

**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 November 9, 2007 at 8:30 a.m. at St. John’s University, 101 Murray Street, New York, New York 10007. The following members of the Board were present:

James T.B. Tripp, Chair

Donald Capoccia;

Dawn S. Davis;

Marilyn Gelber;

Amaziah Howell; and

Alan Moss;

Constituting a quorum. 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 minutes of the Board’s previous meeting held on October 18, 2007. There being no discussion, upon motion duly made and seconded, the minutes of the Board’s meeting held on October 18, 2007 were unanimously adopted.

Approval of Amended Regulation No. 2 – Discontinuance of Water Supply and/or Sewer Service Because of Nonpayment

Mr. Tripp said the first item to be considered by the Board is the amendment of the Board’s service termination rule. Mr. Tripp invited members of the public to speak about the proposed rule.

The first speaker, James Lewis representing a coalition of non-profit housing entities, said there should be no mid-year rate increase, delinquent customers should be referred to non-profit housing entities for counseling, and there should be a two-year moratorium on service termination. In response to a question from Mr. Moss about the coalition's position on lien sales as an alternative to service termination, Lionel Ouellette, a colleague of Mr. Lewis, said the groups they represent generally oppose lien sales as an enforcement method. He added that they had been unaware of proposed amendments to the lien sale law, citing the lack of public notice concerning the pending legislation, and the unavailability of a DEP liaison on collection enforcement. In response to Mr. Ouellette's criticism about the unavailability of a DEP "point" person with respect to collection enforcement, DEP Deputy Commissioner Joseph Singleton introduced himself as the DEP official in charge of collection enforcement and provided his telephone number to the audience.

Bonita Dowling, a mortgage counselor in the Bedford Stuyvesant section of Brooklyn, said there needs to be a greater outreach to low income homeowners who are delinquent on water and sewer bills to advise them of the availability of payment plans as an alternative to service termination.

Jim Buckley of University Neighborhood Housing in the Bronx, complained about the required payment of up to 50% of delinquent charges to initiate a termination complaint. He also said his organization was unable to analyze the pending lien sale legislation because of its complexity.

Mr. Ouellette then said that DEP collection enforcement officials should somehow interface with other City agencies and non-profit housing entities to mitigate the adverse effects of collection enforcement on low income tenants and homeowners.

Mr. Moss, Ms. Gelber, and Mr. Tripp discussed the desirability of “one stop shopping” for low income homeowners seeking advice from different City agencies on paying delinquent water and sewer bills and real estate taxes and seeking mortgage counseling advice. Mr. Tripp said he would reach out to the Department of Housing Preservation and Development and the Housing Development Corporation to explore whether such agencies could meet with DEP to coordinate a unified approach to providing such services.

Mr. Tripp, Ms. Gelber, and Ms. Davis discussed current methods of publicizing Water Board meetings and suggested that improvements could be made.

Mark Schwartz from New York Water Management, the last member of public to speak, said the City Council should adopt stand alone lien sale legislation for water and sewer charges rather than faulting DEP for the accuracy of its bills.

At Ms. Gelber’s request, William Kusterbeck, Treasurer, next described changes in the proposed service termination rule from the version provided to the Board at the last meeting. The revised rule adds, as a service termination triggering event, default on a payment agreement. The rule updates the notice provisions to specify overnight mail and affixing notices to tenants’ doors in multi-family buildings under certain circumstances including provision of the final termination notice by overnight mail. The definition of “customer” is changed to correspond with the definition in the Rate Schedule. The termination notice will describe the procedure for service restoration. The down payment requirement for filing a termination complaint is eliminated. The provisions relating to Special Procedures categories, i.e., the blind, elderly, disabled, or young customers or residents are changed to track Public Service Commission rule NYCRR 14.5.5. The rule defines a standard of “personal” contact that DEP must make to contact an adult resident before service may be terminated and that this includes

telephone contacts and a personal site visit to the premises when telephone contact is unsuccessful. The provision allowing DEP to terminate service without “further demand or notice” where a customer defaults on a payment agreement executed in response to a termination of service notice was changed to require at least a 5-day notice to the owner and a posting to the entrance door of the premises served.

Ms. Gelber, Mr. Tripp, and Mr. Capoccia asked Mr. Kusterback to review the Board’s procedures for disseminating public notice of the Board’s adopted rule changes.

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

WHEREAS, the Board is authorized pursuant to Section 1045-h(8) of the New York City Municipal Water Finance Authority Act (the "Act") to adopt rules and regulations to provide for the discontinuance or disconnection of the supply of water or the provision of sewer services or both by the City of New York for nonpayment of fees, rates, rents or other charges therefore; and

WHEREAS, pursuant to the Act, the Board has previously adopted, and subsequently amended, its Regulation No. 2 authorizing the New York City Department of Environmental Protection ("DEP") to terminate water and sewer service to customers because of nonpayment of assessed charges; and

WHEREAS, to provide the Board and DEP with an enhanced mechanism to enforce collection of charges, it has been proposed that Regulation No. 2 be revised to reflect material changes including but not limited to: lowering the dollar amount and delinquent period thresholds determining an account’s eligibility for service termination because of non-payment; adding a default on a payment agreement as a condition for which termination of service would be authorized; revising the cold weather exception during which DEP will not conduct service terminations; simplifying the Termination Complaint procedure; revising provisions relating to the elderly, blind, disabled and the newborn baby exception as circumstances requiring Special Procedures; and increasing the down payment required for installment agreements executed in response to a termination

notice, all as further described in Attachment A, attached hereto¹ and incorporated and made a part hereof; and

WHEREAS, public notice of such revisions was published in the City Record and in the New York Times and was posted on the New York City DEP website in order to allow the public an opportunity to comment on the proposed revisions; and

WHEREAS, the Board has considered the issues presented as well as such public comment as has been received and the recommendations of staff, and believes that the proposed revisions to Regulation No. 2 are reasonable and appropriate; it is therefore

RESOLVED, that the proposed revisions to Regulation No. 2 as described above and in the form annexed hereto are hereby approved and adopted effective November 9, 2007.

Financial Report

- **Year-to-Date Collection Report and Recommendation With Respect to Mid-Year Rate Increase**

The next item on the agenda was a presentation from Steven Lawitts, Executive Director, on year-to-date collections and recommendation for a mid-year rate increase.

Mr. Lawitts said actual collections for the first quarter of this Fiscal Year were \$987 million or 6.2% below the \$1.05 billion financial plan forecast. Accounts receivable more than 180 days past due as of October 31, 2007 are 14% greater than such accounts as of October 31, 2006. Although actual revenues have increased by \$27 million over the first 4 months of last year, the plan shortfall is still \$63 million. Mr. Lawitts said he did not see a change in the factors requiring a mid-year rate increase, and in response to a question from Mr. Tripp, said the required increase is 18%.

¹ Filed with Minutes of the Meeting.

Mr. Lawitts then described service termination initiatives with respect to delinquent commercial accounts. Thirty-nine shut off notices were sent to commercial accounts which were delinquent on payment agreements and the streets in front of the applicable premises painted to indicate the location of shut off valves. This action resulted in payment from each account. Similar actions are being taken with respect to approximately forty additional delinquent commercial accounts each week.

Ms. Gelber asked whether operating expense and debt service cost reductions are being considered to address the revenue shortfall. Mr. Lawitts said that \$25 to \$30 million in other than personal service cost reductions are under consideration but that debt service owed to bondholders cannot be adjusted.

Responding to a question from Mr. Moss, Mr. Lawitts said that personal service cost reductions are not under consideration, noting DEP's already high 6% personnel vacancy rate.

Mr. Capoccia suggested that the amount of the system rental payment to the City in excess of debt service on City general obligation bonds issued for water and sewer system purposes should be used for rate relief rather than paid into the City's general fund.

Mr. Tripp suggested the mid-year rate increase should be in the amount of the 11.5% increase currently forecast for next fiscal year, which should then remain in effect for the next 18 months.

There being no further discussion, the Board scheduled its next meeting for November 21, 2007, to decide whether to publicly notice a mid-year rate increase.

Upon motion duly made and seconded, the Board resolved to authorize Mr. Tripp to prepare a memorandum to be sent to the City Council, DEP and the Office of Management

and Budget discussing proposed cost saving and revenue enhancement measures which should be taken to avoid a mid-year rate increase.

Approval of Consultant to Perform Benchmarking and Best Practices Assessment of the Bureau of Water and Sewer Operations (BWSO)

The next item on the agenda was the approval of a consulting contract to perform Benchmarking and Best Practices Assessment of the BWSO.

Mr. Lawitts explained the study is required in anticipation of the BWSO's increased workload, staffing and additional services expected to result from DEP's aggressive service termination program. Mr. Lawitts explained that the recommended contractor had been selected pursuant to a competitive request for proposals process.

In response to a question from Ms. Gelber as to why the Water Board, rather than DEP, is procuring these services, Mr. Lawitts cited the time, expense, and complexity of City procurement rules and the fact that the required services are directly related to water and sewer operations.

Mr. Capoccia suggested that action on the resolution be deferred in light of the revenue shortfall, the resulting need to control operating costs and the fact that the services are not a mandated expenditure. The other Board members agreed with Mr. Capoccia and action on the proposed resolution was deferred.

**Approval of Consultant Contracts
Analytical Excellence, Inc. – Bureau of Wastewater Treatment (Labs)**

The next item on the agenda was the approval of an amendment to a consultant contract to require the contractor to analyze the performance of DEP's wastewater sampling laboratories which are operating under the supervision of the Federal monitor. DEP General Counsel, Robin Levine, said the consultant would advise DEP on the implementation of corrective measures described in a preliminary audit of such laboratories. Pursuant to the

contract, the consultant would also conduct a study of DEP's water supply laboratories which are also operating under Federal monitor's supervision.

There being no 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 water and wastewater systems (the "Systems") of the City of New York (the "City") have been leased by the City to the New York City Water Board (the "Board"), pursuant to an Agreement of Lease, dated as of July 1, 1985, as amended, between the City and the Board; and,

WHEREAS, the New York City Department of Environmental Protection (DEP) operates and maintains the Systems; and,

WHEREAS, the Board and DEP both wish to ensure that the Systems are operated and maintained in a manner that complies with all applicable laws, rules and regulations; and,

WHEREAS, in furtherance of this important objective, in March 2007 the Board authorized the execution and delivery of a contract between the Board and Analytical Excellence, Inc. (AEX) in an amount not to exceed \$300,000 to provide technical assistance to DEP in connection with a review of the DEP Bureau of Wastewater Treatment (BWT) laboratories; and,

WHEREAS, in May 2007, the Board entered into a Consulting Agreement with AEX, Inc. (Consulting Agreement) to provide such assistance; and,

WHEREAS, DEP has now identified a need for further technical assistance from the consultant to assist DEP in implementing corrective actions to address the findings identified in the BWT laboratory assessments and to perform a similar

assessment of the DEP Bureau of Water Supply (BWS) Division of Water Quality Control (DWQC) laboratories; and,

WHEREAS, DEP, as indicated in the attached Memorandum to the Board from DEP's General Counsel², has identified the firm AEX as its preferred choice for this assignment, and requests that the Board enter into an amendment to the Consulting Agreement with AEX for such purposes; 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 AEX for total additional compensation not to exceed five hundred fifty thousand dollars (\$550,000) and for an additional term of two years.

Approval of Extension of Personal Service Contract

- **R. Craig – Upstate Water Supply Agreements**

The next item on the agenda was the approval of a personal service contract with an attorney to prepare water supply contracts with upstate customers. Ms. Levine explained that the services to be provided are necessitated by the resignation of the DEP staff attorney who previously drafted such agreements.

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

² Filed with Minutes of the Meeting.

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 water supply and wastewater systems (the "Systems") of the City of New York (the "City") have been leased by the City to the New York City Water Board (the "Board"), pursuant to an Agreement of Lease dated as of July 1, 1985, as amended, between the City and the Board; and,

WHEREAS, the New York City Department of Environmental Protection ("DEP") operates and maintains the Systems, which also include the provision of drinking water to over 35 villages, water districts and other entities north and west of the City; and

WHEREAS, the Board and DEP both wish to ensure that takings of water by upstate water supply customers are properly documented; that charges for such takings are paid as and when due; and that such takings are made in a manner that does not interfere with the operation and maintenance of the water supply system; and

WHEREAS, DEP has requested assistance from the Board in retaining a consulting attorney to work with DEP in addressing legal issues arising out of, or relating to, the supply of water to upstate communities as indicated in the attached Memorandum to the Board from DEP's General Counsel³; 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

³ Filed with the Minutes of the Meeting.

Agreement with Robie Craig as consulting attorney, upon such terms and conditions as the Executive Director may deem reasonable and appropriate, for an additional amount not to exceed \$75,000.

Approval of Amendment to Rate Advisory Services Contract to Provide for the Development of the Cost of Service for Stormwater/Drainage Services and an Evaluation of Alternative Wastewater Rate Structure Options

The next item on the agenda was an amendment to the Board's contract with its rate advisor to provide for a study to determine whether the sewer charge should be changed from a percentage of water consumption to a fee based on the cost of stormwater drainage services. At Mr. Tripp's suggestion, the Board decided to defer action on this resolution until annual rate adoption at which time the effects of DEP's enhanced enforcement efforts can be assessed.

**Discussion of Proposed Climate Change Studies
Background/Purpose and Progress to Date
Sewer Drainage Planning and Alternative Strategies**

The next item on the agenda was a report on proposed climate change studies from DEP Deputy Commissioner Angela Licata. Commissioner Licata said that the Board had previously authorized \$1 million for DEP to study climate change. She described activities undertaken to date pursuant to this funding authorization as well as future actions being contemplated. She described the establishment of the Water Utility Climate Change Steering Committee, comprised of eight regional water utilities including the New York City Water and Sewer System organized to pool their resources to study climate change. She said DEP would prepare a sensitivity analysis to assess the effects of sea level rise and increased rainfall on the Water and Sewer System so as to enable DEP to decide how to best make investments to address the impact of climate change. Gary Heath, a DEP colleague of Commissioner Licata, next described an action agenda for DEP to work with the scientific community, enhance DEP's

understanding of climate change, implement appropriate adjustments, limit involuntary greenhouse gas emissions, and improve communication and tracking mechanisms.

Adjournment

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

SECRETARY