

## REPORT OF THE PENNICHUCK WATER SPECIAL COMMITTEE

June 30, 2004

A meeting of the Pennichuck Water Special Committee was held on Wednesday, June 30, 2004 at 7:01 p.m. in the Aldermanic Chamber.

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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  
   Alderman Robert G. Shaw, Jr.

Members not in Attendance:

Also in Attendance:                              Alderman-at-Large Paula I. Johnson  
   Alderman Lori Cardin  
   Alderman David MacLaughlin  
   David Connell, Esq., Corporation Counsel

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COMMUNICATIONS – None

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UNFINISHED BUSINESS – None

NEW BUSINESS - None

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DISCUSSION

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Chairman McCarthy

I would like to ask Attorney Connell to come forward and give us an update on where we stand with the acquisition actions.

David Connell

As you know there are multiple actions pending. We have something to report since the last time, and you probably heard about a lot of it in the newspaper. In the Declaratory Judgment Action by the company in which it seeks to find RSA:38 unconstitutional and the city's behavior unconstitutional, they sought a Preliminary Injunction to prevent the city from proceeding with the

PUC Petition for Eminent Domain. That was denied.

Soon after that the PUC scheduled the first session on the Eminent Domain case, a very preliminary kind of agenda/discussion session. That will be held on July 28<sup>th</sup>.

Declaratory Judgment continues to be pending even though the Preliminary Injunction wasn't granted. We had filed a Motion to Dismiss the entire thing saying that even accepting the truth of the allegations, in the Petition there was no valid claim stated. That will be heard on Monday, July 19<sup>th</sup> over at the Superior Court here in Nashua.

Now the next step in many cases as has been taken by Pennichuck in that case as well they can file a Motion for Summary Judgment saying that they put in an Affidavit saying that everything in their complaint is true and that they should have judgment as a matter of law. We have until July 9<sup>th</sup> to object to that and file counter Affidavits. Counter Affidavits should actually strengthen our case because in that case you no longer are admitting the truth of the allegations as you do in a Motion to Dismiss you are able to say no that allegation is not the case because we have the Affidavit of whatever official or officials to offer in opposition. We will probably file a Motion for Summary Judgment ourselves on the basis of those Affidavits around July 9<sup>th</sup>, but if things go well for us those will never be reached because the Motion to Dismiss would be granted before that.

There is also a civil rights action, which they filed, which we removed to the Federal Court where we have filed a Motion to Dismiss the Federal Claims. They still have some time yet to object to that. I don't have a date when that will be heard.

The last item that has come about now is that Pennichuck has actually filed a case for a rate increase at the PUC, and there will be an opportunity for the city and other interested parties to intervene and participate in that case.

That is an overview of where the lawsuits are at the moment. If there is any further discussion I would be happy to participate.

Chairman McCarthy

Are there any questions from members of the Board?

At some point the Board needs to have a discussion about the level of intervention that we want to have with the rate case. We probably don't want to do that this evening, but we should give that some thought. I think it ties into our strategy for the acquisition fairly tightly and we would want to give some thought as to how we want to proceed with that.

Alderman Deane

Will we do that at our next meeting?

Chairman McCarthy

Yeah I will try to actually schedule a meeting for early next week given the situation we find ourselves in right now I would rather not prolong this one so I will try to get one on our calendar early. Is there anything else from any members of the committee?

PERIOD FOR PUBLIC COMMENT

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POSSIBLE NON-PUBLIC SESSION

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ADJOURNMENT

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**MOTION BY ALDERMAN DEANE TO ADJOURN**

**MOTION CARRIED**

The Pennichuck Water Special Committee meeting was adjourned at 7:07 p.m.

Alderman-at-Large David W. Deane  
Committee Clerk