

A special meeting of the Board of Aldermen was held Tuesday, July 27, 2010 at 7:10 p.m. in City Hall Room 208.

President Brian S. McCarthy presided; City Clerk Paul R. Bergeron recorded.

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

The roll call was taken with 12 members of the Board of Aldermen present; Alderman Chasse arrived after roll call was taken. Aldermen Tabacsko and Cookson were not in attendance.

Her Honor Mayor Donnalee Lozeau and Corporation Counsel James M. McNamee were also in attendance.

COMMUNICATIONS

MOTION BY ALDERMAN CLEMONS THAT ALL COMMUNICATIONS BE READ BY TITLE ONLY MOTION CARRIED

From: Brian S. McCarthy, President, Board of Aldermen
Re: Special Board of Aldermen Meeting

MOTION BY ALDERMAN CLEMONS TO ACCEPT AND PLACE ON FILE MOTION CARRIED

NON-PUBLIC SESSION

MOTION BY ALDERMAN CLEMONS 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 LAROSE

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

Yea: Alderman Clemons, Alderman Vitale, Alderman Craffey, Alderman Deane, Alderman Pressly,
Alderman LaRose, Alderman Melizzi-Golja, Alderman Cox, Alderman Sheehan,
Alderman Wilshire, Alderman Flynn, Alderman McCarthy

12

Nay: 0

MOTION CARRIED

The Board of Aldermen went into non-public session at 7:15 p.m.

Mayor Lozeau

I just thought I would touch on what the plan is for tonight's meeting. We're going to begin tonight by wrapping up some of the questions that came up relative to the modeling at the last meeting, the use of debt-financing, and then we are going to talk about the acquisition costs. I think Alderman Flynn I think it was you that specifically asked about sources of funds that we've used for the acquisition and the eminent domain. Then we'll do a timeline review and then we'll go into the DMA discussion section by section. Whatever we don't complete tonight on the DMA will be for the next meeting. There are no votes or decisions that we are going to ask you to make on anything tonight. I should point out that Alderman Cookson did call and say he might not be able to attend.

John Patenaude

I think we will let Arthur finish up on our discussion from last week on the financing and the share purchase.

Arthur Gottlieb

I took away two questions from last week; the first was a more detailed breakdown of how we got to roughly \$154.5 million dollars. It will be the spreadsheet starting on the back page I guess. The first question was how do you get to the \$154.5 million of debt financing that would be required to do this transaction. You get roughly \$137.5 million to buy all the stock. That's pretty easy to come to. The next one is roughly \$4.7 million transaction costs for Pennichuck. This is the breakdown such as their banker and professional fees and then the severance costs for senior management and a few other employees.

Then the transaction costs from the city, which is the \$1.5 million of we believe what will be the total cost for this negotiated transaction. We're not talking here about the eminent domain litigation, we're just talking process, just talking about the negotiated transaction and then the cost of issuing the bonds. That cost is roughly 1.2% of the bonds issued.

Finally there's a thing called bond coverage funds, which is just excess debt that you take on. That money will not be spent it will be put essentially into a bank account; funds that we put on deposit and that are available in the event that the city has trouble meeting its debt obligations. That's a requirement in the financing, but that's not money that will be spent and over time it will be reduced obviously, but it starts out by being put into a bank or probably into government securities more than likely.

This is the more detailed breakdown. I'm happy to answer questions about it. These are the numbers we believe today will be the total amount needed to be raised from debt sources in order to do the transaction.

Alderman McCarthy

I was looking through some of this stuff this afternoon. I realize this is more of a traditional stock purchase model, and, therefore, if I compare it to the \$203 million price for the PUC buyout, one of the things that's assumed in the model is that we were taking over the existing debt of the corporation, whereas in the \$203 million we would be buying that out and covering that with other debt services. So if we get to the point where we can dissolve the stock and go to non-taxable funding, we would probably also want to replace some portion of the existing debt with lower interest non-taxable funding of bonding as well, right?

Arthur Gottlieb

You might want to do that. I'm not sure what the penalties, if any, would be for calling that debt early. It's also pretty good debt because mostly when Pennichuck raises money to do its capital improvements, it's most raised as tax exempt debt so the interest rates on that debt are not out of line. They are well below 6.25% for example. You could refund that debt, but the benefits of doing it aren't all that great.

Alderman McCarthy

Okay.

John Patenaude

Just as a side, some of the agreements would require a refinancing, a consolidation on bonded buyout of the stock on a consolidation or liquidation. Some of the debt would be required to be re-bonded.

Arthur Gottlieb

There might be circumstances where you wouldn't have a choice.

Alderman McCarthy

Okay.

Arthur Gottlieb

Are there any other questions about this? This is just a little more detail.

Alderman Flynn

I appreciate getting this. I think the original page was just a little too broad just to tell us big numbers with nothing coming anyplace. Now looking at this here trying to understand this, what's happening in the top half of this is that it is telling us that there currently are 4.6 million shares outstanding and that there's a quarter of a million shares that, I don't know, board of director type people have an option to take at \$19.61 a piece?

Arthur Gottlieb

At average, yeah.

Alderman Flynn

So that adds \$2.5 million to the cost of the transaction by them exercising their options.

Arthur Gottlieb

Yes

Alderman Flynn

And then beyond that \$2.5 million that we're giving to these people, these are some severance packages that the company has given to their board of directors, a little bit further down these management severance costs, these are severance packages that the board of directors has given to these particular officers?

Arthur Gottlieb

Yes, the senior managers.

Alderman Flynn

These costs up above, the \$2.5 million, what is that going to be, it is going to be \$20 times 250 that is going to be...

Arthur Gottlieb

No it's the difference. It is \$9.39 times the 250.

Alderman Flynn

They don't own these shares today they have an option to buy them at \$19.61 and then hours later sell them at \$29.00?

Arthur Gottlieb

Exactly right. And that is how the math is done to get to the value of those options for the purposes of getting to the \$137 million.

Alderman Flynn

So what is the value of those options? You had \$10.

Arthur Gottlieb

A little under \$10. On average, they are valued at \$29 minus \$19.61 or \$9.39.

Alderman Flynn

Are these five numbers down here these are major officers, and why is one of them an estimate from Don Ware?

Arthur Gottlieb

Because Bonalyn Hartley wasn't in the proxy statement, but I think that John you probably have the actual statement?

John Patenaude

Right.

Arthur Gottlieb

That is probably because he only needed the top five people in the proxy statement and their severance costs were in there. Don Ware was one of those top five, but he is staying with the company so he is not in that severance package.

Alderman Flynn

He is staying with the company because there is a statement in here that says Nashua wants to see him stay on? Is that how that is?

Arthur Gottlieb

Currently he is running the water business for them. It would be very tough for us to run the water business without him at least on the front end. That is why we are making the assumption here that he would stay on. When we get the operating plan complete, then we will have more detail behind that.

Alderman Flynn

Is he one of the people that would be exercising options above?

Arthur Gottlieb

He could be yes. A relatively small number.

James McNamee, Esq.

Actually I think he has told us that when he gets his options he exercises them...

Arthur Gottlieb

Yeah most of the time he exercises them.

James McNamee, Esq.

He doesn't have that many outstanding options if any.

Arthur Gottlieb

Right.

Alderman Flynn

So the cost of the severance costs are another \$2 million. We have \$4.5 million in I don't know if we want to call them negotiation, but somehow we agreed to pick up these costs or they are costs that somehow there is a statement within their board of directors guidelines that if the company got sold they would get this kind of compensation, which was pretty easy for them to put in since they are not paying it.

John Patenaude

They have employment agreements so that these guys when they took their job they signed employment agreements and these are you know you hear about it in the press and everything when you get a CEO to sign on they say I will work for you but if you get bought out and maybe something else happens, I get a severance package. And that runs down five people in the organization. It is a contract that if you buy the company you assume, and any buyer would assume.

Alderman Cox

Does that also hold true, even if they wanted to terminate them and switch to someone different who could take them in a different direction if you will? Wouldn't they still have to pay that severance package?

John Patenaude

Yes. Under their agreements they are either termination for cause or not for cause or for change of control. In this case here it is a change of control trigger. Most of the agreements that I have seen have what I call a double trigger; there has to be a change of control and the individual has to be terminated by the company within a period thereafter. It wouldn't be our intention to keep these individuals on anyway because that is part of the benefit you are getting in the cost reduction to decrease costs in the company. It is an up front cost, but going down you are not incurring that cost.

Alderman Cox

I was just expressing a scenario where the company would be incurring that cost even without ...

John Patenaude

If they were to terminate these individuals they would incur that cost.

Alderman Flynn

If I go back to the front page and see this note about an additional \$5 million in financing costs, at one time I was looking at that in terms of us recovering our costs, but this severance package here between the stock options and the management severance costs that is about \$5 million so that is a cost to the water users in this case, about \$400,000 a year for 30 years?

John Patenaude

Yes. Those numbers were baked into the \$154 million that we talked about last week.

Alderman Flynn

For every \$5 million in this deal wherever it comes from, it is costing in this case not us, but the water payers an extra \$400,000 per year for 30 years?

John Patenaude

Yes.

Mayor Lozeau

Patrick Meehan is in the hallway Brian. He is concerned there wasn't a correspondence that came with the non-public. Usually there is. He wants to know if we are meeting about Pennichuck. Is there a reason that we didn't?

President McCarthy

There was a letter and it said ...

Mayor Lozeau

Does anyone have it with them?

Alderman Pressly

It does not say Pennichuck.

Mayor Lozeau

That is what he wants to know. He wants to know if we are meeting about Pennichuck.

Alderman Clemons

He gave me a phone call earlier and I didn't respond.

Mayor Lozeau

Usually we tell him.

President McCarthy

My advice from when we checked with counsel about this was just to say the section of the Right to Know Law and that would be sufficient.

James McNamee, Esq.

It is sufficient.

Mayor Lozeau

Is there a reason not to tell him?

James McNamee, Esq.

If he asks you, you can tell him it is for the Pennichuck acquisition.

Alderman Pressly

In the past, we have said Pennichuck.

President McCarthy

Yes, and I was actually concerned that in the past we have said we were doing an update on Pennichuck or whatever. When we do five updates in the course of two weeks it looks more like we are negotiating a transaction. We phrased it in those terms for that reason.

Mayor Lozeau

We can just say relative to Pennichuck. We don't have to say update right? It means the same thing basically, but I think we cause ourselves more trouble not saying it.

Alderman Pressly

I think it is wise to disclose.

James McNamee, Esq.

Audio inaudible – several individuals speaking simultaneously.....we basically have a deadline of September to file with the PUC.

Mayor Lozeau

Whatever you would like me to pass on I would be happy to pass on.

Arthur Gottlieb

One thing I did want to say; I think these options more than half of them are owned by people other than these 6 individuals.

Alderman Flynn

I could find that out by looking at the proxy statement right?

Arthur Gottlieb

Yes. You will have a level of detail in the proxy. I think the short answer is at least a third of them are owned by different individuals. I don't think....

Alderman Flynn

It probably will have the number of shares for the top 4 or 5 people right?

Arthur Gottlieb

Exactly.

Alderman Flynn

Irregardless of who is getting it, it is an additional total cost of \$5 million.

James McNamee, Esq.

It actually looks like it is more like \$3 million.

Alderman Flynn

How do you get that?

James McNamee, Esq.

If it is \$1 million for the options, but then those five members add up to about \$2 million.

President McCarthy

The options are at least a cost the ratepayers were going to have to bear at some point anyway because it was going to get paid to those officials.

Alderman Flynn

At \$29?

Mayor Lozeau

Yes.

President McCarthy

Yes. They will buy stock back at the market price the day...

Alderman Flynn

So it says in the proxy statement that some day they can buy it for...

John Patenaude

It's whatever the market price is when they...
Alderman Vitale

So it could be down, whatever that day is.

Arthur Gottlieb

The options are under each of their.....**audio inaudible – several individuals speaking simultaneously**... at some point in the future. Today it would be at \$22.50 or wherever they are.

Alderman Vitale

Any of the severance packages if someone was coming or going at any given time we could be paying out a severance package too.

John Patenaude

Only if they were terminated not if they left voluntarily.

Alderman Vitale

Whatever their agreement but there usually is something isn't there?

John Patenaude

Yes.

President McCarthy

Let the record show that Alderman Chasse has joined us.

The options are just a normal course of business item that was going to be an obligation to the company one way or another.

Alderman Flynn

At \$29?

President McCarthy

Yeah.

John Patenaude

It is whatever the market...

President McCarthy

It is whatever the market value is the day that they are sold.

Alderman Sheehan

Maybe he doesn't understand what a stock option is as an employee benefit.

Alderman Flynn

Yeah, but we are driving that price up. We're the guys that are driving it up \$7.

President McCarthy

They are not going to exercise the options unless it gets driven up, and that is one of the incentives for finding a buyer for the corporation at a high per share cost is the pile of options that is owned by the upper management.

Alderman Pressly

What about the dividend reinvestment programs are those included in the stock options?

Arthur Gottlieb

No those speak to the number of shares that are outstanding, and it is a relatively small number. It is not going to move.....

John Patenaude

Those would terminate at some point in time once the agreement was signed. They would buy for that plan, rather than issuing new shares they would buy them out in the open market so that the number of shares wouldn't increase.

Arthur Gottlieb

Just to say, I think the point is a legitimate one, which is that senior management severance and outstanding stock options are sadly part of the cost of doing an acquisition. They are not avoidable. These are existing contractual obligations of the company and when you become the new owner of the company you inherit those contractual obligations. It may be bothersome but I don't think it is avoidable other than not doing the deal obviously.

Alderman Pressly

That is one of the reasons we are buying it so we don't have to pay that.

Arthur Gottlieb

Forever at least. And by the way, almost all of those numbers are two years of salary plus benefits.

Alderman Flynn

If you wanted to reverse that \$5 million you pay \$28 a share. It is that simple.

Mayor Lozeau

I tried.

Alderman Flynn

I am sure you did. I think we are getting a better picture of kind of where the numbers came from. I think the last time the information was given to us, I think it is appreciated that you have gone back now and broken this down for us.

Arthur Gottlieb

I will turn the page over unless there are any other questions about this. Just on the other side, the other question was essentially what is the cost to the ratepayers of recovering the eminent domain costs, all of the costs that were spent on the eminent domain process. The three black lines are the same three black lines you sub last week, the red dotted line is the same as the red solid line from last week (the same 7% interest line), and the green dotted line is the same as the blue dotted line from last week, which is the 6.25% interest. Very simply if the city were to raise an extra \$2.5 million as part of this transaction in order to pay itself back for half of the eminent domain costs then the rates would have to go up by \$200,000 per year in total, which is well under 1% of the total rate requirement. That would go up by \$200,000. If the city were to say I want to recoup all of the costs of the eminent domain process, \$5 million, then for the next 30 years rates would be \$400,000 per year more than they otherwise would be is the shorthand way to think about it, which is roughly 1.5% more than they would be on day one otherwise.

I think the decision about which of these options makes the most sense is one that can be made fairly late in the day. It is a decision that you make after you know at least two things; what the interest rate is that you are going to be able to get and also whether or not the PUC will allow you to recover that extra \$400,000 or \$200,000 per year from the ratepayers. The suggestion might be that in the event there is a bond authorization that it be up to a number that allows the city to do the recovering but that doesn't commit you to raise that amount of money unless you choose to at some future point.

The additional \$5 million doesn't move the cost all that much, but there are as John pointed out last week, there are no guarantees that the PUC will let you take additional interest costing and in addition it is a separate decision that the Aldermen will need to make at some point is whether or not that is what they wish to do.

Alderman Pressly

Would they make that decision when they approve or disapprove?

John Patenaude

Yes.

Alderman Pressly

So we won't know that until after we submit it to the PUC what the answer is?

Mayor Lozeau

We want to be able to have us all look at that before we submit anything to the PUC to decide how much we want to pay back – there are a lot of different options. We could roll it all in and try to make the case, we could roll in the portion that we think makes sense and say we could ask for \$5.6 million, but we are not we are going to ask for \$3.2 million (I'm just making up a number), and this is why and make the case for that. But I would like us to collectively agree to what it is we want to ask for and why.

As we talked about a little bit at the last meeting, there are communities that have not contributed to this negotiated transaction or the eminent domain process and I think we could probably make a reasonable argument that the taxpayers of Nashua shouldn't be the only ones to bear that burden. What that number is we are still doing a little bit of work on it, but we will re-visit it as we go forward and what that is. We're pretty confident on the things that relate to this negotiated transaction being acceptable and paid back.

Alderman Clemons

I think this was answered at the last meeting so forgive me for bringing this up again, however, I forgot the answer; how likely is it that the full rate increase will go through and when we will hear on that?

Arthur Gottlieb

A current rate increase is filed before the PUC. There will be a meeting where all of the parties get together and talk about whether they can cut a deal on the amount of a temporary rate increase. That will be around September 8th. September 15th there is a hearing this year on the rate increase to go into place on a temporary basis. Usually within a week after that hearing the PUC will decide whether or not they are going to put the temporary rate in effect right away, right then. Then after that there is a whole bunch of process that goes on before that rate increase that is approved on a temporary basis becomes permanent. That can last, a permanent right now under the schedule, the permanent rate increase hearing is April 28th. That rate proceeding could get quite muddled up with this if we do proceed, but it would be really good for the transaction, I know it is hard to say when you represent all of the ratepayers, for that temporary rate increase to get put in place in September.

Alderman Clemons

I am only wondering we will be public with this before that September date is that correct?

John Patenaude

It is likely to be around that date. I will go through the revised timeline with you in a minute.

Alderman Clemons

I guess what I am getting to is suppose we come public before that decision comes down, is that going to have an affect on that decision, and if it does have an affect on that decision, what is the likelihood that Pennichuck would withdraw I guess or try to fight that decision or whatever it is they do.

Alderman Sheehan

The PUC knows we are doing this though right.

Arthur Gottlieb

They kind of have a sense of it because we filed a joint motion where everyone kind of said hey something is going on, but they don't know the extent of that. I have every expectation that Pennichuck has got a full fledged incentive to get that rate increase in place as soon as possible because there is still a risk that the PUC would not approve this transaction and they need that money to cover their costs. That is why they have asked for it. They are going to be very driven to fight for some kind of temporary relief to go into effect right around September whether this is public or not.

Alderman Clemons

I guess I understand that, but I guess my question is more towards how the PUC will look at it knowing that Nashua is going to be essentially taking over the corporation, how that is going to affect their...

President McCarthy

They don't know that.

Alderman LaRose

They don't know that.

Alderman Pressly

They don't consider that at all.

Alderman Clemons

Once we go public...

President McCarthy

But they don't know that we are going to take over the ... they know we have expressed an intent. They are still ...try the cases serially essentially, but make the company whole.

James McNamee, Esq.

It is a legitimate question. The timing seems to be working out. The temporary increase and the settlement discussion about that is probably going to happen before we actually go public with the DMA. Once we do go public with the DMA and as we move down the road to actually get approval from the PUC it is very possible that the PUC will suspend the permanent rate hearing pending the outcome of the approval of this acquisition.

Alderman Clemons

Okay.

James McNamee, Esq.

So you are absolutely right and then there could be a timing problem with that. The thing to remember is that Pennichuck, and we will be Pennichuck when we own it too, is entitled to an appropriate rate from the PUC. It may just delay the actual execution of that rate increase.

John Patenaude

The other thing Alderman Clemons the temporary rate process all the time that PUC puts it in place and then it is built in. If at the end of the time they find it was too high they provide for a rebate system so putting that temporary rate in effect and putting the rest on hold ultimately ratepayers are protected by the due process.

Alderman Clemons

Okay.

Alderman Chasse

If we are trying to recoup this \$5 million if we go for it and we end up with the rates being higher for the citizens of Nashua versus what Pennichuck has right now I think we are all going to be burned at the stake. My question is can you have different rates for different localities like Nashua would be paying one rate, to recoup the \$5 million...let's just say we are paying \$10, Merrimack is paying \$12.

Arthur Gottlieb

It's going to have to be all consistent through the whole system because they are all purchasing from the same cost base on a regulated basis. There are two other utilities that we are buying in this and there is some question about how those two little utilities would bear their share of the cost of this financing, and I think our goal would be to try and make sure you know it wouldn't be a great thing if the result were you get a little rate increase in the Pennichuck Water Works system, which is Nashua, Merrimack, and you get rate decreases in the other two little utilities. We're going to try and spread it around.

Alderman Chasse

What I am trying to look at is we have \$5 million that we are trying to recoup so if we said okay Nashua has 80,000 users of water, Merrimack has 20,000, Hudson has 15,000, you add them all up and say okay Nashua is going to be responsible for 50% of that \$5 million, we tell Merrimack that you are going to be responsible for \$800,000, Hudson is going to be responsible for \$6,000, and other places...can you have like sidebar agreements with these localities saying...you can't do that either?

Mayor Lozeau

No.

John Patenaude

The regulated price is the price

Mayor Lozeau

But on that same track that you are on, in the discussions that I have had with the advisors, we look at it more like a pro-rata share of the cost of acquisition or eminent domain and we can attribute a certain amount to those communities. While they won't pay it directly, we can justify asking for those dollars back.

President McCarthy

That still reassesses it on the Nashua ratepayers as well. As far as I am concerned it is a fairly simple question. Right now we have paid the whole \$5 million bill for the acquisition and the other communities have not. The only way that I can see we could fix that is if we got the \$5 million as part of the transaction, use that to offset the tax rate for some period of years and let's say we did that \$1 million a year for 5 years, that will reduce the average taxpayer's bill by about \$50, their water bill probably goes up by \$35 and so does the person's in the other communities and then that way we have recouped some of that money. The question is is that worth it in the end. What the Nashua taxpayers are due back from the surrounding communities is probably not even go to go over \$1.5 million. It is just a simple question

for us of looking at those numbers and deciding whether it is worth going through that complexity to reimburse that \$1.5 million to Nashua.

Mayor Lozeau

Which is part of the reason that I think Alderman Flynn asked last time; let's see where we got that \$5 million that we spent because some of it we maybe could live without recouping this way and others we may want to reimburse like we want to put our million dollars back into CERF. That is part of the negotiated transaction so that is easy. Of the eminent domain dollars, that chunk, and we have that document in the package too to talk a little bit about, but again that is one of those things that I think we need to make some decisions moving forward, but we don't have to do that tonight. And I think there is still more information to come along on that.

Alderman Flynn

If I am part of the upper tier talking about this merger and I work for Pennichuck, I am well aware of what this chart means, I am well aware that I am sure it is very easy for them to figure out the same numbers as we have here so they are well aware that if they don't put in a price increase this is going to be very hard for Nashua to sell to its citizens. That must be true. They must know that we needed this price increase.

Mayor Lozeau

Absolutely that is true...

Alderman Flynn

...to make the chart look like.

Arthur Gottlieb

And they also knew for their own purposes to satisfy their shareholders to pay a dividend...

President McCarthy

They are going to have a real bloody shareholders meeting next year if they don't get a rate increase.

Alderman Flynn

I will come back to that in a second, but I am trying to think if they are looking at this they are kind of in a position to serve themselves pretty well here because the more they can help us with the chart the more they can move the deal forward the more the deal can stand their \$29 and the more they can get their stock options at \$29 and the more they can walk away with their \$2.5 million of severance. They are in a nice position as they are trying to be neutral to help out their own private cause.

Arthur Gottlieb

I agree, and also when it comes to time, the next task to go to the PUC, that is a joint filing we have to work together to put those numbers together, that will include the cost and all the fees going through. They have insight today and they will have more insight as well going forward. It is a joint effort between both of us. But as far as the rate they put in already, they are putting that in, they need that for their shareholders and I think that was put in not only for us, but if we were to walk away from this transaction

they would need that to satisfy their financial needs and keep their shareholders' dividend money so to speak.

Alderman Sheehan

For what it is worth, I worked in a regulated industry and we had to go to the PUC and wanting to do better for our shareholders was not a reason they would approve a rate increase. The only way we would get a rate increase is if we had a solid business case and reason and we could prove that we needed the money. It is not just we wanted to increase revenue for our shareholders. If that is the only reason they were doing this it would be very difficult.

Arthur Gottlieb

Part of it is they are allowed costs and part of the costs is a return on assets.

Alderman Sheehan

Absolutely, but you can't just say we want it to look better.

Arthur Gottlieb

That is shortcutting the whole exercise here. What they are asking for is a return on the assets they have invested in so far plus their operating expenses...

Alderman Sheehan

Absolutely.

Arthur Gottlieb

And that is how they are coming up with the rate.

Alderman Sheehan

Absolutely I just don't know if he understands.

President McCarthy

I think Alderman Sheehan's point is they can't be doing it to jack up the price for us.

Mayor Lozeau

And I think we will know that, but it is just that whole competing interest thing that is lifting the boat.

Alderman Flynn

When they announced their share price increase they did it June 11, 2010. You always have to ask, anything I touch, I always ask myself why now, why now, all of a sudden now they have decided that it is time to reverse the revenue loss from water usage over the past two years. They didn't do that a year ago, but now is a nice time to do it. I don't know why they didn't wait 3 years. They didn't do it after one year but they waited two years.

President McCarthy

They can't do it more often than every two years and they did it exactly at two years.

Mayor Lozeau

At 22%.

Alderman Flynn

And then it says over here the step increase is to recover the cost of and earn a return on certain improvements that will be made in 2010, and then I think it says in here someplace they decided to try to recover their costs for litigation.

Mayor Lozeau

Right....

Alderman Flynn

Why now?

Mayor Lozeau

...which won't be part of that temporary...

Alderman Flynn

They couldn't do it a year ago?

Alderman Sheehan

No.

Arthur Gottlieb

I think the why now is because that was the end of the litigation.

Alderman Flynn

Why did the litigation end?

Mayor Lozeau

When the Supreme Court was issued.

Alderman Flynn

In March?

President McCarthy

They couldn't get it into the last rate case, which they had to do two years ago to get money to pay back what they had invested in the treatment plant. They have spent \$50 million plus in the last five years on improvements to the plant. In order to keep the company whole they need to get a rate case as often as they can to start recouping that cost because they are already paying back the debt. They couldn't put the recouping the legal fees in two years ago so this is the first time that one has been able to get into a PUC case.

<REDACTION 1>

Alderman Flynn

But they have had the opportunity to do this only since March? Actually I think you have spoken pretty honest ...**audio inaudible**... I think we get in this room and we tend to have positions, we tend to try to don't know if we are most effective in presenting what our concerns are. I appreciate the fact that you have kind of showed us both sides of the coin.

Mayor Lozeau

If it is okay with everybody, the sheet that gives you the where the money came from, if you have questions we can answer those. If not, we can take that up as part of the discussion when we start to hone in on what we want to ask for later on in the process. If you want to take some of it up now we certainly can.

Typically our sheet on this is broken down into where the money was paid out from in the final analysis. This actually demonstrates where it originated from and how it happened. So you are okay to hold that until we...John you want to run down the timeline and then we can go on to the DMA?

Arthur Gottlieb

I revised the timeline. The last time I gave this to you it was the first time we met. We are still negotiating the DMA, and I will get to that in a minute. There is one underlying issue, which I will discuss when we get there, but we're looking here at the earliest I believe to complete the DMA negotiations is the beginning of next week, which means that due diligence, which has not started yet we saved those dollars and clearly don't want to start that until we have a stake in the ground with the DMA, and if we start that August 4th it would take us most likely through the 27th to complete the due diligence process. Between there I know you have a meeting on the 10th and I can give you an update then. Also if you need another meeting I put another meeting and left it blank relative to a transaction update and the discussion on governing structure, which we will need to have at some point in time.

We would look at sending final agreements to you around the September 1st timeframe for an initial vote to allow the Mayor to sign the document on your meeting of September 14th. The Mayor could either sign it on the 14th or the 15th. Then I assumed we would go from September 15th to November 5th for the public sessions for the bonding. Then on the 9th vote for that financing and then file with the PUC the next day. That is where we stand today on the timeline.

When I first came here we were expecting to close very shortly. That has dragged out so it has extended out to August.

President McCarthy

It has been pointed out that the board meeting is actually on the 15th and not the 14th because the 14th is Primary day.

Mayor Lozeau

But then there is a Finance Committee meeting on that day too so we have other competing things. We might have to see when that meeting might make sense. We could be potentially flexible and schedule a ...

Arthur Gottlieb

I tried to schedule it whenever you are meeting.

Alderman Pressly

Thank you. Would it be possible to get whatever you are going to propose for the governance ahead of time? I would like to have one as soon as possible.

Arthur Gottlieb

Yeah. We will do that. That also will encapsulate some of the operating plan as well. That is why I was leaning it towards the end of August, but we will get you something before then.

Alderman Pressly

I would love to have it sooner because that is really important to me having worked on getting the vote out to support this almost ten years ago, having an independent governing board was really critical and what we sort of promised. The other that...

President McCarthy

We can't do that under this model. This is a wholly owned for profit company. We can talk about that when we get to the point where we can dissolve the stock after the federal legislation passes.

Alderman Pressly

Right, but are we going to model ourselves completely after the Pennichuck Corporation?

Arthur Gottlieb

You still need a board.

President McCarthy

This is a wholly owned corporation of the City of Nashua and has to be managed that way. I don't know how much flexibility we really have in...there will be a board of directors of some sort. How that is constitutes I am not sure we can change a whole lot.

Alderman Pressly

But I would still like to see it right away.

Mayor Lozeau

Let me just be clear, when we met in this room three meetings ago I said there were three big things we had to do; modeling, DMA, and governance structure. We're just trying to follow a course of action and as soon as we can get through the DMA we can bring you some different options and we can start discussing what that structure might look at. We do have time to do that. It is not something I want to sit with the advisors and do on our own I want to be able to bring it in here and have us discuss the merits of what the options might be. Getting it to you sooner before that discussion we could potentially do that, but it may be better off coming into a meeting and starting the discussion that night, time to vote on it still not that night, you know what I mean – look at it, roll it around a little bit.

Alderman Pressly

It would be nice to know what the choices are at this point.

Mayor Lozeau

That is what I am saying and we just haven't...

Alderman Pressly

If we could say the different choices...

Mayor Lozeau

...been able to put it all...

Arthur Gottlieb

And the top tier you won't vote on until near the end of the transaction. You will have an idea conceptually what you have and it has a governing board perse but you won't have to make that decision as you vote for the DMA. The concepts yes, but not the John Doe filling in this position or that position. That comes way later in the process.

Alderman Pressly

I am well aware that we have to appear to be a corporation for a period of time, but I really think it is absolutely important that we do everything we can to structure it in such a way to indicate that this is going to be independent of the...revenue from this is not going to be co-mingled with the city budget. We have to be absolutely...

Mayor Lozeau

That would no matter what the structure.

Alderman Clemons

It can't be anyway.

Alderman Pressly

A lot of things I was told would be are turning out not to be so that has to be clear.

President McCarthy

That one is absolutely not because it is a regulated utility still.

Alderman Pressly

Okay. So that is a good thing, but I think also if there are choices for the governance it would be nice to look at them now and really focus on keeping it as independent as we can.

Mayor Lozeau

And all I am trying to say is I don't disagree with anything you have said, there is only so much we can do at a time...

Alderman Pressly

Okay you want me to wait.

Mayor Lozeau

... and our energies, well just...I am not going to put you in a situation where I am going to bring it in and say pick right now we have to decide. That is not going to happen. I am trying very carefully to lay this out in a way that all of you feel like you are getting some of the answers that I have had which put me in a different position to recommend. You need to be in that same place and all I am telling you is we haven't done some of the work that is necessary to get you the information that you want yet because we have been focusing on the modeling and the DMA, but we will do that.

Are we all set with the timeline? Okay.

Arthur Gottlieb

Obviously if there is slippage it is subject to ... every day in the DMA that it doesn't get signed we add it to the end case. The thing I refuse to do is get crunched in a position where we can't do due diligence in a timely fashion.

Alderman Pressly

May I ask how the due diligence is doing? I have looked over what they are supposed to be...

Arthur Gottlieb

We haven't started.

Alderman Pressly

You haven't even started yet.

Arthur Gottlieb

No because we don't want to spend dollars here and not be able to come to an agreement relative to DMA.

Mayor Lozeau

It is a significant cost.

Arthur Gottlieb

If I were on the other side I would say oh go ahead do your DMA because the more dollars you sink in the more I have you in hand to say...I can negotiate a lot easier if I know you have spent a million or half a million dollars knowing that you are not going to back out versus spending nothing and it is a lot easier to back out at this point in time than it would be if you did the due diligence.

Alderman Pressly

One thing that confused me is at what point do they go to their shareholders? It appears to be long after we have done a lot of our work.

Arthur Gottlieb

The problem is as you get into this whole process and the process is that – let me just talk about the process, and it is good you brought that up. The process is the DMA gets signed, you approve the DMA and it gets signed, then you have up to 90 days to vote on the bonding and you can approve, disapprove, or take a no vote. Then it goes to the PUC and then the PUC will take whatever time it needs to make its determination. That could go as long as a year. I am not saying it will. It could. Once that is done then we will go and solidify our financing and they will go out and print their proxy and go to their shareholders for a vote. The last thing you want to do is go to the shareholders and have to bring them back in again if the PUC makes you change the deal for any reason.

Alderman Pressly

So in other words the PUC has approved, we have approved it, we have done the bonding...

Arthur Gottlieb

The bonding is sort of the last step, but we will arrange to do the bonding...

Alderman Pressly

But it is still going to be before they go to the shareholders?

Arthur Gottlieb

We will arrange it, but we won't do the bonding until...

James McNamee, Esq.

I think she is talking about the authorization. The authorization vote will be...

Arthur Gottlieb

The authorization yes.

Alderman Pressly

It just seems to me that we are making all of the commitments and they haven't gone to their shareholders yet.

President McCarthy

Their board of directors will have to take a vote.

Alderman Pressly

Okay.

Arthur Gottlieb

Their board will be voting.

President McCarthy

What percentage of their shares are now fairly directly represented on the board?

Arthur Gottlieb

The truth is it would be extremely unlikely for this transaction to get to the point where the board has recommended it and sent out a proxy and for the shareholders to reject it. If the shareholder were to reject it we will know that probably in October. We won't have to wait for the PUC to rule is the short answer here. It would be almost unheard of for the board of directors to be in favor of this transaction given the concentration of their shareholdings to get to a year from now and have the shareholders reject it.

Alderman Pressly

Having been to their shareholder meetings for the last ten years nobody asks anything it is just a rubber stamp.

Mayor Lozeau

Then you have your answer there.

President McCarthy

And now for the first time that is a really good thing.

Arthur Gottlieb

It would be very unusual.

Mayor Lozeau

We will have a commitment from them in September.

Alderman Pressly

From their board of directors.

Mayor Lozeau

Right.

Alderman Pressly

It is just it seems like we are taking all of the very specific public steps and they have not yet.

Mayor Lozeau

Which is why we haven't spent all of that money on due diligence plus we are a different body too. Our requirements we are doing the public's business, they are not.

Alderman Pressly

They can do everything in secret.

John Patenaude

If you were a public company buying them you could take a lot of the timeframe out because you wouldn't have to wait for this 90 days...

Arthur Gottlieb

But you would still in a normal deal wait for the shareholder at the end of everything to approve. That is the normal process for these companies; the shareholders are the last ones to take action so you don't risk what John said wasteful...

John Patenaude

Maybe the best way to go through this is we can sort of thumb through the merger agreement and I will point out some highlights here. We talk about the preamble and the preamble here just identifies ...

Mayor Lozeau

Let's be clear, are you going through the overview or the actual DMA?

John Patenaude

Actually I will flip back and forth if you don't mind.

Mayor Lozeau

As long as you are clear so everybody knows which document.

John Patenaude

On page 1 we have the preamble, it identifies the transaction, which is the merger and also recognizes that the city will use a company or a merger vehicle to buy or merge with Pennichuck. Prior to closing

this transaction the city will be required to establish a new corporation which will be transitory so for a short period of time it will exist and once the funds are paid for Pennichuck it will merge into Pennichuck, and then the city will own the shares of Pennichuck.

Bill Ardinger

So one thing as you start to go through this, just to take a big step back and look at it, this is a long agreement, lots of legal words in it, very difficult to read, but you know what it actually is, it is an agreement where the city is agreeing to buy all of the stock of Pennichuck. It is just that simple. This is just the way these agreements get put together. They are very simple. So when we talk about the transitory saw that the city establishes to do this that is how you accomplish the buying of public company shares in a way where you don't have one shareholder holding up the whole deal. We have got this purchase of their shares done in a way that it can happen most efficiently, but that is all it is this agreement just about we are agreeing to buy their shares as long as they do certain things, meet certain tests, and we can get the financing for \$29 a share. That is all this is.

To just walk through it because now you get some of these details that make you say why this detail, but it is all tied to that fundamental purpose.

Alderman Pressly

I am trying to understand the transition of ownership. I see you have given us a name, the Nashua Water Holding Corporation. This language sort of suggests that we can just adopt their bylaws. It references a whole section on bylaws. Is that something to consider?

Bill Ardinger

That first article that you are reading through that is after the Preamble, that first article says the promise here is what we are going to do and when; we are going to buy your shares, and that also says what happens to their governance documents. We are going to change in accordance with the discussion that you all were just touching on, but which doesn't have to happen right now, it can be done over a period of time, we are going to change their articles and bylaws to fit our needs and even if we change them in this agreement that doesn't tie our hands at all. Once we own this company, once we go through, we can develop a governance plan for this that is responsive to the needs through this whole period and then when we buy them we own the shares of stock, and when you own the shares of stock of a corporation you can amend the bylaws. What it will be, it will be this board, which will be representative of the shareholder or the company, and this board will then vote to do this that is has to do as a shareholder with respect to the company. That is what that first article was.

Arthur Gottlieb

Going back to the preamble, there is one very important thing that you should understand and that is the settlement agreement. What we have agreed with the settlement agreement is that upon execution of the DMA there will also be a settlement agreement, which is executed, which settles the eminent domain case. That settlement agreement if you vote no on funding, it will still be in place so that the eminent domain case will finish, it will die.

If you have a no vote it just gets filed with the PUC and the eminent domain case dies. If you have no vote at all within the 90 day period same thing, it would be filed with the PUC in the eminent domain case files. If it is a yes vote then this is held in escrow unless someone triggers an event to terminate this agreement. There is a tax issue relative to the treatment of the eminent domain case and the settlement of the case through the purchase of the shares. That is sort of the guts of the settlement agreement. It

was just completed last week. You don't have a copy yet, but you will be provided with a copy. We are still tweaking that.

John Patenaude

So when we sign the consensual agreement to resolve this ten year old water dispute by buying their shares, at that same time we are signing another agreement where we say the other eminent domain, the forced taking, is over. When it is over is determined by that settlement agreement. It will be over at some time based on either you don't approve the bonds because that will be a public vote and you may not approve it, it will be over then, and then it is done for two years or it may be done when this terminates or it may be done when we buy the shares. When we sign the go ahead on this consensual basis the way this deal is structured with the settlement agreement the eminent domain taking is going to be you have agreed that it will be gone.

President McCarthy

Does that happen when we sign the DMA or is that at the effective time?

John Patenaude

If we sign the DMA and the settlement agreement at exactly the same time, the DMA is not binding on us due to statutory law, but the settlement agreement is so kind of both agreements move ahead from the same timeframe.

James McNamee, Esq.

The additional question too though is when we file with the PUC and the actual settlement agreement may not be filed with the PUC until we have a final determination on the public interest. This is a matter of PUC law we will have to look into. The thinking is that we may have to run this in the same docket in the eminent domain case, but for the reason that the eminent domain case provides the basis for any taking whatsoever, it is a public vote and the vote by this board to undertake the taking is still predicated to this consensual purchase of the stock.

Arthur Gottlieb

While I am on the settlement agreement, there was language in the settlement agreement, which we did not agree to in discussion with the Mayor and Attorney McNamee. They wanted to prohibit the city from coming back in any eminent domain case for 6 years, and if you did come back within 6 years to pay \$6 million. Obviously we said that is a deal breaker. We said no and they have gone back to their management board with our reply and they will be back to us. One of the underlying things here is that you can't take away your rights to eminent domain.

Alderman Pressly

Is it two years by law though that we can't enter...

Arthur Gottlieb

Yes it is it is two years by law. They wanted to extend it to 6 years. They also wanted you to pay.

Alderman Sheehan

My book is different, but I had questions. I see that there is a superior offer and a topping fee. I want to know what sort of topping fee and will our dropping of the eminent domain still be in effect if they get a superior offer. Would you explain how that could play out?

Arthur Gottlieb

That could play out. They are prohibited from soliciting an offer so when they go out on the street and put this out there when we both sign and it is public information, somebody could come to them within whatever timeframe we have here and say we think we can give you a better offer than the City of Nashua so let's say they come in with an offer of \$35 they have a fiduciary responsibility to review that offer and see if it is acceptable. If it is acceptable to them then if they go for that offer and take it we get a topping fee. Right now it is \$5.5 million that the city would be paid. The topping fee is paid to us.

Alderman Sheehan

Does that cover our costs and is our eminent domain already given up at that point?

Arthur Gottlieb

At that point when they accept that offer, when our agreement is terminated, then that is when the eminent domain would go away but we could have \$5.5 million.

Bill Ardinger

The settlement agreement we were talking about, there is no way for things to end without at some point the eminent domain case will go away. This agreement would terminate on the topping fee payment, and when that terminates then that piece of paper would come out and get filed at the PUC. It is terminating the ten year eminent domain proceeding, and in that case, which is highly unlikely by the way. As you know from your investment banker's prior presentations, \$29 is the absolute max that you could possibly pay for a company like this. Nonetheless if it happens they would have the fiduciary power to take it, but they, that is their buyer, would have to pay us back \$5.5 million.

Alderman Sheehan

Okay.

President McCarthy

We also have the option to match the...

Bill Ardinger

You are exactly right.

Alderman Chasse

I guess my question is what exactly are we doing here tonight? Are we just going through every one of these paragraph sections? I read this whole thing, I am not a lawyer, I fell asleep twice, basically I understand it. I understood their part and if they had higher shares we get the \$5.5 million. It is all in there in black and white. We are paying these gentlemen big bucks to do this work. As far as I am concerned I didn't see anything that stood out to me that they haven't mentioned right here. If anybody

really wants to read it word for word I will get some no doze. It is pretty cut and dry. That is what we are paying you guys for. If you guys feel confident with this I don't have a problem with it.

Arthur Gottlieb

It is up to you. If you want us to go through it...

President McCarthy

I don't think the intent was to go over it word for word, but I think...

Alderman Chasse

If you have questions I can see that, but I don't have any because I understood the fine points that you have already brought up.

Bill Ardinger

Would it help if I could just go to, in these agreements, which happen over and over and over again in this deal, there are like three highlight parts that are actually heavily negotiated, and in this deal the Article VII part, which starts on page 40 of the printout, Conditions Precedent. What I want to say is this section says unless all of these conditions happen or we waive them, you don't have to go forward and pay the \$29 or from their side you will see unless all of the conditions to their obligation happen or they waive it, they don't have to sell us the shares. Importantly for us is to know number 1) we're not obligated to spend a buck unless you guys approve the authorization of the bond in public session in about, assuming we get there, within 90 days, but in a couple of months. That is the Section 7.01 (b).

A second thing is if the PUC doesn't approve it, you don't have to pay any money. That is easy. Another important thing is if you come down through on page 42 at the top (d) No Burdensome Condition, did you see that? If the PUC approves this merger but says we have to put up a \$40 million mitigation fund, we can tell Pennichuck for no cost, nope we are not going forward. So we have put in an out for our obligation if they do that.

Similarly if you look at (e), this is a big one. The biggest risk in this deal on this timeframe is you guys are going to vote and sign within a month if it goes on the timeframe and then a month later vote in public after the Telegraph has talked about it and everyone has complained and moaned...

Mayor Lozeau

We have had the public hearing.

Bill Ardinger

...at the public hearing you will vote on it, but then you go through the PUC process, someone might appeal it, you go through a court process, interest rates could move and the chart that Arthur has prepared shows you that if interest rates were to go above 7% this graph no longer looks like something you could vote for. So we have negotiated in this deal an out that is going to say unless we get financing satisfactory to the city we don't vote. They have rightfully said that is too vague so they said if you get something less than they offered at first it was like less than 19% that didn't last long and then it went down to 7.5% real fast, why because they know our numbers like we do, and we are sticking on 7%. So we're between 7.5% and 7% that we will get out.

The only reason I pointed to that is that I think that constituents when they are complaining or supporting your decision here they will wind up focusing on those big things; how do we get out if interest rates go up, if Israel bombs Iran and interest rates go to 10% do we still have to pay the money – no. If the PUC, that dam PUC who screwed us with a \$40 million fund if they do that to us again do we have to close the deal – no. So we have covered that in here.

The second area which I think is important and always negotiated is in the termination section, which is on page 44 Section 8.03. Now we get to terminate in a lot of situations. One gentleman said there it is a pot of black coffee to read this agreement, and I have had to make like 35 promises in here about how good they are. Any one of those are wrong, we can terminate the agreement and if you look on page 45 (b) Expenses, we're negotiating how much money we get if that happens. Now we have made about 5 promises to them. If we breach any of those reps and they show that we breached it, we owe them the same amount of money. We are negotiating where it is. It is somewhere between \$1 million and \$2 million right now.

There is another thing in here that is open. If we go through this whole process and the PUC approves it and we get down and we have the financing, let's say it is 6% so it is a better deal for the ratepayers, and their shareholders vote and they don't approve it, it is not likely, but let's say it happens, they owe us \$300,000 in that case. And now they are objecting to that, but we are kind of staying firm saying you know and if anyone asks you when it goes public whether you said fight for that \$300,000 please say you did because we are saying that is important to us.

Mayor Lozeau

We are saying that especially after most of us know that we spent a quarter of a million dollars just to come back and talk to them at the table before. What was that 2007 or something? We're very solid on that.

President McCarthy

I had a question about the dissenters provisions on that same line. Does that language mean that if 15% or more of the shareholders dissent we don't go through or it is our option not to go through?

Bill Ardinger

Our option not to go through.

President McCarthy

And their rights as dissenters are? I mean I read the part that says it is at fair value, which I assume what that means is instead of the \$29 contracted price we would pay them the \$29 market value that it will settle on the day of the merger anyway right?

Bill Ardinger

It is a corporate law court case using that transitory sub technique that we are using, which forces all of their shareholders into a box, they have to act as one, they give them an out. If you exercise your dissenter's rights then you are entitled to a court case to determine the fair value. You are right, at this price that is a loser strategy for any dissenter. Nonetheless of people who have gone to these meetings their own representation, they have some shareholders who really don't want this deal to happen I guess and somebody may vote no. At some point too many dissenters starts to get very costly. We offered 5% dissenters and we wouldn't have to go forward. They fought real hard back to 15.

Alderman Sheehan

So they are expecting some dissent.

Bill Ardinger

They expect some dissent.

James McNamee, Esq.

And that is because of the nature of the company, locally owned, people who have owned it for years and passed it down generation to generation and there is an emotional attachment. It sounded like a real concern.

Bill Ardinger

I think the only other thing of the three things, we did two that I think is really relevant in here for a public body, and you guys have heard me thank you for your behavior on this, as a public body we have been keeping this confidential. We have been working in the world of large publicly traded company transaction where everything is confidential. In this agreement there is a promise about just what is going to happen on the confidentiality. When we get to the point where in non-public session you all would look at this final agreement, it is final and set, and approve it and authorize the Mayor to sign it, the Mayor would sign it, they would sign it, and after the market is closed, we would announce. That evening it would get announced.

The next morning if the Telegraph printers are still running, that is the headline that is going to be there and that is going to start a period to your bond authorization vote; first reading, second reading, where there is going to be a lot of public debate and you guys are going to have to answer a lot of questions. Up to now you have not been able to answer questions and you are an elected official. That is very painful. Once we get to that point what we are negotiating with them is we need for you to be able to say why you are voting for it or why you are not voting for it without creating a technical violation of this awful old agreement. That is something that doesn't usually matter to public companies, but it really matters to us in this.

I think of the whole agreement the most important thing is price, you know what that is. The second thing is how do you get out of it and what are the consequences of getting out. The third is how do you know when you don't have to go ahead with it, what are your outs, we covered that, and with you guys more importantly than anything I need to be able to talk to my constituents about why I am voting for it or why I am voting against it. I think that is the confidentiality provision.

You are right it kills you to read these things, but that is what it does.

Arthur Gottlieb

What they will do is within four days they have to file this entire document with the SEC so your constituents will have full access to the entire document at that point in time.

Alderman Chasse

You know what I am hoping is after it is all over and said and done when of course you are going to give your speech to the Board of Aldermen and you are going to bring it up, that would probably be a good time to also put it on the website so that people at home that missed the meeting would be able to see that same speech time and time again.

Mayor Lozeau

I think it is important to keep the Pennichuck site on our city website updated with all of the latest information, and every time we file something with the court or we have got something I make sure that it goes up there. We will keep that up. I think it is going to be very telling during the public hearings. I think it is very important that those public hearings not just be in Nashua as we have already talked about and that we have an opportunity to hear what people are out there saying and the job that we have given to Bill and John and Arthur is negotiate something that gives us some flexibility if something happens and we look at it and go this is no longer a good deal for us this does not make sense for us.

As I have told you a number of times, it was hard for me to get the \$29. It was hard for me to bring you \$29 because I think we are just a little closer to the margin than I am comfortable with and the only thing that overshadowed that for me is I don't want to be sitting here 10, 15, 20 years from now and saying for \$1 a share we said never mind. I didn't think that was in our best long-term interest.

But these other things make it critically important. For instance, one of the things Pennichuck said that John can maybe be a little more colorful on was they wanted to put a provision in that said for the next 6 years if this deal doesn't happen for the next 6 years we can't go after eminent domain and if we do we owe them \$6 million. Well forget about it. What is the settlement fee that we pay out, what is that number if we violate this agreement? I want to make sure that no matter what the number is whether it is \$100,000 or \$2 million that it is very hard for us to come across something that would make us break this agreement.

Alderman Chasse

Too many negative vibes. You have to be optimistic.

Mayor Lozeau

No but I mean you have to be prepared for those things so we are ready. I think that is important and I think that is how this agreement is playing out is that we have the appropriate flexibility at a reasonable cost. We are not spending money on the due diligence before knowing that we have an agreement because as some of the Aldermen know that have been dealing with this since before I got here, they changed the rules of the game an awful lot. You are heading down the street thinking this is where you are going and you get through the day when they change. They have done it 3 or 4 times with us on some of this. We have to know what our deal breakers are.

Alderman Clemons

For me the thing that the public is going to be most interested in is I think the thing that we are most interested in and that is this chart. The thing on this chart is that rate increase. That is what I think is going to drive the discussion if you will actually at least for me. That is why I am still concerned with what is that rate increase going to be and where are we going to be and how confident are we going to be that – which line is this going to be on?

Even with everything else that is in here, I think when we are discussing this in public that is the driver.

Mayor Lozeau

And that is what I say to Arthur all the time, what is the bottom line, what is the worst case scenario and that is why I say that \$29 doesn't give me the cushion I would like. But this still demonstrates that under what we would consider the worst case scenario. Rates will go up during certain times, but they will go up less than they would have under Pennichuck ownership.

The very first press release that I had to do on Pennichuck happened, and I can't remember what the circumstance was, I think I had only been here a couple of months, and I put something out and Upton & Hatfield had written the substance of the press release and in it they had said rates will be lower, and I said wait a minute I am not buying that rates are going to be lower because there is a difference between lower than if Pennichuck owned it and lower right, and I changed it to say rate stabilization, predictable kind of stuff. I was so glad I did that because the deeper I got into this the more it became very clear that we couldn't buy this company and lower people's rates right now. The rate is here, we are not going to lower it, we're just not going to raise it as quickly, and at some point we are going to be in a place where the mortgage is paid so to speak. Thirty years from now the mortgage is paid. That is when some of the other long-term benefits will really be realized.

I agree Ben the drivers are what is the rate going to be, how well can we operate the company – okay that is really important and I don't know that people are convinced about what kind of job we will do with that, and it is important for us to own our water resource, to control that water resource. For me those are the three drivers. All of this other work that we are doing is to make sure that we don't make a mistake on those three things.

Alderman LaRose

Adding on to what the Mayor just said, I never felt that the rates were going to be lower, if we acquired we would reduce the rates. I always was under the impression that our rates would be lower than what Pennichuck. It seems to me from day one that is what we were saying.

Mayor Lozeau

My sense was that was getting lost on some people, the distinction was getting lost.

Alderman LaRose

I think you are right.

President McCarthy

I think when Upton & Hatfield said lower they mean lower on any given day that it would have been the other way not lower than it is today. It is clearer this way.

Alderman Sheehan

We have to assume that everybody is walking in brand new, every time we say something that they know nothing and are starting from scratch and need to be very specific that way because we don't know how much history someone has.

Mayor Lozeau

Mayor Streeter did, I remember it was I think it was just before I decided to run for Mayor, he did a very lengthy guest editorial explaining the difference in that same discussion that lower doesn't mean lower than you are paying today it is lower than what you will pay overall going forward.

President McCarthy

Had the PUC given us the right to take it at the price we thought it was worth; we probably could have made them lower.

Mayor Lozeau

At the Clifton Below price or whatever absolutely no doubt about it. And that would have been a really significant win. And that is one of the reasons that this federal legislation non-taxable is really a critical component of this. It will provide that breathing room for us to have that confidence that we can really deliver it the way we are talking about. It would certainly make me breath easier.

Bill Ardinger

That is a real important point is that the chart that you are looking at right here, if we're stuck with a bad result by a federal tax rule that was not meant for this situation because this situation has never happened before in the country in this way, so what we are doing is we are holding this structure, which is not optimum of a parent company and three regulated subs, when people say well why aren't we doing it like Manchester well the reason is Manchester didn't acquire a privately held utility. If the federal legislation passes, and this will be public while we are still trying to encourage our delegation – right now we can't really talk to them openly. We can talk to them privately, but you know if that passes that provides us with added flexibility to write a new line on that, which is a little bit lower, and also to have more flexibility after the transaction closes with how we own the companies and how we are regulated going forward. There is a lot riding on that.

President McCarthy

In the cases where there have been acquisitions and I know there was one out in Ohio because Skip worked on that, did they just pay off the tax when they acquired the assets?

Bill Ardinger

There is only one case I am aware of, which is BIW and in that case they paid the tax.

Arthur Gottlieb

Was that an asset purchase or was it still a stock purchase/

Bill Ardinger

It was a stock purchase. They did it as a stock purchase and then they liquidated it all down. In that case, they paid the tax. Ninety plus percent of the water systems are municipally owned already in the country so there aren't that many opportunities.

President McCarthy

And elsewhere in the country where the water system is a lot younger the accelerated depreciation may not have created substantial dividends yet.

Arthur Gottlieb

You don't have to do accelerated when it is under 50 years old.

Alderman Pressly

If we are thinking about when we go public and how we are going to deal with our constituents, I think memories are really short and a lot of people have really forgotten all about this and how it got started, and I think it is important that somehow when the press releases are put together that we indicate how

this all started and that Pennichuck put itself out to be sold, and that if we don't do this that is a possibility in the future.

Mayor Lozeau

We carry a history on the website, but I think you are right it bear repeating as we move forward letting people know how did we get here.

Alderman Pressly

And don't underestimate the emotional part of being in charge of our own drinking water supply. I think there is a strong passion for that. I think we should stress that too.

Alderman Clemons

This is probably getting off what we are talking about in this agreement and probably more towards the due diligence, but I guess I have a question in relation to that that I would hope would be a part of the due diligence, and that is the conditions of the ponds themselves. Is that going to be part of the due diligence because...

Arthur Gottlieb

That is part of the operational due diligence that Beck will be doing.

Alderman Clemons

Okay because I know that several of them have invasive weeds and that type of thing. I don't know what kind of costs as associated with that that the city will have to bear in the future as those weeds choke the water more. That is going to be a problem. I think that is something that you wouldn't normally think of, but it is going to be a problem.

President McCarthy

We have actually had a lot of discussions with them on that in the past. What it boils down to is so much of the water is coming out of the Merrimack and only goes into Harris Pond that the ponds upstream we can restore them if we want to, but there is almost no reason to at this point for the water supply the way it works. Harris is the only one you have to keep clear for the normal daily water routine to work. We have lost upstream capacity from Pennichuck Brook, but we have also lost upstream supply because of impervious surface on the watershed.

We had a long time ago talked with them about dredging the ponds. They had in fact looked to dredge them and couldn't get permission to do so at one point. It is an issue that we will just have to take on at some point, but it is not absolutely necessary to continue delivering water at the volume that we are delivering it today.

Alderman Clemons

I was just wondering if that was going to be a part of the due diligence and what...

President McCarthy

I know there is a lot of data already on the nature of that because I have had discussions with Don Ware on it in the past.

Mayor Lozeau

That is a good question. It is important to know what that is, it is part of the assets.

President McCarthy

There was actually a fair amount of stuff in the PUC testimony that was based on the pond condition also.

Alderman Pressly

On a frivolous note, what about the cell towers? We will own those too?

Mayor Lozeau

There are long term leases on some of them. That is part of the due diligence.

Alderman Pressly

That is part of the due diligence. It will come with it.

Mayor Lozeau

You are probably thinking about Columbia?

Alderman Pressly

Columbia and Shakespeare.

Alderman LaRose

I don't think they own that land that...

President McCarthy

Shakespeare there is no...

Alderman Pressly

We don't own?

President McCarthy

There is no tower in there.

Alderman Pressly

They usually put the cell towers because of the elevation they put them near the tanks.

President McCarthy

There aren't any at Shakespeare.

Alderman Pressly

I think there are at Rivier.

Mayor Lozeau

Rivier College. We will be looking at that, but remember there isn't a cell tower that I am aware of, and this has been made painfully clear to me, that doesn't have very long term contracts on them, and when they get down to 5 or 7 years they are in knocking on the door saying we can't upgrade, we can't put anybody on here unless you give us another 30 years. There is one going back and forth now on one of our own cell towers. I am hesitant to go out that far, but I understand the circumstances. It is hard to collect revenue off of them if you can't guarantee somebody space for a period of time.

Alderman Flynn

In this black book that we got, this reference to July 21st, on the page 2, there are two charts on this page. The bottom chart I think I understand where that is coming from. The first column is all of the red numbers and that is where we had all of this early discussion tonight. The top one, what is the total ratepayer savings grid? What is the difference between that grid and the PWW ratepayer savings?

President McCarthy

One is all three utilities and one is just Pennichuck Water Works.

Mayor Lozeau

See how the bottom one says PWW...

Alderman Flynn

So this is like Nashua and those 8 or 9 communities that...

Bill Ardinger

It just the three regulated utilities.

Alderman Flynn

The bottom one is which one?

Bill Ardinger

The bottom one is just PWW it is mostly Nashua, but not entirely Nashua.

Arthur Gottlieb

Yes you are right the bottom one is in Nashua and the ...

Alderman Flynn

Is that the like 8 or 9 towns that are in that PWW?

President McCarthy

Yes.

Bill Ardinger

And the top one is all three – all of the regulated utilities...

Mayor Lozeau

Pennichuck East, Pittsfield...

Alderman Flynn

So overall just somehow the way it works the other small ones that what is it...

President McCarthy

It is Pennichuck East.....

Alderman Flynn

Pittsfield Aquaduct and all that?

President McCarthy

Pennichuck East has a rate that is about twice what Pennichuck Water Works is so those ratepayers do better under our ownership model than the PWW ones.

Alderman Flynn

In this top one, does that include the problems we have at the bottom rolled into the top?

President McCarthy

Yes.

Bill Ardinger

It is a good point and I think it was addressed a little bit earlier as well, which is that if you look at the graphs that we have been doing – I hesitate describing the worst case scenario because you can always make things worse, but there are no optimistic assumptions built into this. I will give an example of an optimistic assumption, well two examples; one optimistic assumption is the tax exempt ruling come through and that makes everything a whole lot better. Another example of an optimistic assumption is that some of the cost savings that would go to PAC and PEU are in fact transferred over to PWW. That would in fact benefit the ratepayers of PWW. That is a thing that I believe the city would ask for as part of its PUC filing, I am not clear that it would get it so that is an example of an optimistic assumption, which would be to say that the way the rate model is constructed that the two small utilities are modeled to get full benefit of the change of ownership and it is not clear that in fact PWW might not be able to get some small piece of that. That would help and is an example of an optimistic assumption that is not built into these graphs. That is why these numbers look better than those numbers.

Mayor Lozeau

This is really a table that says we reasonably believe that this is the likely scenario under these provisions that are in there.

Alderman Flynn

I wouldn't have anticipated that the other small ones could skew the whole number to become almost I don't know predominantly black.

Bill Ardinger

It is a move of 3%. Just think of adding 3% to the numbers on the bottom.

Alderman Flynn

But that PWW is still in that first graph.

Bill Ardinger

But it is enough to move it that 3%. It is a pretty big savings for the smaller utilities.

Mayor Lozeau

And they are carrying a much bigger burden than we are.

Bill Ardinger

Today.

Mayor Lozeau

As ratepayers I mean.

Alderman Sheehan

Well their system is newer and they have less people to split the hardware costs of running their infrastructure so per person in the population it is always going to be higher with a smaller population...

President McCarthy

It is not just that they are newer, that is where the so called troubled systems have gone. When there is one that is in real trouble the PUC asks them to take it over and they do replace crappy stuff. When they put stuff into the two utilities they put them in by where their rate will wind up and most of the troubled systems have wound up in Pennichuck East.

Alderman Flynn

One other question, if for example there was some reason, I know we talked about these things that might happen some problem in the Middle East that drives rate up or whatever, but there was something that would end this deal; it doesn't get financing or the financing is too expensive whatever those situations are, there is quite a list of them I think that you have in there that you have anticipated and

thought through. At that point, the eminent domain is still gone because we decided to go forward. I would imagine at that point Pennichuck must have a drawer that they open and they have a folder that they as always want to sell their company. I am sure everything is for sale they want to find some way to move that company. At that point, some for sale sign goes up, they start advertising, I don't know how you go about selling a water company, but somehow I am sure it is not all unsolicited, we could be a player in that could we not?

Mayor Lozeau

Yes we could be a competitive bidder.

Bill Ardinger

Two years.

Alderman Flynn

I thought two years was for eminent domain.

Bill Ardinger

That statute RSA 38 covers both agreed upon action and taking so once we are done, that starts a moratorium of two years where we can't do anything, but if I look at my investment banker who knows capital evaluations at the company it would be a very rare buyer who would want to come anywhere near this company, without repeating outside this room, attorney client privilege, is dead in the water. It can't move because everyone is afraid that if they buy it Nashua is going to go two years after and try and go after it again, which is a drain. Isn't that right Arthur?

Arthur Gottlieb

It is not impossible that they would try to sell the company, but buyers would apply a pretty deep discount to the concern that the city would then step up and try to do an eminent domain taking again with the risk that in fact what they would get for the major asset they just bought that they would get a price that is not very attractive as set by the PUC. It is a possible scenario, but it is not one to be feared here. It is not one you could defend against.

Bill Ardinger

But the Mayor is right if that is even in the two year moratorium there is nothing that prevents the city from talking to the buyer saying you do a deal with me here is the deal.

Mayor Lozeau

Exactly.

Bill Ardinger

There is no moratorium on us doing a deal with a buyer so there is a lot of power in your guys even in a moratorium.

Mayor Lozeau

You would very much enjoy my scenarios that I have laid out, how all of this could play out.

James McNamee, Esq.

It also helps explain why they asked for the 6 years that we wouldn't proceed with eminent domain.

Alderman Flynn

I figure if we don't get it now we are going to get it, it is just a matter of...

Mayor Lozeau

And I will tell you this, but...

Alderman Flynn

They run out of choices of how they might, what obstacles might lay in that two year period.

Mayor Lozeau

Look how long it has taken us I can't imagine somebody coming along and two years being enough for them to wrap it up anyway. I can tell you this if this doesn't work there is no buyer out there that is going to give them \$29; there is no buyer out there I bet that would give them \$28. Arthur is like maybe, depends.

Arthur Gottlieb

Again, they are obviously willing to do a deal without having it happen with an option \$29 and they were not willing to do a deal without getting to an option with \$28 so we kind of know where the sensitivity is.

Mayor Lozeau

Right, which is what we have to do, but it might be different if, as I say all the time, Joe's Water Company would be looked upon differently by Pennichuck and able to do something there. Maybe we weren't because of any of the baggage, but it doesn't prevent us from working with people to get a...

President McCarthy

If they are doing stock trades they don't have to pay 5% on the money they borrow to pay off the shareholders.

Mayor Lozeau

Do people feel comfortable that they have a better sense of the DMA tonight? I think it was helpful for Bill to take out what are the big things that are still in negotiation and what do they mean versus the typical stuff that is in there.

Alderman Flynn

The end of the confidentiality agreement, the **...audio inaudible...** that carried this along, is that in here someplace or is that yet to be added to this agreement? Do you know what page it is on?

Bill Ardinger

It is in here on page 34. Page 34 is the confidentiality provision. Paragraph (a) is what we want to replace this, which is you can only use the information we're exchanging for the purpose of doing this transaction. (b) addresses the albatross or what I call the dog breath agreement and that agreement we are trying to kill it on the date that you guys would either sign this agreement, which I think is that is what we have outstanding now because you guys have to talk to the public on the next morning. Their offer was that agreement continues for 5 years, which it can't because you would be breaching it every time you answer a question as well as they would because they have to go to the SEC. We're trying to get that covered in that that (b)

James McNamee, Esq.

These provisions survive the ...

Bill Ardinger

Yes they do.

Mayor Lozeau

Plan on August 10th unless there is nothing that we can bring to you then. If there are questions that come to you that you need answers to, by all means call my office ask for me or for Brenda. I don't think there are any decisions that will be made on the 10th.

President McCarthy

Are there any other questions or comments?

MOTION BY ALDERMAN CLEMONS 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

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

Yea: Alderman Clemons, Alderman Vitale, Alderman Craffey, Alderman Deane, Alderman Pressly, Alderman LaRose, Alderman Melizzi-Golja, Alderman Cox, Alderman Sheehan, Alderman Wilshire, Alderman Chasse, Alderman Flynn, Alderman McCarthy

14

Nay:

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MOTION CARRIED

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

ADJOURNMENT

**MOTION BY ALDERMAN LAROSE THAT THE JULY 27, 2010, SPECIAL MEETING OF THE BOARD OF ALDERMEN BE ADJOURNED
MOTION CARRIED**

The meeting was declared adjourned at 9:00 p.m.

Attest:

Paul R. Bergeron, City Clerk