

**MINUTES OF A SPECIAL MEETING  
OF THE NEW YORK CITY WATER BOARD**

A Special Meeting of the New York City Water Board (the “Board”) was held on April 11, 2008 at 8:30 a.m. at The Downtown Conference Center at Pace University, 157 William Street (Room 1315), New York, N.Y. 10038. The following members of the Board were present:

James T.B. Tripp;

Donald Capoccia;

Dawn S. Davis;

Marilyn Gelber;

Amaziah Howell;

Alan Moss; and

Maria Santos Valentin;

constituting the entire membership of the Board. Mr. Tripp chaired the meeting, and Albert F. Moncure, Jr., served as Secretary of the Meeting.

**Adoption of Minutes**

The first item on the agenda was approval of the minutes of the Board’s previous meeting held on February 29, 2008. There being no discussion, upon motion duly made and seconded, the minutes of the Board’s meeting held on February 29, 2008 were unanimously adopted.

**Opportunity for Public comment**

Next, members of the public were invited to address the Board.

City Councilmember James Gennaro spoke to express his opposition to the current System Lease Rental which equals 15% of debt service on New York City Municipal

Water Finance Authority (“Water Authority”) bonds. He said the amount of the rental payment in excess of debt service on pre-1985 City general obligation bonds issued for water and sewer system purposes should not be paid into the City’s general fund but rather used to benefit the Water and Sewer System. Mr. Tripp asked Councilmember Gennaro how he would respond to proponents of the current rent structure who cite the City’s fiscal distress and its need for such revenue. The Councilmember replied that there are more progressive ways to raise general fund revenue. The current rental is regressive, he said, since it increases exponentially with the growth of the capital budget and unfairly impacts low income Water and Sewer System customers.

Next, Carol Kostik, Deputy City Comptroller for Public Finance, also spoke in opposition to the current System Lease rent structure. She said that the City Comptroller had recently sent Board members a letter restating his May 1, 2007 proposal that rent in excess of debt service on City general obligation bonds issued for Water and Sewer system purposes be used for rate relief and pay as you go capital. In addition the City Comptroller has recommended that Board members independently examine infrastructure costs and retain independent counsel to represent the Board in negotiations with the City to restructure the System Lease rental payment. Ms. Kostick said the Comptroller’s proposal would strengthen the Water Authority’s credit rating because of the increased use of pay as you go capital rather than incurring long term debt to finance capital improvements to the Water and Sewer System.

The last member of the public to address the Board was Mark Schwartz from New York Water Management who urged the adoption of expanded lien sale authority with no exceptions for entities such as Housing Fund Development Corporations.

## **Discussion of FY2009 Water/Sewer Rates**

- **Key Assumptions and Current Financial Projections**
- **Rate Proposal**
- **Draft of Public Notice**
- **Rate Adoption Schedule**

The next item on the agenda considered by the Board was a discussion of proposed Fiscal Year 2009 Water and Sewer Rates.

DEP Commissioner Emily Lloyd addressed the Board. She acknowledged that the staff's 14 1/2% rate increase proposal is 3% in excess of last year's projection. She attributed the increase to DEP's stepped up collection efforts and capital program management initiatives which have resulted in both costs and benefits. She explained that although the lien sale will increase revenue, this is partially offset by the expanded Payment Incentive Program ("PIP") and the increased use of payment plans, which will reduce and stretch out the receipt of revenue. Likewise DEP's efforts to manage the capital program more efficiently will help maintain the Water and Sewer System in a state of good repair as required by State and Federal regulators but will increase debt service costs, which in turn, must be funded by higher water and sewer charges.

Next Executive Director Steven Lawitts addressed the Board. He noted that actual Fiscal Year 2008 Revenues are 10% higher than actual Fiscal Year 2007 Revenues but 5% less than plan projections. He attributed the 5% shortfall to the assumption in the plan that the Board would have stand alone lien sale authority thereby resulting in greater revenues, but not anticipating large PIP discounts and the fact that many delinquent customers would elect to enter into payment plans to pay delinquent charges over time. DEP agreed to offer more customers payment plans and to expand eligibility for the Payment Incentive Program as part of negotiations with the City Council for expanded lien sale authority.

Mr. Lawitts next discussed the results of the Payment Incentive Program, DEP service termination efforts, and the amount of collections attributable to payments from delinquent customers who were included in the 90-day lien sale notice.

He then discussed the cost of service which, he said, determines the amount of the rate increase. He said there has been a 3% increase in the cost of service over last year's service cost projections resulting in a corresponding increase in the proposed rate increase from 11½% to 14½%. The increase in debt service over last year's debt service projection, which also increases the System Lease rental payment, has had the greatest impact on the proposed Fiscal Year 2009 rate increase. The remainder of the increase results from higher operating and maintenance costs. These costs consist of a 10% increase in non-discretionary personal service costs, higher electric and other utility bills, higher real estate taxes for City-owned property in the upstate watershed, sludge removal costs, and Environmental Health and Safety ("EH&S") costs required by DEP's plea agreement with the U.S. Attorney. Mr. Lawitts said the staff will advise the Board of capital improvement needs including mandated expenditures.

He said the impact of the proposed rate increase would be approximately \$8.44 per month for the average single family homeowner and \$7.18 per month for the average multi-family unit.

Responding to a question from Mr. Tripp, Mr. Lawitts said it is not possible at this time to project future reductions in payment delinquencies and the corresponding growth in revenue. Responding to a question from Mr. Tripp as to whether all mandated capital expenditures are equally important, Commissioner Lloyd said expenditures to improve drinking water quality and the quality of water in the harbor or to improve the system reliability, such as the Delaware Aqueduct repair plan, are more important than other mandates. Ms. Gelber asked

for clarification of the labor costs component of non-discretionary increases in operating and maintenance expenses. Commissioner Lloyd explained that since DEP is a closed end system for financial accounting purposes, DEP must absorb in its budget all health cost increases resulting from City-wide collective bargaining negotiations. Mr. Capoccia asked whether the proposed \$8 million expenditure for EH&S costs will be eliminated when DEP's probation terminates. Mr. Lawitts responded that DEP will have continuing EH&S compliance costs even after probation ends. Responding to a question from Ms. Santos, Mr. Lawitts said the Fiscal Year 2010 rate increase will likely be similar to the proposed Fiscal Year 2009 increase. Mr. Moss observed that the large increase in the capital program has not resulted in a corresponding increase in DEP personnel.

The discussion ended with a consensus among Board members that the staff should publicly notice the proposed 14 1/2% increase and hold public hearings ahead of the Board's consideration of the rate increase at its next meeting.

**Approval of an Amendment to Agreement with MWH Americas, Inc. to Provide Additional Capital Program Management Services to DEP**

The next item on the agenda was the consideration of an amendment to the Board's consultant contract with MWH Americas, Inc. ("MWH") to provide additional Capital Program Management Services. Commissioner Lloyd explained that pursuant to the amendment, MWH will assist DEP to implement MWH's prior recommendations and provide support to senior management as those recommendations are adopted. Commissioner Lloyd said the prior recommendations included development of specific, consistent tools for capital program management including unitary management of project life cycles so as to avoid increases in scope and cost. Responding to a question from Ms. Davis about the appropriate mix of outside consultants and in-house staff, Commissioner Lloyd said that DEP will gradually transition away

from the use of outside consultants but DEP's use of in-house resources at this time is restricted by City's Hall's mandate to reduce administrative head count by 40 positions. Responding to a question from Mr. Capoccia, James Mueller, DEP Deputy Commissioner of the Bureau of Engineering and Design said that MWH had 17 staff members assigned to this contract. Mr. Moss expressed concern that DEP's use of Board funded consultant contracts may be subverting City procurement rules. Commissioner Lloyd explained that the MWH contract, as well as other consultant contracts, have been procured through a competitive request for proposals process. Ms. Santos said that the MWH consultant contract amendment should make clear that MWH's staff assigned to this account are not DEP employees but rather independent contractors.

There being no further discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

**WHEREAS**, pursuant to Section 1045-g(8) of the New York City Municipal Water Finance Authority Act (the "Act"), the Board is authorized to enter into contracts and to retain private consultants on a contract basis for the purpose of obtaining professional or technical services to assist the Board in carrying out its responsibilities; and,

**WHEREAS**, the Board entered into an agreement on April 24, 2006 with MWH Americas ("MWH") in the amount of \$1,250,000 whereby MWH provided capital program management services to the New York City Department of Environmental Protection ("DEP"), which in particular, reviewed and identified the best practices for program management, benchmarked DEP's practices and processes and made recommendations the implementation of which would improve DEP's management of the water and wastewater capital program ("the Consulting Agreement"); and

**WHEREAS**, on September 15, 2006, the Board authorized an amendment to the Consulting Agreement in the amount of \$1,000,000 for the provision of additional services with respect to the benchmarking and scoping the development and implementing of a capital program Project Management Information System ("PMIS"); and

**WHEREAS**, on December 15, 2006, the Board authorized a second amendment to the Consulting Agreement with MWH in the amount of \$8,250,000 to assist in the Phase II implementation of best practices recommendations for capital program management; and

**WHEREAS**, on May 14, 2007, the Board authorized a fourth amendment to the Consulting Agreement with MWH in the amount of \$9,364,000 to provide assistance to DEP with developing, installing, configuring and deploying a capital program Project Management Information System; and,

**WHEREAS**, DEP has identified a need for further assistance from MWH in completing the implementation of new capital program management processes for DEP, including the provision project management and administration, education and training of personnel, documentation of engineering standards and services and supplemental staff resources, over a sixteen month period for an additional amount not to exceed \$8,876,000; and

**WHEREAS**, the Board has received a presentation from DEP which describes MWH's capital program management services to date and their progress and the need for further services and has requested the Board approve an amendment to the Consulting Agreement in the above amount for such services; and

**WHEREAS**, in accordance with the Water Board's Policy on the Procurement of Goods and Services, in particular, Section 5.i. (prior Board approval of contracts where the cumulative value exceeds \$100,000) and Section 6.iv. (waiver of competitive solicitation where the procurement is a continuation of existing services and it is desirable for purposes of continuity and compatibility), the Board finds such justification reasonable and appropriate in the present circumstances; it is therefore,

**RESOLVED**, that the Executive Director is hereby authorized and directed to execute an amendment to the Consulting Agreement with MWH to provide the additional services, upon such terms and conditions as the Executive Director may deem reasonable and appropriate, for an additional amount not to exceed \$8,876,000, provided that total compensation for services performed under the Consulting Agreement and its four subsequent amendments shall not exceed \$28,740,000.

## **Discussion of Alternative Rate Structure Studies**

The next item on the agenda was DEP's request for Board concurrence with DEP's proposed issuance of a Request for Proposals ("RFP") for a consultant to study Alternative Rate Structures. DEP Deputy Commissioner Angela Licata explained that DEP is seeking a contractor who can assess the desirability of fixed and variable rates as well as different charges for storm water sewage and sanitary sewage generators reflecting the different costs to the sewer system and whether conservation rates should be adopted taking into consideration the balance between conservation goals and revenue shortfall.

Ms. Santos asked to see the RFP before it is issued. Ms. Davis concurred adding that she would especially like to see the scope of work for the proposed contract. Deputy Commissioner Licata agreed to these requests. Responding to a question from Ms. Santos, Commissioner Lloyd said that perhaps Booz Allen Hamilton under its existing consulting contract could analyze whether any other water utilities have a cost of service structure comparable to the System Lease rental.

The discussion concluded with a consensus of the Board that DEP should proceed with the RFP subject to compliance with Ms. Santos' and Ms. Davis' requests.

## **Executive Session**

- **Discussion and Consideration of Proposed Settlement of Unpaid Excess Consumption by United Water of New Rochelle**

Upon motion duly made and seconded, the Board voted to convene in Executive Session to consider a litigation settlement with United Water of New Rochelle.

Thereafter the Board reconvened in open session without having taken any action in Executive Session.

## **Settlement of Unpaid Excess Consumption by United Water of New Rochelle**

Upon motion duly made and seconded, the following resolution, having been considered in Executive Session, was unanimously adopted:

**WHEREAS**, the Board has been advised by staff and counsel that they are in the process of negotiating an agreement with the United Water New Rochelle (“UWNR”) with respect to various bills for excess consumption which have been rendered since September 24, 1994 and which have been the subject of dispute and litigation in the matter of Village of Scarsdale, et. al. v. New York City Water Board, Index No. 98-13254 (Supreme Court, Westchester County); and

**WHEREAS**, staff has recommended a settlement in the sum of Five Million Two Hundred Twenty Four Thousand and Eight Hundred Thirty dollars (\$5,224,830.00) in full satisfaction of any and all excess consumption by UWNR from September 1994 through September 2007, plus interest at the rate of 3% applied to bills dated prior to and including November 1, 2007, conditioned upon the execution and delivery by UWNR of a Stipulation of Settlement and other related instruments, including an updated Water Supply Agreement, satisfactory in form and substance to staff and counsel for the Board, and which Stipulation of Settlement shall, among other matters, include a covenant by UWNR to pay in a timely manner any and all future bills for water taken from the New York City water supply system, whether entitlement or excess, that are rendered by the Board to UWNR; and conditioned upon prompt payment of the settlement amount; and

**WHEREAS**, UWNR, as of January 3, 2008, has made a partial payment of Two Million Nine Hundred Thousand dollars (\$2,900,000.00) towards the full satisfaction of the settlement amount; and

**WHEREAS**, staff has recommended that the Water Board agree to grant a credit against the settlement amount of Seven Hundred Fifty Two Thousand dollars (\$752,000) that represents a portion UWNR’s construction costs of installing a flow control valve and Venturi meter in connection with UWNR’s connection to Shaft 22 of the Delaware Aqueduct, as required by the Water Supply Agreement; and

**WHEREAS**, staff has recommended that the Board agree to conditions set forth in the Stipulation of Settlement regarding UWNR’s design, purchase and installation of telemetry

equipment for the flow control valve in Shaft 22, whereby UWNR has agreed to pay the initial Fifty Thousand Dollars (\$50,000) of the bid price for such work obtained through a competitive bidding process, and the Board agrees to credit UWNR against future excess consumption bills for any amount of the bid price over \$50,000, with UWNR agreeing to pay for any actual cost overages beyond the bid price; and

**WHEREAS**, upon payment by UWNR to the Board of the aforementioned sum, New York City Department of Environmental Protection will issue engineering approval and a land use permit allowing UWNR to make the connection to Shaft 22; and

**WHEREAS**, in accordance with its powers under the New York City Municipal Water Finance Authority Act, the Board has determined the terms of such settlement to be reasonable and appropriate; it is therefore

**RESOLVED**, that the Board hereby approves the settlement in the sum of Five Million Two Hundred Twenty Four Thousand and Eight Hundred Thirty dollars (\$5,224,830.00) plus interest at the rate of 3%, in full satisfaction of any and all excess consumption by UWNR through September 2007 as reflected in bills dated prior to and including November 1, 2007, less the credit of Seven Hundred Fifty Two Thousand dollars (\$752,000) and any credit against future excess bills attributable to installation of telemetry equipment as described herein, subject to the execution and delivery by UWNR of a Stipulation of Settlement and other related instruments including an updated Water Supply Agreement satisfactory in form and substance to Water Board staff and counsel and subject to prompt payment of the settlement amount. The Executive Director is hereby authorized and directed to take such steps as may be required to effectuate the settlement described above.

### **Adjournment**

There being no further business to come before the Board, upon motion duly made and seconded, the meeting was duly adjourned.

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SECRETARY