

REPORT OF THE PENNICHUCK WATER SPECIAL COMMITTEE

July 7, 2004

A meeting of the Pennichuck Water Special Committee was held on Wednesday, July 7, 2004 at 6:30 p.m. in the Aldermanic Chamber.

Alderman Brian S. McCarthy presided

Members of the Committee present: Alderman-at-Large David W. Deane  
Alderman David D. Lozeau  
Alderman-at-Large Steven A. Bolton (arrived at 6:50 p.m.)  
Alderman Robert G. Shaw, Jr. (arrived at 6:50 p.m.)

Members not in Attendance:

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

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Chairman McCarthy

Alderman Bolton called me earlier to tell me that he would not be able to make it until later in the meeting.

COMMUNICATIONS - None

UNFINISHED BUSINESS - None

NEW BUSINESS - None

DISCUSSION - None

PERIOD FOR PUBLIC COMMENT - None

NON-PUBLIC SESSION

**MOTION BY ALDERMAN LOZEAU THAT THE COMMITTEE, BY ROLL CALL, GO INTO NON-PUBLIC SESSION PURSUANT TO RSA 91-A:3, II(D) TO CONSIDER THE ACQUISITION, SALE OR LEASE OF REAL OR PERSONAL PROPERTY WHICH, IF DISCUSSED IN PUBLIC, WOULD LIKELY BENEFIT A PARTY OR PARTIES WHOSE INTERESTS ARE ADVERSE TO THOSE OF THE GENERAL COMMUNITY**

**MOTION SECONDED BY ALDERMAN DEANE**

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

Yea: Alderman McCarthy, Alderman Deane, Alderman Lozeau  
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Nay: 0

**MOTION CARRIED**

Chairman McCarthy

I wanted to meet since we didn't get a chance to go into non-public last week to discuss the likelihood of intervening in the pending rate case, which Mr. Sansoucy advises us is fairly closely tied to our valuation case because it will establish a higher rate based in the company, which establishes a higher book value for the

company as well. One of the things they are trying to do is to I believe recoup the cost of the lease on the building in Merrimack that they moved to which basically they moved out of the property down here into property that Southwood owns that they couldn't otherwise lease for the purpose of offsetting the cost of that real estate at Southwood and putting it back into the water rate, which we would like to protest among other valuations. I asked Attorney Connell to be with us to bring us up to date on that and other developments in the case.

David Connell, Esq.

We have until late this month to intervene in this rate case. It is certainly advisable on one basis or another. Whether it is necessary to go whole hog and fight every step of the way or be more passive and sit back and analyze the data that they have to provide. We can decide as we got. The PUC staff this is their main reason for existence is to put the companies through the ringer on these rate cases and ascertain the real basis for what they are wanting to do an analyze it as to what is reasonable and try to protect the public interest. There is a party there that will be doing some of the heavy lifting against the company.

Of course this is going on simultaneously with the city's acquisition. As Alderman McCarthy said a lot of the issues are similar. They will be trying to substantially increase their rate base and of course that would substantially increase their rate structure. That is a two edged sword for us, it would result in probably having to pay more, but it would also take some of the pressure off the city in its attempt to show that it can operate the company at the same or cheaper rates. The higher their rates are the higher ours could be.

I think, without being totally expert on it, I think that they are going to be able to show all of the property that they have acquired since their last rate case and its value and force us to pay for it whether they get this into the new rates or not at this point. What they do having going for them is their immediate cash flow problem is because the way the commission operates they state what they need for rates and those go into affect automatically on a temporary basis. In the long run what happens when there is not a municipal takeover is when the commission finally determines what the rates ought to be they then look back at the temporary rates they have been getting and if they were too high the ratepayers get some kind of a rebate in the form of reduced rates going forward for a while.

How that would work if the city were taking the company over in midstream I guess it would be one of the terms of settlement. It might be an offset to the acquisition price or something of that sort. We're not going to be able to choke off their temporary rates. They are going to be receiving those whether the rate case goes forward quickly or not.

Certainly we should intervene. I don't know that we have to commission a whole new game plan with hundreds of thousands of dollars of appropriations to fight this. Probably can get by for considerably cheaper. You spoke with Attorney Upton at length too Brian. I don't know if you have any more detail from him.

Chairman McCarthy

On the intervention?

David Connell, Esq.

Yeah.

Chairman McCarthy

He basically thought we needed to intervene and that we did need to present some information, but as you said the PUC will do a lot of the heavy lifting on the investigation of the rate.

Alderman Deane

Would they bring forth any of the expenditures associated with their efforts to kind of bring what they are doing with the television and the media and whatnot?

David Connell, Esq.

If they were to try to sneak that in to the rate base that would be something that we would need...

Alderman Deane

In essence, that is where the money is coming from.

David Connell, Esq.

I could be wrong, but I am assuming they are not that outrageous. I figure they were taking the money from the money that they have safely put into their cash or getting it out of Southwood or something but not out of the ratepayers.

Chairman McCarthy

Right. But the way they would do that is pay it out of Southwood and then pay themselves rent as....

David Connell, Esq.

Well there is no question they are getting it back from the Merrimack building. Kathy Hersh and I had a tour there one day and we went up to one of their dog and pony shows and they without saying why they told us at great length that this was necessary for operations, that they were over-crowded, they were violating codes with people working in the hallways down here on Water Street, and only now are they getting moral back on base and operating efficiently, blah, blah, blah. So they have already got their case made I guess for the necessity of that move.

Alderman Deane

Did you notice the sprinkler doesn't work in the river anymore?

Chairman McCarthy

No I hadn't noticed that.

Alderman Deane

That was tied into their power.

Chairman McCarthy

I think we need to ask during the proceedings what the cost per square foot was on Water Street as compared to Merrimack.

Alderman Deane

So your plans are Dave just to let them lay their information out to the PUC and then intervene at some point?

David Connell, Esq.

We will intervene right at the beginning, get all of the information as it comes out, and have a few well placed limited things to say I guess. I don't think we are going to try to duplicate the PUC's efforts.

Alderman Deane

What is our added cost and if there is any where will the money come from?

David Connell, Esq.

Somebody I think Sansoucy estimated in his mind you could profitably spend \$100,000 but that is in his mind and we don't have that kind of money. That was the reaction of everybody who heard that was to just...

Chairman McCarthy

Including Attorney Upton. Rob's suggestion was that somewhere in the neighborhood of \$25,000 if probably more likely for what it would take to do the intervention that we need to do.

Alderman Deane

But what advantage do we have to even intervening at all?

David Connell, Esq.

Even if you didn't do anything affirmatively it would be a way to get certain information about them sooner than they would otherwise want to disclose it.

Alderman Deane

So that is one of the benefits what is another?

David Connell, Esq.

That you could selectively criticize some of the things they are trying to get a return on and possibly hold the rates down lower than they would maybe otherwise achieve.

Alderman Lozeau

So one case could help the other case essentially?

David Connell, Esq.

Yeah, but as I say it is a two edged sword. I don't want to go too whole hog saying it is in our best interest to keep the rates down because then we have to live with those lower rates when we try to prove that we can run the company at that level. Maybe it will turn out that they have the information that we agree with and say yeah rates ought to be higher.

Chairman McCarthy

They are going to try for example to establish that the systems that they just bought are worth significant or more than what they paid for them and therefore that is what the rate base should be.

Alderman Deane

The thing that kind of bothers me is or doesn't bother me the thing I am trying to understand is if we do gather some information and perhaps there is an opportunity to go on the offensive with what their plans are, who is going to do that? I know the Mayor has taken his shots at what has been going on, but...

Chairman McCarthy

The way we would do that is to do it before the PUC with Attorney Upton and Mr. Sansoucy.

Alderman Deane

But it will be in the paper.

Chairman McCarthy

Right.

Alderman Deane

There will be cheap shots laid out in the paper prior to...it is unfortunate that continues to happen and I think the last barrage that went on I just look at it like...

Chairman McCarthy

When we get to play it out before the PUC and the PUC makes a ruling the only person that Pennichuck can take cheap shots at is the PUC and that is not in their best interest with the other case coming.

Alderman Deane

Right but what I am saying Brian is I don't think it would be proper for the Mayor or anyone for that matter to be making any ill-advised remarks to the press pertaining to the case. I would just let it...

Chairman McCarthy

I would agree with that.

Alderman Deane

That is what has been going on. Now you see these ads on television and the ones in the Telegraph aren't as bountiful as they were in the past but it would just seem to me from a public interest standpoint that making lude remarks at the Pennichuck staff let them bury themselves. Some people just can't give up that opportunity to lambaste the others and I think that is going to come back and haunt us if it continues to go on. We sat in this room one tried to figure a strategy pertaining to who, when and what would be released to the press and the remarks that would be made. Members of this board had no interest in ...that is why we are here, but the issue is when the press wants to write anything on it or get remarks they call the Mayor and then he starts going off to the press and then we read about it in the paper.

Chairman McCarthy

We have actually tried to make sure that all of the contact with the press was through the Mayor's Office so they don't have the opportunity to get 3 or 5 different stories from everybody. One of the side effects of that is what they do get is probably not what I would have responded but...

Alderman Deane

It is probably more damaging than the 3-5 different stories they would have gotten from others on occasion. I don't know that is just my opinion.

Chairman McCarthy

I guess the issue right now is that I think we will need to find some source to fund some additional expense for the rate case intervention. It is in our best interest. Even if we don't go through the acquisition holding the rate down by fighting a rate case is probably always to our benefit.

Alderman Deane

Now would we come across stating that ...we're using city tax dollars, has this been done in the past to go up and intervene at the PUC because of a rate hike?

David Connell, Esq.

There is a long history of mixing it up with Pennichuck on their rate cases. Not in the recent past, but years ago.

Alderman Deane

I am just looking at the fact that...

Chairman McCarthy

I believe Mayor Arel did it at one point.

Alderman Deane

I am just looking at the fact that it is going to be painted in the paper by Pennichuck as here they are spending even more of your money.

Chairman McCarthy

My response to that would be to stop you from spending even more of it.

Alderman Deane

Yeah I know I am just trying to set a stage where in all likelihood that is probably going to happen and we should have a response prepared for the actions if they are approved why we are doing it. That is my only concern. Do I want to pay more for my water no I don't.

David Connell, Esq.

When the merger case was intervened in at least an overview it looked good that went in there looking for information but also some of our own information, analyzed it all and ultimately took a position. I guess that would be the same way here you are not going in half calked deciding that 10% is wrong but 7% is right or anything of that you are just trying to protect the ratepayers.

Alderman Lozeau

We can't just send a statement from the city saying that we object to the rate case and....

Chairman McCarthy

The PUC requires that there be some technical submission with that as to what the objection is.

Alderman Deane

Basically in order to intervene they want you to number one be serious about what you are doing and if you are going to have a financial investment associated with getting lawyers and getting the material gathered to present they know that you mean business and that weeds out a greater part of the population. Anybody could go up there and do it if that is how you want to spend your money.

Chairman McCarthy

It is also their role is essentially judicial. It is not up to them to...although they do to some extent find the information and represent the customer in those questions, a lot of their stuff gets presented with two sides of the question and decide whether the answer is closer to the left or the right side and rule accordingly.

Alderman Lozeau

Assume they lose their rate case; is that appealable thing by a court?

David Connell, Esq.

Yes it is tough though unless there is some particular legal issue, but if it is just a question of whether the judgment of the PUC was right that will ...**audio inaudible**...

Chairman McCarthy

If they actually lost the rate case and didn't succeed in getting at least a double digit increase we would find them very willing to negotiate very quickly. The company is bleeding money at this point and there is no way to plug the leak.

Alderman Lozeau

But \$40,000 or \$50,000 I don't think is a huge investment. I think it is small compared to what we could get as a result just collecting data while you are there.

David Connell, Esq.

The one point made a minute ago Alderman McCarthy was even if that is all it came to it would be worthwhile which is head them off at the pass on maybe valuing some of these companies they just got a hold of an haven't been looked at before by the commission. You don't want the commission to get locked in to a position on their value that is too high.

Chairman McCarthy

Right. Also just bringing to the commission's attention the linkage between the two cases and the fact that this company has gone out and purchased assets which they know are slated to be taken. If they proceed with that they will want to understand that we should be held harmless from the affect of those acquisitions.

Alderman Lozeau

I think we should pursue it.

Alderman Deane

The next thing is to find out where we would get funds from.

Chairman McCarthy

I think Carol was looking at finding some that we could reimburse out of ... the plan of the day when I discussed it with her yesterday was to pay for it out of what we have currently allocated for paying Skip Sansoucy and then in the budget wrap-up before the Board to make a transfer out of the FY05 contingency into that account to make that whole.

Alderman Lozeau

Want to try to bring these guys up in 20 seconds or less?

Chairman McCarthy

We were discussing...Skip has advised us to intervene in the rate case and Attorney Upton agrees.

Alderman Bolton

You and I discussed it so you don't have to go into it for my benefit.

Chairman McCarthy

Alderman Shaw just ... **audio inaudible** ... Skip had a fairly high price tag on what he thought it was going to cost and Rob Upton told us he thought somewhere between \$25,000 and \$50,000 would probably be appropriate.

Alderman Shaw

For us to file as an intervener?

Chairman McCarthy

**Yes. There is one other issue that I wanted to bring you guys up to speed on, which requires ultimately high confidentiality based on the discussions we have had with Pennichuck, which is one of their major shareholders has asked them to engage in mediation with us although we are not calling it mediation we are calling it structured settlement discussions or facilitated settlement discussions. Rob Upton has actually met with Attorney Camerino from Pennichuck to look at going forward with that and set some ground rules. We probably will start having some discussions with them. It is actually encouraging that they are even willing to talk about that. I think there may be some basis there.**

**It would appear that the position they are going to take is that they would like to keep some of the outlying non-connected systems and also get the service contract on the core system when we buy the assets, which I would contend is probably a workable solution if they are willing to come up with numbers on that that are reasonable.**

David Connell, Esq.

**Rob did ask me to stress the extreme nervousness of the company over this leaking out. It would be very bad for them because apparently under the SEC rules is that they can negotiate in a case as long as it doesn't become public but if it becomes public then in order to squelch false information about it they have to disclose a lot about it. They obviously don't want to be put in that position. Their lawyer is even talking about only going into this if a document is circulated and signed by everyone on either side that might have wind of it that they will not disclose it.**

Chairman McCarthy

I actually think that is a reasonable constraint under the circumstances they find themselves in.

Alderman Deane

Interesting.

Chairman McCarthy

I think that they are in a position that they are really motivated to reach a solution of some sort.

Alderman Deane

They don't think the ads are working?

Alderman Bolton

Apparently not.

Alderman Johnson

How about the television commercial?

Chairman McCarthy

The last set of ads was aimed directly at the other communities in the regional district and it doesn't seem to have slowed any of them up.

Alderman Bolton

Do we need to take any action or is this informational at this stage?

Chairman McCarthy

This is informational at this stage. I think some legislation regarding the funding of the intervention will probably be forthcoming.

David Connell, Esq.

That will be legislation that is confidential from its outset. I don't think I have run into that before.

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

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

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

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Nay:

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**MOTION CARRIED**

**MOTION BY ALDERMAN BOLTON THAT THE COMMITTEE COME OUT OF THE NON-PUBLIC SESSION  
AND ADJOURN**

**MOTION CARRIED**

The Pennichuck Water Special Committee meeting was adjourned at 6:55 p.m.

Alderman-at-Large David W. Deane  
Committee Clerk