

A special meeting of the Board of Aldermen was held Monday, March 13, 2006 at 6:00 p.m. in the Aldermanic Chamber.

President David Rootovich presided; Committee Clerk Pro Tem, Richard LaRose recorded.

The roll call was taken with 11 members of the Board of Aldermen present; Aldermen Tollner, Tabacsko, and Plamondon were recorded absent. Alderman Richardson arrived after the roll was taken.

His Honor Mayor Bernard A. Streeter and Corporation Counsel David R. Connell were also in attendance.

### COMMUNICATIONS

#### **MOTION BY ALDERMAN BOLTON THAT ALL COMMUNICATIONS BE READ BY TITLE ONLY MOTION CARRIED**

From: Mayor Bernard A. Streeter  
Re: Special Board of Aldermen Meeting

#### **MOTION BY ALDERMAN BOLTON TO ACCEPT AND PLACE ON FILE MOTION CARRIED**

### DISCUSSION

Pennichuck Negotiations Special Committee update

#### **MOTION BY ALDERMAN MCCARTHY THAT THE BOARD OF ALDERMEN GO INTO NON-PUBLIC SESSION BY ROLL CALL PURSUANT TO RSA 91-A:3,II(e) TO CONSIDER A PENDING CLAIM OR LITIGATION WHICH HAS BEEN THREATENED IN WRITING OR FILED AGAINST THE CITY**

#### **SECONDED BY ALDERMAN BOLTON**

*A Viva Voce Roll Call was taken, which resulted as follows:*

Yea: Alderman McCarthy, Alderman Flynn, Alderman LaRose, Alderman Dion, Alderman Bolton,  
Alderman MacLaughlin, Alderman Deane, Alderman Teeboom, Alderman Cookson,  
Alderman Williams, Alderman Rootovich

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Nay:  
**MOTION CARRIED**

### President Rootovich

At the conclusion of this meeting I will also be requesting the document I just handed out be returned. Just to bring the board up to date and I will allow Alderman McCarthy and Alderman Teeboom to weigh in since they are members of the committee as well, the Mayor is a member of the committee and Mrs. Anderson is in the audience as well as a member of the negotiating team. But again to bring the board up to date we met last week with Mr. Correll as well as the chairman of the board with respect to opening up the negotiation process.

We asked Mr. Correll where he stood. He presented pretty much to the five of us the same highlights and bullets that he had presented to Alderman McCarthy in the last two years. Nothing has changed. He said that he would be willing to sell the pipes in the ground with respect to a lease purchase agreement he would sell the lands around the watershed the ponds and streams, as well as run the waste water treatment facility and pay a fee to the City of Nashua. We left that meeting and we said to Mr. Correll we would go back

through some input of Mr. Upton and Mr. Sansoucy and come back with a proposal that we were going to present to him tomorrow morning.

That proposal you have in front of you this evening. The bullets are the highlights with respect to the purchase we would like to do and the second part of it is the terms with respect to the agreement. What I am asking this evening take some time to read it and I apologize that this document was just completed late this afternoon. The committee is asking for your concurrence with respect to going forward with this proposal and if there are any suggestions, conditions or questions that you have one of the five of us should be able to answer you.

Keeping in mind that this is a starting point, this is a broad stroke, there are no details here, but it starts the process of negotiating. I think it shows Pennichuck that we are very serious about negotiating. He has presented nothing to the city in writing, but it is a starting point. Again, we are meeting tomorrow morning with Mr. Correll as well as Mr. Kreick who is the Chairman of the Board of Pennichuck to present this proposal to them.

Alderman Deane

Alderman Rootovich can you explain the percentages on the treatment plant as well as the Merrimack River intake system or could somebody?

Alderman McCarthy

Maybe it makes sense to talk a little bit about the genesis of the idea that is in here, which is one of Pennichuck's concerns is that if we buy all of their water assets for the plant they are essentially out of the regulated utility business in southern New Hampshire. That turns out to be a concern of the PUC as well because the PUC has a tendency to get help with these systems where you know somebody builds a condo development in Barnstead and puts in plastic pipe and it gets in trouble and they call Pennichuck to bail them out. Having Pennichuck as a regulated utility continuing is something that the PUC and Pennichuck are both interested in.

The intent was to divide up the ownership of the plant, and in order to make that right before the PUC you basically have to have the capital investment in the plant be approximately proportional to the amount of water that is taken out by the two parties so that when they go for a rate case their investment in the plant is commensurate with the amount of water that they are asking to distribute that rate over. Mr. Sansoucy over the past week has looked at the connections and the volumes and the 73% was his estimation of the division of those assets at this point.

Alderman Flynn

Would this take care of that Merrimack comment that they didn't want to have Nashua, they thought Nashua wouldn't be a good supplier for them; they would have their own private interest in taking care of the water system?

Alderman McCarthy

Yeah. The intent is that in fact we would simply have a meter at the Merrimack line on the pipes that go to Pennichuck in Merrimack, they would get their share of the water at that point and they would continue to service the bulk contract with Anheuser Busch.

Alderman Deane

Similar to what they did in Hudson when they took over Consumers?

Alderman McCarthy

Yeah. There is another spot at the Pheasant Lane Mall where there are two customers in Tyngsboro that receive water over the line that we would have to work out similar details, but it allows for a lot of those contracts. We would have one with Milford as well to continue supplying the water that Pennichuck supplies to them now.

Alderman Dion

Thank you Mr. Chairman. This proposal that is before us you haven't proposed this to Pennichuck yet have you?

President Rootovich

No.

Alderman Dion

I see. Thank you.

President Rootovich

Are there further questions or comments?

Alderman Cookson

Thank you. A couple of acronyms that I am not familiar with; SCADA and CIAC.

Alderman McCarthy

SCADA is the automation systems that hook up the plant piping to the control computers. I forget what the acronym stands for. CIAC is Capital and Aid of Construction, which is pipes that are donated when a developer puts a substantial new development in to support getting water ...and the reason they are mentioned in there is often the developer puts in more pipe than he needs, which then opens up other areas and what happens is that pipes are contributed to Pennichuck who then has to when another developer comes along and taps into those pipes for an additional development there is some cash that flows from that developer to Pennichuck back to the original developer to amortize the cost of putting the pipe in place.

Alderman Cookson

Also on that same bullet point where it speaks of SCADA, it also references IT. I understand that IT stands for Information Technology; however, I am wondering will we maintain their IT Department with our IT department? Have we thought that through?

Alderman McCarthy

In general, the discussions we have had about IT what is referred to in here is actually just the computers and the software themselves. Who is maintaining it is an operational issue that would fall under our contract

with whoever the operational contractor is. We could do that with our IT department. We probably would not on a daily basis but I think when we have looked before it does actually make sense for our IT department to do things like keep backup copies of billing information, etc.

Alderman Cookson

Okay. And my final question was under the second bullet, Nashua will have 100% operational control, is it termed in that fashion because we haven't entered into any contract with either Veolia or Beck?

President Rootovich

It doesn't matter who would run the water company we would still maintain 100% control of the operations given Veolia or anybody else the city decides to hire.

Alderman Cookson

Thank you.

Alderman Dion

On the last page the second paragraph...the City of Nashua will pay Pennichuck Water Works \$60 million for the above stated assets plus a dollar for dollar true up of capital spent and CWIP incurred from 1-1-05 to the date of closing. Would you explain the dollar for dollar true up?

President Rootovich

The \$60 million was the last value we had back on 12-31-04. Any improvements that Pennichuck made after that date one being the treatment plant and any other assets or equipment that they upgraded would be added to the \$60 million.

Alderman Dion

What does the CWIP represent?

Alderman McCarthy

Works in progress at the time that we take over.

Alderman Dion

There is no dollar figure here true up value.

Alderman McCarthy

We don't know what it is because it is changing by the day. This is primarily the plant upgrade which is estimated to be in the \$30 million to \$50 million range and our share of that would put the actual number somewhere between probably \$90 million to \$110 million rather than \$60 million.

Alderman Dion

You mean we will go from \$60 million to possibly \$90 million or \$110 million?

Alderman McCarthy

Yes.

Alderman Dion

We would have all of the water rights in the City of Nashua?

Alderman McCarthy

Yes.

Alderman Dion

Including 73% or 73% of the treatment plant?

Alderman McCarthy

Yeah.

Alderman Dion

This stops at the Merrimack line and at the Merrimack line Pennichuck has it?

Alderman McCarthy

Yes.

Alderman Dion

Thank you.

Alderman Bolton

I was actually going to ask a similar question about that line. Shouldn't there be a difference between what the construction work in progress is on the treatment plant and pipe in the ground within the City of Nashua because we are only getting 73% of the treatment plant so it shouldn't be dollar for dollar for that, it should be \$1 for \$.73 ...

Alderman Teeboom

It is.

Alderman Bolton

...at the treatment plant...

Alderman Teeboom

It is.

Alderman Bolton

Excuse me Alderman Teeboom but it doesn't say that and you don't have the floor and you don't have the right to interrupt me. But it does not say that so I am suggesting before we give this to the opposing party it says what we mean and if it is alright with you I would like to continue. Is that okay? Thank you.

Am I correct that ought to specify that for the assets that we are only purchasing 73% of we only pay 73% of the CWIP and for assets that we are purchasing 100% of we do pay the dollar for dollar adjustment?

President Rootovich

Correct.

Alderman Bolton

So will this be corrected before tomorrow when it is proposed because right now it does not say that?

Alderman McCarthy

That clarification will get made. If I read it, these are Skip's words, and Skip is writing dollar for dollar after the...dollar for dollar of the prorated share that Nashua would own I am sure.

Alderman Bolton

Let me suggest that be made crystal clear.

Alderman Teeboom

I was going to make a point on this. I asked that very same question and the number that is not shown here is an estimate Sansoucy was not at the conversation, is \$90 million to \$110 million so my question was how did you come up with the \$90 million to \$110 million. That is sort of loosely based on 73% of the bond they have taken out, which is about a \$50 million bond to fix the treatment plant so it depends on what time and place you take this over which are details that are not in here, **...audio inaudible...** roughly 70% of \$50 million or somewhat less as to \$90 million to \$110 million. It is just a number. We didn't want to put the number in because we don't really know and when I asked that question Upton said they will understand what that means. The word true up I think is what that means.

I agree with you this is just a concept. It is not anywhere near a detailed proposal it is not even a general, it is just a conceptual proposal. A lot of it has to be worked out. For example the question I had on the third bullet and then what is outside Nashua, and you can sort of try to explain what that means but it is certainly not defined at this point. All of these very general points have to be worked out if there is even acceptance in principle of this. If on the other hand their reaction is tomorrow morning you know you guys are so far off and they walk off, then hopefully **...audio inaudible...** has prevailed and we can come back together again, but you can see that a lot is taken from PWW.

My question then was what is left of PWW; it is an accepted pointed argument that is they don't want to be placed out of business. They don't feel that their investors want to be placed out of business. The answer is, and maybe McCarthy can answer this better than me, there is quite a bit left. Maybe you could address it, but they are certainly a viable company, they have cash, they can expand, they can continue to operate. It is their perception of that very point I think that is crucial to the acceptance of this proposal.

President Rootovich

Are there any further questions, comments or suggestions?

Alderman Richardson

Bullet #3 we are talking all critical buffer lands surrounding Pennichuck Brook Watershed, which are outside of the City of Nashua. I don't think that reads correctly. You are actually talking critical buffer lands surrounding the watershed; shouldn't it be surrounding the waterways? Doesn't seem to say what it really means.

President Rootovich

The watershed is the land around streams, brooks, ponds.

Alderman Richardson

I understand and this says surrounding that watershed.

President Rootovich

It is written well to me. I don't understand what your...

Alderman Bolton

Alderman Richardson is absolutely correct. Watershed would be the area that any drop of rain which falls upon ultimately ends up in the Pennichuck Brook system. I don't think that is what this is talking about. I think this is talking about the lands that are immediately adjacent to the stream itself, to the stream and the ponds itself or a distance of whatever is deemed critical, 300', 500', which that is probably what Alderman Teeboom was talking about in what has to be completely defined, but watershed and an area beyond watershed would be clearly more than we need and more than we reasonably could ask for.

President Rootovich

Alderman Richardson anything further?

Alderman Richardson

I haven't had enough time to digest...

President Rootovich

I understand.

Alderman McCarthy

It would in fact make more sense if instead of watershed it said supply ponds, reservoirs, and waterways.

President Rootovich

Are there any further questions, comments, suggestions, corrections?

Alderman Flynn

Did Mr. Sansoucy make any comments about how Beck or Veolia would feel about this deal being watered down to 73%? Would they require a brand new bid or contract?

President Rootovich

I don't think it has anything to do with Veolia or Beck. Beck and Veolia both work for the City of Nashua. I don't think it has any...

Alderman Flynn

It is only  $\frac{3}{4}$  of what it was originally.

President Rootovich

There are also numbers that were thrown around prior, 51%, 49%, and that number ultimately may change based on any final negotiation. It is a starting point.

Alderman McCarthy

Veolia actually makes it clear in their bid how they would differentiate just doing the part in Nashua. They were asked in the RFP to comment on just doing Nashua and doing the surrounding systems so their bid responds to that already.

Alderman Cookson

Thank you. The final bullet point for property and assets to be acquired by Nashua, indicates that all customer counts information and billing records for the above proportion of assets...I am curious what is the anticipated medium that we will acquire these customer accounts? Are they going to print a copy for us which they very well could or will it be in electronic format and a database ...

Alderman McCarthy

I assume it will be as a data...that is a detail we need to work out, but as part of the acquisition of their IT systems we would negotiate what form the customer records are going to be in.

Alderman LaRose

Getting back to what portion Beck or Veolia would operate, this says, the way I read it they would be operating the whole thing because it says that Nashua will have 100% of operational control of treatment and supply systems and that is what they are going to be doing. Pennichuck would be paying us 27% of what is their portion. That is the way I understand it.

Alderman Deane

On the last bullet that Alderman Cookson had brought up, I am pretty sure, maybe Mrs. Anderson could help me with this, but the waste water treatment bills are derived from information we already get from Pennichuck. That is how we figure our user fees so that much we have. I think on the account portion of it for the billing records, the accounts, and the other information may be location of water lines in the buildings or something like that. Would that be correct to assume that Alderman McCarthy?

Alderman McCarthy

It would be whatever information we need to operate the system. When we get a chance to look at it we will understand better what that is.

Alderman Deane

But the billing portion we already have.

Alderman McCarthy

We have some of it I don't know that we know anything but the exact amount of water that was consumed, which is what we need to be able to calculate the sewer bills. We don't know if there are special rates in place for anybody we don't know history of their payments and that sort of thing. There is a lot of data that Pennichuck probably possesses that we don't.

Alderman Deane

I am sure the only thing we get is their use.

Alderman McCarthy

Right.

Alderman Deane

Whatever their amount of cubic...

Alderman McCarthy

It is a detail that we will work out in the same vein we will work out how many trucks we are buying from them. The point now is to get agreement in principle of transferring the assets and we will certainly make sure we get enough things to operate them.

Alderman Deane

Thank you.

Alderman Richardson

Could I ask what is SCADA systems?

Alderman Teeboom

Instrumentation.

Alderman Richardson

Instrumentation? I was hoping that would be something in the form of proprietary information. I see nothing about proprietary information that would entail their company owned models and simulations, that which is not deliverable to the PUC or anybody else, which they own.

Alderman Teeboom

No I used the design schedule system. SCADA systems is what you use in utilities to monitor things. It is literally instrumentation, the sensors, it can monitor their electricity or water flow, pressure, temperature, they are easily collected through separate collection points, ...**audio inaudible**... or telephone link, sent to a central computer and it keeps track of all pipes in all locations you monitor for flow conditions.

Alderman Richardson

Thank you Alderman. Getting back to the other point, intellectual property – we don't care about their intellectual property?

Alderman McCarthy

I think it is clear in what we ask for in that bullet that intellectual property that is part of their IT systems that operates the enterprise are things that need to be transferred.

Alderman Richardson

Well if I was on their side I would argue that is not part of the deal because it is not part of the operating...

Alderman McCarthy

And we would simply reject the deal if you don't throw in the IT, the intellectual property we need to operate it. You have to understand the purpose of this document is to convey enough understanding of what it is we want to buy to start a basis for negotiation. This is not a contract somebody is going to sign tomorrow.

Alderman Bolton

Related intellectual property thrown in there somewhere would not hurt.

Alderman Richardson

I'm through. Thank you.

Alderman Teeboom

I would say the key points on this thing in my opinion is not the intellectual property or how you do on IT and SCADA, the key point is number 1 the price, the price because the price is sort of based on the \$85 million which is the starting point for the Nashua proposal. That is a very key point. The second key point is what is it that Nashua takes outside of Nashua that is the second key point I think for them. And the third key point is their perception as I said before of what is it that PWW continues with if this deal goes through, is it worthwhile for them to continue or just battle it out at the PUC because it is just too much given up. Those are the three, in my opinion, the three key points. Once you get past those three points we can negotiate almost anything with lawyers and consultants and analysts.

**MOTION BY ALDERMAN BOLTON THAT THE BOARD AUTHORIZE THE NEGOTIATING COMMITTEE TO OFFER THIS PROPOSAL WITH THE SUGGESTIONS OFFERED TO PENNICHUCK  
MOTION CARRIED**

**MOTION BY ALDERMAN BOLTON THAT THE COMMITTEE COME OUT OF NON-PUBLIC SESSION AND SEAL THE MINUTES OF THE NON-PUBLIC SESSION BY ROLL CALL UNTIL SUCH TIME AS THE MAJORITY OF THE BOARD VOTES THAT THE PURPOSE OF THE CONFIDENTIALITY WOULD NO LONGER BE SERVED**

*A Viva Voce Roll Call was taken, which resulted as follows:*

Yea: Alderman McCarthy, Alderman Flynn, Alderman LaRose, Alderman Dion, Alderman Bolton,  
Alderman MacLaughlin, Alderman Richardson, Alderman Deane, Alderman Teeboom,  
Alderman Cookson, Alderman Williams, Alderman Rootovich

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Nay:

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**MOTION CARRIED**

ADJOURNMENT

**MOTION BY ALDERMAN DION THAT THE MARCH 13, 2006 SPECIAL MEETING OF THE BOARD OF ALDERMEN BE ADJOURNED**

**MOTION CARRIED**

The meeting was declared adjourned at 6:36 p.m.

Attest:

Alderman Richard LaRose, Clerk Pro Tem