



Clark proposed a motion to open up discussion.

English, seconded by Meadows, moved to authorize additional funding to the Law Offices of Carolyn Elefant for legal services relating to *The City of Oberlin v. Federal Energy Regulatory Commission* currently pending in the United States District Court of Appeals, District of Columbia and to authorize the City Manager to execute agreements accordingly.

Clark gave an account of the litigation on the City's appeal from the Federal Energy Regulatory Commission's initial order to issue the certificate of convenience in necessity that authorized the Nexus pipeline to go into the ground. Clark said the initial order was appealed to the US District Court of Appeals for the District of Columbia. Due to FERC's procedure, there was a significant delay between our requests for rehearing, which is a prerequisite to an appeal, and the actual rehearing decision of the Federal Energy Regulatory Commission of such a length that it allowed the pipeline to go into the ground. In any event, our appeal went forward to the Court. For the most part, the Court ruled in favor of the Federal Energy Regulatory Commission except on one important issue. That was the issue of whether it is appropriate or legal for the Commission to rely on contracts for the export of natural gas to foreign consumers or foreign shippers, in this case, Canada, in authorizing a certificate under Section VII of the Natural Gas Act. The reason why that's important is that Section VII is the only section that allows the use of eminent domain. So essentially, they sent it back to FERC and said tell us why you could exercise eminent domain to take property (such as they did in Oberlin) to authorize the export of natural gas for foreign use and shipment. So, the Federal Energy Regulatory Commission has just responded with its order and made various arguments as to why it could do that. The issuance of the order establishes the beginning of a timeline for the City, meaning if the City wishes to continue its appeal before the Court, it is required to request a rehearing of FERC's latest order. If that's not done, then we cannot move forward. So, there are essentially two issues that will need to be decided: Firstly, does the City wish to request a rehearing and thereby preserve its appeal rights; that would be the issue for tonight. Secondly, if the answer to that is yes, then down the line, the Council will decide if it wants to continue with the appeal. But, if the request is not authorized, then the appeal cannot go forward.

We've talked with Carolyn Elefant. She has indicated that perhaps it will take an additional \$12,000 to \$13,000 to complete the request for rehearing, which involves many briefs and research; it is not merely drafting a letter requesting a rehearing. There is a tremendous amount of work needed to get this done. We probably have about three weeks to do so. Elefant may consult with an outside organization that is also representing some property owners in separate litigation on near-identical issues. In which case, the amount that would be incurred will be reduced. Clark suggests that if Council is interested in moving forward, at least for the next step, there be an authorization not to exceed \$15,000, which should be more than sufficient to get us to the point of appeal.

English asked if they should include the amount Clark proposes in the motion. Clark replied the Council should amend the motion to reflect the amount.

Based on the foregoing remarks, English, seconded by Adelman, moved to amend the previous motion to reflect the words not to exceed the amount of \$15,000 following the word "funding." The new motion would read as follows:

"...to authorize additional funding, not to exceed \$15,000, to the Law offices of Carolyn Elefant for legal services relating to *The City of Oberlin v. Federal Energy Regulatory Commission* currently pending in the United States District Court of Appeals, District of Columbia and to authorize the City Manager to execute agreements accordingly."

**Roll Call:** 6 Ayes  
(Amendment)

0 Nays

Motion Carried

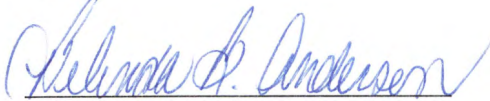
**Roll Call:** 6 Ayes  
(Main motion as amended)

0 Nays

Motion Carried

Being that there was no further business to come before Council, the special meeting adjourned at 5:11 p.m.

**Attest:**

  
BELINDA B. ANDERSON, MMC  
CLERK OF COUNCIL

  
LINDA SLOCUM  
PRESIDENT OF COUNCIL

APPROVED: 09/21/2020

POSTED: 09/22/2020