

APPROVED 12-16-15

MINUTES  
 City of Tacoma  
 Public Utility Special Board Meeting  
 December 3, 2015  
 5:30 p.m.

Mr. Flint called the Public Utility Board meeting to order at 5:30 p.m. at the Public Utilities Administration Building Auditorium.

**Present:** Woodrow Jones, Mark Patterson, Bryan Flint, Karen Larkin, Monique Trudnowski

The meeting was quorate.

**Public Comment:** Public comment was taken from 35 individuals. The public comment sign-up sheet is appended as part of the record.

Resolution U-10828 – Authorizing Tacoma Power/Click! to prepare a business plan to provide, in addition to retail cable television, retail internet services including voice over data internet (VoIP) protocol, commercial broadband, and Gigabit service (Retail Services).

Mr. Patterson moved to adopt the resolution; seconded by Ms. Larkin.

Bill Fosbre, Chief Deputy City Attorney, summarized the resolution. Resolution No. U-10828 will, upon concurrence by the Tacoma City Council, authorize Click! Network to work with outside consultants to develop a detailed business, financial, and marketing plan to provide customers with cable television and retail internet services including voice over data internet protocol, retail and commercial broadband, and Gigabit service. The resolution sets forth specific requirements that must be included in the business plan such as (1) establishing short and long term goals to demonstrate financial progress and success and non-financial achievement, (2) prioritizing how Click will adapt to changing market conditions and increased competition, (3) dealing with its current internet service providers, and (4) structuring its future workforce.

The business plan must be presented to the Public Utility Board and the City Council for approval by April 7, 2016. In addition to the development of a business plan the resolution also requires the appointment of a Click! Engagement Committee by the

Board and City Council to provide oversight and assistance to Click! in the development and implementation of the business plan. The Click! Engagement Committee shall be comprised of three (3) Public Utility Board Members and two (2) City Council members. The Click! Engagement Committee shall meet to consult with Click! on a regularly scheduled basis established by the Committee and Click!. The Public Utility Board and the City Council may consider delegating specific authority in the management of Click! to the Click! Engagement Committee in the future as the Business Plan is further developed.

Proposed Amendment No. 1: Add Sec. 2.g. related to expenditures made on behalf of Click! by Tacoma Power shall constitute loans.

Mr. Patterson moved to adopt Proposed Amendment No. 1.; seconded by Mrs. Trudnowski.

Bill Fosbre, Chief Deputy City Attorney, summarized Amendment No. 1. Proposed Amendment No. 1 will add a requirement to the Click! business plan to be developed under section 2 of Resolution No. U-10828. The additional requirement provides that if expenditures made on behalf Click! by the Light Division exceed Click!'s revenues during any month, such expenditures shall constitute a loan or advance from the Light Division that shall be reimbursed from future Click! revenues by December 31, 2021 or a date when the cumulative unreimbursed expenditures reach \$31.6 million whichever comes first (this is referred to as the Target Date).

In the event future Click! revenues are insufficient to reimburse the loans or advances fully by the Target Date, then the City of Tacoma shall use non-utility revenue along with Click! revenues to pay the loans or advances back within 10 years of the Target Date.

The Board and City Council may fulfil the obligation to reimburse the loans or advances by applying the proceeds of any future transaction that transfers some or all of the City's telecommunications system business to a private third party.

Board Member Patterson summarized his views on Proposed Amendment No. 1. The main concern is rate impacts on the power customer. This amendment proposes a way for the ratepayers to pay for Click!, but paves a way to be repaid as it provides a path for ratepayers to get out from the financial burden.

In response to a Board request from Mr. Jones, Mr. Fosbre described non-utility revenue as undefined in this amendment. Court decisions exist that say these revenues are not generated from the sale, delivery, or generation of electricity.

Board Member Larkin summarized her views on Proposed Amendment No. 1. The issue of rate subsidies between Click! and Tacoma Power is troubling as Click! was

created as part of Tacoma Power. Automated metering was never fully employed. Will oppose Amendment No. 1.

Board Member Trudnowski summarized her views on this amendment. Speaking on behalf of ratepayers who do not want to subsidize Click!, this amendment means they will be reimbursed. If we go 'all-in', this amendment allows for that, but doesn't burden the ratepayer. Will support Amendment No. 1.

Chair Flint summarized his views on this amendment. Click! adds public value and that's the point of moving forward with Click!. Will oppose Amendment No. 1.

Mr. Jones summarized his views on this amendment. Click! was developed over years and is costing millions of ratepayer dollars. We've heard from many who've said they don't want to pay anymore if they don't use it. This amendment gets those ratepayers down to a user's cost. Will support Amendment No. 1.

A voice vote was taken. Board Members Patterson, Trudnowski, and Patterson voted yes. Board Members Larkin and Flint voted no. Amendment No. 1 to Resolution U-10828 passed.

Proposed Amendment No. 2. Add Sec. 4 related to requiring a legal opinion or declaratory judgment be obtained prior to implementing the business plan.

Mr. Patterson moved to adopt Proposed Amendment No. 2; seconded by Mrs. Trudnowski.

Bill Fosbre, Chief Deputy City Attorney, summarized Proposed Amendment No. 2. Proposed Amendment No. 2 will add a new Section to Resolution No. U-10828 requiring that prior to implementation of the Click! business plan TPU and the City Attorney's Office shall seek a legal opinion or declaratory judgment confirming that the Light Division may operate the telecommunications system in accordance with the business plan.

Board Member Patterson summarized his views on Proposed Amendment No. 2. This amendment ensures that actions undertaken by the Board are free of legal risk. The purpose of the amendment is to include, in the business plan, an analysis of what legal risks exist and use that analysis to help decide if the Board can be comfortable with the plan.

Board Member Jones summarized his views on Proposed Amendment No. 2. Everything has to do with legal issues. Want to ensure that whatever is done by the Board is done in the spirit of the law. Don't want to get into a situation from the

beginning where we do not know what we can do from the courts. This protects the ratepayer, taxpayers, TPU, and the community. Will support Proposed Amendment No. 2.

Board Member Trudnowski summarized her views on Proposed Amendment No. 2. It is important to know the parameters in which we do our jobs; it is important to get legal opinions. Will support Proposed Amendment No. 2.

Board Member Larkin summarized her views on Proposed Amendment No. 2. We currently operate Click! on a summary judgment from the court that calls it allowable. Will support Proposed Amendment No. 2.

A voice vote was taken. Board Members Jones, Trudnowski, Patterson, and Larkin voted yes. Board Member Flint voted no. Proposed Amendment No. 2 passed.

Proposed Amendment No. 3. Add Sec. 5 related to requiring Click! rate adjustments approved pursuant to Resolution U-10773 be reviewed and resubmitted for City Council approval in support of the business plan.

Board Member Patterson moved to adopt Proposed Amendment No. 3; seconded by Mr. Jones.

Bill Fosbre, Chief Deputy City Attorney, summarized Proposed Amendment No. 3. Proposed Amendment No. 3 will add a new section to Resolution No. U-10828 that requires Click to review and resubmit rate adjustments budgeted and proposed by Click and approved by the Board pursuant to U-10773 on April 22, 2015 that support the business plan to be developed and requests the City Council approve an ordinance authorizing said rate adjustments.

Board Member Patterson summarized his views on Proposed Amendment No. 3. We've been without Click! revenue increases. It makes sense to review increases while we look at the business plan and then decide if those revenue increase requests are appropriate and resubmit them to the City Council. Will support Proposed Amendment No. 3.

Board Member Jones voiced his agreement to Mr. Patterson's comments.

Board Member Larkin summarized her views on Proposed Amendment No. 3. It is not in the best interest to have a big jump in Click! rates before a plan is shaped as it makes the plan's success less likely. Would prefer to see a new suite of products and look at the rate structure then. Will oppose Proposed Amendment No. 3.

Board Member Trudnowski, summarized her views on Proposed Amendment No. 3. Implementation of a business plan may take a year. While that is being done, ratepayers continue to subsidize Click!. We need to increase rates as it is a business decision and subscriber fees need to be recouped. Will support Proposed Amendment No. 3.

Voice vote taken and carried. Board Members Flint, Patterson, Trudnowski, and Jones voted yes. Board Member Larkin voted no. Proposed Amendment No. 3 passed.

Proposed Amendment No. 4. On page 5, at line 6, strike Sec. 3 in its entirety and insert the following: Sec. 3. The Public Utility Board and the City Council shall, upon adoption of this Resolution, appoint a Click! Engagement Committee to provide oversight and assistance to Click! in the development and implementation of the Business Plan. The Click! Engagement Committee shall be comprised of two (2) Public Utility Board Members, two (2) City Council members and two (2) members of the public appointed by the City Council who have experience in the broadband industry. The Click! Engagement Committee shall meet to consult with Click! on a regularly scheduled basis established by the Committee and Click!. The Public Utility Board and the City Council may consider delegating specific authority in the governance of Click! to the Click! Engagement Committee in the future as the Business Plan is further developed and implemented.

Bill Fosbre, Chief Deputy City Attorney, summarized Proposed Amendment No. 4. This amendment will strike Section 3 of the Resolution No. U-10828 and insert a new Section 3. The new Section 3 will still require the Board and City Council appoint a Click! Engagement Committee to provide oversight and assistance to Click! in the development and implementation of the business plan. However, the amendment will change the composition of the Committee from three Board Members to two Board Members and add two members of the public who have experience in the broadband industry. The two City Council Members on the Committee remains the same. The Public Utility Board and the City Council also reserves the authority to delegate specific authority in the governance (not management as listed in the original Resolution) of Click! to the Click! Engagement Committee in the future as the Business Plan is further developed and implemented.

Chair Flint summarized his views on Proposed Amendment No. 4. Tacoma has had the same business plan for Click! for 15 years and we need the ability to adaptively manage it going forward. Adding two public members brings community experience to the table. The intent is to provide a sounding board to management and have accountability.

Board Member Trudnowski proposed an amendment to Proposed Amendment No. 4 and summarized her views. This is a good idea, but an odd number of people is

needed if a vote is taken. On line 10, after the words broadband industry, add one Tacoma Power ratepayer at large appointed by the City Council.

No second to the proposed amendment to Proposed Amendment No. 4 is needed as this is a friendly amendment. The friendly amendment was accepted by Chair Flint.

Public comment was taken on the amendment to Proposed Amendment No. 4. Six individuals provided public comment (Daniel Jones, Gavin Guss, John Boerner, Kit Burns, Jose Chavez, and Mitchell Shook).

Board Member Patterson summarized his views on Proposed Amendment No. 4 and its amendment. At some point in the future, an oversight group should have members of the public. Not opposed to that, but to its timing. The Board and Council are responsible for early parts of the plan developments and that is critical and shouldn't be diluted with other participation. The plan should include a broader discussion on governance and structure. The Board and Council should begin that discussion and extended participation take place later. It may be more efficient to develop a plan first. Will vote in opposition to this amendment to Proposed Amendment No. 4.

Board Member Jones summarized his views on amended Proposed Amendment No. 4. We need to clarify how the Board and Council will go through the selection process for this committee.

Board Member Trudnowski inquired if this item passes, could the implementation and specifics of member selection and their responsibilities be discussed at the next Board meeting? Chair Flint stated that the Council will determine the procedure.

A voice vote on amended Proposed Amendment No. 4 was taken. Board Members Jones, Trudnowski, Flint, and Larkin voted yes. Board Member Patterson voted no. Proposed Amendment No. 4 as amended passed.

Proposed Amendment No. 5. On page 1, at line 15 after the word "whereas" delete all text through page 2, line 23 up to the words "all- in retail model" and insert the following: The operation and strategic direction of the broadband telecommunication system as it exists now must be changed to achieve clear public policy goals and protect electric utility customers, and adequate review of proposed changes should be undertaken to ensure consistency with relevant state law and the Tacoma City Charter provisions.

Board Member Trudnowski moved to adopt Proposed Amendment No. 5; seconded by Board Member Patterson.

Board Member Trudnowski summarized her views on Proposed Amendment No. 5. The current recitals we're looking to replace are items that need to be addressed; 1) broadband not critical to TPU; 2) historical savings Click! has provided are not in alignment or representative of where we are now; 3) polling doesn't address the 70% of citizens that don't support subsidizing Click!; 4) does Click! reach 26% or 13% of Tacoma Power's footprint? Mr. Gyaltzen clarified that the 26% represents all homes that have at least one service from Click!.

Board Member Larkin summarized her views on Proposed Amendment No. 5. The whereas statements represent statements of fact. Not sure if this proposed amendment is a statement of fact.

Chair Flint summarized his views on Proposed Amendment No. 5. Resolutions give direction and whereas clauses are statements. These statements were created by Board Members Larkin and Flint with the Mayor and Proposed Amendment No. 5 is superfluous. We don't have to agree with the facts to make them facts.

In response to a Board Inquiry from Board Member Trudnowski as to whether or not staff provided input when meeting with the Mayor, Chair Flint stated yes.

Voice vote was taken. Proposed Amendment No. 5 failed with 2 in support and 3 in opposition.

Board Members provided final comments on Resolution U-10828 as amended.

Board Member Patterson summarized his views and thanked all who came to provide comments throughout this process. He will be voting in favor of Resolution U-10828 and U-10829. Click! and TPU have authority delegated by the Council to operate business outside of electric network and the lease approach is preferred due to financial benefit and less risk. No matter who operates the system, the services and pricing will be in the same target. A lot of players in the marketplace were not in place when Click! was launched and the reasons for starting Click! no longer exist. There is benefit from cable TV and internet provided by larger suppliers and spreading technology costs among a larger customer base and not have costs borne by a smaller group. To provide the Council with the same opportunity to look at both choices and to have the same decision process as the Board, will vote in favor because of the resolution as amended and if it comes back from the Council, we can work together on it.

Board Member Jones summarized his views on the resolution as amended. Every time ratepayers turn on the cable or use the internet, everyone pays and the money accrues.

We have paid so much money and attention to Click! and we can't keep up as the programming costs increase and we're a small company in a big world; we can't compete because don't have the leverage of larger companies. We've paid over \$100M to get this up and do we want to walk away? No. This isn't a sale. If we do anything, it is a lease. I'm trying to protect the ones who don't want any more rate pressure. They don't want broadband, they want entertainment on cable. On that basis, what I'm doing is for the folks who can't or don't want to afford Click! or continue to subsidize it and will vote no on the 'all-in' process. I don't want more rate pressure on those who have a hard time trying to figure out if they're going to buy food or gas. That's a big responsibility on my part.

Board Member Larkin summarized her views. Tacoma has a long proud history of award winning utilities. In many communities, the options are public and private. Many utilities have privatized over the years and there was no control in the future once that was done. Cable is entertainment and broadband is essential. There are 665 public power agencies offering broadband services. Read from American Public Power Association publication saying that there are advances in offering these public systems. A Public Power Daily article says broadband is a boon to economies. Chattanooga Power Utility operated by City of Chattanooga has a governance structure similar to Tacoma. They have a penetration rate of 44 percent in offering triple play. Their most expensive product is \$132 per month, but they also have low income services. One sentence from their annual report describes the financial benefit brought to the system as they avoided 4 to 5 percent electric rate hike. Click! hasn't been run appropriately; that's not a negative – the focus just needs to be different moving forward. With strong leadership, support and direction, we can turn things around and issue of subsidy will be moot.

Board Member Flint summarized his views. Click! represents the best of Tacoma and that vision of forefathers still serves us with power and water. Everything great about Tacoma is from Tacoma. I'm concerned about losing control of the paid-for infrastructure. Internet is essential function of modern society. You can meet with doctors through video links. We've invested and should continue and control the infrastructure that services the power system. In 2006, all cable customers saved \$11M because our rates are lower than surrounding areas. Because of rising costs, that's no longer the case, but that's the role we can place going to the future. The consultant said our system is robust enough for gigabit speeds. Seattle was looking at \$400 to \$600M for the same thing we have. We have a tremendous resource and the only limit is imagination. Click! is struggling – not because of ISPs or employees. It is because we've had the same business plan for 15 years in an industry that changes every 18 months. Our rates are being increased and there are cord cutters. This has been a



difficult process. I've seen amazing dedication of the staff of this organization and have faith in management and front line staff and it is time to give them clear policy direction and tools to be successful and let them do great things.

In response to a Board inquiry from Board Member Trudnowski as to if we go all in we will eliminate all financial losses, Chris Robinson, Power Superintendent, stated that over a five year period, revenues will not cover expenses and losses are expected to be recovered by future Click! revenues, general government, or a third party.

Board Member Trudnowski summarized her views. The Board represents all ratepayers. I've heard great comments during public comments about the 'all-in' proposal. I want a win/win. If I had my druthers, we would table this discussion and keep working for a solution on how we could do this without it coming out of all ratepayer pockets. Mrs. Trudnowski then read citizen emails received that were against subsidization. Also, results from polling says that 70 percent of customers believe that Click! should be paid for by Click! customers. To go into a business that operates at a loss isn't in alignment with ratepayer wishes. Would like to look into what federal funds may be available to use. There are risks associated with the 'all-in' proposal and we need legal analysis. If there was a way to be 'all-in' without subsidization, I would do it. We're being rushed into a vote and I'm not able to support the 'all-in' option.

Board Member Jones thanked his fellow Board Members for the hard work that has been done. There is a lot of pressure when trying to figure out how to change a business model midstream, bring in additional revenue, and deal with the political process. There has been a tremendous amount of work behind the scene. I would love to have Click! do what it is supposed to do, but unfortunately circumstances don't allow.

Board Member Larkin voiced her desire to see consultants brought in to see how we can lead Click! to a positive financial picture.

A roll call vote was taken. Board Members Flint, Patterson, and Larkin voted yes. Board Members Trudnowski and Jones voted no. Amended Resolution U-10828 passed.

Resolution No. U-10829 - Authorizing Tacoma Power/Click! to solicit lease and property sale proposals for a third-party operator to use and maintain Tacoma Power's telecommunication network and purchase Click!'s physical assets to offer cable television and retail internet services including voice over data internet ("VoIP") protocol, commercial broadband, and Gigabit service ("Retail Services") to residential and commercial customers within Tacoma Power's service territory.

Mr. Patterson moved to adopt the resolution; seconded by Mrs. Trudnowski.

Bill Fosbre, Chief Deputy City Attorney, summarized the resolution. Resolution No. U-10829 authorizes Tacoma Power, upon concurrence by the Tacoma City Council, to solicit proposals from third-party operators desiring to lease portions of Tacoma Power's telecommunication network that are determined to be surplus to utilities needs to offer cable television and retail internet services including voice over data internet protocol, commercial broadband and Gigabit service ("Retail Services") to residential and commercial customers within Tacoma Power's service territory. Solicitation of proposals should occur by February 15, 2016 and Tacoma Power is required to make recommendation to the Board and City Council by March 1, 2016.

The Resolution requires that Tacoma Power seek proposals that include a number of specific elements including (1) term, (2) purchase of Click! physical plant and operating assets not used to provide utility services (3) annual rent CPI (4) annual capital investment in the physical network, (5) continuing Click!'s existing contract relationships with it retail and wholesale internet service providers, (5) providing lifeline services for low income customers, (6) employing individuals with living wages to operate the network.

The Resolution would authorize Tacoma Power to stop providing retail cable TV service and wholesale internet related services upon approval of the third-party operator proposal and develop a transition plan for Click! employees. Finally, the resolution authorizes Tacoma Power to negotiate an agreement with the third-party operator to operate and maintain portions of the telecommunication network used by third-party operator and Tacoma Power subject to final approval by the Board.

Board Member Patterson moved to enter Substitute Resolution U-10829; seconded by Mrs. Trudnowski.

Proposed Substitute Resolution No. U-10829 - Relating to Tacoma Power; authorizing Tacoma Power to solicit lease and property sale proposals for a third-party operator to use and maintain Tacoma Power's telecommunication network and purchase Click!'s physical assets to offer cable television and retail internet services including voice over data internet ("VoIP") protocol, commercial broadband, and Gigabit service ("Retail Services") to residential and commercial customers within Tacoma Power's service territory.

Bill Fosbre, Chief Deputy City Attorney, summarized Proposed Substitute Resolution U-10829. Substitute Resolution No. U-10829 also authorizes Tacoma Power, upon concurrence by the Tacoma City Council, to solicit proposals from third-party operators desiring to lease portions of Tacoma Power's telecommunication network that are determined to be surplus to utilities needs to offer cable television and retail internet services including voice over data internet protocol, commercial broadband and Gigabit service ("Retail Services") to residential and commercial customers within Tacoma Power's service territory. Solicitation of proposals should occur by February 15, 2016 and Tacoma Power is required to make recommendation to the Board and City Council by March 1, 2016.

The substantive differences between the original Resolution and the Substitute Resolution includes (1) broadens the list public policy objectives that third party proposers must agree to consider and negotiate related to what product offerings and services it provides, (2) TPU and the City Attorney's Office are required to seek a legal opinion or declaratory judgment to confirm Tacoma Power may adopt agreements with a third party operator in accordance with the Substitute Resolution, and (3) adds to the transition planning requirement that Click! review and resubmit rate adjustments budgeted and proposed by Click! and approved by the Board pursuant to U-10773 on April 22, 2015 that would support Click! during the transition period and requests the City Council approve an ordinance authorizing said rate adjustments.

Board Member Patterson summarized his views on Proposed Substitute Resolution U-10829. As a lawyer, I want legal issues vetted so this won't be the subject of a legal challenge. Click! will continue to need revenue streams during any transition and I want to work with the City Council to resubmit rate increase requests.

Chair Flint stated that the substitute resolution is welcome, but he will not support the underlying resolution for reasons previously mentioned.

Voice vote on the Proposed Substitute Resolution was taken. Board Members Jones, Patterson, Trudnowski, and Flint voted yes. Board Member Larkin voted no. Entering a Proposed Substitute Resolution passed.

Board Member Patterson summarized his views on the substitute resolution. Either resolution is a good solution. The lease proposal provides the opportunity to find a right fit with a bigger supplier to negotiate terms of a contract to make the Click! system successful and I prefer it to the 'all-in' option. One hesitation is the impact on Click! employees who do a fabulous job. These troubles are not caused by employees and without them, Click! would be in worse shape. So I regret the lease proposal's effect on Click! employees. If the lease proposal goes forward, I hope Click! employees will find positions at TPU or General Government as they're great employees. The risk avoidance of the lease proposal makes me vote in favor of it.

Board Member Trudnowski shared excerpts from emails from ratepayers that were shared at the earlier study session. A lease that outlines goals to be met can be written. Would love more time to prepare, but will support lease vote.

Board Member Jones summarized his views on the substitute resolution. If a lease is done, the Board and staff will work to represent all ratepayers. It would be monitored. All three operating divisions are making money to reinvest in the utilities. If we lease, we level the playfield in that we get experts that know the industry and business. We

will have a list of demands of what they're supposed to be doing because they represent us. The Council will make the final determination.

Board Member Larkin summarized her views on the substitute resolution. This resolution includes a Request for Proposals and CenturyLink or Comcast could be interested. There may be FCC rules, but we can't control the private sector and if the lease fails, it would be impossible to take the system back and re-engage.

A roll call vote was taken on Substitute Resolution U-10829. Board Members Flint and Larkin voted no and Board Members Patterson, Trudnowski, and Jones voted yes. Substitute Resolution U-10829 passed.

### **Adjournment**


There being no further business or comments from the Board, the Public Utility Board meeting was adjourned at 8:49 p.m. until December 16, 2015 for a study session beginning at 3:00 p.m., followed by a regular meeting at 6:30.

Approved:



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Bryan Flint, Chair



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Monique Trudnowski, Secretary