electric Utility Commission, City Council Member Eric Mitchell and the Federation of Austin Industrial Ratepayers, are separately planning to study the concept of an independent board to oversee the electric department.

While that idea does not enjoy universal support, parties agree that new options for running the department must be examined. They are using San Antonio's management of its city-owned electric utility as an example.

Although many questions and issues remain — including criteria for board members, appointment procedures, the effect on the city's general fund and how to ensure a board that is representative of all ratepayer classes — the discussion must be pursued if solutions are to be found.

Mitchell has said he plans to carry the idea to the City Council. There are several reasons why. To keep up with changes in the electric utility industry, the department has to be insulated

from decisions based on politics. Council members, who have multiple issues on their plates, do not have the time or expertise to give proper attention to the utility.

Before closing the Holly Street Power Plant was placed on the council's front burner, a string of incidents illustrated the dilemma of having elected officials — who are subject to constituents and political agendas — oversee major municipal enterprises.

Several examples involving the utility stand out, including the successful referendum to sell the city's 16 percent share of the South Texas Project nuclear plant in 1981 and the 1987 City Council decision that prevented the construction of 345-kilovolt lines, which would have allowed the city to reduce use of the Holly Street plant. Opposition was based on potential side effects from electromagnetic fields. The Public Utility Commission found that Austin was overcharging ratepayers in 1986, the only time the utility has faced PUC scrutiny.

While Austin officials may choose not to duplicate San Antonio's City Public Service, it at least provides a case study. San Antonio's utility is run by a five-person board that includes the mayor. The utility's chief operating officer reports to the board, which sets policy. Board members serve five-year terms and suggest new appointees to the City Council, which typically rubber-stamps the choices.

Rate changes, disposal of property and sale of bonds must be approved by the council. Supporters say the board allows simple decisions that often face not-in-my-backyard opposition to be decided more easily, such as where to locate transmission lines or build a new power plant.

San Antonio and Austin are the largest cities in the state that operate electric utilities.

A board such as San Antonio's cannot guarantee a decision-making environment free of politics. What it can do, however, is ameliorate the political pressures that undermine good business decision-making.

Ironically, however, if the City of Austin attempts to depoliticize its electric utility through changing its administration, it may face one of its messiest political fights ever.

EDITORIALS

09-23-94

COMMENTARY

Austin American Statesman

14 Austin American Statesman

Friday, September 23, 1994

This

CORRECTION

An editorial in Friday's editions incorrectly identified the chair of the Austin Electric Utility Commission. Mary Jones is chair of the commission.

09-24-94

CORRECTION

An editorial in Friday's editions incorrectly identified the chair of the Austin Electric Utility Commission. Marilyn E. Jones is chair of the commission.

09-27-94

09-30-94

City Council orders utility audit, votes to study forming independent board

BY MIKE TODD

American-Statesman Staff

The City Council, which raised electric rates two weeks ago, voted Thursday to order a management audit of the utility and study the idea of removing the utility from direct council control.

Council Member Eric Mitchell, a sponsor of the measure calling for study of an independent governing board, said he wants the city to consider its options.

"The city manager may bring back a report finding it's not in our best interest to do it, but I think it's something we need to explore," he said.

Regarding the audit, council members said they want to reassure the public that the city-owned utility is being run well.

"It is appropriate to proceed with this so we will be able to as-

sure ourselves and the ratepayers that we are operating the (electric utility) department with as much efficiency as possible," said Mayor Bruce Todd, who recommended the audit.

The council unanimously ordered the management audit, which will be conducted by an independent firm and take six to eight months.

Mitchell's resolution to study the idea of an independent board to govern the utility passed 4-2-1, with Max Nofziger and Gus Garcia opposed and Brigid Shea abstaining.

Shea said she is concerned that an independent board might not be as accountable to the public as the council.

Although the city has an appointed Electric Utility Commission, it is advisory only. The utility staff must refer major decisions, ranging from large pur-

chases to rates and policy decisions, to the City Council.

Austin is unusual in that regard. A city document said that more than half of the public power systems in the United States are governed by independent boards. Among them are the Lower Colorado River Authority and city utilities in San Antonio, Brownsville and Greenville.

The two council actions follow a rate increase the council enacted Sept. 16, the first in five years. The new schedule raised base rates for residential customers 14.54 percent while reducing them 4.86 percent for large industries.

Officials said the difference was necessary because, for years, large industries paid more than their share of costs and residents less.

Study suggests cutting energy conservation rebates

■ Price Waterhouse also proposes city let independent board govern electric utility

Continued from B1 02-26-96

Holly Power Plant, which is just north of Town Lake in East Austin. Residents in the nearby neighborhoods have sought to have it closed because of the noise it generates and because of fires at the plant in recent years.

The Price Waterhouse study doesn't say whether the decision was wise or ill-informed. However, the report concluded, a privately held electric utility probably wouldn't have decided to close the plant, and if the city's power company is to remain competitive, the report said, the city "may not have the luxury to make the same types of decisions in response to community preferences."

The city plans to close the plant completely by 2005. Garza said if the electric industry becomes competitive, the city might need to reconsider that decision and any others that affect the utility's competitive posture.

"The assumption is that the de-

cision (to close) has been made, but what it also says is that it leaves it open in terms of whether it will remain that way if you're in a competitive environment," he said.

Streamlining

The report also identifies dozens of ways that the electric utility can save \$25 million and streamline its operations. Prominent among those are staff reductions of up to 20 percent of the total utility work force within the next two budget years, which could save \$7.7 million.

"The service providers are the ones who take the brunt, and that has the impact on the community," said Carol Guthrie, assistant director of the Texas chapter of the American Federation of State, County and Municipal Employees. "Cutting \$8 million in two years is devastating."

Cut conservation rebates

Another recommendation is that the utility be placed under the authority of an independent board, where the utility could op-

erate in "a less complex political environment" and with an enhanced ability to make decisions quickly. Under that model, which San Antonio's publicly owned power company uses, the utility's employees would no longer be city employees.

Using standards and practices of power companies throughout Texas and the nation as the basis for comparison, the Price Waterhouse study also recommended that the utility:

■ Over three years, eliminate existing rebate programs that encourage energy conservation — for savings of \$6.3 million.

■ Stop the practice of giving business to minority- and women-owned businesses if lower prices or better products can be obtained elsewhere.

■ Aggressively pursue more favorable terms in a gas-transport contract, which, if the utility were paying a rate more in line with the market, could save the utility as much as \$3.4 million.

■ Shelve plans to convert the unused downtown Seaholm plant

to an alternative use, such as a museum, because the plant offers "an excellent opportunity for repowering" and the costs of converting it to a nonutility use could be extremely high.

■ Be given autonomy in salary matters, so that the utility can attract and retain key employees without being constrained by the city's pay scales.

The report also recommends that the utility slash the amount of money that it transfers annually to the city's coffers by \$27.2 million. In the current budget year, that transfer was \$57.9 million, or nearly twice the average that a survey group of large municipal utilities transferred.

Garza said the city is shooting to cut the transfer by \$8 million in the upcoming budget. That puts a squeeze on all the other city departments, he said, but where the streamlining to absorb the cut will come has not been decided.

"It may mean reductions. It may mean no growth," he said. "Until you look at the whole picture, it's hard to comment."

Utility study re-examines closing plant

■ Holly plant decision might have to be reconsidered if utility becomes competitive

By NINA REYES 02-26-96
American-Statesman Staff

The city might not have the "luxury" of closing the Holly Power Plant, and the city's electric utility must eliminate jobs if it is to become competitive. Also, the utility should slash the subsidies it sends annually to the city, which last year totaled about \$60 million.

Those are just a few conclusions of a Price Waterhouse study, released Friday in its complete form, that was commissioned to review the utility's viability in the open electricity marketplace of the future.

The Austin City Council was presented with a summary of Price Waterhouse's recommendations on Feb. 14. But much of the detail on a recommended \$25 million worth of savings was not available until the full report was released.

City officials are examining the recommendations and developing plans to implement some of the report's suggestions in time for the next budget year, which begins Oct. 1.

"The goal is to reduce \$25 million — that's something we're going to try to have to do a step at a time," said Jesus Garza, the city manager.

"The utility has typically done things as a monopoly, and I think what the report says is that we need to look beyond operating as a monopoly to becoming a competitive business."

The Price Waterhouse study, dubbed the "competitive performance review," is the result of months spent peering into every corner of the city's electric utility.

The review assessed how the utility would fare in a competitive electricity market. Political indications are that, within the next several years, customers may be given the option of buying electricity from an array of power companies much as they can now choose among companies that provide long-distance telephone service.

Last year, city officials decided to phase out operations of the

See Study, B5



Garza

Austin American-Statesman

METRO

Utility's future in the hands of Austin council, community

BY LAYLAN COPELIN
American-Statesman Staff

Electricity is about reliability. In Austin, it's also about the predictability of debate over the future of the city's largest asset, an electric utility which generates \$500 million-plus in annual revenues and subsidizes a fourth of the city's budget.

Though the Austin City Council has decided not to entertain offers to sell the utility, round two of the community debate begins next week with the first two of four nights of meetings with the utility's stockholders, Austin's taxpayers, as it were.

The City Council has left important questions on the table. Do part-time council members have the time to oversee the utility? Must the utility's subsidy be cut to make it more competitive?

"This is the single largest economic question this city has ever faced," says Austin Mayor Bruce Todd about the municipally owned utility. Consultants at Price Waterhouse have questioned the utility's ability to compete if the power industry is deregulated by state or federal officials.

The Electric Utility Commission, an advisory panel to the council, is sponsoring the hearings.

It also has named a panel of community leaders, all representing various factions of the debate, to try to seek a consensus. The panel includes representatives from large employers, such as IBM and Texas Instruments, to consumer activists. The panel also includes former City Council members and other political leaders. A professional mediator, Austin attorney Sam Graham, has been hired to moderate the meeting.

Can so many visions be focused on one solution?

"It's a varied group," said Teresa Reel, vice chairwoman of the Electric Utility Commission. "I don't believe they have gotten to-

gether at the same time, the same place to have this conversation.

"We're hoping this conversation leads to consensus."

The public also is invited to comment.

At issue is how to get the utility ready to compete in a deregulated market. Price Waterhouse urged the utility to reduce its debt, staff and operations cost. It also questioned if an operation run by elected officials could be nimble enough to compete with privately owned utilities and other competitors.

The first two nights will be dedicated to the issue of how the electric utility should be managed. Currently, utility officials answer to the city manager, who works for the City Council.

One proposal is for an independent board, appointed by the council, to act as a board of directors. The utility staff would answer to them. The council would continue to set rates and authorize debt.

The second week will concentrate on proposals to cut the utility's subsidy to the city budget. Price Waterhouse recommended reducing the transfer, currently at 12 percent of revenues, to about 6 percent.

In five years, the utility would be contributing only \$37.6 million to the city budget, instead of a projected \$74.7 million, according to city finance officials.

The difference would have to be made up in new taxes, cuts in services or growth in the tax base.

"The Price Waterhouse recommendations could have a direct impact on tax rates and city services," Reel said. "On the flip side, if the utility doesn't get competitive, the city could lose the asset altogether."

UTILITY MEETINGS

Issues broken into two topics concerning the future of Austin's electric utility will be discussed at four upcoming meetings:

■ Topic: Who should govern Austin's electric utility?

Dates: Monday — 5:30 p.m. Town Lake Center, 721 Barton Springs Road

Tuesday — 5:30 p.m. Town Lake Center

Panel: Ed Adams, IBM, manager of external programs; Len Riley, Texas Instruments, site manager; Dr. Charles Urdy, former City Council member, Lower Colorado River Authority staffer; Robert Bamstone, former City Council member; Charles Herring Sr., former state senator and former LCRA general manager; Manuel Zuniga, former Electric Utility Commissioner member; Jim Marston, Environmental Defense Fund; Tom "Smitty" Smith, Public Citizen; Sam Graham, moderator, former electric utility commissioner

■ Topic: Should the electric utility's subsidy to the Austin city budget be cut?

Dates: May 20 — 5:30 p.m. One Texas Center, Suite 150-C, 505 Barton Springs Road

May 21 — 5:30 p.m. Town Lake Center, 721 Barton Springs Road

Panel: The panel for this topic is still to be named.

Panel urges appointed electric board

■ Two former City Council members join citizens in criticizing present utility management setup

BY LAYLAN COPELIN
American-Statesman Staff 5-14-96

An appointed board, not the elected Austin City Council, should oversee the city's electric utility in a deregulated market, a panel of citizens agreed Monday.

Two of the biggest critics of council management were two former City Council members, Charles Urdy and Robert Barnstone.

"I don't believe there's anyone in this city who believes the City Council is an asset to the electric utility," Barnstone said. He and Urdy said the council does not have the time to focus on utility management, and politics often sidetracks necessary decisions.

"A politically driven body cannot run a competitive business," Urdy said.

The nine citizens were invited to discuss the future of the utility by the Austin Electric Utility Commission,

'I don't believe there's anyone in this city who believes the City Council is an asset to the electric utility.'

Robert Barnstone, former City Council member

which advises the City Council. The panel resumes at 5:30 p.m. today at Town Lake Center, 721 Barton Springs Road. The Council is grappling with how to make the publicly owned utility more competitive if state or federal officials deregulate the power industry. Public comment is invited.

The panel's recommendations are expected to be forwarded to the City Council.

Under the scenario envisioned Monday night, the City Council would appoint a board to oversee the electric utility, which subsidizes one-fourth of the city's budget. The council would maintain the duties of setting rates, issuing debt or condemning property. To dele-

gate those duties would require either changing state law or expensive refinancing of the utility's \$1.7 billion debt.

"The issue is, how do you get competitive quickly," said Len Riley, site manager of Texas Instruments. "This model (appointed board) would achieve that."

Yet there was a question whether Austin voters would have to approve the change. City lawyers said yes. Barnstone urged them to find a way around that interpretation.

Tom "Smitty" Smith of Public Citizen, a consumers group begun by Ralph Nader, warned that future competitors to the utility could finance opposition to any change in the system's management structure. "They could keep us in a non-competitive position," he said.

Others contended that an election would show public support for a new way of running the utility.

Smith suggested electing the board as a means of encouraging public debate of utility issues, but Manuel Zuniga, who was defeated this year for a City Council seat, dismissed that proposal as "government by soundbite."

While San Antonio's appointed utility board was praised for running an effi-

See Utility, B2

Utility board revamp urged

Continued from B1 *05-14-91*
cient system, Austin attorney Jim Marston said that board is not as diverse or responsive to ratepayers as Austin has come to expect.

Marston urged the panel to "take the best parts of the San Antonio model," while ensuring any utility board would be diverse.

Al Erwin, a former state utility commissioner, noted that not all of the customers of the utility live inside the city limits. "Taxation without representation is not pleasant," said Erwin. About 15 percent of the utility's customers live outside Austin.

The panel debated how to make the board responsive to ratepayers while looking out for the bot-

tom line in a competitive market.

Austin attorney Kirk Watson urged appointing members from different rate classes or geographical areas to "look holistically (at the utility), not to be focused on just making money."

Yet Barnstone argued the board selection should mirror the business world's method. "When GE picks its board, they don't pick one from Column A and one from Column B. We need to find the most qualified people."

Barnstone suggested a search committee to recruit people to be suggested to the City Council for appointment.

Voters should decide utility's fate, panel says

■ Advisers suggest board be set up to run city's electric service

By LAYLAN COPELIN
American-Statesman Staff

05-15-96

Austinites should be asked to vote as early as Aug. 10 to transfer control of the municipally owned electric utility from the City Council to a five-member board appointed by the council.

That was the consensus Tuesday night of nine citizens asked to discuss for two nights how to make the utility more competitive. They concluded that the City Council does not have the time or political will to manage the system if state or federal officials deregulate the power industry.

Yet the panel agreed that the

council should continue to set rates, issue utility debt and condemn property. As the city's largest asset, the utility subsidizes one-fourth of the city's services. Consultants have questioned whether the monopoly could survive in a competitive market.

The panel warned that concerns of the utility's 1,100 employees should be addressed before an election amending the city charter. "If it looks like we are going to harm hundreds of employees, my support would go away quickly," said Austin attorney Jim Marston.

Given low turnout in recent elections, Austin attorney Kirk Watson said 1,100 employees and their families "might be half the turnout."

The panel's recommendations will now be filtered through the

See Utility, B8

Utility workers defended

Continued from B1

05-15-96

Electric Utility Commission, which advises the City Council, before being forwarded to the council.

The panel was assembled to represent factions from past utility battles. Yet the participants found more middle ground than expected, in part, because there were few options, said Tom "Smitty" Smith of Public Citizen, a consumers group.

State law dictates the composition of an appointed utility panel: four citizens and the mayor. To try to pass a new law next year, during the battle over deregulating the power industry, would be dangerous, the panel agreed.

Smith said Austin could find its utility hijacked by the city's rivals at the Legislature. "It's an invitation to theft," Smith said. "It's like leaving the keys in the car." The law might be amended, however, to allow a larger board.

Robert Barnstone, a former City

Council member, said he had hoped the utility could be transferred to a board without an election. But lawyers said it could not.

He urged the City Council to make it clear the proposition could not be used to try to sell the utility. "If the language is slippery, people will be suspicious," he said.

Greg Powell, an official with the American Federation of State, County and Municipal Employees, provided the only spark of controversy. Speaking to the panel, Powell said employees at Brackenridge Hospital lost pensions and other benefits when the municipally owned hospital was leased to a competitor.

"There are 1,100 (utility) employees involved," Powell said. "Please don't forget about them."

Changes in state law could help protect the employees' municipal pensions, but some panel members hesitated to tie the hands of a utility board.

"If you are going to have an independent board, then tell them what to do; what's the point of having a board?" asked former state Sen. Charles Herring Sr.

The panel urged the Electric Utility Commission to address the employee issues before an election.

Powell also questioned the panel's assumption that an appointed board would be less political. Trying to compete in a deregulated market, the utility may have to cut its subsidy to the city budget, which would have to be made up with taxes or cuts in services.

"We (Austinites) are going to pay one way or another, either in taxes or (electric) rates," he said. "It's a shell game."

Powell also worried that an appointed board will be too independent. He cited Capital Metro, the bus system, which raised its sales tax last year with little warning.

"The last thing I'd like to see is a Capital Electro," Powell said.

in→fact

Austin's weekly newsletter for key information
on business, politics and government

No. 44

Ken Martin, Editor

May 22, 1996

Council zapped for its poor management of city's electric utility

Independent board touted

Politics of Electricity

To establish an independent board to govern Austin's electric utility requires the approval of existing bond holders, plus voter approval of an amendment to the city charter. The panel that spent two evenings discussing the issues agreed that the language of the charter amendment must unequivocally rule out the possibility of selling the electric utility. The next two dates available for a charter election are Aug. 10 and Jan. 18. Because the charter may not be amended again for two years, the timetable must relate to any other efforts underway to amend the city charter. The grass-roots group *Priorities First!* has been circulating petitions to reform campaign finance laws, and had hoped to force a charter election Aug. 10. But co-chairman Jack Haden says progress has slowed and the target for such an election is now Jan. 18, 1997.

Who would work to defeat a charter amendment providing for an independent electric utility board? Well, because the ballot language would rule out a sale of the electric utility, and because some investor-owned utilities want to buy it, it's conceivable that an investor-owned utility might campaign to defeat the charter amendment. The fear of unlimited special-interest money being dumped into the election campaign was expressed by some panelists. However, Don Martin, lobbyist for Texas Utilities, the potential buyer with the highest profile, says, "I can't imagine anybody opposing it."

Having the **Austin City Council** manage the city's electric utility enterprise is like asking a thoroughbred race horse to win the **Kentucky Derby** while carrying a 400 pound jockey. There's no way the electric utility can compete when managers are handicapped by limited access to the elected decision makers, and saddled with a procurement system that requires city council approval before making purchases of \$37,000 or more. "Even if we elected geniuses to the council, the council simply doesn't have the time," said former city council member **Robert Barnstone**, one of the 10 men who sat on a special panel appointed by the city's **Electric Utility Commission (EUC)**. The panel met for a total of six hours on May 13-14. It reached a consensus that to prepare for retail competition—which could come as early as 1997 if the Legislature should authorize it—the electric utility should be managed by an independent board. The foremost model for such governance is the **City Public Service Board of San Antonio**, which manages both the electric and gas systems for the Alamo city. For Austin to adopt such a system of governance would require an election to approve a change to the city charter, plus the approval of existing bond holders, said assistant city attorney **Bob Kahn**. The next two dates available for a charter election are Aug. 10 and Jan. 18, Kahn says. The panelists and EUC members are divided over when the election should be held. Some urge the earlier date, while others want a slower approach. **Ronney Reynolds**, the only council member to attend the meetings, said he would prefer to wait until January to permit a fuller public explanation of the change before the election. One thing agreed to was that the language of a charter amendment must avoid all reference to sale of the utility, since a clear council majority is opposed to the sale.

If the hurdles were surmounted and a board were established by the city council, the council would retain the power to issue debt, set rates, and condemn property. Panelist **Jim Marston** of the **Environmental Defense Fund** said the council should also set the amount of funds transferred from the electric utility to the city's general fund. (Two nights of meetings on the subject of the general fund transfer were scheduled for May 20-21, after press deadlines.) Under existing state law, an independent board would have five members, one of which would be the mayor. The panelists agreed that seven members would be preferable to allow broader representation, but seeking legislation is risky. Several models were discussed for the board's makeup, including appointing members by customer rate class (industrial, commercial and residential), geographical area (including a representative of electric customers outside the city), and by various professions. No consensus was achieved on the makeup, except that the foremost concern should be competence. Marston also called for diversity among the board members. Barnstone emphasized that the board owes its fiduciary responsibility to Austin taxpayers, who are the utility's stockholders. The panel said there should be a way for the city council to remove board members, unlike the **Capital Metro** board, whose members are beyond recall. Those safeguards aside, an independent board is a must. "We've got competition coming that's going to kill us under our current structure," said panelist **Alan Erwin**, a former chairman of the **Public Utility Commission**. *

Put utility into hands of board, panel says

■ Five-member appointed board would have all powers over electric utility except to set rates, issue debt or seize property

By LAYLAN COPELIN
American-Statesman Staff

The Austin Electric Utility Commission is united on how to make the city's electric utility more competitive: Take the oversight out of the City Council's hands and give it to an appointed board.

The seven-member commission agreed Monday night to recommend the broad proposal to the City Council, yet devilish details divided the commission and remained unresolved.

For example, who decides how to divide the utility's profits — the council that needs the money to balance the city budget, or the board charged with protecting the interest of the utility's owners, the taxpayers of Austin? And should those utility board members be homegrown or corporate types drawn from a national pool?

"We need professionals with considerable business experience running a business as large as our utility and dealing with customers, employees and shareholders," said Neil Kocurek, an executive with Radian Corporation and a member of the utility advisory panel. "We shouldn't limit ourselves

See Utility, B5

Utility plan would put oversight elsewhere

Continued from B1
to Austin."

He envisions recruiting the type of business leaders who serve on major corporate boards nationwide. But at least four utility commission members, either public employees or retirees, said they disagree.

"You start talking about (directors from) out of town, and you'd kill it for Austin voters," said Linda Shaw, an employee of the Texas Employment Commission. Marilyn Jones, chairman of the utility commission, and Teresa Reel and Shudde Fath said they agreed. "I wish we'd limited board membership to Austin ratepayers," Fath said after Monday's meeting.

The utility commission, an advisory panel appointed by the City Council, voted unanimously that the City Council call an Aug. 10 election to amend the city charter creating a utility board.

The five-member board would have all powers over the utility except to set rates, issue debt or seize property by eminent domain. Those powers would be left to the Council. Yet that structure leaves it unclear whether the board or the Council would decide how much of the utility's revenues should be transferred to the city budget. Currently, the utility subsidizes more than one-fifth of city services with a transfer of about \$60 million.

With the Council setting electric rates but the utility board approving the budget, it might create a stalemate — or require a compromise.

"There would have to be some agreement," predicted Reel, vice chair of the utility advisory panel. "We just don't know how."

And the utility commission couldn't decide Monday night, deferring further discussion about the utility's profits until later.

They did recommend that the electric utility board, which by law includes the mayor, be expanded to seven members, if the Legislature would allow it. The Council would make the appointments, but the utility commission wants to recruit and nominate a pool of potential nominees. They also suggested staggered terms but no term limits for the utility board members.

The utility advisory panel concluded that an appointed board would have more time to manage the utility than the City Council. They also said the board might be less politically charged.

Anticipated changes in the power industry have prompted discussion about the future of the utility. Both state and federal officials are considering deregulating the industry, stripping the utilities of their monopolies. That would leave Austin's municipally owned system competing for customers with other power providers.

Price Waterhouse, a consultant hired by the City Council, suggested cutting the utility's overhead, debt and subsidy to the city budget. Only by cutting costs can the utility be ready to compete with low-price providers of electricity, the consultants warned.

The City Council, on a 5-2 vote in March, decided not to entertain offers to sell the city's largest asset, which generates more than \$500 million in annual revenues. Instead, the Council asked its utility commission to recommend ways to make the utility more competitive.

The commission, in turn, solicited the opinions of Austin citizens from selected panels over four nights last month.

Council to EUC: Forget about August election for new electric board

Look for a charter election in January 1997, for both the electric board and initiative for campaign finance reform

Electric Utility Board

According to the recommendation of the Electric Utility Commission, the Electric Utility Board would independently govern the electric city's electric utility. The EUB would owe its fiduciary duty to the citizens of Austin, who are the owners of the utility. The city council would set electric rates, issue debt and condemn property. The EUB would have all powers not granted to the city council, including the authority to develop policy, oversee personnel and approve the budget. The EUB would hire a chief executive officer and delegate to that person the full authority to manage and operate the electric utility. The EUB would consist of five members, one of which, by state law, must be the mayor. The other four members would serve four-year, staggered terms, and have no term limits. EUB members would be entitled to reasonable compensation, as approved by the city council.

Max to serenade the city at his last meeting

Call it dead on arrival. The **Electric Utility Commission** (EUC) unanimously recommended an Aug. 10 charter amendment election be called to seek voter approval to establish an **Electric Utility Board** (EUB). The five-member EUB would independently govern the city's electric utility enterprise, except that the power to set rates, incur debt and condemn property would be retained by the city council. Not a single council member contacted by *In Fact* favors an Aug. 10 election. Indeed, mayor pro tem **Gus Garcia** and council members **Eric Mitchell** and **Max Nofziger** are not convinced that an independent board is appropriate. "I think the board of the electric utility ought to be elected, so that control of the utility stays responsive to the community," Nofziger says. Garcia is not certain of what corrective action is needed regarding the electric enterprise. "I don't have my mind made up on what is right and wrong with the utility," Garcia says.

Mayor **Bruce Todd** and council members **Ronney Reynolds** and **Brigid Shea** are against an August election, as are the two new council members who will take office June 15, **Beverly Griffith** and **Daryl Slusher**. Nofziger and Shea's terms end June 15. Council member **Jackie Goodman** says she is not sure about an August election and would like to know more about the ramifications. Reynolds told *In Fact*, during the panel discussions hosted by the EUC, that holding off the election until January was essential to provide enough time to convince voters that an independent board should be authorized. EUC chairwoman **Marilyn Jones**, after being informed of the council's negative reaction to the EUC's call for an election, says that the city council should go ahead and shoot for the next available charter election date, in January. She wants to "move forward with an educational plan to make sure people know what we're trying to do and why we're doing it." **Shudde Fath**, who has been a member of the EUC since it was formed in 1977, will recommend that the EUC get on with recruiting possible members of the EUB as the first step toward gaining public acceptance. "If we could get a high-quality list of nominees who would agree to (serve), I think we could sell it," Fath says.

A slowdown in the ongoing petition drive underway for campaign finance reform will not force the council to put the EUB measure on the ballot in August. The **Priorities First!** group, which has been pushing the **No More Corruption!** initiative petition, has missed the June 1 deadline for turning in the signatures needed. They now plan to wrap up their campaign by Aug. 1, says **Priorities First!** co-chair **Linda Curtis**. If they do so, and if the number of valid signatures prove sufficient (at least 5 percent of the qualified voters must sign an initiative petition), that would force a charter election in January 1997. ✱

Council member **Max Nofziger** will croon his way out of office by providing the live music portion of the June 13 council meeting. Council regulars got a preview of his vocal talent last month, when he harmonized on "Happy Birthday" for **Jackie Goodman**'s celebration, at the request of the mayor **Bruce Todd**. Further marking Max's nine years on the council, there will be a party at 7:30 p.m. June 13 at **La Zona Rosa**, and the public is invited. Admission is free, with a cash bar. ✱

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Election on utility not likely this year

■ Residents tell board they favor giving independent panel control of city's Electric Department

BY LAYLAN COPELIN
American-Statesman Staff

Austinites won't have to worry about election fatigue in the August heat.

A City Charter election to transfer the Electric Department to an independent board, recommended for Aug. 10, probably won't happen until January.

"I never thought we should do it in August unless we just had to," said Ronney Reynolds, the City Council member who requested that the Electric Utility Commission study the issue. That advisory board recommended the election after hearing comments from panels of citizens over four nights.

The commission agreed with the citizens that turning over the Electric Department to a separate board would make it less political and allow the utility to operate more like a business. There is a possibility the Legislature next year may deregulate the power industry, forcing the monopoly to compete for customers.

Utility profits provide more than a fifth of the city budget for services such as police and parks. There also would be questions

See Election, B5

Tuesday, June 25, 1996

B5

Election on electric utility not likely until next year

Continued from B1

whether utility workers would remain city employees with the same benefits under an independent board.

Reynolds said the Aug. 10 date was proposed because there was concern that a charter amendment on campaign finances might be ready by then. Charter elections are restricted to every two years. If petitioners had gotten their proposal on the Aug. 10 ballot, then other charter amendments could not be considered for two more years. When that did not happen, the pressure to put the electric issue before the voters faded.

Reynolds said he still supports the idea of the City Council turning day-to-day oversight of the utility to a board. Yet he opposed rushing it to the voters.

"When you call an election, you'd better be sure you've got the (political) program out there and the public understands the pros and cons," he said. "This is a very important but complicated issue."

"I believe if we do (the election) in August, we'd be playing Russian roulette."

Austinites already have voted in a series of elections this year: party primaries, their runoff, a special election for a state representative's seat in northwest Travis County, contests for Austin Community College trustees and the Austin Independent School District, a school bond vote, plus the City Council election and its runoff.

Voters, after all, may be tired. Trey Salinas, an aide to Mayor Bruce Todd, noted the low turnout

'When you call an election, you'd better be sure you've got the (political) program out there and the public understands the pros and cons.'

Ronney Reynolds,
Austin City Council member

for this month's council runoff, adding, "The utility issue is too important to be decided by a handful of voters."

The next possible date for a charter election is January. Or the council could decide to wait until May, when a mayor's race could draw an even bigger turnout.

Robert Barnstone, a former council member who served on the citizens' panel, said it is important that the issue not be forgotten.

Despite the recommendation for the independent board, many questions remain unresolved: Who would serve on the board, how much authority would the City Council surrender to the new creation, and who would decide the level of profits used to subsidize the city budget?

"I hope it's not put on the shelf," Barnstone said. "A lot of work needs to be done and the City Council has to be involved."

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Key decisions on utility

The Austin City Council has done a commendable job so far in discussing the future of the electric utility in a responsible manner. The council today will choose between two proposals on the future of the utility or blend them.

A majority of the council has agreed on the major issue of an independent board — rather than the council — gov-

erning the utility. The sticking points now are the transfer of profits from the utility to the general fund and the size of the city's electric conservation programs.

A Price Waterhouse report suggested substantial cuts in both. A reduction in the transfer to the general fund, which pays for police, parks and other basic services, has obvious implications. The money cut from the transfer to the general fund would have to come from somewhere — tax increases, budget reductions or both.

Council Members Beverly Griffith and Daryl Slusher think they have a way to avoid a tax increase by slicing into the utility's overhead but keeping energy conservation spending fairly level. They are offering a resolution as an alternative to one drafted by city staff members that is scheduled for a vote today.

While the Griffith-Slusher proposal is a thoughtful one, there are doubts that

the levels of reduction they propose are attainable. Moreover, it continues consecration of a bovine: conservation programs.

There is no room in this discussion for sacred cows. All the utility's operations and overhead should be on the chopping block for the utility to be competitive in the future.

While we agree with Slusher and Griffith that the current City Council should not lock future councils into tax increases, there may not be enough in the utility's \$283 million operating budget that can be placed on the guillotine of competition.

One very noteworthy and laudable component of the Griffith-Slusher proposal is a yearly review of the utility's progress in reaching competitive footing. That common-sense measure is one the council should not

hesitate to adopt.

The vote today is crucial. The council's trip to the New York bond houses for a series of meetings that could determine the utility's — and ultimately the city's — credit rating is scheduled next week.

So far, council members have demonstrated responsible leadership on this issue. Here's hoping they find room for compromise on differences that remain.

**There is no room
in this discussion
for sacred cows.
All the utility's
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block for the
utility to be
competitive in the
future.**

In bill, cities may hand over utilities without a vote

BY BRUCE HIGHT
American-Statesman Staff

The Austin City Council could turn over the job of governing its electric utility, Austin Energy, to a new, independent board without voter approval under a bill by Sen. David Sibley, R-Waco, to deregulate the electric utility industry.

The city charter requires a referendum to make such a change, but an obscure provision in Sibley's bill would allow city councils across the state to set up such boards despite their charters.

If the provision becomes law, city councils could shed the responsibility of running utilities — including setting rates — without voter approval.

Sibley's bill also would give municipally owned utilities more freedom from state laws governing how cities make major purchases and land transactions.

Municipal utilities in New Braunfels, Georgetown, San Marcos and Bastrop also would be covered by the proposed changes. The state's 75 municipal utilities serve about 3 million Texans, or about 15 percent of all electric customers.

The Special Senate Committee on Electric Utility Restructuring, chaired by Sibley, is scheduled to spend a long day today amending his complex bill and then voting on it.

Sibley said last week that he expects the full Senate to debate and vote on the bill March 17.

State law already allows city councils to set up independent boards to run their electric utilities, but only with voter approval. If they want, they can also give the board the power to take private property for public use and the authority to set rates and borrow money.

Austin Mayor Kirk Watson said that the idea of an

See Utility, A3

Monday, March 8, 1999

Utility provision lets cities bypass voters

Continued from A1
independent board to govern Austin Energy is worth studying, but that he is against making such a move without voter approval.

"I would always favor having an election," Watson said. "Citizens have already voted on that charter and told us they want to have an election. So, I'd say we'd need to do that regardless of what is in that bill."

His successors, he said, "would face some accountability issues if they failed to" do the same.

Shudde Fath, who has served on the city's Electric Utility Commission since 1977, said she likes the idea of an independent board for Austin Energy but would oppose creating one without voter approval. The commission is a council-appointed advisory body but has no direct governing authority.

"I think that decision ought to be up to the voters because it is publicly owned," Fath said. "City councils ebb and flow and come and go on different issues. To me, that's more of the state meddling in local affairs, which sometimes they're pretty good at."

Mark Zion, president of the Texas Public Power Association,

said the provision overriding city charters was first drafted as part of an electric deregulation bill in 1997 at the request of city officials in Austin and Brownsville. The association is the trade group for the state's municipally owned utilities.

Although the 1997 bill went nowhere, the association was able to get the charter override provision included in this year's bill by Sibley.

Zion said he could not remember who from Austin had sought the charter override in 1997. But after an American-Statesman reporter began asking about the provision Friday, Zion said Austin officials told him they were no longer interested in it.

Sibley's bill, announced Jan. 21, would allow cities with municipally owned electric utilities to keep their service areas closed to competition indefinitely, even if the state deregulates the industry in 2002.

However, officials of municipally owned utilities say that, sooner or later, their customers will want the right to choose, and that they must prepare for the day when they will have to compete.

That's why, they say, they need

other provisions in Sibley's bill to help them compete with investor-owned companies in 2002.

One provision the cities want would exempt municipal utilities from a law requiring city governments to get bids for most purchases of more than \$15,000.

Other provisions would exempt them from giving public notice when they want to sell land and from having to get approval from their city councils when signing contracts with other government bodies, unless the contract was for more than \$100,000.

Zion said the power association favors amendments that would require a city council to adopt its own process for handling such transactions before its municipal utility would be free of the state limits.

The cities, he said, could enact procedures that work better in a more competitive business environment, but "that are still bounded by existing ethics ordinances, codes of conduct, minority procurement ordinances and prohibitions against self-dealing."

You may contact Bruce Hight at bhight@statesman.com or 445-3977.

Tab 5: Historical and Other Material from EUC Member Shudde Fath

Council's CPS picks are critical decisions

05-03-01

By June, the five-member City Public Service board will have three new members.

Never has it been more important to have a strong board.

In the aftermath of the utility's poor handling of a \$2.4 million contract with a management consultant, the need for aggressive, strong board members is clear. The board must be prepared to subject staff decisions to thorough, independent analysis. A rubber-stamp approach risks more scandals.

Current CPS board members essentially select replacements. They are recommending for City Council approval Stephen Hennigan, chief financial officer of San Antonio Federal Credit Union, to replace Gloria Hernandez.

Applications will be accepted through Friday for the seat Bexar County Judge-designate Nelson Wolff is leaving because of his upcoming role in county government. Wolff, with his business and political background, has been the strongest voice on the board.

The mishandled \$2.4 million consulting contract highlights the need for strong board members.

Mayor Howard Peak, one of the remaining three trustees, will leave in June when the new San Antonio mayor takes office.

The change in three of five board seats is likely to shake up CPS, and frankly, the Watson Wyatt Worldwide contract controversy demonstrates the agency needs it.

Hernandez's replacement must come from the city's northeast quadrant, and Wolff's must be filled by a resident of the northwest quadrant under the geographical criteria established in 1998.

Whether the current City Council or the new one installed in June makes the decisions, members need to pay special attention to the CPS appointments, with an emphasis on independent trustees.

1998

San Antonio Express-News
May 3, 2001
Tuesday

TOTAL P.04

05-04-01

Council to vote on CPS trustee nominee

The self-appointing City Public Service board has nominated Stephen Hennigan, chief financial officer for the San Antonio Federal Credit Union, to take over for retiring trustee Gloria Hernandez.

Hernandez, a florist who has served on the board since 1991, was scheduled to leave office May 31.

Board chairman Alvaro Sanchez Jr. asked her to stay through June 30 to maintain continuity and help choose the successor to Nelson Wolff, who is set to be sworn in as Bexar County judge Tuesday.

If confirmed by the City Council, Hennigan will begin a five-

year term July 1, representing the northeast quadrant of the city.

The council is scheduled to consider the nomination May 24. The council can only vote to confirm or reject the nomination.

Hennigan is a certified public accountant who graduated from the St. Mary's University School of Business and Administration and began his banking career at the San Antonio office of Victoria Savings Association.

After a 2½-year stint at Union National Bank, Hennigan went to work for San Antonio Federal Credit Union in 1993 and was promoted to senior vice president and chief financial officer

last March.

Fifty-eight people submitted applications for the post, which pays \$2,000 per year plus expenses. Utility trustees chose Hennigan from a list of eight finalists at a special workshop meeting held Monday.

Today is the deadline for submitting applications to serve the remainder of Wolff's term, representing the city's northwest quadrant.

Applications and a sample of the required financial disclosure statement mandatory for board members are available by calling 353-2346. The forms also are available on the CPS Web page at www.citypublicservice.com.

San Antonio Express News
May 4, 2001
Friday

controversial nature of the project prompted **Table 5: Historical and Other Material from EDC Meetings Shulder Filed** package, thereby giving the public a chance to either approve or deny the extension without jeopardizing funding for other roads.

Although Thursday's vote was only to set a public hearing to receive further input on whether the road should be included in the city's long-range transportation plan, Slusher got a head start by listing all the reasons why he believed it should be removed. "This proposed road would cut right through Bear Creek," Slusher noted. "I just think this would be too damaging. I would like to send a message to the commissioners that we don't believe this road is a good idea, that we think it would be very damaging to Barton Springs and the Edwards Aquifer." Slusher indicated that city studies showed the extension of Frate Barker would not be needed for emergency vehicles to adequately service the area and that he believed it would not service enough people to reduce traffic congestion.

Slusher also stressed the urgency of removing the road from the plan before Travis County voters go to the ballot box in November. "At least one of the commissioners and probably other supporters have been using the fact that it's in the city's plan to argue in favor of the road," he said.

Mayor Pro Tem Jackie Goodman echoed Slusher's desire to send a message to Travis County Commissioners. "I think for the upcoming election, it would be a better approach not to have an assumption one way or the other predetermined by Council plans and a supposedly approved designation for this particular street," she said. "For the moment, I don't think we should predispose the voters into thinking this is something we support." The measure to set the public hearing for September 27th at 6:00pm passed unanimously with Council Member Beverly Griffith temporarily off the dais.

In other transportation matters, the Council voted unanimously to release money received from Capital Metro for regional transportation projects. The \$6 million will go toward right-of-way acquisition along the proposed route of SH 45 North. (See In Fact Daily, Aug. 10th, 2001.) The item had been delayed twice while Goodman tried to schedule a meeting with interested parties to go over details of how the money would be used. That meeting came together on Wednesday and included State Representative Mike Krusee (R-Round Rock), light rail supporters, cycling advocates and neighborhood groups. "The issue that came to the forefront was really about MoPac," Goodman said. "This, in my opinion, does not have an effect one way or another." As for the proposed SH 45 North, Goodman said she liked the proposal. "Environmentally and economically, this is beneficial for the city. I wanted the information to get out to those who are trying to be very aware of all the traffic issues and transportation issues that we take up."

The Wednesday meeting apparently satisfied Goodman, and congratulations and thanks were extended back and forth between council members and representatives from Williamson County. Mike Heiligenstein, Williamson County Commissioner Precinct One, praised the efforts of Goodman and other members of the council. "Thank you very much for the regional cooperation you've shown," he said. The measures allocating the funds passed 6-0, with Griffith away from the dais.

City, Acme win dismissal of billboard giant's federal suit Fight between Reagan and competitors not over

US District Judge James Nowlin has ordered dismissal of a lawsuit by Reagan National Advertising against the City of Austin and Acme Partnership, a competitor of the billboard giant. Reagan has been in a lengthy battle, fought through the city's Sign Review Board, and in court, against its competitors. The competitors are offering higher prices to rent space for their signs than Reagan has been willing to pay. Part of the battle is over the issue of who may replace a billboard.

According to Nowlin's order, Reagan has alleged that "only the current sign owner may replace or modify a sign," under city ordinances. "Thus, Reagan believes that it is its sign that is grandfathered, not the land, and that if Reagan removes its sign, no new sign may ever be erected on that land under current City ordinances prohibiting off-premise signs. Reagan asserts that the City is violating Texas law," and both US and Texas Constitutions "by issuing permits to build new signs to third parties." So, Reagan sued the city for taking its property.

The city and Acme argued that Reagan had no property interest in the land once its lease had expired. Nowlin agreed. "The Court finds that there are no facts alleged that show any type of 'taking' by the City. In each instance complained of by Plaintiff, the lease for the property upon which Reagan's sign is located has expired or will expire by its own terms."

Whispers

No Longhorn Pipeline ordinance now ... Council Member Raul Alvarez, who had sponsored an ordinance "concerning hazardous pipelines" made a motion on Thursday to delay consideration of the ordinance indefinitely. Alvarez said attorneys for the city need to look into a number of issues on the matter. The motion came after an executive session discussion with attorneys on a number of issues, including pipeline regulation ... Council hears good economic news ... In these days of down markets and declining tax revenues, it's not easy to find an economic advisor with good news. But Bill Newman of Public Financial Management, the city's financial advisors, was all smiles when he announced the results of bids on the city's bonds Thursday. The Council approved issuance of more than \$79.6 million in public improvement bonds at a rate of 4.63 percent. In addition, the Council approved the sale of about \$65.3 million in Certificates of Obligation (COs) at 4.36 percent, and \$2.65 million in PPFCOs at 3.5 percent. Newman declared such a low rate of payment "good, if not wonderful." The bids were taken on the Internet, he noted. Political consultant Mike Blizzard had complained in emails about the issuance of COs, but no one complained during the meeting. Council Member Beverly Griffith and Mayor Pro Tem Jackie Goodman were off the dais when the vote was taken ... Charter Revision Commission appointments ... The City Council also appointed all nine members of a new Charter Revision Commission yesterday. They are: Clare Barry, Ricky Bird, Bobbie Barker, Robert Chapa, Marta Cotera, Charles Miles, Eddie Rodriguez, Clint Smith and Stephen A. Yelenosky. All were appointed by consensus. Council Member Raul Alvarez appointed Maria C. Hernandez to the Commission for Women. Caroline M. LeGette was reappointed to the Electric Utility Commission by Mayor Pro Tem Jackie Goodman. William M. Moore was appointed to the MAP Advisory Board by consensus. Two members of the Robert Mueller Municipal Airport Plan Advisory Committee were reappointed by consensus, Suzanna Caballero and Jim Walker. Council Member Danny Thomas appointed Bob Belanger to the Urban Forestry Board. Two members of the Water & Wastewater Commission, Jim Haley and Aida Berduo Douglas, were reappointed by Mayor Kirk Watson and Council Member Will Wynn, respectively...

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Ban on retail tax breaks makes ballot

Expected May vote must be moved to November, city says

By Kate Alexander

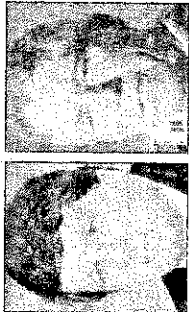
AMERICAN-STATSMAN STAFF

A charter amendment to ban tax incentives for retail projects in Austin has qualified to go before voters, the city clerk announced Tuesday.

But in a sudden shift, City Attorney David Smith determined the election cannot be held until November 4. It was expected to be held May 10.

Stop Domain Subsidiaries, a group of about 450 small businesses opposed to the economic development package given to the Domain shopping center, needed to submit signatures from 5 percent of the city's registered voters to get the amendment on the ballot.

Of the more than 27,000 signatures submitted, City Clerk Shirley Gentry estimated that 20,624 are valid, she said. More than 18,000 signatures were required to qualify the amendment for the ballot.



David Smith

City attorney clarified date for vote.

Brian Rodgers

Group leader says delay not a problem.



Read the city attorney's memo on the eligible election date for a referendum with this story online.

The City Council must now add the amendment to the ballot.

"We're on," said Brian Rodgers, founder of Stop Domain Subsidiaries, upon hearing that the clerk had certified the petition. Whoops and hollers rang out behind him.

On, indeed, but not until November.

The city charter can only be amended every two years. The previous charter amendment election was held May 13, 2006, so this year's election date of

May 10 is a few days shy of two years.

Despite the ample discussion in recent months about the charter amendment election, Smith said his lawyers did not catch the issue until this weekend.

Rodgers said the campaign might lose a little momentum by waiting until November but the issue is not going away.

"May or November, we'll win either way," Rodgers said.

If approved by voters, the amendment would prevent the city from giving tax incentives to projects that have retail components. It would also stop the city from making payments for any existing projects, such as the Domain.

The Greater Austin Chamber of Commerce has not yet taken a position on the amendment, but chamber President Mike Rollins said this amendment could have serious consequences for the city's economic development efforts.

Breaking promises is a "bad business practice and very harmful to the national reputation of Austin," Rollins said.

Joining this amendment on the ballot will be a council-initiated item to give the city auditor more independence. The council might also add an amendment to change Austin's method of electing council members to a district-based — rather than citywide — system.

The delay gives supporters of that change some breathing room.

"This is a complete blessing in disguise," Council Member Mike Martinez said.

The time line will allow for a series of town hall meetings and additional discussion, Martinez said.

And it will put the issue before a broader base of voters in November.

"You get a much more comprehensive decision from the citizens when you have such a high voter turnout," Martinez said.

The council will still hold a public hearing on Feb. 28 but will not have to make a decision on putting the issue on the ballot until September.

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CPS board structure needs reform

Express-News Editorial Board

Updated 09:00 a.m., Sunday, February 19, 2012

CPS Energy CEO Doyle Beneby has been on the job for 18 months. During that time, he has presided over a significant transformation of the nation's largest municipally owned electric and gas utility.

CPS has become a major partner with the city for economic development. It has expanded its diversification of energy generation while charging rates that remain among the lowest of any major utility. It has positioned itself as a global player in solar energy. And CPS, which for decades frustrated demands for greater public scrutiny of its operations, has become more accountable and transparent.

The most recent evidence of this is the public mea culpa Beneby issued for extravagant meal and alcohol expenditures at ratepayer expense. Beneby inherited CPS wine-and-dine policies, a legacy of the utility's culture of indifference to public concerns. He didn't create them, but he has begun the process of reforming them.

Beneby's regret and commitment to managerial improvement is refreshing. Unfortunately, there's been no comparable acknowledgment of error from the leadership of the CPS board of trustees, despite the fact that board members are supposed to represent the interests of the public and ratepayers.

It wasn't only CPS executives who were running up excessive drinking and dining tabs on the public's dime. Some trustees, who supposedly took on the burdens of stewardship for a small stipend and a commitment to public service, also did so.

The dining expense fiasco, like the nuclear cost estimate debacle in 2009, highlights the limits of the current board structure. CPS is a \$2 billion operation with 3,600 employees. A board of four trustees and one ex officio member, the mayor, is simply too small to effectively provide guidance for an enterprise this large. By statute, a committee of this board cannot consist of more than two people.

Both VIA Metropolitan Transit and the San Antonio Water System, though much smaller municipally run services, have larger boards of trustees than CPS. CPS needs a board with the numbers and the diversity of talent to match its critical mission.

The structure of the CPS board of trustees is, however, an impediment to reform. The board's four citizen trustees, representing four geographical quadrants of the city, are self-perpetuating. If a trustee terms out or resigns, the board selects a replacement. Only the mayor is accountable to the public every two years.

The four current trustees bring a variety of life experiences to the board. But only one has a background in large business operations, and none have résumés in the energy or utility industries.

A sensible reform would be to expand the board to nine members. This could be accomplished by creating four additional at-large trustees, preferably appointed by City Council. Such a remedy would require legislative approval. ← NOTE

The insularity of CPS governance is by design, intended to prevent meddling by politicians at City Hall. But such extreme insularity has demonstrably come at the expense of accountability. A board that was fully aware of the operations of the utility and fully engaged with the public wouldn't have been blindsided by the nuclear cost estimate controversy or public outrage over meal and alcohol tabs.

That insularity is also a hindrance for the utility's CEO — Beneby — who ought to have greater guidance from the board of trustees. His admission of responsibility for the wine-and-dine controversy is admirable. Yet long before Beneby arrived in San Antonio, CPS trustees had approved and even shared in CPS's lavish meal expenditure policy. Beneby may have acted responsibly, but he is far from being solely responsible.

Beneby is halfway through his three-year contract with CPS. By this point, the board should have taken action to extend his contract — if the trustees intend to keep him. They should.

Beneby has provided solid leadership for CPS, including efforts to change its institutional culture. He has earned a vote of confidence from the board of trustees. More than that, he deserves the support of a larger board of trustees with broader skill sets to complement his leadership.

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June 1, 2012

V GOVERNANCE

I CANNED
DO EUC FATH**Whispers 6-1-12**

Looking for a better way . . . Next week, of course, the **City Council** will be taking a vote on the new rates for **Austin Energy** after about five months of discussion and study. It has taken an inordinate amount of Council and staff time to get to this point and tried the patience of not a few of them. **Council Members Bill Spelman, Sheryl Cole and Chris Riley** are also sponsoring an item on next week's City Council agenda intended to start the process of looking for a better way to resolve thorny issues at Austin Energy – such as setting of electric rates – and how the city can be more responsive to Austin Energy customers who live outside the city. Asked whether an independent board might provide a better governance mechanism than asking the City Council to handle those issues, Spelman told *In Fact Daily*, "Somebody who has more bandwidth than the City Council has or is ever likely to have, ought to be looking at the details. We just have never been in a position to look at those." Spelman said the resolution would direct **City Manager Marc Ott** and **Austin Energy General Manager Larry Weis** to provide a list of governance models, such as that used by the city-owned CPS Energy in San Antonio and other public power utilities. That task should be done by Aug. 31, he said. Then the Council-appointed **Electric Utility Commission** would be directed to do a cost-benefit analysis. Spelman said the **EUC** would be asked to consult with four former General Managers of Austin Energy and with representatives of the American Public Power Association, the Texas Public Power Association and any other appropriate source. They will have their work cut out for them, with Oct. 31 the proposed deadline for their report . . .

~~**Convention Center hotel space . . .** The **JW Marriott** on Congress Avenue may be stealing all the attention, but the **Manchester** project on Cesar Chavez Boulevard actually is slightly bigger, at 1.35 million square feet compared to 1.2 million square feet. The **Marriott** breaks ground this summer. The **Manchester** project, which will be operated by **Fairmont** and known as **The Grand Hotel at Waller Creek**, breaks ground next spring. Zoning for the project was approved last week. As developer **Perry Lorenz**, who owns the land, has suggested, the project will be a major infusion of property value and tax dollars for the tax increment finance district that is paying for the Waller Creek tunnel project . . . Austin might be breaking through to the larger convention market, and it's not because two new convention hotels are rising from the ground. The **Austin Convention and Visitors Bureau** notes that six new non-stop flights are being planned for **Austin Bergstrom International Airport**. Southwest will start non-stops to Washington National DC, Atlanta and Portland. **AirTran** already has added an Austin-Cancun route, **US Airways** will add an Austin-Philadelphia non-stop route this summer and **Delta** has added an Austin-New York route, starting in June . . .~~

Celebrate CPR survivors today . . . **Council Member Mike Martinez** and **EMS System Medical Director Dr. Paul Hinchey** will host a celebration for more than a dozen people who have survived cardiopulmonary resuscitation today at 2pm in the **City Hall Council Chambers**. The survivors will be reunited with first responders who saved their lives. The event is part of **Take Heart Austin Week**, which is being celebrated in conjunction with **National CPR Awareness Week** June 1-8. The goal of Austin's citywide campaign is to improve cardiac arrest survival throughout Austin and Travis County, where last year 72 people's lives were saved after being treated by Austin/Travis County EMS system . . .

Meetings . . . The **Transportation Policy Board** of the **Capital Area Metropolitan Planning Organization (CAMPO)** meets from 1:30pm to 3:30pm in City Hall's Boards and Commissions Room.

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IN FACT DAILY

June 4 – June 8, 2012

Monday, June 4

Questions over governance of Austin Energy go back three decades

By Mike Kanin

Austin City Council Member **Bill Spelman's** push to consider establishing an external governing body for **Austin Energy** has already been vetted thoroughly by at least one city advisory body — 16 years ago.

In May, 1996, an all-star citizens' group urged Council members to adopt an independent governing body for Austin Energy after two lengthy back-to-back meetings. In fact, formal questions about altering the governing structure of the utility date back to the 1970s, according to veteran **Electric Utility Commission (EUC)** member **Shudde Fath**, who has been a part of multiple efforts to encourage the city to adopt an independent board similar to the one that manages **San Antonio's CPS Energy**.

"The only way to go is to do the CPS model," Fath told *In Fact Daily* on Sunday evening. "My premise is that the board would participate in the decision making process...It would provide continuity. One of the big things is that it would be a positive to the bond-rating houses. They take a dim view of the political management of the utility."

The 1996 panel included former EUC chair **Sam Graham**, Tom "Smitty" Smith of **Public Citizen** and State Senator **Kirk Watson** (D-Austin) before he served as Austin Mayor, among other luminaries. They held two multi-hour public meetings on May 13 and May 14, 1996. In the end, after much testimony and questioning, the group agreed that Austin Energy needed an independent board. Fath knows because she was there. She has served on the EUC since its inception nearly 35 years ago.

In his summary of the group's proceedings at the time, *Austin American-Statesman* reporter **Laylan Copelin** quoted group members and former City Council members **Robert Barnstone** and **Charles Urdy**. "I don't believe that there is anyone in this city who believes the City Council is an asset to the electric utility," Barnstone said.

"A politically driven body cannot run a competitive business," Urdy added.

On Friday, *In Fact Daily* reported that Spelman, Council Member **Chris Riley**, and Mayor Pro Tem **Sheryl Cole** would place an item on this Thursday's Council agenda that would call on City Manager **Marc Ott** and Austin Energy General Manager **Larry Wels** to begin a study of the possibility of transferring board control of the utility to an independent body. "Somebody who has more bandwidth than the City Council has or is ever likely to have, ought to be looking at the details. We just have never been in a position to look at those," Spelman said. (See *In Fact Daily*, whispers, June 1, 2012.)

In a February 2008 memo to EUC members, Fath was blunt. "Until there is a major change in governance, it is my considered opinion that we are just rearranging the deck chairs!" she wrote.

Such a change would take a revision to the city's charter. With Council members planning a charter election for this fall, and considering that two years must elapse before another can take place, Fath wants to see inclusion of a question about the utility's governance as soon as possible. "I'd like to see it go on the ballot this November," she said.

Should Council members opt for a change, Fath argues that there would be no need for a drawn out information-gathering process. "The EUC has voted unanimously for this in '96, and '02, and I think one more time," she said.

Spelman told *In Fact Daily* Sunday night that he knew that there had been some discussion on the matter previously, but that he was surprised to hear that it had advanced as far as Fath suggested. He pointed out that the new resolution would call for a simple look at how other large city-owned utilities are governed and provide this report to the current EUC and Ott.

Fath — who, at 96, would rather not lead an effort for the charter question — indicated that the multiple other attempts to change the utility's governance structure have been met with silence from a host of past City Councils. Fath may ask the chair of the group to place an item addressing the issue of governance on the next EUC agenda. That meeting is scheduled for June 18.