

APPROVED 11-13-19

## MINUTES

City of Tacoma  
 Public Utility Board  
 Special Meeting  
 October 30, 2019; 5:30 p.m.  
 3628 South 35<sup>th</sup> Street  
 Ground Floor Auditorium  
 Tacoma WA 98409

**Present:** Karen Larkin, Bryan Flint, Mark Patterson, Chrissy Cooley, Carlos Watson

The meeting was quorate.

Chair Larkin called the special meeting of the Public Utility Board to order at 5:30 p.m.

Mr. Flint moved to allow Board Member Watson to participate in the special meeting via phone; seconded by Mr. Patterson. Voice vote was taken and carried.

Resolution U-11116 – Authorize Tacoma Power to declare surplus utility-owned property including certain inventory, equipment, and vehicles allocated to the Click! Network together with the excess capacity of the Tacoma Power HFC Network, part of which is used by what is commonly referred to as the Click! Network; and authorize execution of the Click! Business Transaction Agreement by and between Tacoma Power and Mashell, Inc., d/b/a Rainier Connect and Rainier Connect North LLC.

Mr. Flint moved to adopt the resolution; seconded by Mr. Patterson.

Chair Larkin stated that a public hearing on this resolution was held on October 23, 2019 and that a detailed presentation was given by Chris Bacha, Chief Deputy City Attorney. Chair Larkin requested a brief summary from Mr. Bacha. Mr. Bacha summarized the resolution. This resolution accomplishes two things; authorizes a declaration of certain utility property as described in the resolution and forwards it to Council for consideration as under the law. It also provides for approval of the Click! business transaction agreement, which is conditioned upon Council consideration of the agreements on November 5, 2019. On November 5, the Council will hear a resolution on the surplus property declaration and a resolution for the agreements.

In response to a Board inquiry on why both items are consolidated into one resolution for the Board while the Council is considering them as separate resolutions, Tom Morrill, Chief Deputy City Attorney, responded that for clarity purposes for the Council, it is better to take them as separate actions. Separate resolutions are not required for the Board

and it is simpler for the Board to have one. There is no disconnect as long as the Council takes a vote on both.

Public comment was then taken. The following individuals spoke in opposition of the resolution: Mitchell Shook, Sherry Bockwinkel, Rich Langsford, Darrell Bowman, Kit Burns, and Juan Jose Chavez.

Board Members then made remarks:

Board Member Cooley: I am willing to take the time to come to the best decision, but am aware of the certainty that is needed. I want to be certain for Click! customers, employees, and citizens that we meet the 12 policy goals. I want to thank staff who have worked hard on difficult decisions for over a decade. I participated in two of the seven stakeholder meetings and took to heart what I heard. We have a responsibility to implement the best policies that circumstances allow. The decision on excess capacity will allow the best chance of meeting a healthy, competitive environment for internet services. The 12 policy goals keep the network public and affordable for all. I care about jobs for Click! employees. I am impressed to have all the goals met and support the resolution.

Board Member Patterson: I appreciate the public attendance to the many meetings; we all listen. Surplus does not mean we think the network is unimportant. We think cable and internet is important. The whole exercise has been to find a way to keep using the network to provide cable TV services and internet to residents. Rainier Connect (RC) has agreed to do that for us and that is part of what needs to be done. We are allowing RC to do that because TPU cannot provide those services. Operations have not generated positive cash and there is no cash from operations to pay for upgrades and provide desired services to customers. The Board had been studying this when I first started in 2012. No changes to the TPU model would produce positive cash. In all studies, there have been no alternatives that have been projected to produce positive cash; we are not making numbers up. The numbers have been reviewed by staff, the city, outside independent auditors, and two consultants. All have reached the similar conclusion that there is not a mechanism that will produce positive cash flow. The network's original purpose is no longer useful because of technology changes. Offering cable was intended to make a profit, but it did not. The electric power rates should not be used for TV and Internet shortfalls. Some ratepayers do not have cable or internet from Click! and through power rates are covering shortfalls. We are passing the cost to those who cannot use them; it has been unfair for quite a while. The lawsuits against TPU have shown significant legal risks if power rates are used to pay shortfalls from cable and internet. It is not appropriate legally to have that continue and the City does not have the revenue. The only way is to have RC cover the costs. They are going to use TPU's hybrid fiber system to provide TV and internet services and they are paying all the costs. RC will pay for the capital improvements and assume all risks of the operation going forward. They are assuming all risks. Regarding internet pricing, there is nothing in the agreement to keep RC from raising them, but the internet service providers have always done that and TPU never set internet pricing. Cable TV prices have been set by TPU. TPU cannot continue to provide these services and need someone else to assume the costs and risks. Surplus does not mean it is unimportant, but these assets are not necessary to provide power to our customers.

Board Member Flint: I have been on the Board for eight and a half years and have been working on this for a long time. There have been many public and committee meetings in that time. I voted for the 'all-in' package twice and against the Wave lease. I voted not to renew the prior Director's employment partially on this issue. Every time I have been asked to make a decision, I tried to stick to the North Star – 'if we have a public infrastructure that the public built, how do we ensure that it is used for public good'. This room has been filled and there have been many meetings and I remember those voices and recognize the value. What is important is that in January 2018, the Board and Council passed 12 policy goals. I am voting to support this because it protects those policy goals and meets the North Star of public good with a public asset. We currently have public / private partnerships. We will control the vital infrastructure with a private party who is taking the risk. Public ownership, access to low income, equitable access, protection of net neutrality, open access, preserve competition, safeguarded municipal use of services, maintains financial sustainability, creates opportunity for economic development and educational opportunities, provided jobs for Click! staff, protected consumer privacy, built on the goodwill of Click! and its good customer service. I did not know we could achieve all of these policy goals and congratulate Mr. Bacha and the team. There are reporting mechanisms for RC for taking corrective action and fines and, if needed, the ability to take back the network. It is not perfect, but it protects the 12 public policy goals. It uses the public infrastructure to create public good for the community and I will be supporting it.

Board Member Watson did not make comments.

Chair Larkin: At the last public hearing, someone asked the Board to explain why they would vote for this. We heard similar comments tonight. I am going to try to summarize how I came to my understanding of the issues. This has been a very long, complicated, controversial topic. There have been multiple presentations, analysis, and reports. Power designed and built the network in the 1990s. At that time, Power selected smart grid technology that relied on fiber and cable infrastructure intended to connect to smart meters. That technology did not turn out to be the industry standard and today we are proceeding with advanced meters to deploy wireless technology and not rely on coax and most of the fiber originally built for the purpose. That is why we can consider the infrastructure surplus. We no longer need the capacity for the originally intended purpose. In the meantime, Power built on the excess capacity, with at the time, was a state of art system known as Click!. The City chose to stand up cable and use private partners for internet and it was profitable at the time. Now, that is not the case. This model under any allocation model was losing money. Over the past few months, there is a small positive cash flow, but that is because we cut employees and expenses and that is not sustainable. There is no money for the improvements it needs. I came on the Board at the height of the Click! controversy and wanted to find a solution because I believe the internet should be a service. Unfortunately, internet services are not a utility. Both cable and internet are competitive, optional services. Of the 117,705 potential customers, only 11 percent are Click! cable customers and 18 percent are internet customers. I have spent countless hours looking at many public options. The 'all-in' option was actually multiple options where we looked at a combination of models. With over two years of trying, we could not find an all-in public option model that had a chance of success financially or legally. That is when we tried to consider this model as a solution if we could find outcomes that could be secured contractually. The 12 policy goals were developed by the Board and Council and there was extensive public outreach

to vet and prioritize the goals. We went through a competitive selection process. We end up today with a contract with RC. After going through a robust and thoughtful process, I believe we have found the right partner with RC that will preserve all things loved about Click!. The internet is a competitive and optional service. Click! does not provide, and has never provided retail internet services. It was provided by four private, for-profit partners. Advanced Stream and RC set internet rates that were not controlled by the city. Click! financials were audited by a private firm. Click! is not profitable under any justifiable allocation model. There has been a robust, public process to determine the future. We have looked at options that would require a public vote, but those options were not deemed viable. The City is not selling Click!, it is a lease. It is subject to contract terms and conditions that meet the public goals with both financial and termination penalties. This is a historic vote and I am an avid supporter of public utilities and proud of what TPU has delivered over its long history. I will be voting in favor, as I believe we have thoroughly reviewed all public and private options and this resolution, under current laws, is the best outcome for citizens and customers. I thank Click! employees; we could not have built our customer reputation without them. They have been through a difficult time and I thank you for your loyalty. We are doing all we can to ensure a successful transition. I thank loyal Click! customers and want them to stick with Click! through this transition and hope you are just as happy with the new partnership service agreement.

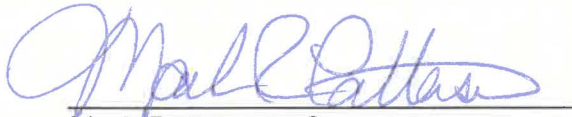
Voice vote was taken and carried. Resolution U-1116 was passed unanimously.

### **Adjournment**

There being no further business or comments, the Public Utility Board was adjourned at 6:23 p.m. until Wednesday, November 13, 2019 for a study session at 2:00 p.m. followed by a regular meeting at 6:30 p.m. at Tacoma Public Utilities.

Approved:

  
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Karen Larkin, Chair

  
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Mark Patterson, Secretary