

**MINUTES OF THE ANNUAL MEETING OF THE  
NEW YORK CITY WATER BOARD**

The annual meeting of the New York City Water Board (the “Board”) was held on May 13, 2011 at 8:30 a.m. at the New York City Department of City Planning, 22 Reade Street, Spector Hall, New York, New York 10007. The following members of the Board were present:

Alan M. Moss,

Marcia Bystryn,

Alfonso Carney,

Donald Capoccia,

Mehul Patel,

Arlene Payne, and

Benjamin Tisdell;

constituting the entire membership of the Board. Mr. Moss chaired the meeting, and Albert F. Moncure, Jr. served as secretary of the meeting.

**Approval of Minutes of April 8, 2011 Meeting**

The first item on the agenda was approval of the minutes of the Board’s previous meeting held on April 8, 2011. There being no discussion, upon motion duly made and seconded, the minutes of the meeting held on April 8, 2011 were unanimously adopted.

**Adoption of Fiscal Year 2010 Annual Budget**

The next item on the agenda was the adoption of the Fiscal Year 2012 Annual Budget. Executive Director Steven Lawitts said the \$3.2 billion Budget is based on information contained in the certifications required by the System Financing Agreement and the System Lease. He then described the certifications. The Executive Director of the Water Authority has

certified the Water Authority's expenses and estimated aggregate debt service for Fiscal Year 2012. In addition the City's Budget Director has certified projected System operating and maintenance expenses for the next fiscal year and the rental payment requested by the City pursuant to the System Lease. The System's Consulting Engineer has in turn certified that the amounts certified by the City are reasonable and appropriate.

Responding to Mr. Moss, Mr. Lawitts said that the rental payment requested by the City is \$238 million. Responding to Mr. Carney, Mr. Lawitts explained that the System's Consulting Engineer is selected for a multi-year period through a competitive request for proposals process. There being no further discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

**WHEREAS**, the New York City Water Board (the "Board") has received certification from the New York City Municipal Water Finance Authority (the "Authority") regarding the Authority's Budget for the fiscal year commencing July 1, 2011 ("Fiscal Year 2012") reflecting Authority Expenses and estimated Aggregate Debt Service (as such terms are defined in the Authority's General Revenue Bond Resolution); and

**WHEREAS**, the Board has received certification from the Director of Management and Budget of the City of New York (the "City") regarding: the amounts which the City reasonably anticipates it will have expended during Fiscal Year 2012 in connection with the operation and maintenance of the water and wastewater system as described in paragraphs (a) through (e) of Section 8.1 of the Agreement of Lease dated as of July 1, 1985, as amended, between the Board and the City (the "Lease"); and the rental payments requested by the City for Fiscal Year 2012 pursuant to Section 8.2 of the Lease; and

**WHEREAS**, the Board has received certification from AECOM USA, Inc., Consulting Engineer, pursuant to Section 8.3(a)(ii) of the Lease to the effect that amounts certified by the City for costs incurred or to be incurred in connection with paragraphs (a) and (b) of Section 8.1 of the Lease are reasonable and appropriate; and

**WHEREAS**, the Board has reviewed a proposed budget for the Board's own anticipated Expense Fund operating expenses for Fiscal Year 2012; and

**WHEREAS**, the Board has reviewed the proposed Annual Budget for the Board's expected expenditures for Fiscal Year 2012 based on the above-described certifications and Board Expense Fund budget, and has determined that such provision for anticipated expenditures is reasonable and appropriate to enable the Board to exercise its powers and carry out its purposes in accordance with the New York City Municipal Water Finance Authority Act; it is therefore

**RESOLVED**, that the Annual Budget of the Board for Fiscal Year 2012, a copy of which is attached hereto<sup>1</sup>, is hereby adopted.

### **Adoption of Fiscal Year 2012 Rate Schedule**

The next item on the agenda was the adoption of Fiscal Year 2012 Water and Sewer rates. Mr. Lawitts explained that a 7.5% increase is proposed as described by Commissioner Holloway in his presentation to the Board at last month's meeting and at the public rate hearings. Mr. Lawitts said this increase is required to fund the Annual Budget just adopted by the Board. A 2% discount is proposed for customers enrolled in both the paperless billing and direct debit programs thereby reducing the effective rate of increase for these customers to 5.4%. Mr. Lawitts said that the terms of payment agreements have been changed to conform to the requirements of the new tax lien legislation adopted by the City Council. The down payment requirement, currently 10%, has been completely eliminated and the maximum repayment period has been extended from 5 to 10 years. However, excluding single-family homes, a customer who defaults on a payment plan will now automatically be eligible for the lien sale.

Responding to Mr. Capoccia, Mr. Lawitts confirmed that the stormwater charge for parking lots is the only new source of revenue proposed in this year's Rate Schedule. Mr. Lawitts said the charge of \$0.05 per square foot which was implemented for the last half of

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<sup>1</sup> Filed with Minutes of the meeting.

Fiscal Year 2011 as part of a Pilot program will be increased by 7.5% and continued for the entire 2012 Fiscal Year.

Mr. Capoccia then asked when frontage billing is expected to be phased out. Mr. Lawitts responded that universal metering is now being implemented to replace flat-rate billing, which is scheduled to expire in June 2012. Board staff will present a range of options at that time. Flat-rate billing may simply be converted to metered billing or an alternative flat rate may be recommended based on benchmarking of actual consumption in multi-family buildings as determined through the Automated Meter Reading program. Responding to Mr. Carney, Mr. Lawitts said the staff hopes to have the comparative data to begin this analysis within a month.

Next Mr. Moss, Mr. Carney, and Ms. Bystryn expressed their views about the proposed rate increase.

Mr. Moss thanked members of the public for their attendance and participation at the rate hearings. He also thanked Commissioner Holloway for his presentation and Board staff for their work. He then strongly emphasized the Board's independence and how seriously it takes the responsibility to establish rates and charges, which will enable the System to be self-sustaining while at the same time considering the concerns of rate payers. Taking these factors into consideration, he said he would vote in favor of the proposed rate increase.

Mr. Carney said he believed the 7.5% rate increase is the only way to ensure the System will be self-sustaining, recognizing however, that many New Yorkers are adversely affected by the economy.

Ms. Bystryn said that she will support the rate increase and looks forward to hearing the staff alternatives to the current frontage billing system.

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-g(4) of the New York City Municipal Water Finance Authority Act (the "Act") to establish, in accordance with Section 1045-j of the Act, fees, rates, rents or other charges for the use of, or services furnished, rendered or made available by the water and wastewater system of the City of New York (the "City"); and

**WHEREAS**, in accordance with Section 1045-j(9-a) of the Act, public hearings concerning certain proposals regarding water and wastewater system rates and charges were held in each borough of the City on May 2, 3, 4, 6 and 10, 2011, and transcripts of said hearings have been received and reviewed by the Board; and

**WHEREAS**, in accordance with certifications received from (i) the New York City Municipal Water Finance Authority (the "Authority") with respect to the Authority's annual budget for the fiscal year commencing July 1, 2011 ("FY2012"), (ii) the City with respect to (a) the amounts which the City reasonably anticipates it will expend during FY2012 in connection with the operation and maintenance of the water and sewer system and (b) rental payments requested from the Board, and (iii) AECOM USA, Inc., Consulting Engineer, with respect to the reasonableness of the City's certification of certain expenses, the Board has on this day adopted its annual budget for FY2012; and

**WHEREAS**, based on the requirements set forth in the Board's annual budget for FY2012 and the testimony and reports submitted at the aforementioned public hearings, the Board has determined that, effective July 1, 2011, the water rate for all in-City customers, flat rate and metered, should increase by 7.5% over the rate in effect in Fiscal Year 2011 and the rate for waste water services should remain at 159% of the applicable water charge; and

**WHEREAS**, the Board has further determined that the billing policy proposals of 1) new and revised installment payment agreement terms, including options for no down payment, a repayment period of up to ten years, and new default provisions, 2) revised denial of access notice requirements, 3) revisions to the maximum fixture flow-rates for a reduced water rate pursuant to the Board's Comprehensive Water Reuse Program, 4) a discount of 2% offered for FY2012 to customers who register for both

paperless billing and direct debit, and 5) registered participants in the lead and copper monitoring program will be eligible for a \$25 credit to be applied to a customer's water bill upon successful completion of the lead and copper monitoring test, all as set forth and described in the public notice, the Public Information Regarding Water and Wastewater Rates booklet dated April 2011, and the Board's Water and Wastewater Rate Schedule for Fiscal Year 2012, should be approved as recommended by staff; it is therefore

**RESOLVED**, that the Water and Wastewater Rate Schedule for Fiscal Year 2012, a copy of which is attached hereto<sup>2</sup>, which reflects an increase of 7.5% for in-City water rates as well as the new and modified billing and collection policies and fees as described above is hereby approved.

### **Upstate Rate Report and Adoption Schedule**

Next Mr. Lawitts gave a presentation about upstate water rates, which the Board is expected to adopt in June.

Mr. Lawitts said that the System provides water on a wholesale basis to 55 upstate water utilities which in turn distribute water to individual retail customers.

Under the Water Supply Act of 1905, upstate customers are entitled to receive quantities of water equal to in-City daily per capita consumption multiplied by their populations at a so-called "entitlement rate". Consumption in excess of this amount is charged at the higher in-City metered rate.

Mr. Lawitts described the calculation of the entitlement rate. He said the upstate cost of service excluding in-City distribution costs, is divided by forecast consumption based on a 10-year regression analysis. The proposed entitlement rate for Fiscal Year 2012 is \$1,238.45 per million gallons. This represents a 7.7% increase which is 45% less than last year's forecast increase of 14.1%

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<sup>2</sup> Filed with Minutes of the meeting.

Mr. Lawitts displayed a pie chart describing the components of the cost of service. Debt service is 43%, personal service costs are 20%, and upstate real estate taxes account for 26% of the cost of service.

There is a \$7 million credit to the cost of service for revenue received by New York City from upstate hydropower utilities and permit fees. Discussion of the hydropower credit ensued with several Board members asking why revenue received by the City should reduce the upstate cost of service. Mathilde McLean, the Board's Treasurer, explained that legacy upstate hydropower facilities remained private as part of the City's condemnation of the water supply system, and under the original condemnation arrangement, hydropower revenue received by the City was credited, in part, to the cost of service for upstate customers.

#### **Motion to Proceed to Executive Session: Discussion of Pending Upstate Rate Settlement**

Upon motion duly made and seconded, the Board resolved to convene in Executive Session to discuss a proposed litigation settlement. Thereafter the Board reconvened in open session without having taken any action in Executive Session.

#### **Approval of Pending Upstate Rate Settlement**

Upon motion duly made and seconded, the following resolution was unanimously adopted:

**WHEREAS**, the New York City Water Board (the "Board") has been advised by staff and counsel that the New York State Department of Environmental Conservation ("DEC") is scheduling an adjudicatory hearing in response to a Petition filed by several Upstate Communities pursuant to 6 NYCRR part 603 challenging the entitlement rate established by the Board for Fiscal Year 2005, effective July 1, 2004, OHMS Case No.: 2005J490; and

**WHEREAS**, the Board has been advised by staff and counsel that Upstate Communities either have filed or might file

Petitions challenging entitlement rates established by the Board for Fiscal Years 2006 forward; and

**WHEREAS**, counsel and staff are negotiating a settlement with Upstate Communities that would fully and finally resolve entitlement rates for Fiscal Years 2005 through and including 2010 and would resolve various issues for future rate years, in exchange for a one-time adjustment in the form of a reduction to the upstate cost of service; and

**WHEREAS**, the terms of the settlement will be effective only if counsel and staff are able to negotiate a finalized settlement that they find acceptable, and only if such finalized settlement is adopted without change and ordered by the DEC Commissioner, which order would be a necessary prerequisite to making the settlement binding on all Upstate Communities with respect to future rate challenges; and

**WHEREAS**, such settlement, if finalized and ordered by the DEC Commissioner with notice to counsel on or prior to June 8, 2011, will be implemented as part of the FY2012 entitlement rate; and

**WHEREAS**, in accordance with its powers under the New York City Municipal Water Finance Authority Act, the Board has reviewed the sum and substance of the proposed terms of such settlement as presented in a memorandum by counsel and finds the proposed terms to be reasonable and appropriate; it is therefore

**RESOLVED**, that the Board hereby approves the settlement as described in the memorandum from counsel in concept, subject to the execution of a stipulation consistent with this approval and satisfactory in form and substance to staff and counsel.

### **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