

A special meeting of the Board of Aldermen was held Wednesday, October 17, 2007, at 6:00 p.m. in the Aldermanic Chamber.

President David Rootovich presided; City Clerk Paul R. Bergeron recorded.

Prayer was offered by City Clerk Paul R. Bergeron; Alderman Teeboom leading in the Pledge to the Flag.

The roll call was taken with 10 members of the Board of Aldermen present; Aldermen Tollner, Richardson, Williams, and Plamondon arrived after the roll was taken. Alderman MacLaughlin was recorded absent.

His Honor Mayor Bernard A. Streeter and Deputy Corporation Counsel Stephen Bennett were also in attendance.

#### COMMUNICATIONS

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

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

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

#### NEW BUSINESS – RESOLUTIONS

#### **R-07-276**

Endorser: Mayor Bernard A. Streeter

**RELATIVE TO THE APPROPRIATION OF \$375,000 FROM ACCOUNT 299-00 “UNDESIGNATED  
FUND BALANCE” INTO ACCOUNT 699-07 “WATER SUPPLY  
ACQUISITION”**

Given its first reading;

#### **MOTION BY ALDERMAN MCCARTHY THAT THE RULES BE SO FAR SUSPENDED AS TO ALLOW FOR THE SECOND READING OF R-07-276**

#### **MOTION CARRIED**

*Resolution R-07-276 given its second reading*

#### **MOTION BY ALDERMAN MCCARTHY FOR FINAL PASSAGE OF R-07-276 BY ROLL CALL**

#### ON THE QUESTION

#### Alderman Teeboom

According to the analysis I received, it says that this requires a 2/3 vote.

#### President Rootovich

That is correct.

#### Alderman Teeboom

Before we do that would you tell us what the 2/3 vote represents?

President Rootovich

Seven votes. Now there are eight required with the arrival of Alderman Tollner.

Alderman Teeboom

I have a series of questions about this resolution. It is a transfer resolution from undesignated fund balance. This is a supplemental budget, which is why we need 2/3 vote. It adds to the approved budget by the amount stipulated here, \$375,000. I see CFO Anderson is here. Can she approach and answer some questions?

First of all what is this for exactly?

Carol Anderson

This is for additional costs that we need to cover with the Pennichuck – it is the trial basically. I came before you for the last one, and we had a budget and we went by that budget. Some of the costs have come in greater than what was projected at that time. In particular, Attorney Upton's fees – he had estimated what he needed through the trial, and when we say trial it was understood through September. Through September those fees came in about \$50,000 higher. Another additional amount that was not anticipated at that time and Mark Sousa may want to comment on that, is a briefing period that we are entering into in the months of October, November, and early December. That is part of this trial. That Attorney Upton has estimated would cost approximately \$90,000. He may need additional support from some of our other consultants such as Skip Sansoucy, it could be Veolia – I have an extra \$20,000 there.

Another amount that has not been anticipated was there is a deferred amount for George Sansoucy that was through the contract with Sheehan, Finney & Bass when we went through the stay period. That is the \$28,000. Then the last amount that was not anticipated was for Sheehan, Finney & Bass for services rendered in August and early September. That totaled \$102,000.

Alderman Teeboom

Who is Sheehan, Finney & Bass?

Carol Anderson

That was the negotiations. Basically that is the majority of what we are requesting. That comes up to about \$290,000. What I really need right now – some of the other ones came through, some of the bills, because they were just estimates they had given us. The shortfall is exactly \$312,230 so the \$312,000 against the \$290,000 it is about \$22,000 that was a variance.

Alderman Teeboom

The original \$50,000 amount is spent? What was the first \$50,000 for?

Carol Anderson

The first \$50,000 for Attorney Upton was for additional costs he had projected for trial costs – the trial costs through September came to an additional \$50,000.

Alderman Teeboom

If I add this I come up with a different amount. I get \$300,000.

Carol Anderson

I came up with \$290,000.

Alderman Teeboom

You are asking for \$75,000 more just to cover any contingency?

Carol Anderson

I have some bills that are slightly higher too. What I am really looking for contingency is approximately \$50,000 - \$60,000 – not to necessarily spend that, but the problem that we have is when the PUC begins reviewing all of the work and both Pennichuck and Mr. Upton are preparing for this briefing period, they may be asking for even more information than has been submitted. What I did is I put in what Mr. Upton gave us as a number, but Mark Sousa too has indicated it is not unlikely that they could be asking for even more information. We don't want people to not have the funds available to provide what is needed during this short period through the end of the briefing period.

Alderman Teeboom

The numbers I just added add up to \$320,000.

Carol Anderson

Okay.

Alderman Teeboom

So you have basically \$55,000 additional. Will that take us through the entire trial up to the PUC decision?

Carol Anderson

It should. That is exactly what the plan is that it will take us through there. We have the extra \$50,000 that is built in so should something else be requested of us. That should take us right through to a decision by the commission.

Alderman Teeboom

That will take care of Mr. Upton, Sansoucy, Veolia, Beck, and Sheehan?

Carol Anderson

Yes.

Alderman Teeboom

So it takes care of all of the negotiating costs and expenses so far?

Carol Anderson

To date yes.

Alderman Teeboom

This hopefully is the end of it until a decision is made. Once the decision is made then there will be further costs if we decide to go forward with whatever the decision is.

Carol Anderson

Yes.

Alderman Teeboom

It would have helped I think if we had the breakdown of this thing. I am a little upset about a couple of things. First of all we got this thing yesterday. We didn't get the analysis of this resolution until today. We didn't get a breakdown until a few minutes ago. We need time to catch up.

Carol Anderson

I have been trying to catch up too. One of the things that I did is I took the Pennichuck – for the Pennichuck resolution, for the monies I put the due and anticipated amount and I put what is owed to each one with a brief explanation. I was just finishing this up, and I show what that total amount is, what is still available in the 699 account as it stands now, and how I got to the \$312,000. The other numbers that I just gave you; I was trying to work back as to why we didn't have enough funding when I came the last time. I can certainly share this with you, and you will see what we are asking for.

Mayor Streeter

I might respond Alderman Teeboom that the original intent of this meeting was to give you a briefing by Attorney Upton. He is caught up in traffic, and will be here shortly. After discussion with our CFO, I felt that the financial aspect needed to be discussed, and rather than call another special meeting I thought we could handle both items this evening. That is why you got it rather late. I would have preferred to have had it to you prior to the weekend, but we couldn't get those figures together.

Alderman Teeboom

We are catching up. That is okay. How much is left in undesignated fund balance? How close is that to the recommended 7.5%?

Carol Anderson

I have been reviewing it, and I can't tell you right off the top of my head, but it is in the vicinity of \$27-\$28 million is our undesignated fund balance. Let me say \$26 - \$28 million. The amount that we are supposed to have in there, by your policy, is 7.5%. I believe now that percent is around 12-13%. That is what undesignated would be.

Alderman Teeboom

We are still well within?

Carol Anderson

Yes.

Alderman Teeboom

Why are we taking this out of undesignated fund balance?

Carol Anderson

Unfortunately I looked at two other areas, and both areas are not really areas you would want to be tapping into at this point in time. I looked at general contingency. There is \$170,000, but that has to last basically until the end of the fiscal year in June for any emergencies that would come up. Then the only thing else that we could have gone to, and I am very much opposed to it, but I was just looking for some funding, would have been to the city retirement account. That is already under-funded as a reserve fund so I didn't want to have to go there. Since we were under the cap that is why it made sense to go to undesignated.

Alderman Teeboom

I just want to point out one other thing. This is going to require 8 votes to pass this. It may not pass. It may pass. It may not pass. If it does not pass then what happens? Where is this money going to come from?

Carol Anderson

If it does not pass, then I guess we revert back – if it is not coming from those two particular accounts, then we would have to implement across the board...

Alderman Teeboom

Paragraph 56F of the Spending Cap, which is across the board cut.

Carol Anderson

When you do the across the board cuts we would also have to make adjustments with some accounts that we cannot touch such as the water supply and things like that. Even school district – Attorney Bennett and I had that discussion today – we don't believe you can go to the school department, wouldn't be able to touch bonded debt, there is a myriad of ...

Alderman Teeboom

Well this is \$375,000 across \$220 million so it is not a huge cut. I don't think the Charter will allow picking and choosing. Anyway that is the only question I have.

Alderman Deane

A few weeks back there was a resolution we had discussed, which is R-07-245, and you had forwarded us an amended version. I don't happen to have it. I have the original version, and that pertained to the transfer from the school capital reserve account into the school department trust funds, and the other \$600,000 that was part of the amendment, where were those funds coming from? Wasn't that for this purpose?

Carol Anderson

The purpose that we had thought of is if it had come in and been funded through that – that 681 account – monies had been put in there then you could have moved that other \$600,000 over to general contingency. That was the hope that we would have more money in general contingency for items such as this or anything else that would come up during the year without having to go to fund balance.

Alderman Deane

Weren't the Pennichuck expenses mentioned in that?

Carol Anderson

I don't think it was discussed at a meeting – it was a meeting that I was unable to attend. I had a conversation I believe with you and with Alderman Teeboom about that, but that was one of my concerns was to have money for this.

Alderman Deane

Thank you.

Alderman Dion

I checked with Carol Anderson last week to see how much money had been expended by the city so far in the Pennichuck acquisition. The figure she gave me, and correct me if I am wrong Carol, was \$4.1 million. With this expenditure we are just about at \$4.5 million, and the meter is still running. Mr. President as you know, I haven't voted for any of these appropriations, and I certainly am not going to vote for this one. I just thought I would bring that out that the expenditures so far will be in the vicinity of \$4.5 million and still running. Thank you.

Alderman Flynn

Maybe Mrs. Anderson could help us out – I really didn't have a chance to prepare very well for this either, but I would have liked to have looked up in the FY08 budget, how much money did we set aside for Pennichuck negotiations?

Carol Anderson

We did not set money aside for Pennichuck negotiations in that time.

Alderman Flynn

If we took no action on this tonight one of the possibilities we would have I would imagine would be to refer this to committee and do some studying as to what other venues we could access for funding this. It wouldn't automatically mean that the 56F would be affected. Is that true?

Carol Anderson

One of the problems that we have is these costs have already been incurred. These monies are due except for about \$110,000 for the October through December timeframe for the briefing period. Other than that these bills are all due. One of the things with the FY08 budget why it wasn't put in there – I think I can say

this publicly is that we had hoped that we might have reached an agreement and been able to have some sort of closure to this, and been able to get a bond authorization.

Mayor Streeter

Can I back up what Mrs. Anderson said? That was the rationale behind us not including it in the FY08 budget because we felt it would probably be resolved before now.

President Rootovich

Are there any further questions?

Alderman LaRose

We do have bills. We need to pay them. We should pay them, and we should go forward. If we believe that, if the majority of us believe that we should be pursuing and purchasing Pennichuck in the interests of the citizens of Nashua and the ratepayers then we need to fund this so that we will have the kind of representation we need at the PUC to go forward and win this case. Otherwise, we are wasting out time.

Alderman Cookson

CFO Anderson I know that in the past there have been some unique bills that have come in from our consultants; parking tickets, books, and such. The expenses that are being incurred at this particular point, are there any obscure bills that we might be receiving? Are we paying for parking tickets, are we paying for a book?

Carol Anderson

Absolutely not. If anything, I will tell you that we have some of our consultants who are not charging us all of their time, and having worked I am sure that Mark and I and the Mayor being inside, can tell you how much effort has been put into this. They are to be commended because they are writing this off. No I have not seen anything like this.

Alderman Cookson

Thank you very much.

Alderman Richardson

I wish to be recognized.

President Rootovich

I just did.

Alderman Richardson

Thank you. That is all.

President Rootovich

You mean recognized in terms of attendance?

Alderman Richardson

Yes that is a definite.

Alderman Teeboom

The required number of votes has changed. It is 10 votes now. Given everything we have spent so far, not counting this money, how much have we spent on this Pennichuck affair?

Carol Anderson

Not counting this the actual amount that we have had funded has been \$4,071,000. That is why I gave Alderman Dion the number of \$4.1 million. Since inception in the year 2002, it is \$4,071,000.

Alderman Teeboom

So this will make it \$4,400,000. I should point out that I will not support this not because I don't think we need to pay the bills, because I don't think this is the way we should be paying for it. We have money elsewhere. We have money in budgets and reserve accounts. We could transfer those monies. We could have the Spending Cap. The amount of \$375,000 cut across a \$220 million budget is not a significant amount even if there are certain amounts that are mandated because mandates are exempted from that cut.

Carol Anderson

I hope it is not inappropriate, but the reserve fund – when I talked about taking it out of the retirement fund, I know full well that is the last place it should be coming from. We can go in there. We have like \$600,000 in there for the city retirements plus whatever we have in the current budget. Our accrued liability on these funds, on the accrued sick and vacation are over \$14 million so when I made that half hearted comment I never want to see it come out of there. I can't think of any reserve fund where it should come out of because even the CERF isn't where it is supposed to be.

My hope would be by taking it out of this fund where we had the excess that went in there at the end of last year that to me is the most appropriate...I couldn't agree with you more if we had more money in other reserve funds Alderman Teeboom I would agree with you, but we don't. This is the proper place.

If I go back and start to try to take it out of the departments, it is the beginning of the fiscal year we have contracts that have gone through. We can't take it out of the water, we can't take it out of the pensions, we can't take it out of health, we cannot take it out of bonded debt, we cannot take it out of the school – we have so few departments that are going to be hit with the \$375,000. That is the only thing that I would ask. I believe this is the proper vehicle to fund this.

Alderman Tabacsko

I guess I would just say that given CFO Anderson's most recent comments I guess I would just encourage us to take her advice and follow the advice of our professional staff. This is the right way to do it, and I think this is how we should fund it, and I intend to support it.

President Rootovich

Are there any further questions?

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

Yea: Alderman Tollner, Alderman Tabacsko, Alderman McCarthy, Alderman LaRose,  
Alderman Bolton, Alderman Plamondon, Alderman Rootovich  
Nay: Alderman Flynn, Alderman Dion, Alderman Richardson, Alderman Deane,  
Alderman Teeboom, Alderman Cookson, Alderman Williams

7

7

**MOTION FAILED**

**MOTION BY ALDERMAN DEANE TO REFER R-07-276 TO THE BUDGET REVIEW COMMITTEE**  
**MOTION CARRIED**  
***Division Taken***

Resolution R-07-276 referred to Budget Review Committee.

NON-PUBLIC SESSION

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

**SECONDED BY ALDERMAN TABACSKO**

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

Yea: Alderman Tollner, Alderman Tabacsko, Alderman McCarthy, Alderman Flynn,  
Alderman LaRose, Alderman Dion, Alderman Bolton, Alderman Richardson,  
Alderman Deane, Alderman Teeboom, Alderman Cookson, Alderman Williams,  
Alderman Plamondon, Alderman Rootovich

14

Nay: 0

**MOTION CARRIED**

President Rootovich

Attorney Upton if you would be so kind as to join us. I will turn the floor over to you to bring us up to date on where we stand.

Rob Upton, Esq.

Let me just first comment on what you just did because it is votes like what you just took that send a horrible message to the PUC, which reads the newspapers. It is going to indicate to them in some ways that you are not serious about this effort to a point where you are unwilling to pay for us to go forward. I am not going to stop, but I'm pretty disappointed. What I am mostly disappointed in is that I think that the trial went very well from our perspective. Our witnesses did I think a much better job than theirs did. Even though that doesn't mean we are going to win, it certainly is a much better place than where it was very possible we could have been. I think it was a mistake for you to do what you did. I hope you will find another way to do it.

Just to go on with what happened at the trial, as I said our witnesses really did a very much better job than theirs did especially the city witnesses; Alderman McCarthy, Alderman Rootovich, the Mayor all did great jobs. Carol Anderson and Ruth Raswyck did a great job, Kathy Hersh. Everything went in very well. Most of what occurred at the trial was cross-examination; everybody had submitted written testimony before they got there. Nothing really harmful happened during the cross examination of our witnesses, and I think we had great results with theirs and in particular Don Ware who I think in large part is going to look like a liar at the end of all of this. He had testified that they have a software program called Synergen, which is their asset management program. It is largely a work order program that migrates into everything else. It is a really pretty cool program when you see how it operates.

We discovered during the discovery that the PUC staff in an audit of Pennichuck Water Works had criticized enormously their use of Synergen and had largely suggested that it was not only being used for the purpose for which it was intended but that it was not used or useful, which in utilities means that they probably shouldn't have been able to include the cost of it, which was \$600,000, in their ratemaking.

There are some funny and great moments in a trial, but this was one of the really good ones; when we brought it up we brought it up with another witness and Ware was seated at the counsel table with their lawyers and as soon as that witness got off the stand Ware ran up to one of our witnesses and started pointing his finger in his chest saying you tell your lawyer I know more about Synergen than he will ever know. Well the next day when he was asked about Synergen he said oh we don't use Synergen as our asset management system we use something called OPS 32, which is a far less effective program. We couldn't believe that he was saying this so we asked him a whole bunch of questions about what OPS 32 does and more about Synergen, and he kept deferring off and saying no OPS 32 does all of these Synergen does not. Then he got off the stand.

We made a bunch of inquiries about OPS 32 and the capabilities of OPS 32 and what Synergen would do and we filed a motion to strike his testimony because we thought he had fabricated...what made what he was doing even worse was the next day he came up to the same witness of ours who incidentally is a Veolia employee, and said oh I made a mistake it was not OPS 32, the program is MP 2. MP 2 does even less than OPS 32 does. The witness said to him well are you going to correct your testimony and he said no I don't think it needs to be corrected. I think he is going to be pretty much taken out of the case. I think his testimony now is all very suspect. He also admitted to a great number of errors in his calculation of costs and those kinds of things.

Their witness Riley who was their expert on valuation, his theory of value was based upon a municipal buyer and he concluded that any New Hampshire city or town could buy Pennichuck and as a result, given all of the synergies that a municipality has like a lower cost of capital and cheaper operations and everything else, they could pay more and would pay more, they would bid it up. You will recall that he concluded a value of about \$270 million where Sansoucy was at \$85 million rising up ultimately to about \$149 million with the improvements to the water treatment plant. His theory that any New Hampshire city or town could buy Pennichuck Water Works is of course contrary to what the PUC has already held when we tried to buy, you recall we tried to buy, our original petition sought to buy the assets of Pennichuck East and Pittsfield Aqueduct Company and the PUC said no you can't do that you can only buy the assets of the utility which serves Nashua and that is Pennichuck Water Works. I think his valuation is going to be really striped out.

The other witness that we did very well with that we had to do well with as Mark Nailer who was the PUC witness who had testified that he didn't think that it was in the public interest. He came across I think pretty effectively as a stiff wooden bureaucrat. Skip you recall in his testimony had indicated that he thought Nailer was biased and I think Nailer himself may have proved that. He thinks that municipalities for example stand in the way of regionalization where we have been the primary moved to get regionalization, and he says that notwithstanding Nashua's, and we got a lot of testimony about this at trial, but Nashua's police and

fire compacts, regional fire compacts, the public works department's regional efforts in all kinds of public safety issues.

He wouldn't concede that any of the commitments that the city has made would change anything. Now we have made commitments, some of the commitments just for example that we have made on your behalf are the core rates, the rates that are charged in Nashua are the same rates that would be charged to the satellite customers, that service outside the city would be regulated, that we would continue the special contracts with Hudson, Anheuser Busch, and Milford on the same terms and conditions, and that the PUC could exercise oversight over those contracts and that the customer service would be performed by Veolia, which was a very important concession. Carol originally thought she could do it in-house and I think concluded after some of her analysis during the negotiations period that was probably more than she wanted to do, could do, but probably more than she wanted to do. That was something that the PUC staff had criticized us for. He wouldn't concede anything notwithstanding those commitments.

He did admit that the troubled companies, and remember he worried about Nashua not wanting to purchase troubled companies if we acquired the system and that was an important benefit that Pennichuck provided. We showed him the remaining regulated companies in New Hampshire and the number of customers in the possible regulated companies is miniscule, just miniscule.

Anyway, the trial went really well. We think that really the only issue left on the public interest part of the case is the impact that our acquisition of Pennichuck Water Works would have on the customers of Pennichuck East and Pittsfield Aqueduct Company. What they have said is that if we acquired Pennichuck Water Works that there would be a 60% rate increase required for both Pennichuck East and Pittsfield Aqueduct and that is because of the way Pennichuck has created this company. Instead of having each of those companies have its own assets and its own employees doing its own work and billing for that and charging rate based upon that internal company, they created a system where Pennichuck Water Works has all of the employees and all of the assets. It does all of the work for those other companies. Instead of paying the actual costs what they pay is a portion of the costs. They pay based upon an allocation formula, which doesn't result in them paying the actual costs. We think that is something the PUC will hopefully take into consideration.

The biggest argument is that it is the tail wagging the dog once again. The number of customers in PEU and PAC is about 6,000 and the number of customers in Pennichuck Water Works is about 25,000. One thing that is particularly irritating about this allocation agreement and the way they have it set up is that Pennichuck Water Works also provides the employees and service for Pennichuck Water Service Company, which is an unregulated private company engaged in competition to provide water services in a number of towns throughout the state and actually in Massachusetts and they say they are going all over New England.

What we have proposed as a way of dealing with this is that the PUC establish a docket to determine what the harm really is. Nobody has had an opportunity to engage in that kind of analysis yet and that the PUC consider a mitigation fund, which would have to be paid by Nashua, but could be used to mitigate that harm. At the level that we think the value is going to come in, even with a mitigation fund that we think would be required, we are still way less than what we were talking about with the negotiations and I still think puts us in a very competitive position rate wise.

One of the ways that lawyers often try to gauge what is happening is by listening to questions that the Triar of Fact asks, in this case the PUC. There were no questions on public interest. They asked no questions at all related to what is in the public interest. The only questions they asked were on value, which to me...when I was trying personal injury cases you always wanted to hear what questions the jury had and they would often ask questions and if they came in and asked questions about liability you got worried, but if they came in and started asking questions about damages you knew they were going your way. There is no

guarantee with what I am saying, but to me that was a very important indicator of what they are thinking. Incidentally the areas that they were talking about with value related to what is called rate base. Rate base is another way of saying net book value. Net book value is the lowest possible value of the company, but it is the value on which rates are set. They were great questions.

All in all we feel pretty positive. As Mr. Teeboom knows, I always thought settlement was the best avenue and I encouraged it and I guess I would still say it is probably the best avenue if it ever becomes available again. But when it became clear as it did that president Montopoli was incapable for whatever reason of pulling the trigger, I supported your encouragement that we go back and litigate this thing. I thought when we went when we went back and I still do that the chances of winning before the PUC even if just 50/50, were better than the likelihood of being able to do a deal with Montopoli.

Now I originally thought that our chances were probably 50/50 because of the position that the PUC staff had taken that the purchase was not in the public interest and that it would be an uphill battle. I now think, after the trial, that the odds are at worst 50/50. I think we are in a much stronger position than we were when the trial started. I thought things went very well. The next steps are to file briefs. We have 30 days from yesterday to file briefs. That is an important opportunity for us to argue the evidence and put our case in the best light. I am happy to answer any questions you have. We tried to work with the Telegraph reporter who covered the case to make sure she understood what was happening. I think she did a pretty good job. The recent editorial I think was important. That is the first time that I am aware of that the editorial staff has supported any of this.

I can talk to you about the status of any settlement discussions if you want. I can answer whatever questions you need to have.

#### Alderman McCarthy

I spent a couple of days up at the trial when I was testifying and when Mr. Ware was testifying, and during Mr. Ware's testimony I was careful to watch the Commissioners and it is hard to tell anything about Commissioner Morrison from his body language, but it looked to me like Commissioner Getz was paying wrapped attention to the answers that he was not getting from Mr. Ware and likewise for Commissioner Below. I certainly thought we scored a lot of damage on that particular issue and I thought Mr. Ware came across as looking a lot less competent than I would have judged him to be. I certainly don't think that escaped the PUC, and that goes to a fundamental part of the public interest and the valuation arguments I think.

My question is pragmatically what is the mechanism to force this back to the table based on what happened at the PUC? We have almost got...the issue that you bring up about severance damages is almost the one we want brought up because we really want the key to be purchasing...what we would really like is the PUC to say no darn it you are going to take the whole thing. How do we get that to happen from here?

#### Rob Upton, Esq.

In terms of a voluntary settlement, I really don't know where to go with that to be perfectly honest. During the trial Bill Patterson who is their chief financial officer walked by me and I said hey Bill I have really been out of the loop are there any settlement discussions going on, and he stopped and said no not that I am aware of, but I can tell you that Duane is sitting and going through the merger agreement that we had sent to him and making notes on it and he is expecting to hear from the city after the trial is over. I said well gee I don't know if that is going to happen, and he said well I can tell you he is kind of worried that he hasn't heard already.

I reported that conversation to Alan Reisch. Alan says that he is not going to recommend that you go back to the table unless Duane comes to you with a proposal, has taken the merger agreement, marked it up and said this is what I can live with just because of the way he negotiates. He doesn't ever complete anything. He never pulls the trigger on any issue. Every issue remains on the table for him, and he is impossible to negotiate with. Just 3 or 4 days ago Camerino called me and said are there any discussions going on so I said, and Camerino has been very frank and honestly he is so far out of the loop he is further out of the loop than I am on settlement discussions. I said gee Steve I just talked with Alan Reisch a short while ago and he said this is what has got to happen before he can recommend to that the city comes back to the table and he said well I will report that to Duane so I know Duane knows about it, the question is whether he will do anything about it.

I honestly don't think he is capable of doing it. He is terrified, from my observation, he is terrified of criticism. He is afraid he will be criticized if he does the deal and he is afraid he will be criticized if he doesn't do the deal.

Alderman McCarthy

In one sense I almost have a concern with the way the result comes out that is not on our side, which is this is a crapshoot as to where the valuation arguments come down and I actually think that the offers we have made to Pennichuck are on the high side of where the valuation arguments are likely to wind up. Once the PUC issues an order with valuation on the main part of the utility, if it is in the lower part of that or even at the middle, which I suspect is well below what we had the valuation at, it then becomes impossible for us to go back even to the terms we had on the table because we can't say well the PUC awarded it to us for this, but we think it is fair to pay them that. I don't know. If there is a way to convey that back to them that...

Rob Upton, Esq.

Well we have. They know the risk. Camerino is a smart guy. I am sure he is telling them that. I know that he told them before the case even started that it was a mistake not to continue to talk, not to try to find some way around this insistence that we litigate at the same time we were talking. He was not a fan of that. I think they fully understand the risk. I think that Montopoli really believed that because of the staff's position that it would be impossible for them to lose. I think he is now in a position where he realizes that can happen.

Alderman McCarthy

The other thing that does not enter into the PUC case but does enter into the free market value of the company on their side is one of the reasons the company was so attractive beforehand was because they rarely filed rate cases. Therefore, they have that advantage of every new connection is pure profit on the old rate case basis and that made their earnings substantially higher than they might otherwise have been. They are now in this place where they have tremendous capital investments, they are going to have to go for rate cases as often as then can basically as those assets come on line to recoup them in the rate base, and that means they true up the operating cost every two years and they lose that entire advantage they have in their earnings on the new connections. They are not going to be able to sustain the kind of premium for a free market trade that they were able to get in the Philadelphia Suburban deal.

Rob Upton, Esq.

The offer we made them I think is a premium that they can't achieve in ten years.

Alderman McCarthy

Yes I suspect that is correct.

Rob Upton, Esq.

What is incredible to me about their refusal to talk to us or their unwillingness to pull the trigger is the money was right. This isn't a fight about money. They agree with the money. They are thrilled that we were prepared to drop the litigation if the conditions that we needed wouldn't be met. If I was them I would have signed that deal in 20 seconds just because the only way we were probably unlikely to end up doing it was that one of those conditions would fail and then they would be free of us forever. Now, let's assume the worst happens and we lose, if you want you can tie them for another two years at not very great expense. You can tie them up for another two years they won't be able to sell their company. If it was me, I would want you at the table. The money is right and the deal is right.

Alderman Dion

One question I have is what happened to the \$250,000 good will money that we gave Pennichuck?

Rob Upton, Esq.

It was just that, it is theirs.

Alderman Dion

There is no way we can recoup that money?

Rob Upton, Esq.

Not that I can see. We would have to prove that they didn't engage in the negotiations in good faith and I don't think we could show that.

Alderman Dion

Well happy birthday, nice gift.

Alderman Teeboom

I attended a number of these sessions. I missed the most important one the one with Riley. I actually bought his book the early version, the one I could afford. I will just tell you the way the newspaper reported it, it didn't sound as rosy as the picture you painted. Maynard who is the chief economist for the PUC came across in the newspaper, and I was not there to hear that...

Rob Upton, Esq.

Who?

Alderman Teeboom

Is that Maynard his name, the chief economist for them?

Rob Upton, Esq.

I don't know.

Alderman Deane

The guy you mentioned that was on the stand.

Rob Upton, Esq.

Nailer. He is not an economist

Alderman Teeboom

Well he is a chief...

Rob Upton, Esq.

He is the head of the water division.

Alderman Teeboom

Came across that he was very biased in favor of not doing this thing. The other guy that I thought was the guy that used to be the former chairman of the PUC. What is his name? I thought he was very effective against the city, well he has a lot of weight and he thinks terrible deal.

Rob Upton, Esq.

His testimony largely was that he didn't believe that the PUC could set conditions on the sale that would be binding. I never heard of such a thing. The law is very clear that the PUC is permitted to set conditions and the conditions that we were talking about are the commitments that we were prepared to make. We were asking them to set those as conditions of the sale so that they would be binding on the city.

Alderman Teeboom

I am just giving you the general impression. The general impression is that they paid a lot of attention to him because he has a lot of weight. If you think if we lose this thing we go forward, you have not got my vote so if you think we are all together on that...the briefing, we have \$90,000 programmed, well we didn't pass it, but it will pass some other way, \$90,000 programmed for briefings, what is this? Is this a summary that you are doing like in a court you file briefs and everybody is going to read these briefs?

Rob Upton, Esq.

We are permitted to file up to 75 page briefs. After the first round of briefs there is a reply brief that is required. The \$90,000 basically is just to get through to the end of the year. It includes all of the briefing, all of whatever arguments occur, whatever has to be done, if the PUC asks us to provide additional information, all of that kind of stuff. It is obviously a much lower pace than what we went through in August and September.

Alderman Teeboom

I remember seeing a stack of books this thick and this long at the end of that counter that is all of the testimony.

Rob Upton, Esq.

That was just half of it. There was an equal amount underneath.

Alderman Teeboom

It was stacked this thick. What bothers me about this whole thing, it has bothered me since April, last year April we got a staff report and the staff report in my opinion was a deadening report, a killer report. The staff says not in the public interest. I heard staff, I heard Marcia Thornberg, pretty unsympathetic to the Nashua case. I heard the other testimony, the Budweiser guys and the other guys and their attorneys, pretty hostile to the Nashua case. Some of our witnesses were fine, but they had a lot of witnesses also and I thought a lot of their witnesses that I saw were pretty good also on their side. I think they had more lawyers than you have. I think it was just you and Richardson and I keep seeing 4-6 of them sitting out there at the table and it seemed like they had more technical support, all of this stuff that was thrown on the screen. They had more people and were better organized. I remember you and Richardson getting lost in all of the paperwork. Richardson got lost in the paperwork. You guys use too much paper.

Rob Upton, Esq.

You guys would not have wanted to pay...

President Rootovich

Gentlemen is there a question here somewhere without going through memory lane?

Alderman Teeboom

Well the attorney made observations and I thought I would make a couple of them because I was there too. There was a sidebar about the other companies and whether we could fold them in and that was an offer I think you made to fold them in to buy the whole system. I understand from the article in the newspaper that didn't go over very well.

Rob Upton, Esq.

No, no we have never been able to do that. At the very beginning of the case our petition was to buy all three of the regulated companies. We thought that the statute permitted us to do it. They filed a motion to dismiss and argued that only PWW could be acquired by Nashua and in fact not even all of PWW. They argued that just what is in Nashua could be acquired by Nashua. We have never been able to do it. We have always said that is the best thing for all of the companies because that way there would be no harm because those same employees who service Nashua and Nashua system would be available to service PEU and PAC like they currently do. We have always said that. The PUC has always said no, you can't do it.

Alderman Teeboom

Okay so that was a non-starter.

Rob Upton, Esq.

From a long time ago.

Alderman Teeboom

I think that was their Achilles' heel. That was our Achilles' heel. That is my observation. It is not quite as rosy as Attorney Upton's I am afraid.

Rob Upton, Esq.

I didn't say rosy I said it is at worst now 50/50. That is along way from saying it is 90/10.

Alderman Teeboom

I buy more to 90/10.

President Rootovich

Any further questions, comments?

**MOTION BY ALDERMAN TOLLNER THAT THE BOARD OF ALDERMEN 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**

ON THE QUESTION

Alderman Teeboom

We have talked basically about things that are all in the public. We haven't really talked about any strategy of any kind dealing with this thing. We are not talking about going forward with anything other than a briefing, which is public knowledge. We talked about observations we have. Unless the observations are secret, why are we making this non-public?

Rob Upton, Esq.

What you hear from me is attorney/client privileged and if you let it go into the public you no longer have the benefit of hearing from me in a privileged way. You can do what you want. I can tell you every time you had me speak in public down here it became a part of their case and they used it effectively against you. You can do what you want, but I think that is a huge mistake and if you continue to do it, I'm going to be very reluctant to come and speak to you and to speak openly about stuff. The whole point of doing it this way is so that you can hear from me in a candid way. If I have to speak in public and it's going to become public it is going to be much more guarded and you are not going to get the benefit of what I really think.

President Rootovich

You heard the motion. Is there any further discussion?

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

Yea: Alderman Tollner, Alderman Tabacsko, Alderman McCarthy, Alderman Flynn,  
Alderman LaRose, Alderman Dion, Alderman Bolton, Alderman Richardson,  
Alderman Deane, Alderman Teeboom, Alderman Williams, Alderman Plamondon,  
Alderman Rootovich

13

Nay:

0

**MOTION CARRIED**

**MOTION BY ALDERMAN TOLLNER TO COME OUT OF THE NON-PUBLIC SESSION AND RETURN TO THE SPECIAL MEETING OF THE BOARD OF ALDERMEN**

*A Viva Voce roll call vote was taken which resulted as follows:*

Yea: Alderman Tollner, Alderman Tabacsko, Alderman McCarthy, Alderman Flynn,  
Alderman LaRose, Alderman Dion, Alderman Bolton, Alderman Richardson,  
Alderman Deane, Alderman Teeboom, Alderman Williams, Alderman Plamondon,  
Alderman Rootovich

13

Nay:

0

**MOTION CARRIED**

ADJOURNMENT

**MOTION BY ALDERMAN DEANE THAT THE OCTOBER 17, 2007 SPECIAL MEETING OF THE BOARD OF ALDERMEN BE ADJOURNED  
MOTION CARRIED**

The meeting was declared adjourned at 7:05 p.m.

Attest:

Paul R. Bergeron, City Clerk