

CITY COUNCIL MINUTES OF A JOINT MEETING  
WITH KERRVILLE PUBLIC UTILITY BOARD

KERRVILLE, TEXAS  
MARCH 22, 2016

On Tuesday, March 22, 2016, at 5:34 p.m. the Kerrville City Council meeting was called to order by Mayor Jack Pratt, and the KPUB meeting was called to order by Chairman Stephen Fine, at the Kerrville City Hall Upstairs Conference Room, 701 Main Street, Kerrville, Texas.

CITY COUNCILMEMBERS PRESENT:

Jack Pratt	Mayor
Gary Stork	Mayor Pro Tem
Stephen Fine	Councilperson
Bonnie White	Councilperson
Gene Allen	Councilperson

CITY COUNCILMEMBERS ABSENT: None

KPUB TRUSTEES PRESENT:

Stephen Fine	Chairman
Philip Stacy	Vice Chairman
John Sample	Secretary
Fred Gamble	Treasurer
Jack Pratt	

KPUB TRUSTEES ABSENT: None

CITY STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Brenda G. Craig	City Secretary

KPUB STAFF PRESENT:

Mike Wittler	General Manager and Chief Operating Officer
Lidia Goldthorn	Executive Assistant
Jill Sodberry	Chief Financial Officer
Steve Schulte	Legal Counsel
John Davidson	Legal Counsel

Proposal for a loan from the Kerrville Public Utility Board to the City of Kerrville to provide funding for the City of Kerrville water reuse project in an amount not to exceed \$8,500,000.

Mr. Fine noted the proposal was initiated by KPUB and not by the City. KPUB had funds on hand from recent litigation with LCRA. KPUB's long term goal in 2023 was to purchase or build a power plant to help offset electrical costs and benefit the entire KPUB system. KPUB proposed to loan funds, up to \$8.5 million, to the city at the rate of 2.4%, comparable to the city's latest bond issue. KPUB was currently earning less than

1% on its investments. The city would save the cost of financing a bond issue, usually \$200,000-300,000. KPUB's attorneys and the city attorney looked at the proposal and said it could be done and it would not mess up KPUB's bond rating or violate anything in KPUB's bond ordinance. This proposal would save money for city taxpayers and raise revenue for KPUB ratepayers.

Mr. Whittler noted KPUB had accumulated funds to partially finance future electric system improvements, which were planned to commence in 2023. KPUB had set aside \$6.9 million during the lawsuit with LCRA in case of an adverse outcome, and an additional \$8 million in the rate stabilization fund. Once the lawsuit with LCRA was concluded, KPUB instructed staff to find ways to invest funds at a higher rate to help fund future projects that were planned for 2023.

Mr. Whittler noted the KPUB board received an opinion from John Davidson, KPUB's Special Counsel, and Jeffrey Kuhn, KPUB's Bond Counsel: "KPUB had the authority to grant or loan the funds to the city provided it satisfied the funding and rate covenants contained in and otherwise complied with the provisions of Ordinance No. 2013-21 as adopted by the city council on October 22, 2013." Mr. Davidson prepared a promissory note, loan agreement and KPUB resolution for a loan not to exceed \$8.5 million. The documents were reviewed by Mr. Kuhn, Mr. Hayes, and KPUB and City staffs. Mr. Whittler reported that Steven Adams, KPUB's financial advisor, reviewed KPUB's financial statements, existing loan agreement with Broadway Bank, and KPUB's wholesale power agreements for credit and collateral requirements and he found no reason that KPUB could not make a loan to the city. KPUB notified Broadway Bank, who held the note on existing KPUB debt, and Bill Fisher of BKD, KPUB's auditor, that a loan from KPUB to the city was contemplated; neither raised concern about the proposed loan. He noted this was not an investment under the Public Funds Investment Act.

Mr. Whittler reviewed sections of KPUB's Resolution 16-08 and the terms in the loan. The proposed loan would commence August 1, 2016, and have a ten year repayment term, with a 2.4% interest rate and the first three years interest only payments. The length of the loan and the interest rate were based on the city's recent loan for the wastewater facility. KPUB was currently earning 0.3% average interest on standard commercial terms. A loan to the city would keep interest earned in the local community and not paid to bond holders out of state; this would put funds back into the utility system. The note was not collateralized but was secured solely by a lien on and pledge of the net revenues of the city's water and wastewater system. Any default or failure to pay any principal or interest when due would result in KPUB withholding transfer payments to the city as established in Section 35(c) of Ordinance No. 2013-21, which was 3% of KPUB revenue, until the default was resolved. Mr. Whittler stated the note was not pledged by city ad valorem tax revenue, and the loan was not deemed to be a public security under Texas Government Code.

KPUB could have chosen to use the funds to temporarily lower today's rates; however, Mr. Whittler opined it was more important to invest in the infrastructure and future projects that would ensure stable and competitive rates. KPUB started 25 years ago

and in 2013 paid off \$25.5 million debt, and in 2013 KPUB issued more bonds; all funds in the system were paid by ratepayers.

Councilmember White noted Section 3.06 of the city charter stated that ordinances and resolutions should be read at two regular council meetings; since this was a special meeting, it should be reposted for a regular meeting and considered in 4-5 months. Protocol was to present items to KPUB and City Council on their agendas to discuss the matter, then bring it to a vote. She questioned why the urgency for a special meeting to approve the resolution now as the city had \$4.1 million on deposit, \$1.3 for construction in certificates of obligation, and the design plan was not finished.

Mr. Fine noted KPUB had previously met and discussed the proposal prior to bringing the issue to the city council. KPUB had discussed this for several months; however, they waited until the water reuse ad hoc committee had made its recommendation on the water reuse project. In order for both bodies to meet together, the agenda had to be posted as a special meeting.

Mr. Hayes noted the charter provision applied only to ordinances, and this was a resolution. There was no requirement to have two readings of a resolution and a resolution could be passed at a special meeting; however, council did not have to vote today, and the resolution could be posted for the April 12 regular meeting.

The following persons spoke:

1. Ed Shuler noted KPUB had expenses now and infrastructure projects underway; he wanted KPUB to have a larger contingency fund, at least \$2.5 million.
2. William Spencer Hart opined this was all cooked up to be done during Holy Week and the mayor wanted to get it done before he left office. He objected to Mr. Fine being involved and opined Mr. Fine had a conflict of interest because he was serving dual offices. Also, state law required meeting notices be posted at a place convenient to the public at least 72 hours prior to the meeting; Mr. Hart opined that the agenda posting was not in compliance with the law as it was posted for only 46.3 business hours and did not qualify as an emergency notice. Based on population (22,389 KPUB ratepayers and 22,347 city citizens, the cost would be \$379.6 per person for KPUB customers and \$380 per person for city residents. Some of the funds accumulated by KPUB were because LCRA overcharged KPUB and KPUB overcharged its customers.

Mr. Fine noted that prior to his running for city council he contacted the office of the attorney general and they did not see a problem. Mr. Hart questioned if the attorney general's opinion gave Mr. Fine authority to vote on matters of lending money between the two entities, and he wanted to see a written legal opinion stating it was constitutionally legal. Mr. Fine noted he was a full board member on both KPUB and City Council.

Mr. Hayes noted the public meeting notice was posted more than 72 hours prior to the meeting, as required by state law.

3. Robert Naman asked if the \$8.5 million loan would be paid all up front or on draw when needed. Mr. Fine stated it would be a maximum \$8.5 million lump sum.

4. Carl Meek questioned if the 2023 infrastructure project could be done sooner and help rate payers sooner. Mr. Whittler noted that KPUB had solicited proposals for a 40-75 megawatt regional plant; possibly with one or more partners. KPUB could start the project sooner; however, KPUB would be operating a plant in a competitive market. Also, KPUB had a contract to purchase 100% of power from ERCOT until 2023.

Approval of Kerrville Public Utility Board consideration of Kerrville Public Utility Board Resolution No. 16-08.

Mr. Sample moved for approval of KPUB Resolution No. 16-08; Mr. Gamble seconded the motion and it passed 5-0.

Approval of City of Kerrville Resolution No. 09-2016 a resolution authorizing the city to enter into a loan agreement with and a promissory note to the Kerrville Public Utility Board for an amount not to exceed \$8,500,000; such funding to be used by the city for improving its wastewater treatment facilities to include reuse

Mr. Stork moved for approval of City of Kerrville Resolution No. 09-2016; Mr. Allen seconded the motion and it passed 4 to 1 with Councilmembers Stork, Allen, Fine, and Pratt voting in favor of the motion and Councilmember White voting against the motion.

**ADJOURNMENT:** The meeting adjourned at 6:25 p.m.

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
Jack Pratt, Mayor

\_\_\_\_\_  
Brenda G. Craig, City Secretary