

REPORT OF THE PENNICHUCK WATER SPECIAL COMMITTEE

OCTOBER 18, 2010

A meeting of the Pennichuck Water Special Committee was held on Monday, October 18, 2010 at 7:03 p.m. in the Aldermanic Chamber.

Alderman-at-Large Brian S. McCarthy presided.

Members of the Committee present: Alderman-at-Large Barbara Pressly (7:05 p.m.)
Alderman Michael J. Tabacsko
Alderman Jeffrey T. Cox

Members not in Attendance: Alderman-at-Large Mark S. Cookson

Also in Attendance: Mayor Donnalee Lozeau
Alderman-at-Large Ben Clemons
Alderman Richard LaRose
Alderman Diane Sheehan
Alderman Richard P. Flynn
Alderman Mary Ann Melizzi-Golja (7:06 p.m.)

Chairman McCarthy

I believe that both Alderman Cookson and Alderman Pressly are currently out of town.

**MOTION BY ALDERMAN TABACSKO THAT THE RULES BE SO FAR SUSPENDED AS TO ALLOW ALL MEMBERS OF THE BOARD OF ALDERMEN PRESENT TO VOTE FOR THE DURATION OF THE MEETING
MOTION CARRIED**

NON-PUBLIC SESSION

MOTION BY ALDERMAN TABACSKO THAT THE COMMITTEE 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 LAROSE

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

Yea: Alderman McCarthy, Alderman Tabacsko, Alderman Cox, Alderman Clemons, Alderman LaRose,
Alderman Sheehan, Alderman Flynn

Nay: 7
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MOTION CARRIED

The committee went into non-public session at 7:05 p.m.

Mayor Lozeau

Thank you Mr. Chairman. I just wanted to take a moment to just go over the plans for this evening's meeting. As you can see Mr. Gottlieb is here and Mr. Ardingier joining Mr. Patenaude. The purpose of tonight's meeting is to walk through the Definitive Merger Agreement; the major changes from the draft that was originally

provide in July, go over the confidentiality section, PUC approval, which we talked about no burdensome condition so basically the four things that have changed that we will be talking about particularly tonight are confidentiality, the PUC approval, financing, and termination.

If necessary, we will also do an overview of the settlement agreement. Then, as you know, Wednesday night we have reserved some time after the Finance Committee meeting to just give you a very small update on how our due-diligence discussions went with the vendors that we are having tomorrow.

Alderman Tabacsko

The next meeting you said is...

Mayor Lozeau

Wednesday the 20th.

Alderman Tabacsko

This week okay.

Mayor Lozeau

We reserved a little bit of time just to say it went really well on Tuesday or here are the big problems, whatever we find out tomorrow.

Alderman Tabacsko

But not Thursday?

Mayor Lozeau

But not Thursday. Then we will try to figure out between the next few days what next week will look like for meetings. Is that about right John?

John Patenaude

Yes. If you have the agreement in front of you, it says on the first page on the top Final Merger Agreement 9-16-10. I can start off in generalities before you get the copies, and one is really the confidentiality agreement. Pennichuck really didn't want anything to be divulged at one point in time and we had to deal with the Right-to-Know Law and that is what took us so much time between the end of July and mid-September. I think Bill can fill you in on some of the specifics, but that is the major change in that section of the Confidentiality Agreement.

Bill Ardinger, Esq.

Right and concept. What is going on in this merger agreement is that once you sign it we are going to have continuing access to information about the company that includes in some cases information that is not available to the public, and before we close the deal, if we sign this agreement and are binding, they are still a public company and they are still responsible to their shareholders. We had to make a promise in this agreement that we would keep information we get from them confidential, but we could only make a promise to the extent of our power to do so because we are a public body under governing law like the Right-to-Know Law that John mentioned.

It seems simple; I promise to keep your confidential information confidential. That is all it should have been, but there was a real hard struggle because they were pressing saying I want you to keep everything confidential about our company and about this agreement, about your deliberations, and I said to them as your counsel, I am sorry this is not like Philadelphia Suburban, a private company, we are a public body and there is some stuff we can't promise. It took a long time to bridge that gap. Why? There are a lot of reasons why, people aren't used to it stuff like that. But we finally bridged the gap and the gap ended up being bridged and you will see it in your materials and when you get a copy, we have actually, in the merger agreement in this Section 606(b) said we're making a promise to keep things confidential in accordance with a Confidentiality Agreement.

Right now we are under a confidentiality agreement, we are going to replace that if this merger agreement becomes binding, with a new one that reflects the reality, which is the only stuff we're going to keep confidential is your most private commercial information that is protected from disclosure because otherwise if we disclosed stuff we would screw up your stock price. Everything else; our deliberations about our debt, about what we think they are worth, all of the stuff that we are going to do if we...remember we are quiet right now, assuming you approve this and we sign this agreement, the next morning it goes public. The Nashua Telegraph would have that lead line City and Pennichuck Agree on \$29 right. From that moment on you people are in a difficult situation. The public is going to evaluate how you made your decision, why you made your decision, and why you think it is in the best interest – please don't hold it against me, I am assuming it would be approved. If it is not, the same thing will ultimately happen.

You are not constrained under this confidentiality agreement when a member of the press or the public asks you the question why did you vote for this. Everything we have talked about in all of these meetings that you have to been to many more than I have, you can now say because this is this, this is that. You don't have to worry except about a couple of items and Attorney McNamee knows which those are and you are going to fully know these. There are only a couple. Everything after that date that you say is going to be public. The only thing we're going to promise to keep confidential is when we ask them the question how are your earnings coming and they go well we are not supposed to talk about that publicly, but in the merger agreement we are supposed to tell you, they will tell us, and then we have to keep it confidential because if we coughed up those earnings issues people might start trading their shares and it really messes up things.

That is how we have resolved it. The Confidentiality Agreement that you will read that will replace the current one that we are under, it is 7 pages long. The key promises in it are fairly straightforward as I have described it. That is the resolution we came to. Why it took so long I can't say, but we finally, they just gave up. They contacted a former Attorney General who told them the City is not trying to trick you, this is the Right-to-Know Law and it took time but we got there.

You need to read the agreement. For those who are not working with these agreements all the time it seems like a lot of wasted language and every one of these agreements seems wasted. I assure you it is not. Every word matters. The sum and substance of the promise is what we have done. Final point on this is we have made an additional promise in the confidentiality agreement, which is unusual. It is that in the event that for some reason the deal breaks off and can't get to closing because the PUC won't approve it, if that happens we are promising both sides to each other that neither side will use any of the information they receive against the other in a court case. That is the only thing that is slightly out of the norm with a usual confidentiality agreement. John turning it back to you and to any questions that is how this confidentiality agreement issue was resolved.

John Patenaude

The one thing, which is not for tonight but in some of the upcoming meetings we will be talking about items in due-diligence, that is all based on information that they have provided us so most likely we won't be able to talk about that information in a public hearing. We can have it, but it will have to be redacted out of the minutes because it is all private information that they have provided us.

Bill Ardinger, Esq.

For example at Wednesday's meeting. When all of that information; salaries of all of their employees, what is their land situation, this is all very confidential information. That stuff is the kind of stuff we are promising to keep confidential until we own it. That is exactly right. The rest of the meetings with the deliberations that the board has had that we can talk about we just can't talk about – they have given us a projection for example of what their earnings will be we can't talk about that publicly.

Alderman Pressly

Does this agreement go on forever or after the deal is signed, sealed, and delivered does that confidentiality agreement disappear?

Bill Ardinger, Esq.

When we sign the Merger Agreement and we get that press announcement the next day and we go for say 6-9 months in front of the PUC, it is all going to apply and all of that promise lives. Then let's assume we get the approvals and we close so all of their shareholders sell their shares to us in a merger for money okay, at that moment when the sole shareholder is now the City, you can exercise that power to direct that you made a promise to yourself and you can change that promise so that agreement can go away if that is what you choose.

Alderman Pressly

We would have to vote it to go away?

Bill Ardinger, Esq.

Yeah or the company that you now own might make the decision on its own to say this agreement is now null and void. It doesn't make any sense at that point.

Alderman Clemons

If I could, I guess the only thing that I have a concern with that has been mentioned is the due-diligence. Not necessarily everything in the due-diligence, but if there is something in there that would make us want to not vote in favor of this then how are we going to resolve that?

Bill Ardinger, Esq.

You will have the right to everything. It is just that the minutes to that meeting information from that meeting will have to be redacted. It is not confidentiality from you the Board of Aldermen but really from external.

Alderman Clemons

I understand that and that is exactly my point because if something comes in there where, and I don't know what it could be, but if there was something that came up that would add a significant cost say to the ownership or something that wasn't foreseen comes up, I don't know what it could be, but something that would make you not want to approve this deal, how are we going to explain that to the public if that came out of the due-diligence process? We're not?

Bill Ardinger, Esq.

Given that the minutes of this meeting are going to be disclosed to the public, and I don't want to taint these, I am not going to come up with a specific example. I think your due-diligence session you are going to hear some things that we found that are not perfect and you are going to evaluate it. Whether they rise to that level remains to be seen. But if you get in a position where you are going to vote no on the ultimate deal, the merger agreement would never get signed. Ultimately you are going to see that the process that has commenced will unravel. It will become public at some point that the City and the company are no longer in discussions. It is pretty much common knowledge now that we are even though we have both promised each other that we wouldn't talk about it.

I think if the media were to come to you and say why did you not vote to approve this you want to say because there was this piece of paper that showed awful company or something and it wasn't worth the price. I think you are going to have to find a diplomatic way to say we could not reach agreement on price without divulging that piece of paper. It wasn't in the interest of the citizens of Nashua, well why, because the rates would be too high. You are not giving up the information. I think it is going to be an exercise of diplomacy.

Alderman Clemons

Okay.

John Patenaude

Any other questions on confidentiality? I can go through burdensome conditions. If you would start with the one that I missed earlier today.

Bill Ardinger, Esq.

You have gone through the merger agreement structure, which is pretty simply; what are we buying, how much are we going to pay, they make a bunch of promises to us in their representations about how good they are, we make a few promises to them about how good we are, and then we make promises that during the period we are under this agreement both sides are going to do certain things, and finally it says how do you get out of the agreement. That is the general flow of the whole agreement.

What John is pointing to is a promise that we made to them about the nature of the regulatory proceeding, what we are going to do. We are making a promise and in the draft that you had in July we made a promise both parties are going to work together to win at the PUC. That was the simple promise. They were interested in knowing well what is your plan that you are going to present to the PUC. Now we want to reserve all of our discretion. The easy answer is, for your representatives, we don't know the plan because the Legislators have not yet spoken and made the decision, which is you. They said but we need to know a little something so in this section 604(d), we have said that we will cooperate with each other to get this PUC approval and that it is going to be our intent, the intent of the acquirer, to operate and manage these regulated subs, PWW and the two other little ones, as public utilities. That means we are not going to try and pull them out of the jurisdiction of the PUC regulation, we couldn't, and we are going to operate them in the ordinary course consistent in all material respects with all prior regulatory status and treatment.

They kind of know here, they say you are going to try and do plug and play the Mayor has called it, you are going to try and run them basically the same way you are just going to substitute yourself, the City, as shareholder for their shareholders and going to kind of run in the same format. There will be big changes; there won't be a number of high officials at the company and there will be some other changes, but we are going to tell them we are going to do it basically the same regulatory treatment.

The second thing we said is we are going to ask the PUC to include in our rate base an acquisition premium, an asset sufficient to generate enough cash from ratepayers to pay the city's debt. That is clearly telling them this is our plan, we are going to have rates sufficient to pay our debt. Interesting, not a profit on the shares

anymore, that is the difference. Ultimately if this works out that will be a benefit because paying the equity rate of return is higher than the debt return so we're telling them look, and if we don't get this and there is another section, that means that we are not happy and we are going to have the power to get out of this deal. That tells them, John I think that 604(d) was a change where we are saying more clearly what our plan is when we go to the PUC. I think that provision ended up working in our favor as to how we want to present it to the PUC.

Bill Ardinger, Esq.

Thank you. Go to 702(d) – Burdensome Conditions on page 42 of the draft. This section, Article VII says we don't have to go forward and pay them the money unless these things happen or don't happen. This one is there must be no burdensome condition at the PUC before we go forward. They fought really hard about this because this is kind of...think of it as this is our out, if you are buying a house if my financing doesn't come through I get out and I don't owe you my money you can't keep my escrow agreement. This is a big out because we are promising to pay \$29 a share to every one of their 4 million plus shares. That is a big promise. This says very simply if the PUC approves this deal right, but imposes some burdensome condition like you have to establish a \$40 million mitigation funds, like that, we can look at Pennichuck and their shareholders and say we had this agreement, but under this provision we do not have to close. We don't have to close and pay. In other words, that will give us a lot of power before the PUC to say to the staff if you impose that condition we may walk and so we are trying to get this...now Pennichuck fought this. You will see in your July version they were objecting strenuously. Why, like any seller they want as few outs as possible. But what we resolved to was this provision, which is in there.

By the way, it shouldn't have been hard for them. It was one of these things where they fought, fought, fought and we were at a meeting where they had for one of the first times outside counsel present, and they were fighting in the meeting and turned to the outside counsel, their guy, and he said oh no this is a very fair provision, it is in every one of these acquisitions so at that point all of the air went out and we got to this solution. This is an important provision if for example you are talking to a voter, citizen, resident well wait a minute what happens if the PUC sticks you with the mitigation fund, we can evaluate that, at this time we wouldn't have to close.

Alderman Pressly

You keep saying when you present this to them. Who are you presenting this to? Who is on their team?

Bill Ardinger, Esq.

Most of the time it was their CFO, Tom Leonard, their Lawyer, Roland Olivier and at a couple of meetings Mr. Montopoli was there and Mr. Ware was there. It was only at a few meetings where they had counsel from another outside law firm that were there. That was the team we were meeting with. Ultimately even though we had trouble on a few of these provisions, we did get it done.

Alderman Pressly

So there were no board of directors?

Bill Ardinger, Esq.

No no. The board never really attends any of these kinds of negotiation sessions. They sit not unlike what you are doing, and review the outcome of the work and then decide to vote or not.

Alderman Pressly

Okay.

John Patenaude

That was one big change in burdensome conditions and the other one was in financing and Bill can go through that as well.

Bill Ardinger, Esq.

Financing is the one you are most comfortable with, it is the one when you are selling your house and you tell the buyer is this contingent on you getting financing or not. You want it to be without a contingency as a seller and the buyer wants a contingency. This is that provision except in a much bigger agreement with a lot more at stake. What this is saying is that we don't have to close unless we have made financing arrangements that raise the money necessary to pay this on terms that we reasonably determine are acceptable to us.

Now that was our initial proposal. They, although this is on the record, it was not unreasonable for them to object to that first proposal of ours and they tried to give it definition. We negotiated a significant time period to come up with this provided however clause that you may see right there in (e) that says basically that it is not reasonable for us to say we haven't gotten good financing if we can get financing on these terms: general obligation debt, \$160 million total, repayment over a 30-year term, optional redemption for five years, and a true interest cost of no greater than 7% and the interest would be includable in gross income, this is the taxable deal. What this is saying to them is if we were to go all the way through this process, get the PUC approval, and get to the end, and everything has been done, all conditions are gone, and our banks or our market is saying you could issue general obligation bonds at \$160 million at 5% you can do this, but let's say we got cold feet, let's say there has been elections and things have changed, if we can get money at 5% 30 year debt general obligation, we can't get out under this clause. We can only get out if the market, for example let's say Israel has bombed Iran and market rates have skyrocketed. Lawyers are filled with disaster. I apologize. If we get interest rates at that level like at 15%, at that point we can say we can't get good financing we are out. We can do that, we just can't trick them. That is the deal that is expressed in this provision.

John Patenaude

That is one that you will see is still highlighted. It is open. They have to do their due-diligence to make sure that they are comfortable with the 7% rate, and that is what they were doing.

Bill Ardinger, Esq.

And also the five year call option has an interest rate affect in here. They are looking at that with their advisors.

John Patenaude

So those are the major changes there. The next major change came into the termination provisions on Section VIII. A lot of those were major re-writes. Bill why don't you just go through those. I think once you go through those, those are the major changes from the agreement you saw back in July.

Bill Ardinger, Esq.

Article VIII in this agreement is like most termination sections of merger agreements in most respects. It has been negotiated and we can go through quickly a couple of the changes. The only thing that is really unusual about Article VIII is you will see Section 801 if you look at it on page 43. This one has been in no other merger agreement that I am aware of, and what this is that under State Law, the Municipalization Statute, this agreement cannot become binding on the city until this body has made a vote in public to authorize the issuance of the debt. That is why this agreement has this two step feature in it which is you sign it after a non-public meeting authorization, it goes public, and then you have kind of a type of second bit at the apple. There will be public debate and then there will be a presentation of an authorization to issue bonds and that vote will be a big public vote.

This thing says that while this is binding on them, this agreement, right from the very get go it is not binding on the city until that public vote. That provision is quite tricky, it has never been done before in any merger agreement that I am aware of, but it has to be because of the way State law works. We struggled a long time with them on this, but finally they understand the position. That is 801. Are there any questions on that provision? That is important. It will come up in your discussions with the press. They will say well is this binding on us, you haven't even had a public vote how can you make this \$160 million promise without a public vote. We have fought and the Mayor actually was really clear on this, made it very clear to us you must reserve the right of the Board of Aldermen to have a public vote before this becomes binding and we were able to achieve it Mayor and you did not have to kill me. Are there any questions on that?

Alderman Pressly

It sounds a little bit like what they do. When they were going to purchase Philadelphia Suburban they had made the offer, they had the agreement, but they had to get the vote of the shareholders. It sounds a little bit like what this is.

Bill Ardinger, Esq.

It is a little bit like that except it is unique. In that case, Philadelphia Suburban was going to buy them like we are going to buy them...

Alderman Pressly

Okay.

Bill Ardinger, Esq.

...and in fact their shareholders did have to approve that transaction and they have to approve this. One of the conditions to closing is that their shareholders must vote to approve it, but the company is still bound to this agreement on day 1. The agreement has this issue that if shareholders vote against it no deal, but they are bound on day 1. We are actually not bound on day 1. That is the difference.

802 is the series of sections A through I that says when can you terminate and how can you terminate. Just an example, a) if we agree mutually with them to terminate this agreement and not go forward, we can do it. In the second one, b) if we get a negative decision by the PUC either party can give notice that they are going to terminate this agreement so in other words if the PUC says I am not going to approve it no, each party now has the right to get out of this agreement. It is important to note in this case that we have protected against the right for it has to be a final decision so appeal rights. You could appeal at the Supreme Court and the other part can't get out yet. That is an example. You can see in c) if we don't get the financing then within 90 days after everything else, all of the other conditions have been satisfied, then the company can terminate. We can't string them out if we are struggling on the financing. Very important one here is e) either us or the company, Pennichuck, can terminate this agreement if it hasn't closed before December 31, 2011. This is a big deadline, and you think it is like way out there right, we haven't had Christmas here yet in 2010 and you are talking about 2011. This is a real deadline.

We have asked the question do you want to move this deadline back to them and they said no we have to keep the pressure on. It is not an unreasonable position, but if we get out towards, get the PUC decision but we appeal it, you could very easily see a situation where you could ride right up to 12-31-2011 and you would have this right to terminate that would arise for either party. That could be a problem. You could have a situation where we had promised to pay \$29 a share and for some reason, I won't use the awful hypothetical again, water companies become the most valuable securities on the stock market and they all quadruple, and we have the right to buy this one at \$29 a share, it should be \$80. I will tell you they will drag their feet to get to that deadline date so that they can terminate.

If they drag too much there are other provisions in this agreement where we can sue them and they would breach it, but that is an important data that is in these termination clauses. I will close this one with f) and g). F is either of us can terminate if this Board of Aldermen doesn't make that public vote to authorize the issuance of the bond so if this board says I am not going to do it in public both sides get out no costs, it is over. That was another thing that the Mayor was very strong on. They were asking for a penalty if you all voted in public no and the Mayor said absolutely not there is no penalty for that public vote.

Mayor Lozeau

I was pretty confident you would back me up in that.

Bill Ardinger, Esq.

Yes. G is the other one Alderman Pressly the stockholders meeting. If their stockholders don't vote in favor, then either side can terminate the agreement. Obviously there are more provisions. Those are the key highlights of 802.

Alderman Sheehan

I have a question on E. Because of the drop dead date, what if an intervener slows up the process? That could take a lot of time.

Bill Ardinger, Esq.

Absolutely right and that is any circumstance including intervention at the PUC could cause us to start riding up against that deadline. Now just like I said there can be cases where the price quadruples and this is a really good deal for us, the opposite could happen too, we could have a second dip in the recession, the market could collapse again, all of the other peers in the water industry could decline, and this \$29 could be

something we would like to avoid. We might then be encouraging interveners. It is one of these things that we have picked as long a date as possible that we could negotiate, but it is important and I think it will come up in...there are few things in this merger agreement that will come up in the public discussion, this is kind of one of them I think.

Alderman Tabacsko

With this December, 2011 that to me seems like this is the second time now we are putting pressure on the PUC to deal with this perhaps in a more timely manner than they would otherwise. Is that good or bad for us? I could see the PUC not particularly wanting to have that kind of pressure placed on them.

Bill Ardinger, Esq.

I will give you my sense you are starting to...I actually think you are in a position where you all and your experiences as public officials, you may have a better answer than I can offer. There is a fine balance here between picking a date that takes all of the pressure off, allows people to strategize a lot, intervention strategies to develop, other towns perhaps to come up with strategies. You don't want to leave it open ended. Our judgment is that the PUC is interested in having this case resolved on a consensual basis if it is possible. If it is not, I don't think they're thrilled about it. I guess on balance Alderman Tabacsko I would say the gamble is that this is the right date.

Chairman McCarthy

Basically from our experience with the eminent domain proceeding this is different in that in this proceeding it is the same as any other merger in that both parties are coming and saying this is a good idea and the PUC has to exercise its regulatory authority of do we believe that it is a good idea. In the case of our eminent domain the PUC is basically performing a judiciary function between two opposing parties. I can see where they were nervous about doing that on the scale that it was done, but I think what we are putting before them here is much more in keeping with their normal course of business. I agree I think if it is consensual they will want to get that off the docket in less than a year, which I think is what we are winding up asking them for.

Alderman Pressly

Does the choice of this date have anything to do with the city elections because I don't mean to insult anybody, but we might have some lame ducks at this point because the election would have been in November, and yet the new board would not take over until January. The people around this board might not be the same.

Bill Ardinger, Esq.

I can answer directly the question from the negotiating team perspective is no the thought never entered our minds.

Alderman Pressly

That was not a factor. But that is the truth. That is the position.

Bill Ardinger, Esq.

It may have been a failure for us not to take that into account, but we were thinking more about the deal.

Mayor Lozeau

I didn't bring it to your attention to pay attention to because I wanted you to do it based on the business deal that we were trying to do. I gave some thought to any political campaigns kind of coming in the middle of when we announce this. Some people may run because they support what we are doing and others may run because they want to undo what we are doing. You could lose your mind thinking about how that plays out with the dates and so I really just wanted them to work this like a business deal that makes sense with a reasonable amount of time. It gives us the chance to have the public hearings we want to have, take action on it, let the PUC do their business, and get our work done. I think it will fall right.

Alderman Pressly

I appreciate that, but I am struck by just the coincidence of that being the situation of that time.

Mayor Lozeau

Yeah it is just...

Alderman Pressly

I don't know if it is good, bad, indifferent or if it will have any impact at all. I think chances are there might be some change somewhere.

Chairman McCarthy

We are not making decisions in that timeframe it is basically up to the PUC by then.

Alderman Pressly

Okay so there would be no vote on this board any time near there?

Mayor Lozeau

We should have our vote done in the next couple of months at the latest.

Alderman Pressly

I am just thinking of the interveners and that sort of thing. I just think it is worth noting that ...

Bill Ardinger, Esq.

There could be decisions of the Board of Aldermen to decide whether or not to extend the date. This date is in here, but if both parties want to extend it they can extend it together so there might be some decisions of the board out at this point, but at the risk of entering the political world I would like to say I agree with the Mayor I think this is not a good, it is almost impossible...I hadn't thought about it, but my mind would break apart if I tried to figure out all of the different election matrix. This is just the end of the year nothing more than that.

Alderman Tabacsko

The end of the next year.

Bill Ardinger, Esq.

Exactly. Alright so that is 802. This is how you terminate. 803 says what happens if you terminate and the biggest key here is expenses and liquidated damages, which is (b). Now tracking all of these things requires some careful reading, but the basic thing is it says if we terminate this agreement, and you can see the way it is crafted, because they have breached it not in a willful way but that they have breached it, they owe us \$1.5 million. It is liquidated. We don't try and calculate what the damages are that is what they owe us. Similarly if they terminate the agreement in the little roman iii, because we have breached the agreement not willfully but breached it, we owe them \$1.5 million.

If you look at roman iv if their shareholders vote against the deal they owe us some magical amount Mayor, \$250,000. I wonder where that number came from, but they...

Mayor Lozeau

The \$250,000 that they owe us from chatting with them the last time.

Bill Ardinger, Esq.

There is a bit of harmony and karma in that number. Now if we willfully breach the agreement or the willfully breach the agreement with intent, let's say everything goes swimmingly at the PUC, we have available financing, but some board gets together and just says I am not going to go ahead I vote to direct that no officer of the city shall close this deal, that is a danger zone. If there is a willful breach you can file a contract action in court, and you can sue for damages. The same for us; if that price were up at \$82 and we had it at \$29 and they willfully breached the agreement we could file a lawsuit against them for what we believe we lost. Willful breaches are bad. These other breaches that are not material we have liquidated the damages.

We fought a lot about since July how much the liquidation should be and this is how we resolved it. I think those are the important things in the termination clause. I guess I would add one other thing, you already talked about the superior proposal at the last meeting in July.

John Patenaude

That was in there at the last meeting.

Bill Ardinger, Esq.

That was in there good. That is important. Just to note, if for some reason some company comes in, Philadelphia Suburban or its successor came in and said in front of the shareholders don't go through with it, I will pay you \$50 a share, at that point, if that happened and the shareholders failed to go through with it, we would get \$5.5 million, which is another magical number that is designed to try and recover the cost of this enterprise for all of these long years for the city.

Chairman McCarthy

Why can't we just force them to go through with it and get \$84 million?

Bill Ardinger, Esq.

They have the right to get out if their shareholders, they have that right they have to. We can't even bind them in that. This is a common provision and that was the only other thing. That was the same in the July version. That's it.

John Patenaude

So those are the major changes to the agreement. Any questions?

Chairman McCarthy

Are there other sections of the merger agreement that anybody wants to talk about?

Bill Ardinger, Esq.

Most often these agreements are good for putting you to sleep.

Alderman Tabacsko

Assuming that this all happens here in the next couple of weeks as we are expecting, review again the timeline from there, when does it get to the PUC and that kind of thing?

Bill Ardinger, Esq.

The timeline would be that the 90 day, I call it the 90 day for bonding would be either mid December or probably the first week in January depending on where we end up on due-diligence for the signing of this. Then at that point in time soon thereafter and probably within a day or two we would file with the PUC. The PUC can take 6 months, 8 months, but in the meantime clearly we would be working on making sure that we have all of our financing documents together ready to go, and they would be working on their Proxy, which they need for their shareholder vote and as soon as the PUC would give their approval they would be ready to go for the shareholder vote and then as they are doing that we would, at the end of that process, go in and get our financing finalized for the transaction.

Chairman McCarthy

Do we know what else is likely to be on the PUC's calendar next year? Are there any major electric cases that we....

John Patenaude

You are teasing right?

Bill Ardinger, Esq.

Northeast Utilities announced that it was buying NStar today for \$4.3 billion.

Chairman McCarthy

No I didn't know.

Bill Ardinger, Esq.

I think that will require approvals in all New England jurisdictions. However, that alone wouldn't be enough to derail commitment of resources to handle this case at the PUC.

Chairman McCarthy

I actually was not aware that happened.

Bill Ardinger, Esq.

The last document we have is a Settlement Agreement, which is an Addendum to the DMA. It is really settling the eminent domain case. If you look at what can happen here, if the deal doesn't go through, we both sign and then the 90 day vote doesn't go through or it is a no vote then the settlement agreement would be filed and the eminent domain case would be done at that point in time. If at any juncture before the end of the end game that there is a termination then again this settlement agreement would be signed and be the end of the eminent domain case. If the agreement goes through and all of the transaction finally occurs then this really never gets signed because there is no need for a settlement.

John Patenaude

Let me just qualify one...this agreement is actually going to be signed at the time of the merger agreement so this settlement agreement gets signed and it, unlike the merger agreement, is binding on the city. This agreement is saying we have been in an eminent domain case, we are now reaching agreement on a consensual transaction to resolve it, and no matter what happens if this agreement is concluded and we close the deal there will be a piece of paper that is attached to it called a Withdrawal Notice that gets filed at the PUC and terminates the eminent domain case, obviously, because we didn't need it anymore.

If for example you were to vote no at this public vote, that ends the merger agreement, it is over, but this settlement agreement then requires the filing of that withdrawal notice with the PUC, eminent domain is over. The importance of filing that document ending that eminent domain proceeding is that under the Statute it starts a two-year moratorium, two year period where no further eminent domain action can be taken by the city. Basically right now the eminent domain proceeding is sitting there moribund, but it is at the PUC still alive. On this track, if we do the merger agreement, we are agreeing to resolve that case and settle it. It is just when is the only question, but there is no other way out eminent domain will be over if we sign the merger agreement, it will be over depending on what time.

Alderman Tabacsko

And we needed to do that in order to get to the definitive agreement?

Bill Ardinger, Esq.

Yes exactly. They wanted some certainty.

Alderman Tabacsko

That was going to go away.

Bill Ardinger, Esq.

Exactly right. And frankly the thing is so moribund it is not even on life support anymore really.

Alderman Tabacsko

On that same note, the \$40 million piece that the PUC had talked about in the eminent domain case, do we believe that the consensual agreement that we are providing here and the plug and play type of operation is sufficient to address the concerns the PUC raised about those outlying customers?

Bill Ardinger, Esq.

Yes. All parties to this negotiation, both Pennichuck and the city, believe that this is a different proposal. In the eminent domain case if you think of Pennichuck as the corporation at the top that is publicly traded and it has all of these subs; the two little ones and then the one that we care about, PWW, we care about all of them, but the two little ones and Pennichuck Water Works, we were trying in eminent domain to take all of the assets of Pennichuck Water Works and separate those functions and activities from these two. That is where the PUC says we have to put up a mitigation account. In this case, we are not separating we are going to buy the shares of the top box and so all of the synergies that exist are still there, and therefore, we are really confident – you never know, but we are confident there would be no basis for a mitigation fund.

If after buying the company the city were to move on a path to purely municipalize, take it out of this corporate structure, you dealt with the tax issue let's say, and you were going to start separating the PWW activities from the other two, at that point, the concept or problem of the mitigation fund comes back into being, but this structure we don't believe it will come up.

Alderman Tabacsko

Thank you.

Chairman McCarthy

Are there any other questions?

Alderman Flynn

In this scenario, we are going to vote for a DMA prior to any agreement by this board of how much we are going to finance for the water company is that true? Does that come separately afterwards when we decide to vote for the bond?

Chairman McCarthy

There is a separate vote on the bond yes.

Alderman Flynn

So you may agree to the DMA, but you have objections when the bond comes forward if it doesn't cover all of the city's costs?

Chairman McCarthy

I would hope that we will get that...

Alderman Flynn

When will that discussion happen when we are signing the DMA?

Bill Ardinger, Esq.

That discussion will happen before you sign the DMA so that you will have full disclosure of how much you need to borrow, what are the elements of that borrowing...

Alderman Flynn

That has something to do with how your argument is going to go forward to the PUC.

Bill Ardinger, Esq.

Right.

Alderman Flynn

Because the PUC may find it a lot more attractive at \$155 million than it would at \$160 million. That discussion is going to happen the night we vote on the DMA?

Bill Ardinger, Esq.

Or even before that if you want to, but the \$160 million just keep in mind that the \$160 million in the contract here it is really up to \$160 million. You can vote for less.

Alderman Flynn

The \$160 million would recover all of our costs if we did that or most of our costs right?

Bill Ardinger, Esq.

That is why we put it in there so that you would have an option to go that high.

Alderman Flynn

And in this section, we call it general obligations, but these are going to be revenue bonds not general obligations bonds aren't they?

Bill Ardinger, Esq.

No.

Alderman Flynn

These are going to be bonds that are going to be paid through the rates ...

Chairman McCarthy

Yes.

Alderman Flynn

...and then the recovery from the water payers correct?

Chairman McCarthy

Yes.

Bill Ardinger, Esq.

But they are general obligation bonds.

Mayor Lozeau

But they will be paid for by the revenue from the business of the water company.

Alderman Tabacsko

How do we carry them? Does the city carry this as part of the overall city's bonded debt?

Mayor Lozeau

No.

Alderman Flynn

Is this a change?

Chairman McCarthy

They are general obligation with respect to the corporation correct?

Bill Ardinger, Esq.

No the city.

Chairman McCarthy

They are city general obligation bonds?

Bill Ardinger, Esq.

Yes.

Mayor Lozeau

The reason that this question is coming up and there is concern is because there is a certain level of debt that we carry and a certain level that we don't want to carry. So that is why we talked about when we had that legislative change we talked about being able to do either.

Bill Ardinger, Esq.

You were way ahead of me. In the past transaction that you were looking at a couple of years ago it didn't get fully baked, but the concept from my review of your minutes was that people were thinking about what are traditionally know as revenue bonds, which mean the only thing a holder of those bonds could look to for repayment was from the revenues of the utility activity. That is what you are thinking about. In this particular deal as we started to look at it and looked at the structure of this company and they have tax exempt debt outstanding, which is fairly well priced, we found out that issuing traditional revenue bonds things that are

called revenue bonds would not be in the best interest of the city. Instead the formula that would work best would be to issue general obligation bonds that is the full tax base of the city is pledged to repay as well, but the city is still going to have access to the operations of the utility, which is going to be driving additional cash into the city's general fund. That money is going to be more than sufficient to pay off the debt service or sufficient to pay off the debt service on the general obligation debt.

We ran into a problem what about the debt limit, what about the debt limit that all cities operate on and what the Mayor authorized and just to keep all of our options open, we went back to the Legislature to that special legislation, remember no city in the country is allowed to own a private corporation you are the only city because of the 2007 legislation. We went back to that 2007 legislation and we said that the city can use general obligation debt in addition to the traditional revenue bond debt and that it would not count against our debt limit. So you can issue general obligation debt, which has got a lower interest rate than the revenue bonds, and it doesn't hurt your debt rating.

Mayor Lozeau

Or our limits.

John Patenaude

I actually talked to First Southwest last week on another matter, but they said that this debt would not impact the credit rating. They think it is easy to finance.

Chairman McCarthy

The reason that the general obligation bonds are more advantageous is simply that the interest rate is lower on the secured debt than it would be on...

Bill Ardinger, Esq.

It is cheaper to get the general obligation bonds. If you go with revenue bonds you have to put out a whole prospectus and it is pretty costly.

Chairman McCarthy

I think the downside is, let's say for example that suddenly everybody in the watershed decided to stop watering their lawns and revenues went down substantially so that we could not cover the cost of the bonds, we would then be forced to do one of two things, either to raise rates substantially which we might not be allowed to do by the PUC or we would have to raise the revenue from taxes rather than water revenues. I guess the PUC in its regulatory function can't really tell us that we can't recover the cost of the investment.

Mayor Lozeau

Exactly.

John Patenaude

That is exactly right.

Bill Ardinger, Esq.

And that is why we put in the agreement that we have to get the PUC on board with service the debt. They have to give us enough monies in our projections anyway to service both the interest and principle portion of our financing.

Mayor Lozeau

That is the only reason it changed Alderman Flynn was the dollars were driving the decision.

Alderman Clemons

Not to be the devil's advocate, but what happens in the case that Alderman McCarthy just said where it is a particularly wet summer and we didn't raise enough money through the rates to pay that and we can't raise the rates so we have to find another source of income which I assume would be taxes.

Chairman McCarthy

We can raise the rates. After I thought about it, the PUC gets to regulate the rate and can statutorily regulate the amount of profit that the shareholders are entitled to on their investment. We are asking for zero in the first place so they can't cut that. If we walk in with a rate case that says this is what it takes to pay the debt that runs the water company and the operations they are more or less required by law to grant us that rate increase because we are not asking for a return.

Alderman Clemons

Okay. My other question is in regards to blurring the lines between a corporation and a municipally run water company. How does that factor into that?

Bill Ardinger, Esq.

The new company when you establish it will be established with both equity and debt so there will be a note from the city to the new company or to Pennichuck so there will be an interest bearing note so there will be interest and principle being paid to the city and also dividends although a lesser amount of dividends to the city so it can pay down its debt. It is a normal capitalization of a company.

Alderman Clemons

Okay. And so then carrying that further I assume that in the opposite case where there were we took in more money than it cost to run the company that year, this was brought up before, could we use the extra money to pay down the debt or would that have to somehow go back to the ratepayers?

Bill Ardinger, Esq.

It is servicing debt. Again, you are never going to have...in a perfect world you would have the match, but it is not going to be perfect because you are going to have weather factors...

Mayor Lozeau

He is asking what control we have over where the money goes so yes we could pay down debt service. We could re-invest in something, we could replace pipes or...

John Patenaude

Or you could leave it in a rate stabilization fund, which is most likely what would happen. If you had that opportunity you would build up a fund within, not you, Pennichuck Corporation would build up an internal fund that literally is a rainy day fund so the year that is really rainy and the ordinary revenues don't cover it you have the ability to use that fund to cover losses if necessary.

Alderman Clemons

Okay. And I assume that under State law it would be, I hope it is illegal for us to move that money out of Pennichuck into some other...

Mayor Lozeau

And decide that we have saved up enough money and we are going to build a new school kind of thing?

Alderman Clemons

Exactly.

Mayor Lozeau

We can't do that.

John Patenaude

It will be regulated.

Bill Ardinger, Esq.

It is not illegal, but the exact formula that Alderman McCarthy just focused on works the same both ways so you were absolutely right to bring up both hypotheticals, but the PUC as long as these three water utilities are under its jurisdiction, if all of a sudden they are throwing off so much income that you are getting very high rates of return to their shareholder, the PUC can initiate a rate proceeding on its own to lower rates. That formula is supposed to get you right to the point where you are covering, like a revenue bond, you are covering your obligation.

Alderman Clemons

Okay.

Chairman McCarthy

Along those same lines, and going back to Alderman Flynn's question about covering the \$5 million in city expenses that we haven't decided yet, it occurred to me the other night that if we do it, if we don't take care of that up front and we look at how the economics of the operation go, in times when we are actually running at a surplus in water operation can the board of directors effectively declare a dividend in order to pay that back to the shareholder?

Bill Ardinger, Esq.

I think the answer would be subject to the McCarthy formula that catch you if you have way too little return or way too much. The answer is yes. You own stock in N.U. or in the old days in PSNH, you ended up in a year when there were lots of hospitals running 24 hours a day lots of electricity sold, you would get a bigger dividend. They could declare more of a dividend. Now then the PUC would move in with the consumer advocate right and say that is too high, but you could easily see \$5.5 million getting in a real dry summer or if you have a real big commercial customers that uses a lot of water, generating that kind of unexpected revenue.

Chairman McCarthy

I guess I'm just seeing that as a way for us not to burden the initial cash flow of the corporation, but if in fact things work out as well as we think they will to still recoup the \$5.5 million that we have invested.

Alderman Tabacsko

I would even go as far as to say spread that out over a period of time. If you are going to assume that this is going to be a well run company and you are going to operate within this range and so that both sides of that equation work out and you fund the rainy day fund and you fund a dividend of some modest amount back to the city to recoup that money. I kind of like that better than the financing it all up front.

Bill Ardinger, Esq.

Alderman Tabacsko I am wondering if it is not the same thing. Let's assume that you borrow instead of \$155 million n\$160 million, now what you have are rates set sufficient to spin off little bits of money on that \$5.5 million and like building a new school like my wife is the president of the school board in Concord, it spreads the cost of that burden over 30 years of ratepayers. The only thing about not going for it up front in a way where the PUC has approved it, you are always at risk that someone at the consumer advocate says I don't want you to pull that \$5.5 million out.

Chairman McCarthy

I think it is not a question of the mechanics of the financing because you are right the money costs the same whichever way we do it, what it is a difference of is where the risk is assessed. Right now we have already spent that money. If nothing else happens there is no down side either in the city or in the water rate. If we borrow it and pay ourselves back it will get spent somewhere out of the city's general fund and it won't be there and then if we have problems with the water utility rates will go up because there is an extra \$5 million in burden. I think some of us may think that leaving the risk on the city side until such time as we know how well the entity is going to run may be advantageous.

Mayor Lozeau

Although I might argue that there is some combination of some money up front. The million dollars that we took, \$500,000 of which I had intended to increase CERF with that we didn't do and the \$500,000 we took out of it I think it is very important to return that million and we have been clear about that I think all along. What I want to see is the numbers to figure out...I know I want that \$1 million at least, but do we want to look at \$2.5 million now and \$2.5 million a little later or whatever that equation might be? I want to see how the numbers look before I do that. I also want to see how the due-diligence plays out. I am not yet convinced that there might not be still some numbers that we want to look at more closely.

Chairman McCarthy

Was your question sufficiently answered Alderman Flynn?

Alderman Flynn

I think my question is out there. The other thing I am still trying to clear up in my mind, do we have to prove to the PUC that we can run a water company as cheaply as Pennichuck can? Do we have to prove that or does Pennichuck have to prove that we can't. Of course if they want the \$29 they really wouldn't be fighting us hard on that.

Chairman McCarthy

Pennichuck will be trying to prove that we can also.

Alderman Flynn

How does it come down that the PUC has those skills to decide when it really is in the city's best interest if both parties arguing are on the same side of the table?

Chairman McCarthy

We would effectively present the model that we have developed for rate making and how that is going to play out in the rate. The PUC is already quite familiar with Pennichuck's rate cases and how those are likely to play out in the future. It is up to them to essentially apply the no net harm standard on that and say the rates will probably not be much different or not substantially higher under city ownership than under the ownership of the utility.

Bill Ardinger, Esq.

In addition to the rate side, which I agree with Alderman McCarthy that is going to be the principle they are going to ask, is how are the ratepayers going to be treated as a whole under this transaction. But on management Alderman Flynn which you asked about, they are going to ask the question how the heck do you plan to manage the operations so that this service continues to get delivered on a quality basis. We have to answer that question. Unlike the first case where we were dumping all of the existing Pennichuck management, we had to come up with an answer to the question and we came up with the answer Veolia, a third party operator so you are right that question is going to be asked and we have to answer it. This case is going to be different. The answer is the same people are going to run it that have been running it. It is going to be the exact same Don Ware; maybe other employees depending...the only thing that is changing is the shareholder. And they will ask the question they will say yeah but what kind of control and domination does the political process, the shareholder, have over this important public service operation and what we are going to do is hand them Articles and Bylaws that demonstrate that this board has just put an arm's length in between the political process, and I think that will answer the question.

So those two components, it is the same people that have been running it up to now plus the political process is shielded through decisions that the board itself has made. That will allow us to make our case and prove the management point.

Chairman McCarthy

Is there anything else? Is there anything else we need to do this evening?

Alderman Pressly

Would you put in the record that I have joined and I think Alderman Melizzi-Golja?

Chairman McCarthy

I did that.

Alderman Pressly

You did that?

Chairman McCarthy

Yes.

Mayor Lozeau

Right at the beginning.

Alderman Pressly

Thank you. I don't know that I mentioned that Alderman Melizzi-Golja had arrived.

Alderman Melizzi-Golja

I thought I heard you say that.

Chairman McCarthy

I did ask if you wanted your seat and I thought that would...I'm guessing that our staff will figure out from that that you are here.

Alderman Melizzi-Golja

Yes.

Mayor Lozeau

Alderman McCarthy can I just get a sense of the group; are people interested in coming Wednesday night to hear how tomorrow goes?

Alderman Sheehan

Yes.

Mayor Lozeau

I would hate to bring folks in if folks aren't going to come.

Alderman Clemons

I am interested, but I can't.

Mayor Lozeau

I know you can't, but the rest of you can come and are interested? Okay. I anticipate it being a short meeting because I don't think we will have really collected our thoughts. We've got it booked for 8 or 9 hours tomorrow so by Wednesday we might not be as brilliant as you like.

Alderman Tabacsko

You have Finance starting at regular time?

Mayor Lozeau

At 6:30 p.m. I don't want to jinx anything and say it is a short meeting, but we will see how it plays out.

MOTION BY ALDERMAN TABACSKO 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

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

Yea: Alderman Pressly, Alderman Tabacsko, Alderman Cox, Alderman Clemons, Alderman LaRose,
Alderman Sheehan, Alderman Flynn, Alderman Melizzi-Golja, Alderman McCarthy

9

Nay:

0

MOTION CARRIED

MOTION BY ALDERMAN PRESSLY TO COME OUT OF THE NON-PUBLIC SESSION AND RETURN TO THE REGULAR MEETING OF THE PENNICHUCK SPECIAL WATER COMMITTEE
MOTION CARRIED

ADJOURNMENT

MOTION BY ALDERMAN LAROSE TO ADJOURN
MOTION CARRIED

The Pennichuck Water Special Committee meeting was adjourned at 8:35 p.m.

Alderman Jeffrey T. Cox
Committee Clerk