

**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 3, 2009, at 8:30 a.m. at Spector Hall, 22 Reade Street, New York, New York 10007. The following members of the Board were present:

Alan M. Moss;

Marcia Bystryn;

Donald A. Capoccia;

Dawn S. Davis;

Amaziah Howell;

Mehul J. Patel, and

Benjamin Tisdell,

constituting the entire Board. Mr. Moss 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 27, 2009. There being no discussion, upon motion duly made and seconded, the minutes of the Board’s meeting held on February 27, 2009 were unanimously adopted.

Introductory Remarks on Rate Proposal

Executive Director Steven Lawitts briefly addressed the meeting to summarize the circumstances underlying the staff’s proposed 14% rate increase. The biggest expense which must be funded by Water and Sewer Rates is the debt service cost incurred to finance Water and

Sewer System capital construction. Most capital projects result from State or Federal mandates, such as the third Water Tunnel, the Croton Filtration Plant, the Ultra Violet Disinfection Facility (the “UV Facility”) and the Newtown Creek sewer treatment upgrade. Since these improvements must be constructed on a fixed schedule there is little flexibility to adjust the amount or timing of financing costs. On the positive side these projects will provide 1700 new construction jobs thereby stimulating the economy. At the same time that interest costs are increasing, the System has experienced an unexpected 6% drop in consumption thereby reducing revenue and applying greater pressure on rates. DEP has nevertheless reduced its operating budget by 5%. Responding to criticism of the System Lease rental structure which requires an annual payment from the Board to the City, Mr. Lawitts said the ongoing Rate Restructuring Study has found that most water and sewer utilities in the country’s largest cities make a similar payment to the local government.

Presentation by City Comptroller

New York City Comptroller, William C. Thompson, Jr. next addressed the Board in opposition to the proposed rate increase. Comptroller Thompson made the following five suggestions. The Board should complete and publish the Rate Restructuring Study forthwith. The portion of the Board’s Lease rental payment to the City in excess of debt service on City general obligation bonds issued to pay for Water and Sewer System capital costs should be rebated to the Board and used for pay as you go capital. Governor Paterson should be lobbied to provide direct State grants to the City for clean water and drinking water projects. DEP should reduce its operating budget by another 5% on top of the 5% reduction already made. There should be a moratorium on natural gas drilling in the Catskill/Delaware Watershed to prevent contamination of ground water which could result in the loss of filtration avoidance thereby

requiring construction of a multi-billion dollar filtration plant. At Mr. Capoccia's request, Mr. Lawitts responded to the Comptroller's call for immediate implementation of the Rate Restructuring Study. Mr. Lawitts explained that although the Rate Restructuring Study was always scheduled to be completed this year, it was never intended that the recommendations in the study be incorporated in Fiscal Year 2010 Water and Sewer Rates. Rather it was anticipated that such recommendations would be implemented over time after careful review and analysis by the Board and its staff.

FY2010 Rate and Billing Policy Proposals

- **Financial Update**
- **Recommended Rate Proposal**
- **Proposed Rates and Regulations in Connection With Denial of Access and Theft of Services**

Mr. Lawitts next presented a Financial Update ahead of his discussion of the staff's Fiscal Year 2010 Rate and Billing Policy Proposals. He said that actual revenues were \$91 million or 5% below the plan target amount. He attributed the shortfall primarily to an unprecedented decrease in consumption. He said that the decline in metered consumption accounts for 4% of the revenue drop with the remaining 1% being caused by payment delinquencies. He then described certain collection initiatives intended to address payment delinquencies. These include automated telephone calls to two thousand customers who owe \$500 or more. Such letters have thus far resulted in \$8 million in additional collections. He then described the noticing process for the lien sale planned for May. 18,000 accounts representing \$180 million in unpaid charges were included in the 90-day notice. The imminent prospect of tax lien foreclosure triggered by the notice, incentivized 3,000 accounts to pay \$132 million in past

due charges. 15,000 accounts representing \$48 million in unpaid charges were included in the 60-day notice.

Mr. Lawitts discussed the Payment Incentive Plan for mixed use properties and the single family service termination program which resumed in March after being suspended for the winter. He described the components of the projected Fiscal Year 2010 System Operating and Maintenance Budget (the "O&M Budget"). 51% of O&M Budget expenditures are for personal service costs. Other components include Environmental Health and Safety costs, wastewater treatment costs, real property taxes, and utility and chemical costs. He then described the projected Capital Budget. Mandated projects comprise 75% of the capital program. Since the construction schedules for these projects are contained in Consent Decrees, by law they may not be delayed or stretched out to mitigate financing costs.

Responding to a question from Mr. Capoccia to describe the impact of pension investment losses on the O&M Budget, Mr. Lawitts said such losses have resulted in an increase in the fringe benefit rate. Last year this rate, which is a key component of personal service costs, was 35% to 45% but is projected to be between 45% and 51% this year due to the declining value of the pension systems investment portfolios. Mr. Capoccia observed that the City Comptroller is custodian of the pension systems investments.

Mr. Lawitts reiterated the fact that the revenue shortfall below plan target amount is \$91 million. He said Fiscal Year 2010 Water and Sewer rates would have to compensate for this gap which is projected to increase to \$100 million by end of the Fiscal Year.

Ms. Bystryn observed that although the Board seeks to encourage conservation, using less water also decreases revenue. She asked whether the Rate Restructuring Study would

address this structural anomaly. Mr. Lawitts replied the study will analyze conservation pricing as well as fixed and variable charges.

Mr. Lawitts said the staff proposes a 14% rate increase. He described the impact of the proposed rate hike on a single family household. He said Water and Sewer charges would increase from \$800 to \$912 per year. This would place the City at about the median for water and sewer charges in the 24 largest cities in the country. Finally, Mr. Lawitts described the staff's proposed regulations for Denial of Access and Theft of Services. The new rules would assess a flat fee for these offenses at a level equal to the 95th percentile of average metered consumption charges.

Mr. Lawitts concluded by observing that the staff would now publish notice of the proposed rate increase and Billing Policy Proposals and conduct public hearings in all five boroughs as required by law. Thereafter the staff will present its final rate and Billing Policy Proposal recommendations to the Board for consideration at the Board's Annual Meeting in May.

Approval of Property Disposition: Approval of a Grant of Easement to Westchester County

The next item on the agenda was the consideration of the grant of an easement to Westchester County. DEP attorney Robert Craig explained that the easement would be on City-owned land in Westchester to facilitate the County's construction of an alternate water distribution pipeline. The pipeline would enable the County to take water from the Kensico reservoir during shut down of the Catskill Aqueduct during construction of the UV Facility referred to earlier by Mr. Lawitts. The consideration for the easement would be the swap of an easement by Westchester to the City to facilitate installation of infrastructure related to the UV Facility. Responding to a question from Ms. Davis, Mr. Robie said there would be no adverse

impact on the cemetery where the easement to be granted is located. Responding to a further question from Mr. Capoccia, Mr. Robie said the County would fully indemnify the Board and City. There being no further discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

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 (the “Lease); and

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

WHEREAS, pursuant to Section 11.1(d)(ii) of the Lease, the City may, with the prior written consent of the Board, grant interests in property covered by the Lease which, in the reasonable judgment of the Board, do not interfere with the operation, maintenance and the collection of revenues from the Systems; and

WHEREAS, the County of Westchester (“Westchester”), a municipal corporation organized pursuant to the laws of the State of New York, currently receives, pursuant to Section 24-360 of the Administrative Code of the City of New York (the “Code”), a supply of water from the Catskill Aqueduct for certain of Westchester’s water district(s); and

WHEREAS, DEP is constructing the Catskill/Delaware Ultraviolet Disinfection Facility (“UV Facility”) on City-owned property located in Eastview in Westchester; and

WHEREAS, as part of the UV Facility construction, the Catskill Aqueduct will be shut down for an extended period of time, currently scheduled to begin in October 2010, in order for work related to the Catskill Pressurization Project (“Pressurization Project”) to be conducted, such work being integral to the construction of the UV Facility; and

WHEREAS, due to the scheduled long-term shutdown of the Catskill Aqueduct for the Pressurization Project, Westchester will need to obtain an alternate source of water in order to maintain an adequate supply to meet the demands of the customers within the affected water district(s); and

WHEREAS, pursuant to an agreement between DEP and the Town of Mount Pleasant (“Mount Pleasant”), a municipal corporation organized pursuant to the laws of the State of New York and located in Westchester, DEP will be constructing a 24 inch water main that will run from the Kensico Reservoir, part of the Systems, to Mount Pleasant’s Commerce Street Pump Station (“Commerce St PS”), such water main to be operational by the shutdown of the Catskill Aqueduct and not affected by such; and

WHEREAS, Westchester has requested an interconnection to Mount Pleasant’s line at a point south of the Commerce St PS in order to receive a supply of water from the Kensico Reservoir via Mount Pleasant line during the shutdown of the Catskill Aqueduct; and

WHEREAS, in order for Westchester to deliver this supply of water to its distribution facilities, Westchester will need to construct a new water distribution pipeline from the point of interconnection with Mount Pleasant’s 24 inch line to its pump station within the Gate of Heaven Cemetery (“GOH”), as well as rehabilitate its pump station within GOH and its distribution line to Westchester’s storage tank; and

WHEREAS, the City currently owns in fee a parcel of land that runs through GOH along which the Catskill Aqueduct is sited; and

WHEREAS, Westchester has requested that an easement on the City’s land be granted to Westchester, such easement to correspond approximately with the route of the Catskill Aqueduct as it passes through GOH and beginning at the eastern point of the City’s land within GOH and ending at Westchester’s pump station; and

WHEREAS, Westchester’s pump station along with its pipeline running to Westchester storage tank are situated on City property pursuant to a land use permit issued to Westchester by DEP, with Westchester’s pump station and a portion of the pipeline within the boundaries of GOH, the remainder of Westchester’s pipeline to its storage tank situated on City property outside the boundaries of GOH; and

WHEREAS, Westchester has requested that the land use permit be extinguished and an easement on the City land currently occupied by Westchester’s pump station and pipeline to the storage tank be granted to Westchester in conjunction with the easement granted for the installation of the new pipeline; and

WHEREAS, the requests for easements on the two (2) parcels of City-owned land described herein would constitute a single

granting of an easement to Westchester and create an interest in the City land as described above, such grant being one (1) easement from the eastern point of the City's land along which the Catskill Aqueduct is sited within GOH to the western point where the City's land has passed out of the boundaries of GOH, ending at the point where Westchester's pipeline connects with its water storage tank; and

WHEREAS, the granting of such an easement constitutes the granting of an interest in real property subject to the Lease; and

WHEREAS, pursuant to Section 4-106(9) of the Code, an easement on City land may be granted without public letting in perpetuity or for shorter periods where the purpose of the easement would be for transporting water for municipal water supply or for any other public purpose; and

WHEREAS, DEP and Board staff have determined that the grant of the easement to Westchester as described herein would be in accordance with both the Lease and the Code, in the best interests of the City and would contribute to the overall sustainability of the Systems, DEP's water supply redundancy initiative and enable the City to continue to adhere to the statutory requirements for supplying Westchester with its entitled share of City water; and

WHEREAS, Westchester has agreed to grant to the City rights to Westchester land in the form of an easement for installation of infrastructure related to DEP's UV Facility, such grant of an easement to the City by Westchester to be equal and full consideration for the grant of the easement described herein; and

WHEREAS, based on the recommendation by staff and for such consideration as herein described, the Board has determined that the grant of an easement to Westchester as set forth in this Resolution is reasonable and appropriate; and,

WHEREAS, by letter dated April 1, 2009, William Pfrang, P.E., Project Director, ACECOM confirmed that they have evaluated the grant of easement to Westchester, and have concluded that such transfer provides benefits to the City, and that it will have no adverse impact on the operation of the water and wastewater system serving the City of New York, it is therefore

RESOLVED, that, pursuant to the powers granted to the Board by the Lease, the Board hereby approves the grant of an easement to Westchester and authorizes DEP to take such actions as may be required to effectuate the granting of the easement described herein.

Adjournment

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

SECRETARY