

REPORT OF THE PENNICHUCK WATER SPECIAL COMMITTEE

February 4, 2004

A meeting of the Pennichuck Water Special Committee was held on Wednesday, February 4, 2004 at 7:00 p.m. in the Aldermanic Chamber.

Alderman Brian S. McCarthy presided

Members of the Committee present: Alderman-at-Large Steven A. Bolton
Alderman-at-Large David W. Deane
Alderman David D. Lozeau

Members not in Attendance: Alderman Robert G. Shaw, Jr.

Also in Attendance: Alderman-at-Large James R. Tollner
Alderman-at-Large Paula I. Johnson
Alderman Richard LaRose
Alderman Robert A. Dion
Alderman Marc W. Plamondon

NON-PUBLIC SESSION

Chairman McCarthy

I want to bring you up to date on where we are. Very little has happened since the last time we talked about this in non-public session until this past week. The things that took place and I don't remember when the last time we actually talked about the negotiations was, but I think it was at the point where we had met with them about four times. Pennichuck was never willing to discuss anything but their theory that the utility was worth over \$200 million and that was only in the most vague of terms where they simply said they had a number that started with a 2 and that was the extent of the information we received from them.

Alderman Deane

Wasn't that in October?

Chairman McCarthy

Yeah I believe you are approximately right. We met with them again in November at a meeting at which they said basically the same thing. We conveyed to them that we were going to send them, based on what little discussions we had had, a formal offer for their consideration so that we could bring it back to this board and that was the offer for \$121 million. The genesis of the \$121 million figure was to take the \$106 million cash equivalent of the Philadelphia Suburban deal and to add to it \$15 million which we believed to be unavoidable tax consequences of a private acquisition of the assets. That number was derived by First Southwest who is our financial advisors looking at the taxability of the assets when they were converted from accelerated depreciation to straight-line depreciation and their depreciated value when they were bought by us that basically there would be a tax liability, which we believed ran to about \$15 million. It did not take into account the capital gains liability of the shareholders, which we have always believed was the shareholders' problem because they have had that liability all along and some day when they sell the stock they will realize that liability anyway. That was where the \$121 million number came from.

It was as we suspected rejected by them after some brief discussion with the board of directors. I had asked that we try to sit down with them one more time, and on December 11th I believe it was the Mayor and I called Mr. Correll and asked if he would be willing to sit down with us and with our financial people and with the financial people from Connecticut Water who had been discussing with us purchasing the non-regulated assets of the utility and making an offer for a service contract to look at some of the issues because Pennichuck had always said to us

there are liabilities associated with this that you don't understand and we said great educate us, sit us down, tell us what they are, we will look at them, and tell you whether we think we are absorbing them whether we think you have to pay them off or whether we think that we didn't catch those.

Mr. Correll told me on the 11th of December that he would talk to a couple of members of his board and his attorney and get back to us on the 12th. On about the 15th or 16th we called him back to ask if he was going to call us back on the 12th and he said people were on vacation, he hadn't been able to get a hold of them, but he would talk to them and get together. We met with Mr. Correll and Mr. Camerino I think it was the first week of the year to discuss setting up a meeting and they were of the opinion that they did not want anyone from a third party there, but would be willing to meet with the city. We were going to form a list of questions to bring with us to look at some of these things and they were going to reiterate a list of questions they had for us.

Some weeks later they called us and told us that they hadn't seen a list of questions from us and that puzzled them and the following day, which was last Tuesday, they sent us a letter in the mail that said they had no interest in meeting and the negotiations were at an end.

On Thursday we met with the water commission in non-public session and after significant discussion the commission voted to support Nashua's taking of the utility by eminent domain if necessary. I felt that was an important thing to have before we pursued that for the reasons that I stated earlier that I don't believe we can succeed if we go to the PUC at odds with the other consumers of Pennichuck Water. At that point, and also at Alderman Deane's request, I had scheduled this meeting to bring you up to speed on where we were with Pennichuck.

Yesterday at about 4:00 p.m. I got a call from corporation counsel that the letter which you all received today had arrived at the Mayor's Office yesterday afternoon. We met this morning to talk about it. About 2 hours later we became aware that Pennichuck did in fact file suit this morning in Superior Court seeking a declaratory judgment that the application of RSA 38 is unconstitutional. I have known about that since 5:00 p.m. yesterday that they were likely to do that. They did file suit today. We have issued a release that basically recaps what I just told you that we are proceeding forward with the process. We will have to meet more frequently with this committee certainly to discuss how we are proceeding from this point on.

Alderman Bolton

Can I ask why we are meeting in non-public session so you can tell us what is contained in a press release that has already been released to the media?

Chairman McCarthy

Because I was telling you the details of what we went through with Pennichuck, which are bound by a confidentiality agreement with them. The conditions under which they met with us were that we would not disclose the discussions that we had with them.

Alderman Bolton

What is in the press release? I thought you said there was a press release that just said the same things that you have told us.

Chairman McCarthy

No, it recaps the letter that we got. I have a copy of the press release if you want to read it. It says very little.

Alderman Bolton

Okay.

Alderman Deane

I have some questions, but I don't think that a non-public would...

Alderman Dion

Mr. Chairman from the brief comments you made pertaining to what led up to from November and so forth it looks to me, and correct me if I am wrong, there hasn't been really any serious negotiations between the city and Pennichuck. Am I correct in assuming that?

Chairman McCarthy

There has never been anything that I would characterize as substantive negotiation. There has been a willingness on the part of the city to do so, there has been a fairly steadfast denial of any information from Pennichuck on what they believed was leading to an amicable settlement with two exceptions. Primarily what they have told us is their theory of valuation in a takings case, which is that the utility is worth replacement costs less depreciation, which comes in their eyes to a number in excess of \$200 million. They did at one point say to us that they would sell us the source, the plant, the water rights that Pennichuck possesses around Nashua's supply and the infrastructure that is underneath the City of Nashua for a price of \$160 million plus a guarantee of a ten year service contract on the water system and that they would take over operation of the sewerage treatment plant.

Alderman Dion

And when was this offer made?

Chairman McCarthy

That was back in October.

Alderman Dion

So how many times have you really sat down personally yourself in these negotiations? How many sessions have you had three?

Chairman McCarthy

I believe we have had five. We met with Mr. Kreick shortly after the vote last year, we met with Mr. Kreick and Mr. Correll after Mr. Correll was appointed, we met with Mr. Correll and Mr. Camerino either 2 or 3 times during the summer and fall of last year, and we met with Mr. Correll and Mr. Camerino once several weeks ago.

Alderman Dion

So you are talking 5 meetings?

Chairman McCarthy

Yes.

Alderman Dion

To the best of your knowledge?

Chairman McCarthy

Yes.

Alderman Dion

They definitely want \$160 million plus?

Chairman McCarthy

Yes.

Alderman Dion

What did you answer to them when they mentioned that figure?

Chairman McCarthy

The \$160 million was presented at the meeting where we told them that we would give them a public offer based on what we knew about valuation and I had said to them at the time that I expected they were likely to reject it based on what they had said that day and that at that point we would probably pursue our rights under RSA 38.

Alderman Dion

Did they flatly reject that Brian?

Chairman McCarthy

Yes.

Alderman Dion

They did?

Chairman McCarthy

Yes.

Alderman Lozeau

The \$160 million was only for Nashua property.

Chairman McCarthy

The \$160 million was for the Nashua infrastructure only and the source and the plant.

Alderman Dion

I am sure that you must have told them look you were willing to take \$106 million you were ready to consummate the deal with Philadelphia Suburban. I am sure that must have come out somewhere.

Chairman McCarthy

Yes it did.

Alderman Dion

And what was their answer?

Chairman McCarthy

That was then and this is now.

Alderman Dion

Oh really.

Chairman McCarthy

Their answer was basically well that was a stock for stock swap and this is an acquisition by the city and therefore we prefer a different theory of valuation, and I believe that the entirety of that was set up to position them for what they will present in the eminent domain case.

Alderman Dion

Now the only out we have is to go eminent domain is that correct?

Chairman McCarthy

Yes.

Alderman Dion

They filed suit with the court right?

Chairman McCarthy

They filed for a declaratory judgment today to ask that the provisions of RSA 38 not be applicable to them on a constitutional ground.

Alderman Dion

Alright. Assuming for some reason that the court agrees with them what happens then? Do we still have the option or does that cancel out the eminent domain proceeding?

Chairman McCarthy

We don't know. Attorney Bolton and I had a discussion of that earlier.

Alderman Dion

I just saw Steve smiling.

Chairman McCarthy

Well there is a possibility that would in fact open some other avenue to us, but we don't know until we see what the judgment is likely to be. I don't know what the Superior Court will do with that. I suspect that they will reject Pennichuck's argument. Regardless, one side or the other is likely to appeal that through the Supreme Court.

Alderman Dion

I know the courts work in mysterious ways. Do you have any idea how long of a process this is before they do get an answer?

Chairman McCarthy

Pennichuck has requested that the judgment be expedited whatever that means.

Alderman Johnson

That doesn't happen.

Alderman Bolton

Do we have a copy of that by the way?

Chairman McCarthy

I do. I got one this evening. Interestingly the Union Leader found out early today that had been filed and the court would not give them a copy of it because we hadn't been served with out copy of it yet.

Alderman Dion

They have pretty good eyes and ears don't they?

Chairman McCarthy

Yeah.

Alderman Dion

Or a pretty good information system.

Chairman McCarthy

Well Pennichuck issued a press release immediately on the way home from the courthouse.

Alderman LaRose

Thank you Mr. Chairman. How much money have we spent so far in the pursuit of this, how much money do we anticipate on spending in the pursuit of this, and where is this money coming from?

Chairman McCarthy

At the moment we have spent somewhere I asked Mrs. Anderson to get an exact figure on that. We know how much we have allocated and the number escapes me at the moment. It is in the range of \$200,000 to \$250,000 between the Rizzo study and all of the other work that we have done to date. We anticipate that the eminent domain proceedings will take probably another \$500,000. We have been funding it by essentially loaning ourselves the money from surplus revenue or contingency. The intent is that we will re-fund that out of the bond when the purchase ultimately takes place.

Alderman LaRose

So you are going to borrow money, pay interest to pay yourself back...

Chairman McCarthy

We are going to borrow money to pay it back out of the water rate rather than out of the tax rate. The bonds that will be let to buy the utility are regulated.

Alderman LaRose

I am assuming you are going to be anticipating revenue anticipation.

Chairman McCarthy

Yes.

Alderman LaRose

Now you have a new wrinkle because now Pennichuck is bringing us to court and they are looking for some I forget the name of the judgment you mentioned, and if they should prevail I am assuming the city is probably going to appeal the verdict and then first thing you know it goes to the Supreme Court and whatever happens there that is going to get appealed.

Chairman McCarthy

No that is not appealable actually.

Alderman LaRose

That is true, but the fact is it appears that we will be spending a lot of money.

Chairman McCarthy

It would appear that way.

Alderman LaRose

Do we have outside counsel?

Chairman McCarthy

We have had outside counsel in the past, we do not currently, we will again at some point soon. We were retaining the services of Devine, Millimet & Branch until a month or so ago and we are not doing that now. We will probably for the eminent domain phase re-engage Mr. Upton's services in conjunction with Mr. Sansoucy's.

Alderman LaRose

Because Pennichuck has brought court action against us can we still get eminent domain going or do we have to wait until that court action is finished?

Chairman McCarthy

I don't know whether they have asked that the process be enjoined I would expect that they did.

Alderman Bolton

They didn't.

Chairman McCarthy

They didn't. That is interesting.

Alderman Bolton

The reserved the right to do so.

Chairman McCarthy

I would anticipate that they will ask for an injunction to stay the order in the PUC.

Alderman LaRose

So if we start one may move forward.

Chairman McCarthy

Yeah, but there is nothing that stops us from petitioning the PUC at this point.

Alderman Dion

Just to follow on what was just said pertaining to the money that was allocated originally, I believe that at the charter meeting that I watched back a week or so ago that question was asked how much money was left, and if I remember correctly Mr. Chairman I heard the figure \$15,000...

Chairman McCarthy

That is their budget not ours.

Alderman Dion

Oh that is their budget.

Chairman McCarthy

One of the things that the...the communities have each put in \$10,000 to the charter commission with the exception of Nashua and Bedford who have put in \$5,000 each.

Alderman Dion

So everybody got a budget on this.

Chairman McCarthy

We put money into the regional budget which they have used to retain the services of Wadleigh, Starr, Peters to work on the charter for them.

Alderman Dion

How is that money spent that Alderman LaRose just spoke about mostly lawyer fees?

Chairman McCarthy

Yes.

Alderman Deane

Upton, Rizzo...

Chairman McCarthy

We spent about \$100,000 between Rizzo, Sansoucy, and Hartman on the original study. The services of Devine, Millimet will cost us I believe the bill is about \$68,000 at this point. Alderman Bolton if you would like to take a look at that bill and review it I would be more than happy to have you do so because I am of the opinion that we did not get \$68,000 worth of product for it.

Alderman Johnson

You mean we got ripped off?

Alderman Bolton

The same would be true as regards to work of Rizzo to tell you the truth.

Chairman McCarthy

No no I was much happier with Rizzo's product than DMB's. We actually think that they did work that the results of which were never delivered to us, and corporation counsel was going to pursue with them getting those results.

Alderman Bolton

This is Devine?

Chairman McCarthy

Yeah. There are lots of areas in the bill that had to do with researching opinions on topics where we have never seen an opinion.

Alderman Johnson

Thank you. Who is the acquisition team? Who is that comprised of?

Chairman McCarthy

The people who have been working on it here are myself, the Mayor, Mrs. Anderson, Mrs. Hersh, Chief Buxton, and Attorney Connell with help from Mr. Sousa also.

Alderman Johnson

Okay. Out of all of these people who has the expertise at doing any type of acquisition in this type of realm?

Chairman McCarthy

Steve Adams at First Southwest Corporation who has done some 50 utility acquisitions in his career.

Alderman Johnson

So he is also on the ...

Chairman McCarthy

He is one of the consultants that we regularly call upon.

Alderman Deane

Steve Adams?

Chairman McCarthy

Yeah.

Alderman Deane

Where is he from?

Chairman McCarthy

First Southwest our financial advisors. Regularly when we discuss those aspects he is on the phone with us along with Jay Gonzales who is our bond counsel and Cinder McNerney who also works for First Southwest who is our normal financial advisor in Boston.

Alderman Deane

There is a cost associated with those phone calls too right?

Chairman McCarthy

Yes. They have not at this point...

Alderman Johnson

The little hour glass has turned over so they know exactly how long we have been on the phone for. But I mean outside of these three people nobody else really has the expertise in acquiring anything.

Chairman McCarthy

I am not sure what you are asking.

Alderman Johnson

Has anybody else done any write-up of any purchase and sales agreement to acquire any type of utility, any...that is where I am going with this?

Chairman McCarthy

That is why we had engaged the services of Devine, Millimet & Branch.

Alderman Johnson

Okay. Did we ever do a purchase and sales agreement?

Chairman McCarthy

We had nothing to write purchase and sales agreement for.

Alderman Johnson

Okay. So there was never a purchase and sales agreement every written and given to them?

Chairman McCarthy

You have to reach an agreement before you issue a purchase and sales.

Alderman Johnson

Well I just, you know where we presented them the...so what type of document did we have when we offered them the \$121 million and again I would like to see how we derived at those figures.

Chairman McCarthy

I told you how we derived. It was derived from the \$106 million cash equivalent of the Philadelphia Suburban deal and that number I believe comes from the document that Mr. Arel gave us when he came here with Mr. DeBenedictus to present us on that merger...

Alderman Lozeau

This is non-public.

Chairman McCarthy

...plus the approximately \$15 million in tax burden that we had identified.

Alderman Johnson

How did we identify that \$15 million in tax burden?

Chairman McCarthy

I believe that came from Mr. Adams at First Southwest.

Alderman Johnson

Okay.

Alderman Dion

When Philadelphia Suburban...do you recall when they made that offer for \$106 million and Pennichuck was ready to grab the offer before we stepped in and had the referendum vote, do you recall whether or not that \$106 million included their real estate part of their business?

Chairman McCarthy

It included everything because it was a stock swap for the stock of the corporation.

Alderman Dion

It included the real estate, it included Pittsfield?

Chairman McCarthy

Yes.

Alderman Dion

And Aqueduct was it?

Chairman McCarthy

Yeah.

Alderman Dion

And there was another one. Was it Pelham?

Chairman McCarthy

Well there are five companies that comprise Pennichuck. There is Pennichuck Water Works, Pennichuck East, which is a collection of small systems outside of the core system, Pittsfield, Southwood, and Pennichuck Services Corporation.

Alderman Deane

Yeah that is the one that services maintenance wise.

Chairman McCarthy

Pennichuck Services is the one that provides maintenance services to municipalities other than the regulated utilities. None of the regulated utilities are served by Pennichuck Services Corporation.

Alderman Dion

So that was included in the \$106 million Suburban offer?

Chairman McCarthy

Yes.

Alderman Dion

Real estate and what we just discussed.

Chairman McCarthy

Yes.

Alderman Dion

The whole works.

Chairman McCarthy

Yes.

Alderman Dion

And the offer we made was for?

Chairman McCarthy

The whole works.

Alderman Dion

The whole works including the real estate?

Chairman McCarthy

Yes. We did not believe that we were able to purchase the real estate. What we had done was to engage Connecticut Water to come up with a valuation on some of the other assets. They came up with a number between all of the assets they were looking at some of which we would not have sold to them we would have acquired, of approximately \$17 million and they were going to absorb \$5 million in debt. The amount the city would have been responsible for would have actually been approximately \$110 million, which would have been transferred to the regional authority.

Alderman Dion

Thank you.

Alderman Lozeau

You rattled off some numbers. Am I correct to assume that we are into this for half a million dollars?

Chairman McCarthy

Not yet. We are into it for about a quarter at the moment.

Alderman Lozeau

Any more debt that is incurred is that shared by the whole district commission?

Chairman McCarthy

On an ongoing basis?

Alderman Lozeau

Yeah.

Chairman McCarthy

Not unless we get agreement from them to do so. Here is my intention with respect to that; when we issue bonds to acquire the utility we would pay ourselves back at that point and therefore when they take over they will have to assume debt that reimburses us for those expenses.

Alderman Lozeau

All of the legal costs that we will...

Chairman McCarthy

Yeah.

Alderman Lozeau

Who is paying all of these legal bills now?

Chairman McCarthy

The Board has appropriated money over the last year to pay for those.

Alderman Bolton

Would it be a correct statement to say no one but the City of Nashua, no other town has contributed a penny to this effort, we are at a quarter of a million dollars and counting, and if we are unsuccessful in whole or in part we will never recover a penny from any of these other towns?

Chairman McCarthy

Yes.

Alderman Dion

Right on the money.

Chairman McCarthy

But as has been pointed out the lion's share of the people who benefit from the acquisition are in fact our citizens.

Alderman Lozeau

Only if we acquire it.

Alderman LaRose

For clarification in my mind, and I know you touched on this before, the reason that we set up this water district is because the feeling is that Nashua alone could not get the PUC to allow us to purchase by eminent...

Chairman McCarthy

No. The water district was set up because Mrs. Pressly went out and solicited all of the towns in the region to set up a water district, which she is now no longer happy with. That having happened Nashua was of the opinion that in order for our purchase of the utility to succeed we have to reach agreement with the region that is beneficial to both of us because otherwise we will go to the PUC with us on one side and the other 15 towns on the other and the PUC will say don't want to hear it.

Alderman LaRose

Why do you feel that the other 15 towns would go up against us?

Chairman McCarthy

Because they have said so.

Alderman LaRose

Oh.

Chairman McCarthy

That part was easy.

Alderman Deane

I just look back to that night when Attorney Upton was sitting there and his recommendation was to take it by eminent domain.

Chairman McCarthy

His recommendation was to go forward with RSA 38. That requires that you first make an attempt to purchase the assets.

Alderman Deane

We didn't do that though.

Chairman McCarthy

Yes we did. That is what the offer that we delivered in November was and it was rejected.

Alderman Deane

When did we bring Attorney Upton in here? Wasn't it some time in February?

Chairman McCarthy

Yeah.

Alderman Deane

So from February until November you look at that timeframe, what happened between February and November where we couldn't have started...

Chairman McCarthy

Most we waited for Mr. Correll to get back from vacation.

Alderman Deane

Nine months on vacation? He wasn't working there then though was he?

Chairman McCarthy

He was...

Alderman Deane

No he wasn't there.

Alderman Johnson

No he wasn't.

Chairman McCarthy

He was shortly after that. We met very quickly after the vote with Mr. Kreick, actually after Mr. Arel resigned. We met with Mr. Kreick and Mr. Kreick said his first priority was to get a new CEO and that we should sit down with the CEO when he was on board and talk about the acquisition, and we did that, and from then on every time we tried to meet with them we would call them on a Monday and propose that we meet on Wednesday and we would wind up meeting three weeks from Thursday afternoon because somebody's schedule over there didn't allow it.

Alderman Deane

So why did we put up with that? I don't ...

Chairman McCarthy

Because the alternative is to go to a process which by its very nature will take 2-3 years to finish and cost us between half a million and a million dollars.

Alderman Deane

Instead they filed a lawsuit against the city.

Chairman McCarthy

But if we had reached an agreement you would all be sitting here telling us what a great job it was. It is incumbent to use litigation as a last resort I believe.

Alderman Deane

I understand that Brian I'm just looking at the timeframe from when we went out and banged the signs in the ground and told the people in the community that they were going to have control of their local water system and that the French weren't going to come in here and buy it out from under our feet, and where we are today and the amount of money that we have spent, and I still...

Chairman McCarthy

And I believe that had we just quickly gone to eminent domain we probably would be at an impasse with the communities in such a position that we could not get past the PUC at this point in time.

Alderman Deane

What did Connell say about that or Upton or Devine Millimet?

Chairman McCarthy

About taking it more quickly?

Alderman Deane

Yeah. By taking it by eminent domain and using the gate valves on the edge of the city limits and telling the communities that...

Chairman McCarthy

You can't get it by eminent domain if the other communities oppose you at the PUC and there is a finding that it is not in the public interest. That is the first thing that has to happen. Before you even talk about the valuation the PUC has to determine that the acquisition of the utility is in the public interest.

Alderman Deane

I understand that but I also look at the financial interest of the predicament that we are in and...

Chairman McCarthy

The PUC is predisposed to protect Pennichuck Corporation.

Alderman Deane

I understand that, but I look at what has transpired with these other communities and you refer to us as the 800 pound gorilla well unfortunately the 800 pound gorilla is the one with the wallet and we have been paying, we have been absorbing all of these costs and in turn we live with the threat of if we go with the eminent domain these very people that you have been working with are going to turn on us and testify against us during the proceedings, which just goes to show you that the element of trust between what you and Fred Britton have done up there it is about skin deep. I think those people...

Chairman McCarthy

It is not that set of people. Remember that the determination...

Alderman Deane

Those people would be there. You are telling me Peterman and Karen White wouldn't be up there carrying on?

Chairman McCarthy

I wouldn't ...**audio inaudible**...

Alderman Dion

Not to mention Barbara Pressly.

Alderman Deane

I just think that when push came to shove Brian the relationship that Alderman Britton and perhaps yourself and whomever has with that group of people is skin deep at best and I think...

Chairman McCarthy

I actually, with a couple of exceptions, do not believe that to be true. I believe that...

Alderman Deane

The tone of what went on at that public hearing with the way some...and I am telling you that Mike Scanlon guy is another one.

Chairman McCarthy

That is one of the exceptions.

Alderman Deane

Please I mean...

Alderman Lozeau

Didn't we just hire the guy from Merrimack?

Chairman McCarthy

Yeah we did.

Alderman Deane

So we're picking them off the water district one at a time.

Chairman McCarthy

Jay had actually come around to supporting us. The only communities that we have had trouble with recently are Bedford and Milford.

Alderman Deane

Well Milford has been kind of...I haven't been involved in all of it but just the sense that I had in the meetings that I attended, you could feel it in that room. It boiled over. Even up in Bedford the last two meetings you could see those people pitting themselves it is us against them. That is the way the towns, that is the feeling I got anyway.

Chairman McCarthy

When it started out it was us Nashua against them the towns. The flavor at last week's meeting was us Nashua and the towns versus them Bedford. I think we have made...the vote was not disclosed only the result of the motion was, but the vote was not unanimous, but it was overwhelmingly in Nashua's favor. There was in fact one negative vote on that motion.

Alderman Deane

I wonder which town that came from. Did it begin with the second letter in the alphabet perhaps?

Chairman McCarthy

It might have. I do want to point out from that the other motion that they took, and I think I pointed this out in the memo, was they would like to have two members of the charter committee interact with us on our strategy for the taking and we have expressed that we would not object to doing that. Those two members are unfortunately as I think I told you, Mr. Scanlon and Mr. Massey from Hudson.

Alderman Deane

Good. Bring them on.

Alderman Johnson

As everybody was talking I started reviewing the minutes of January 2nd that Mrs. Pressly gave us. I'm going to follow up with what Alderman Deane was talking about. Last year when the people went to the polls to vote they were voting for us to proceed to see whether or not we basically should acquire the water...no one said that we had to nobody said we did not have to, it was just telling us to proceed to see if we should. I guess what bothers me from February last year to November right before the election nothing was done then right before the election we jumped in to try to acquire this water and we bring everything to the surface again right before the election so everybody knew that something was being done in November.

Chairman McCarthy

The last meeting we had with them was on November 12th, which was...

Alderman Johnson

I am saying about the Mayor, it was right before the election. That is when this whole thing started again.

Chairman McCarthy

The Mayor may have made some press release but there the actions on the acquisition were in fact deliberately delayed until after the election so that neither side could benefit from that.

Alderman Johnson

My concern, and I remember Mr. Upton sitting and telling us about eminent domain last year, and I was so against Nashua running the water company because of a certain person in a certain director position who took me out to lunch and then denied that he took me out for lunch to talk to me about this, was because I didn't want the city to have another utility that we couldn't handle. But in reading everything that has gone on between last year and this year I'm having second thoughts about this regional water. I am beginning to think maybe Nashua at this point in time should be the one, if we are going to acquire it, and sell our water like Manchester is doing. The best time I had was when I went up and spoke to Tom Bowen at the Manchester Water Works.

Alderman Lozeau

Did he take you out to lunch?

Alderman Johnson

No he didn't take me out to lunch. He wasn't trying to sell me any water or bottle it. He explained the operations of the...and sure it has been around for what 200 years, but the operation is an operation that they know every pipe that they have to scrape and foment, they have almost the lowest water rates in the state other than they are now doing a 48% rate increase because they had to go out and get revenue bonds because I think that they said they had some piping that they had to...

Chairman McCarthy

They face approximately the same infrastructure issues that we do.

Alderman Johnson

But they are on top of everything, they never had to go out before and bond. They decided to do this...

Alderman Lozeau

They didn't have to pay \$160 million for it either.

Alderman Johnson

Right, but if you listen to their operation they could tell you the whole operation. There is no guesswork.

Chairman McCarthy

So can Pennichuck.

Alderman Johnson

Well I have my doubts about Pennichuck in certain areas. I am not 100% convinced that Rizzo knows everything. We don't know everything that is going on...

Chairman McCarthy

I am not talking about Rizzo I am talking about Pennichuck specifically and the person of Don Ware who is their chief engineer.

Alderman Johnson

Right but you know what they are not telling us everything and I don't think they are going to disclose everything at this point in time because they are not selling it to us so we don't know what is hidden underneath every piece of roadway. I'm having a lot of reservations about what is going on. \$225,000 we spent, we have given ourselves about half a million dollar budget. Where are we going with this? I haven't figured it out anymore where we are going with this. Pennichuck doesn't want to deal with us. We can go to the PUC, the PUC might say yes it is in the best interest of the community to take it by eminent domain, but you have three towns that aren't going to like us taking it because they want to be part of a regional but they really don't want us part of the regional because we are this big fat elephant here.

That is where the problem starts. We are the biggest community, we have the biggest stake in the regional, and our job and our duty is to protect the citizens of Nashua the ratepayers of Nashua entering into any type of an agreement with any regional charter. If in fact I don't protect Nashua I haven't done my duty as an elected official and I have the right to be booted out because I am not protecting the ratepayers' interests and the citizens of Nashua.

When you start taking a look and I only went to one meeting and the attitude towards any member of the public questioning even a conflict of interest was appalling. They really don't want to work with us that much. They want the controlling interest and leave Nashua out in the cold and that is my sentiments as I am reading.

Chairman McCarthy

I have to tell you that I don't agree with you on that regard. I believe there is significant history there particularly between Mrs. Pressly and Mrs. White and Peterman.

Alderman Lozeau

Good history or bad history?

Chairman McCarthy

They were the best of friends when this started until these debates over the Charter happened, and I think one of the things that you see articulated at those meetings is they have heard all of this before and while the person standing at the microphone may not have been Barbara's what was articulated was Barbara's concern, which was heard 100 times previously, and consequently it is not at all unlikely that there is that defensive reaction to it when it is brought up again on some of those issues.

Alderman Johnson

Yes but isn't Mrs. Peterman doesn't she work for Gilbane?

Chairman McCarthy

She works for Stabile Property Management.

Alderman Johnson

And how much watershed has Stabile and Arel taken?

Chairman McCarthy

That is a different company. She works for Stabile Property Management, which is a contract maintenance organization for condominium associations primarily.

Alderman Johnson

Stabile is still Stabile. It is a separate entity but it is still a Stabile company.

Chairman McCarthy

I don't believe that she has ever done anything at the water district that was motivated by the interests of the Stabile companies. In fact, when I disclosed to them that it was Connecticut Water that we had talked with she and Karen White both ironically said that one of their misgivings was that they thought that the partner we had been working with on this was Stabile, which I found extremely ironic. They assumed that since the majority of the issue was around the...and let me actually go back and talk about that because there is an interesting difference in the philosophies there that gets back to your point about who runs it. Given that most of the debate was around the non-regulated utilities around Southwood they had assumed that what we were looking for was a partner to take over the real estate business and therefore erroneously concluded that Stabile would have been the likely partner for us to be paired with.

In fact, my intent as I articulated through all of the board meetings that we had, was that we should not in fact own the employees of the utility and that we should contract out the management, and that was why we had gone and sought out a water company that was willing to take on all of the current staff of Pennichuck and to leave the current structure in place and simply run it as a contract business.

The district is not sure that it feels the same way although in some recent discussions they have entertained the possibility that this may have some advantage. I believe that simply putting the district structure in place to manage the assets and the contract but having an outside water company that does the actual day-to-day operations of the plan is probably the most intelligent thing we can do.

My concern is I have no concerns over the way the thing is run by its daily operations I have concerns over the way its assets are managed and over the amount of money that is put into reinvestment in the plant as opposed to return to the shareholders, but those are issues that...

Alderman Lozeau

Or its top executives. Somebody told me that Correll was hired specifically...

Alderman Tollner

Absolutely.

Alderman Lozeau

Specifically to keep this away from the city.

Alderman Tollner

Oh no to settle it.

Chairman McCarthy

He was clearly hired with the intent of selling it. His contract has an interesting clause in it that I have discussed with him, and his interpretation of it is different from ours and in the end I conclude that it is simply an oversight in the way they wrote it. He is guaranteed three years pay regardless at \$250,000 a year. If a change of control event takes place wherein the stock is acquired by somebody else, he is entitled to an additional 2 years' salary. That clause excludes an acquisition of assets by the City of Nashua or other municipal entity because that is not a "change of control". It is basically silent on what happens if somebody buys out all of the assets of the corporation and it ceases operation. His interpretation is if that is the case he gets his bonus, our interpretation on the face of the wording was that he doesn't, and therefore has a vested interest in not selling it to us.

At any rate, he stands to get, were he to walk in on one day and sell the corporation's stock, 30 days later he would receive \$1.25 million in compensation for the time he was there plus the exercise of all of his options.

Alderman Deane

How sweet it is.

Alderman Lozeau

Maybe he will pay the \$250,000 we have invested on his way out the door. I doubt it.

Chairman McCarthy

I thought of throwing in the offer letter that we would pay his \$500,000 bonus if Pennichuck wouldn't pick it up. Wasn't sure the spirit of that would be taken correctly.

Alderman Lozeau

This guy must know what he is doing.

Chairman McCarthy

He is the CEO who engineered the sale of United Water to SUEZ and it is quite clear from, it is clear from our discussions that the reason he is at Pennichuck is to get us to go away so that United/SUEZ can buy Pennichuck, and in fact when we had the discussion where he offered us the Nashua plant for \$160 million he said we would love to talk to you about taking over the operations of the waste water treatment plant because that is our business. I said I was unaware that Pennichuck operated any waste water treatment plants at this point in time. I believe that he was speaking for some other entity when he said we. I believe also from scuttlebutt in the industry that there may in fact be two bids outstanding on the possible purchase of Pennichuck so that they may stand to gain considerably once we are gone. I believe that both SUEZ and Kelda are interested in acquiring a utility of that size in the area.

Alderman Lozeau

At what point do we throw in the towel?

Chairman McCarthy

My intent would be when we get a judgment of a price that is something where we cannot sustain a reasonable rate. I think we need to go forward to the point where we have done the updates on the appraisals and gone to the PUC and expressed our theory of valuation and gotten a number from them and done the rate analysis on what we can do based on that. If the PUC says they are right it is worth \$220 million then there is not much we are going to be able to do nor are they going to have very much luck selling it at that point because when they come back with an offer that translates into \$130 million two months later...

Alderman Lozeau

Then we could file our lawsuit right?

Chairman McCarthy

Yeah.

Alderman Dion

The Public Utilities Commission are the ones that are going to settle what the company is worth?

Chairman McCarthy

Yes.

Alderman Dion

The purchase price? The Public Utilities Commission will make that determination?

Chairman McCarthy

Yes.

Alderman Dion

Not the courts?

Chairman McCarthy

Well it is appealable to the courts afterwards.

Alderman Dion

Alright let's go that avenue, assuming the Public Utilities Commission gives X amount of dollars as a purchase price and Pennichuck objects to that because of a lowball figure, they have a right to appeal to the court to change that purchase price?

Chairman McCarthy

Right.

Alderman Bolton

No.

Alderman Dion

Isn't that correct? They don't have that right?

Alderman Bolton

Under...

Alderman Dion

They did it at Stellos' Stadium on the land.

Alderman Bolton

Different statute.

Chairman McCarthy

That is a different process.

Alderman Bolton

The procedure under Stellos' Stadium is under the Eminent Domains Procedures Act, which is 491(a). This municipalization of a public utility is under RSA Chapter 38. Interestingly enough that is one of the points in this lawsuit that Pennichuck has filed that the difference between the two statutes deprives them of equal protection under the New Hampshire Constitution. Under Chapter 38, the Public Utilities Commission determines the issue of necessity sometimes called public interest, and determines the price. That is then appealable as to issues of law only to the New Hampshire Supreme Court.

What that means is the New Hampshire Supreme Court doesn't make any additional findings of fact but could review whether the proper procedures were followed, whether there is some deviation from what is required in the way things were done or the way the calculations were made, but it is not like going to court and getting a jury trial for example, which is what is available if one is not satisfied with the result of the Board of Tax and Land Appeals' assessment of value under the procedure of 491(a). As I say that is actually one of the issues among about 5 that is brought up in this petition.

Alderman Tollner

What would prevent Pennichuck from coming back 3, 6, 9, 10 months and suing the city for damages?

Alderman Bolton

Nothing.

Alderman Tollner

So regardless of what the outcome is...

Chairman McCarthy

Three, six, ten months from what?

Alderman Tollner

From right now. Regardless of what happens whether we...

Chairman McCarthy

Under what circumstances?

Alderman Tollner

If I am reading there, and I just grabbed it, the letter that came it looks as if they feel that, and I can't disagree with them, that we have been carrying this process on for an extremely long time, it has damaged their stock, I don't really agree with the fact that it is flipping their employees out because if you talk to their employees not every single one but a good chunk of them would rather it remain operated and owned locally, but I mean if I am a stockholder I am sure there is some stockholder probably that fellow that wrote the letter to the Telegraph from wherever he lived filing a class action suit against the city for damages that we have impeded his ability to sell his stock or make money on his stock. We pretty much have frozen...

Chairman McCarthy

We have exercised rights that we have under the laws of the State of New Hampshire. When those laws were passed it was arguably anticipated that they would have affects on companies that were subject to them. I believe personally that it was incumbent upon us to pursue to the greatest extent we could an amicable acquisition of that company and not to go to eminent domain. The argument that we didn't go to eminent domain fast enough is sort of like you sending me a bill, me refusing to pay it and discussing it with you for 10 months while we argue about whether I should pay it or not and then me coming back and saying well you have wasted my time by not suing me over it the minute I didn't pay it.

The argument on its face doesn't make any sense. We have attempted and in good faith in my estimation to try and reach an amicable settlement and we have just recently failed. Based on that we will go forward with the takings proceedings.

Alderman Tollner

What is the Mayor's opinion? Maybe you stated this before I got here and I apologize for being late, but what is the Mayor's opinion on this situation that we are in right now?

Chairman McCarthy

That we should go forward with the filings with the Public Utilities Commission.

Alderman Plamondon

SUEZ they are a British entity?

Chairman McCarthy

SUEZ is French.

Alderman Plamondon

And you said Kelda? I have never heard of them.

Chairman McCarthy

They are British.

Alderman Plamondon

I think it is just important to note that they are still looking at the foreign interests.

Alderman Tollner

It is the problem with the thing happening in the night.

Alderman Bolton

That is the bomb.

Chairman McCarthy

Yeah.

Alderman LaRose

Is a motion to adjourn in order?

Alderman Deane

No no no, don't jump the gun, we have to ...is everybody done?

Chairman McCarthy

Is everything comfortable with the discussion at this point, where we are?

Alderman Bolton

No, but that is a different question from whether we want to leave.

Alderman Plamondon

I think we have to continue. We have an investment in here financially but we also have an investment in our water supply that we want to keep it local. I think our voters of Nashua expressed that so I think we have to pursue it.

Chairman McCarthy

I want to point out that as we go forward what we will present to the Public Utilities Commission as our theory of value is significantly lower than what we have offered for the entire corporation. We will have to go out and get our appraisals updated, but Mr. Sansoucy's appraisal of the assets of the core system was way less than \$121 million last year and we will have to look at where that sits now. It is actually sort of interesting in that the two parties are sitting on opposite sides of the table from where they normally are and in tax appeals we argue replacement costs less depreciation and they argue book and we will be arguing the opposite points.

Alderman Plamondon

Is there a point that if we can't get all of the municipalities involved to agree with us in harmony especially the one municipality with the second letter of the alphabet, do we have a stand back position where we could say well okay we will just go after the property in Nashua and the Nashua interests and the \$160 million?

Chairman McCarthy

We have not discussed that other than I have thought about it and I actually have a proposal in that regard if it comes to it. At this point, I actually believe that the other communities are behind us solidly enough to proceed with the eminent domain process. I wasn't always...

Alderman Bolton

I will believe that when I see their money.

Chairman McCarthy

...I wasn't always clear on that and one of the ...

Alderman Johnson

It has been our money all along.

Chairman McCarthy

...one of the fallbacks that is available to us is to simply take the pipe that is in Nashua and the reason I would look at doing that is the plant is virtually at end of life anyway, they will need to essentially reconstruct the plant at some point in the future to meet regulatory requirements and to meet some of the new filtrations. They have to put sediment filtration in there because the pond system cannot absorb any more sediment. The other thing that needs to get done is that a direct shunt across the ponds from the intake from the Merrimack needs to be built. Given that if you own the pipe under Nashua and if you secured the water rights to the withdrawal from the Merrimack you could in fact run the Nashua system on what you had to do as capital improvements. I wouldn't want to do that because that would cut us off from the Pennichuck pond system, but it certainly is a self-determining goal to take over some of that.

There is also a potential for some high-volume wells in the aquifer in Dunstable that we could in fact reach agreement on in order to get a secondary supply. We can look in the long term at other sources of supply. There are some regulator hurdles to do that. You have to convince DES that you are now going to take the 20 million gallons a day that Pennichuck used to take out of the Merrimack River, but there is a possibility to do something there if it comes to it. If it comes to it I think we should discuss those things.

Alderman Plamondon

The other thing we talked about the communities, one of the communities is Salisbury, MA correct?

Chairman McCarthy

One of the what?

Alderman Plamondon

One of the communities that Pennichuck maintains is Salisbury, MA right they are part of...

Chairman McCarthy

The services corporation I believe has a service contract.

Alderman Plamondon

Services okay.

Chairman McCarthy

There was also actually a bulk water contract with Tyngsboro.

Alderman Plamondon

Okay. I thought it was more than just a service for Salisbury, but okay. My point is not valid. Thank you.

Alderman Johnson

Thank you. I remembered now what Manchester was doing, they were doing a new treatment plant for the water and that is why they were going out to get revenue bonds. I think the question is here if in fact Nashua was to pull out and say at this point in time we don't want to go any further you would need three communities to be able to go in and get a revenue bond and take it and/or by eminent domain am I correct?

Chairman McCarthy

If Nashua pulls out in all likelihood what will happen is that the entire effort to acquire it will go away and it will be sold.

Alderman Johnson

Okay.

Chairman McCarthy

That may well be ... **tape flipped**...before we make Alderman Bolton's motion I simply wanted to point out with respect to the comment that was made about having it under political control and how good it was to distance it from it that Pennichuck currently is completely out of the realm of political control. Manchester on the other hand is entirely within it and the rates in Manchester are ¼ of what some of Pennichuck's customers are paying.

Alderman Johnson

As a matter of fact I asked Tom about that you know how the members are selected and the board, and he said as a political board this time it is not bad compared to the past, but you know what are you going to do. But my other concern if we pull out yes there could be damages. What happens if in fact they get two offers on the table, they don't want to deal with us, they take an offer, are we going to still try to pursue it for eminent domain with the PUC?

Chairman McCarthy

Neither of those companies will entertain the notion of acquiring it until the threat of eminent domain is gone.

Alderman Deane

They are not going to spend a dime.

Chairman McCarthy

Because one from a pragmatic standpoint they don't want to get involved in it, two Pennichuck knows that if they were to even remotely leak that they had another offer on the table the region would quickly solidify on the issue of the taking.

Alderman Johnson

You know I just don't have a good feeling like I did last year on this I really don't. I know what everybody voted on last year but that was last year and the circumstances were different last year than they are this year.

Chairman McCarthy

I guess the only thing I know that is different this year is we know how much work it is going to be and I have always suspected it was going to be a lot.

Alderman Plamondon

We have to get a ruling from the PUC.

**MOTION BY ALDERMAN DEANE THAT THE COMMITTEE 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
MOTION SECONDED BY ALDERMAN LOZEAU**

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

Yea: Alderman McCarthy, Alderman Bolton, Alderman Deane, Alderman Lozeau

4

Nay:

0

MOTION CARRIED

**MOTION BY ALDERMAN DEANE TO COME OUT OF NON-PUBLIC SESSION BY ROLL CALL AND RETURN TO THE MEETING OF THE PENNICHUCK WATER SPECIAL COMMITTEE
MOTION SECONDED BY ALDERMAN BOLTON**

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

Yea: Alderman McCarthy, Alderman Bolton, Alderman Deane, Alderman Lozeau

4

Nay:

0

MOTION CARRIED

ADJOURNMENT

**MOTION BY ALDERMAN BOLTON TO ADJOURN
MOTION CARRIED**

The Pennichuck Water Special Committee meeting was adjourned at 9:05 p.m.

Alderman-at-Large David W. Deane
Committee Clerk