

**SPECIAL COMMITTEE TO REVIEW ENERGY CONTRACTS  
AND RELATED PROJECTS**

**July 20, 1999**

**5:15 PM**

Chairman Wihby called the meeting to order.

The clerk called the roll.

**Present:** Aldermen Wihby, Sysyn, Pinard, Shea, Thibault

**Messrs:** F. Thomas, T. Parsons

Chairman Wihby addressed Item 3 of the agenda:

Communication from the Public Works Administrator submitting schedules relative to the New Hampshire PUC's Rate Case Docket 960059 and the Restructuring Docket 96-150.

Mr. Thomas stated before I turn it over to Tina, one of the reasons why we wanted to have this meeting tonight was to keep this Committee informed of what is going on and also to keep you informed as to what type of expenditures we are expecting down the road and what potential options we have available to recoup some of our funds coming down the road. With that, I will turn it over to Tina.

Ms. Parsons stated before I start with the schedules since the hearings are being mapped out at the Commission, I thought the first thing I would update the Committee on is the status of the contracts that were adopted by the Board. The paperwork has been completed and filled out and sent to EnergyNorth on behalf of the City to change the meters on the accounts that qualify for the gas contract. Those meters should be switched over with a September 1 start date. The same holds true for the City of Nashua and they have six accounts and they are all schools. Ours are the Airport and the School of Technology. Those should be in place and ready to go hopefully by September 1.

Alderman Shea asked EnergyNorth was bought out weren't they or there is some talk that they are going to be bought out.

Ms. Parsons answered I guess there is a merger going on.

Alderman Shea asked that won't affect any kind of contractual agreement.

Ms. Parsons answered absolutely not. The assuming company will now be the parent company to the distribution company, which may or may not remain EnergyNorth. It will be business as usual for EnergyNorth for awhile while they go through the merger. The status of the contracts. Energy efficiency measures. That was the contract with the advantage that we would get in place some of the lighting and motor issues in some of our facilities, including the wastewater treatment plant for the City of Nashua. That paperwork has been completed on behalf of the City for the projects whose funding is in place. Those have been forwarded for signature and hopefully those contracts will be initiated in August. Outstanding. The Water Commission meets next Wednesday to verify and approve the water contract and I am working with the State on the issue of EPD or wastewater treatment. We want to make sure that we don't lose our ability to get back State monies as the waste water treatment plan always goes through their process under the revolving loan and I am working to make sure that we don't lose those monies or that status. That is the status of the contracts. Before you placed in the letter and this is as I have stated to the Board the last time we met, this is a moving target. The two schedules we have attached to the letter. The first one has a Page 3 on the top and the second has a Page 4. That showed you the procedural schedule for the deregulation docket. The third page of this is the schedule as it was laid out for the rate case. PSNH's permanent rate case. They have both been suspended due to the settlement or the memorandum of understanding, the preliminary memorandum of understanding between the company and the Governor's Office. The schedules, therefore, have been suspended and they have been replaced with two things that the Commission is looking to do. They were going to be filing a motion in conjunction with the company in the Federal docket to find out if they had the authority to suspend these two rate cases as the judge had already ordered them to proceed with the stranded cost issue of the docket so we have some passings of two different court systems conflicting with each other and we are looking to get some clarity on the Federal side so that we know what to do on the State side. That being said, the two schedules for the rate cases have been suspended until August 10 with the date of August 2 as the company and the Governor's Office intention to file detail to the preliminary memorandum of understanding for the rate case settlement. So they have come out with some details and summary, but they haven't come out with exactly what rates would look like and rate design and all of the things that go behind the memorandum of understanding. They have filed a letter of intent with the Commission, but they want to have a definitive agreement in place by August 2 with a little bit of time for the parties to review that so that the Commission will be holding their meeting on Tuesday, August 10. At that point, those parties who are interveners can, with a very short timeframe here, comment or at least ask questions of the details that are going to be in the second memorandum of understanding from the Governor's

Office. This is a moving target so the schedules that you have before you have a certain timeframe built into them that won't start now until August or probably September. What the Commission will do is they will just change the dates. The same timeframe is needed between items, but it won't begin now until September instead of if you look at Page 3 some of these items have already been completed. I should state, so that there isn't any confusion, that if you look at Page 3 of this letter there were three dates here – May 28, June 11 and June 21. All of these dates preceded the Commission's order of June 30. So that this Committee is aware, the supplemental testimony by all parties, the City met all three of these data requirements and we did file supplemental testimony. The definition of that is that we updated testimony that we had supplied two years ago because a year and a half has gone between when they started this process and where we are now, a lot of those numbers have changed. The company has collected some of the costs that they were righting off so those have become non-issues both at the Federal side and also in collections because they have amortized them. We met the June 21 date. The Commission suspended that schedule on June 30 so now we are just waiting for the August date.

Alderman Thibault asked just so I know what is happening here, if in fact we look at what the Governor has been working on with PSNH and we are looking at a possible 15% savings as I understand it if the Governor's proposal goes through right.

Ms. Parsons answered the first year I think is 18%, but I think that depends on which rate class you are in.

Alderman Thibault stated I think maybe my question at this point is what were we looking at when we started playing with this thing. We were looking at, it seems to me, a 20%-25% savings. If, in fact, there is a possibility that we are going to get 18% without really pursuing it, is there a reason for us to pursue it further? I am trying to get your feel on that.

Ms. Parsons replied I need to state that because there isn't any detail behind that, those are based on certain assumptions that the company has made and they haven't shared that information with us so it is difficult to compare. There are so many versions that have been filed, including the company's original plan called Customers First and they had come out with that two years ago. It depends on what your starting point is. If the starting point is the 1996 rate, that is a different picture.

Alderman Hirschmann asked would this be retroactive.

Ms. Parsons answered the settlement would be whatever assumptions are built in there. If the assumption is that the rate savings begin, as of rates that were in effect in 1996, that is a different scenario than rates that are in effect right now. Now those rates haven't moved a lot except to say that between that date and this date there are entitlements built into the rate agreement for certain recoveries that the company hasn't received. One of those is pretty simple to understand. It is a fuel adjustment clause meaning that if the price of oil goes up or the price of nuclear energy replacement power goes up, every six months there is a mechanism built in there for them to recover any cost above the rates that they are receiving to cover that. The company has been setting those costs aside so built into the settlement agreement they are saying we are willing to write-off a percentage of that in exchange for other things. I don't want to give you a ton of detail, but it is a complete package. They want to settle everything. From PSNH's perspective, they want the rate case to go away, they want the deregulation issues to go away, there is a mechanism built in for sale of their generation assets and assumptions built on what they will get and recover for that and then of course what they will recover towards stranded costs. It is a moving target and if I say to you well it was definitively this percentage, somebody will hang me by it.

Mr. Thomas stated the point you were trying to make is why do anything more and I think you would be foolish if you didn't do anything more because first of all, you have to analyze the proposal like Tina said. You have to see what is good, what it is based on, what are the long-term gains. I think it would be foolish to sit back on it now because quite frankly you are going to have to spend more funds in order to have the experts take a look at what is in this agreement. If it is not to the City's benefit, then you are going to have to move in other directions.

Ms. Parsons stated the next item is the budget. What we ask for, and I asked to receive this in some fair amount of detail so you will have to bear with me because they are legal issues and nobody in this room with the exception of one is an attorney who could look at this and know what it all means. What I asked from Elizabeth Good-Pasture from O'Neil, Grills, and O'Neil who helped put this together and it contains a budget that is for both the legal expenditure and the consulting fees or engineering...Sheri Brown really is the principal. If you start with the first page of this, it is the restructuring and what I did was I had her go by the procedural schedule as it was originally laid out. That is why I prefaced what I said when they rescheduled these items on the schedule they will still build in the same amount of time. So if it is two weeks or three weeks, that will get built into a revised schedule and I asked her to take the schedule and work that into a budget. How many hours would it take us to complete data request. How many hours would it take for the legal and consultant side to respond to data requests that we get? The supplemental testimony by all parties, as I stated, Sheri has filed that. Sheri Brown filed testimony on behalf of the City and the Commission staff

filed testimony, but a number of the parties filed a letter with the Commission on that date saying we feel uncomfortable putting our testimony in until we see what the settlement agreement was. Well, at that point it is kind of like because there was so much work involved it was done. Sheri was at the point where it was ready for review and submission so we submitted it.

Alderman Shea asked the material that you are submitting supposedly is material according to this that has to be additional evidence. Is that correct? So they are submitting additional evidence that prior to the hearings that were previously conducted?

Ms. Parsons replied that is right.

Alderman Shea asked and they are not allowed to cross-examine are they.

Ms. Parsons answered yes, they are.

Alderman Shea stated according to this it says "submit and have an opportunity on such new material" so that the new material they will cross-examine but not any other.

Ms. Parsons replied right.

Alderman Shea stated so basically what we are determining is that we are going to pay for material that is going to be updated and not previously submitted.

Ms. Parsons responded the basis, however, is the material that was previously submitted because this whole process has already been gone through once and that, because it is part of the same case, they can refer back to that and somebody like Sheri who is on the ball can say wait a minute that is not what they said a year and a half ago, even updating numbers. If they all of the sudden are coming into the hearing with statements that contradict what they said previously, that is open for cross-examination so now you can say well wait a minute that is not a matter of having amortized those costs or recovered those costs, you are telling us something entirely different.

Alderman Shea asked does our attorney do anything in conjunction with the Attorney General's office or does he submit it and it is new to everyone.

Ms. Parsons answered he represents the City.

Alderman Shea asked so he does not confer with anyone prior to...

Ms. Parsons interjected what can happen in the procedural hearings and what the Commission likes to see happen is a moving towards the middle. So you can have one party with a statement or testimony submitted that is way over here and then you can have another party that says oh no, the company should recover 100% of everything, etc. and be way over here and the Commission will actually recess depending on what the issue is of the moment and say we will take a half hour recess, could the parties get together and decide how you are going to proceed.

Alderman Shea stated lets assume that Henry represents the City and he represents the State and both are working towards a solution, do these two attorneys or these two parties here, are they working together or do they work independently so that this particular party doesn't know what that party is doing or do they work in conjunction with one another in order to...

Ms. Parsons interjected if you look at the procedural schedule here where you had supplemental testimony filed and then you have responses and rebuttal, that is the intent of the data request so that if Alderman Thibault's position is that far removed from Alderman Pinard's position, you can file those data requests and see if there is something there that doesn't work.

Alderman Shea asked so what you are saying is that Manchester's concerns may differ from the State's concerns.

Ms. Parsons answered exactly and that is kind of the reason that there are so many different parties up at the State because business and industry has a different concern than the Office of the Consumer Advocate that represents residential and low income interest and the City is in a position to look at it from a totality. Also, the Governor's Office is looking at it as a total picture. I guess what we could do is I could entertain questions. The restructuring hearing has each one mapped out.

Mr. Thomas asked could you just explain for the Committee the different tasks in very short terms. What do we gain by restructuring and what is involved in that?

Ms. Parsons answered each one of these stands apart from each other or in the case of the settlement agreement or the memorandum of understanding that the State and the company have that is an attempt to bring all of these three issues together. Now the concern that we have and the City along with most of the parties who have intervened from the beginning is that if we don't continue with the restructuring hearings and the rate case and the Governor's Office and the company and the parties do not come to agreement on this settlement or this memorandum of understanding, we have lost another three or four months. If we continue with the restructuring hearings and the rate case that clearly outlines what you are giving up. For instance, if we were to complete the rate case now as you

may recall we went through a process where we have temporary rates in place right now. What we did was we looked and the Commission looked to get the customer a consistent rate structure so the company had come in as part of that docket and asked for increases in rates that they were entitled to. We looked at the data and the staff looked at the data and said we think there is a rate decrease here of a larger percentage than was agreed upon and this is where the Commission came in and ordered a 6.7% decrease on the rate case which pretty much equaled what the company was entitled to recover under the energy mechanism or the fuel and purchase power clause, the conditional cost of power at that time so we ended up with level rates which were kind of invisible to you and I. However, because that decrease is a temporary rate decrease, it is in a bank. It is sitting there. That 6.5%. If, in fact, that rate case goes all the way through and it is determined that the rate decrease should have been 10% or 12%, those rates are retroactive back to when we set that rate, back to July of 1997. The company knows that so that is a risk, if you will, that the State gives up if we don't go through a rate case. With restructuring, that attacks the stranded cost issue. So in their settlement proposal, they proposed to recover certain sums of money for stranded costs that may differ from going through a full restructuring hearing and coming up with a number and how are they going to recover that because it is not just the number that you recover, but how you recover it that matters. So the settlement or the memorandum of understanding may be entirely different from what a restructuring hearing may produce. When you combine all of those issues, you then know what you are giving up and what you are getting. It is my opinion, anyway, that when you look at that there is definitely some gives and takes there. The State gives up some things and the company gives up some things. Really what it is about is who gives up more or is the ratepayer really getting a fair deal here. Frank asked me to go through these. They really correspond with the procedural schedule and with the exception of Tom, what is testimony, what is discovery. Discovery is the questions that are submitted for clarification or more understanding about the positions that parties take. If, for instance, somebody submits testimony, I can rebuke that testimony. If I have made an assumption or a claim on PSNH and they don't agree with that, that is their opportunity to submit comments that say, no, we take exception to what the City has said or the reciprocal is true and they can prepare witnesses and direct testimony. This is an adjudicative process. It works just like a court. The resulting reams and reams and reams of the written word become the...the body of the docket becomes appealable so if at the end of the rate case if PSNH or any other party was not satisfied with the results of that docket, they can appeal that and then all of the testimony that is in there becomes part of the second court case. So it is important in terms of building a good case. Prepare cross-examination is exactly what it says it is. That is where we take the testimony that has been submitted by other parties and they sponsor someone who gets up on the stand and swears to tell the truth and they, then, are subjected to questions. So our attorney then says, you know based on Sheri's analysis, Pete

may say the City has analyzed this and is it true that if you accepted a lower rate of return rates would come down by this or whatever. That hearing process is three and a half days and that is what goes on in that process. It is all of the pre-filed, if you will, and I can show you an example. This is Sheri's testimony. It is about 30 pages with some exhibits behind it that somebody has to sit and analyze. We defend it, but somebody else on the other side of the table, the company and the other parties, look to see if they agree or disagree with what is contained in here and that is what every party to this document is doing because somewhere along the line there may be a place where we can all agree and sometimes the Commission looks to say well what can we agree on and what is still contentious. What is contentious comes out in the cross-examination. All of this, the sum total of the record that is built during this process, is what the Commission relies on to make their decision because when they make a decision, as I said, another party, any party to this docket can appeal that but they have to appeal it on a sound legal basis. They can't just say I don't like it. They have to appeal it on some basis and that basis is in the record.

Alderman Shea asked is it possible for Manchester to benefit from this particular type of involvement to the detriment of say Bedford or Hooksett or some other town.

Ms. Parsons answered from the municipal viewpoint, no.

Alderman Shea asked from the regular, residential consumer viewpoint.

Ms. Parsons answered each rate class covers certain costs differently. It is far more expensive for PSNH to provide power to your house and my house than it is a Velcro because that is a certain hook and they use far more power than you or I do. The wires are the same and it is much more expensive for them to serve us. Also, the residential rate payer is the one most unlikely to pay their bill and you also get into fixed costs and the fixed income folks so it is built and structured differently. The answer to your question though does it differ from Manchester to Bedford though, not by much except that we have 100,000 people in a smaller square area. If you look at someone like the city of Berlin where their homes may be 10 miles apart, there is concern about deregulation and such that they may become a more costly customer to serve.

Alderman Shea asked so do the people from the PUC have to take into consideration all of the ground rules relating to everything.

Ms. Parsons answered yes, all of it.

Alderman Thibault stated and we may have more major uses such as businesses in this area so they have to look at all of the different ways that they supply this power.

Ms. Parsons addressed settlement proceedings. I just want to state that on Page 2 the detail of time and dollars allocated to settlement proceedings, this money is going to have to be spent if we are going to do any real analysis of the Governor's and the company's memorandum of understanding.

Alderman Thibault asked are you talking about the \$22,000.

Ms. Parsons answered correct. Whether that pulls on its own proceeding which the Commission has to decide if they are going to handle that separately or if they are going to incorporate that into the deregulation docket, either way we have not done any meaningful analysis on the memorandum of understanding. What we have done is we have read what was made available to us and made certain assumptions based on what we think is in there, but without really looking at it and getting the details behind it, we are not going to know if it has moved that far from where we stood originally. Assuming that we agreed with it, let's say that we looked at it and analyzed it and decided it looks like a fair deal, when we come before the Board I think we have an obligation to say this is what we get, this is what we give up and know that it is not just somebody telling us that, but that we have made an independent analysis of that. That goes one way or the other.

Alderman Thibault stated if I hear what you are saying, we should go along with this and go through with it.

Mr. Thomas replied yes, I feel firmly that we have to go and analyze what is in the Governor's proposal. In addition, issues such as stranded cost may be completely different in the long term. If we can reduce the amount that PSNH is going to recover and share the cost then it will have a tremendous effect on the rate that you pay in the future and potentially in the final settlement agreement. I think the good news is...I feel that the end is getting closer and closer and we wanted to make you are of the three paths that are ahead of us now and the potential costs involved. These are estimated costs and they are going to be billed to us as they do the work. This is not a lump sum type of cost. Again, as Tina said, everything is very involved right now and there are a lot of changes. Taking a look down the road, long term, if you can pick up a percent it would make a big, big difference and if the investment that the City has in this project right now, it is my opinion that we have to go forward.

Alderman Wihby asked so you are just letting us know right.

Mr. Thomas answered yes. It is funded under our budget, but again the expenditure of the consultant and legal fees has been a major project and a major concern. We felt that it was imperative that we keep you up-to-date on what has transpired and what are some of the potential costs that we are looking at down the road.

Ms. Parsons stated for your information, this Thursday, two days from now, there has been scheduled as part of the deregulation docket the Legislature has established and Oversight Committee that was supposed to look at deregulation and the rate structure going forward. That Committee was never really formally established at that time. Hearings happened and the Commission moved forward with the process, but with the memorandum of understanding coming out, they have decided to create this Legislative Oversight Committee. The meeting of this Committee is on Thursday morning. They have called all of the intervening parties to come up and make comments on the memorandum of understanding as it stands now. This Committee is looking for education because some of them haven't been involved. Senator D'Allesandro sits on this Committee and I have spoken with him. That is a good thing for us. The Committee, as part of their task and part of this hearing on Thursday, are looking to issue a request for proposal to hire an independent consultant to review the memorandum of understanding and I have spoken to Senator D'Allesandro about my concerns about the Committee, the Legislative Committee now getting involved and having to hire a consultant who is not going to be familiar with the history that has gone on in this docket. They will be paying to educate somebody. They will be paying somebody to review every testimony that has been submitted and it is my feeling that, as you can see before you the City is going to do that anyway and there may be some synergies here of perhaps seeing if the Legislature is interested in Sheri's testimony and her analysis independent of the State, if you will, because they can probably save themselves a lot of money. The fiscal chair, I have been told that it will go through the Finance Committee, that decision will actually go through the Finance Committee and it is Representative Neil Kirk who heads that Committee. It is somebody that I just haven't had an opportunity to get in touch with yet.

Alderman Shea asked is this Oversight Committee both the House and the Senate.

Ms. Parsons answered yes.

Alderman Shea asked how many people are on the Committee.

Ms. Parsons answered I am not sure. This Oversight Committee is going to follow the legislation. It is part of the deregulation docket.

Alderman Wihby asked but it is a special Committee just for that.

Ms. Parsons answered yes. I am thinking there are probably seven people on the Committee.

Alderman Shea stated I just wanted to make sure there weren't 400 people on the Committee.

Ms. Parsons replied no, but whatever comes out of that Committee, that Committee will make a strong recommendation and I can assure you that the gentlemen who are sitting on that Committee are very strong in both having already been involved in the electric side. They are strong House and Senate members so their opinion will weigh heavily in how this bottoms out. That being said, again I have spoken with Senator D'Allesandro and one of the last pieces here is at the last Board of Mayor and Aldermen meeting I mentioned to you that there had been a House Bill introduced that deal with the recovery of costs for participating in rate profits. In that legislation it was amended to include municipalities so by the time we actually researched the issue, that House Bill had already gone through the Senate and had been signed into law by the Governor. It excludes municipalities so there is a provision in there that not only excludes municipalities, but it is capped at \$10,000 which I can assure you and as you can see before you, \$10,000 doesn't buy you the this stocking. They have almost excluded any meaningful participation other than the utility and the State. We have spoken with Senator D'Allesandro and he has assured me that come September he is going to bring in some legislation and look to amend that statute to include municipal participation. That is good news. I hope so. I think there is a fairness issue involved here and I think the fairness issue concerns the fact that a utility, any utility, with deep pockets that hold items like rate payer interest up in the Federal court, they can hold it up in a procedural by continually submitting motions to delay, deny, hold up data requests, they can make the process last a very long time at the detriment of rate payers. In order for any meaningful intervening body, whether it is municipal or rate payer, to come in and participate and try to hold the feet to the fire if you will of honesty and trueness in numbers, it is costly. What we have noticed is that we have already lost NH Municipal Association. They spent a small sum of money and couldn't continue to participate. The town of Claremont was in and they are now out. They haven't participated. The Retail Merchant's Association that represents the retail interests in the State which are considerable, have been on a budget. The woman who was representing them has had to get another job. She can't afford to give away her time any more. We see it being a matter of attrition. Sooner or later there won't be anyone left in the room except the utilities and the Commission staff.

Alderman Wihby addressed Item 4 of the agenda:

Communication from Attorney Rodier expressing appreciation to the Finance Department for their efforts in bringing us to the verge of substantially lower electric rates in the State and recommending that the City seek compensation and reimbursement for attendance at the New Hampshire PUC hearings.

On motion of Alderman Thibault, duly seconded by Alderman Shea it was voted to receive and file this item.

Alderman Shea asked who is this fellow.

Ms. Parsons answered a brief synopsis is he had a lot to do with getting deregulation started in this State. He was representing a large industrial client who wanted to lower their electrical costs. He challenged the company when he wanted to do this he said I will pay you for the price of power and I will pay you the Federal Energy Regulatory Wheeling charge and that is all I will pay you. I won't pay you stranded costs. They said well we have an exclusive franchise. The issue was at that time an exclusive franchise so you can't supply power to anyone in the PSNH territory. That went all the way to the Supreme Court and he won in Supreme Court.

Alderman Shea asked the NH Supreme Court.

Ms. Parsons answered yes. So that started it. Once it was determined that PSNH did not have an exclusive franchise to supply energy to a customer, that kind of kicked off the legislation and this is where we are at. Everyone has kind of forgotten the role that he played, but it was pretty instrumental.

There being no further business to come before the Committee, on motion of Alderman Shea, duly seconded by Alderman Pinard, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee