

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

August 28, 2000

5:15 PM

In the absence of the Chairman, the Clerk called the meeting to order at the appropriate time.

The Clerk called the roll.

Present: Aldermen Wihby (late), Sysyn (late), Pinard, Shea, Thibault

Messrs: R. Sherman, T. Arnold, Alderman Gatsas

The Clerk noted that in the absence of Chairman Wihby, a motion is in order to elect a Chairman Pro-Tem.

On motion of Alderman Shea, duly seconded by Alderman Pinard, it was voted to elect Alderman Thibault as Chairman Pro-Tem.

Chairman Thibault addressed Item 3 of the agenda:

Communication from Alderman Lopez suggesting information be obtained relative to the use of solar lighting versus the current high-pressure sodium lighting used throughout the City.

On motion of Alderman Shea, duly seconded by Alderman Pinard, it was voted to table this item.

Chairman Thibault addressed Item 4 of the agenda:

Discussion relative to the acquisition of the Amoskeag Hydro Station.

Mr. Sherman stated I just wanted to bring the Committee up-to-date with where we are. I believe it was at the August Board meeting that we talked about this. The direction we got from the Board was to go out and see if we could find someone who would be willing to come in if the City bought the facility that would be willing to lease the facility from the City and in essence protect the City from any net operating losses and the City still be able to reap the benefits of the relatively cheap electricity coming from it so the City could again reduce its electric costs in the end. What I have here and I will pass out, we had laid out 15 points that we asked to see if they could meet. If I can, I would like to read these

points into the record and we can certainly discuss them. If the Aldermen have more or would like some of these changed, we certainly can consider that going forward. The first thing we asked these folks to do is we said we are under a relatively short time-frame and if we are going to proceed with this we should have at least a Memorandum of Understanding in place by October 1, 2000. The party that we are talking to has absolutely no problem with that. We would like to get this Memorandum of Understanding to the Board at its first October meeting. The second item that we told them is the City will issue the bonds for the acquisition. The City's cost for capital is much cheaper than private industry so we would issue the bonds. Number three we said the entire time the City will hold title to the property. Number four, the City would enter into a long-term lease for operation and maintenance of the facility. Number five, the lease payments that were received back will be at least equal to the debt service requirements so again we will issue the bonds but we are guaranteed that lease payment to at least pay that capital back. The lessee would be responsible for all O&M and capital requirements of the facility. Again, the City will stay out of that process. The City will be protected against any net operating losses. If there aren't enough revenues to cover that operation and to cover the lease payment, that would be the responsibility of the lessee to make those payments. The lessee would be responsible for out of the operations to make a payment in lieu of taxes. The lease would provide a sharing agreement for any excess cash flow. So, once O&M is paid, once the lease is paid, once the pilot payment has been paid, we probably would also want to set-up a capital reserve fund but then there would be a sharing arrangement for any excess after that. Number ten, all of the employees at the facility would be employees of the lessee. These are not going to be City employees. Part of the settlement agreement with the State is that any municipality that acquires one of these facilities is required to take a certain number of employees. There is a union agreement that needs to be resolved there. So, we would just pass these employees on to the O&M company. The lessee would provide all of the insurance necessary to protect the City. The lessee would be responsible for assisting in the relicensing of the facility. The relicensing comes up in 2005. That is typically a five-year process. My understanding is that PSNH has actually started the process. The lessee will assist the City in the valuation process. Again, it is in both parties interest to get this at a reasonable price. The City would be reimbursed over time for the cost it has incurred to date so any of the dollars we have already spent or might spend between now and the time that we would actually acquire it will come back out. The lessee would reimburse the City. The City would enter into a long-term power purchase agreement with the lessee to take all of the power from the facility. Now again as we talked about at that Board meeting, what we are looking at for generation is in the vicinity of 1 ½ to 2 cents less than the retail price of power so there are some significant dollars there. These are the conditions that we laid out. We have one party that I spent a couple of hours on the phone with this morning that has

absolutely no problem meeting these conditions. They have forwarded a Memorandum of Understanding. They have also forwarded a lease agreement. They both right now sit with Tom Arnold. Tom, I don't know if you want to address them. I know that you have looked at them and had some concerns.

Deputy Solicitor Arnold stated I have looked at them both. I have a number of concerns with them in terms of actually a number of different areas. I think that given what you were telling me about your conversation this morning we can probably work those out. It deals with things like the length of the lease, the relicensing of the facility, and some of the risk allocation language in the agreements. This was a first draft.

Chairman Thibault stated the one thing that concerns me and I have been on this thing from the beginning on number 14 where you say the City will be reimbursed over time for the cost they have incurred, what does that mean exactly. The City is protecting the City here?

Mr. Sherman replied no. What we have is the City has spent a little over \$150,000 to date. We hired the engineer. We sent in the divers. We had people come in and do a valuation for us.

Chairman Thibault stated and we have administered the program.

Mr. Sherman replied no. This isn't Aggregation. This is just the hydro. What we said is well if the City goes out and purchases this, we want to be reimbursed those costs that we have. They said they don't have any problem reimbursing the City. Their concern is maybe the first year there won't be enough cash flow to cover a lump sum payment of \$250,000 or \$500,000 so they would want to look at it and say okay well how about if we made three equal payments over three years and we will give that money back to the City.

Chairman Thibault stated that was my biggest concern. I wanted to be sure that I understood what this said here.

Mr. Sherman replied I think one of the concerns that was raised by the Aldermen was okay if we now have to go to the PUC and we are going to spend more money and are we ever going to get this money back. What we talked to these parties about is it would almost be that they take the lead in the valuation process and it is at their risk. Now obviously we would want to make sure that our interests are protected along the way but they would go to the extent of even providing us witnesses to come in and say as an independent investor in hydros this is how we value it and yes I would pay for this benefit, but I wouldn't necessarily pay for this benefit. It kind of gives a different twist from the City side. We are almost sitting

there like PSNH would be sitting there. Not only would we have the discounted cash flow, but we would have the replacement value, we would have the light sales and we would also have a hydro investor sitting there testifying on behalf of the City as well.

Chairman Thibault asked so you feel that we are quite protected with this. Is that with any interest that could accrue over those three years.

Mr. Sherman answered yes. Those are the types of things that we would have to work out through the lease agreement.

Alderman Wihby asked what are we buying it for.

Mr. Sherman answered that hasn't been determined yet.

Alderman Wihby stated so basically we are buying it from PSNH and we are going to lease it to someone else and whatever we buy it for the lease is going to be for what.

Mr. Sherman replied they would want to look at the cash flow and if we went out and issued the debt for 20 years...well they are going to be making the lease payments to make sure that the debt is paid back. Now if we give them a 30 year lease...

Alderman Wihby interjected plus the maintenance.

Mr. Sherman replies yes.

Alderman Wihby stated so it is not costing the City anything. What happens if they go under or whatever.

Mr. Sherman replied those are the types of things that we need to work out in the lease agreement for bankruptcies, etc.

Chairman Thibault asked do you think it is something we should table until we get more information.

Mr. Sherman answered I just wanted to update you on what is going on.

Alderman Wihby asked what does the first thing say though. You are not giving us a lot of time here?

Mr. Sherman answered this is...we are kind of and I hate to say the words but I still have civic center in the back of my mind and if you remember what we did with the civic center is we came to an understanding of what we were going to negotiate in the lease. The lease could take us awhile to negotiate.

Alderman Wihby asked so this is nothing. If we decided in three months we didn't want to do this...

Mr. Sherman interjected right. If we end up at a dead-end or if the price comes in too high we will have all of those outs in the Memorandum of Understanding.

Deputy Solicitor Arnold stated the Memorandum of Understanding, again I reviewed their proposed copy this morning and I would want some fairly significant changes to that to better put down what we are going to agree to in the future. What they submitted, I think, was a six-page document. I would want to be a lot more careful with the risk allocation and the funding and that type of thing.

Mr. Sherman stated they need some work and they don't have a lot of information. I asked them to send us their documents and told them that we would put in our language.

Alderman Shea asked so we don't know what the purchase price is going to be and as far as the Memorandum of Understanding, are we just fishing. Do we have just one bite or are there several people interested?

Mr. Sherman answered there are two parties that are extremely interested. Another party that I talked to said they were not interested in the lease but if we wanted to go back and own it and just have them do the O&M where now you are on the table or at risk, which I got the impression that the Aldermen weren't interested in so they are kind of on the side.

Alderman Shea asked can we, as a municipality, own an electrical plant.

Mr. Sherman answered yes.

Alderman Shea stated so we have a couple of interested parties, we don't know the purchase price and there are problems connected with one of the parties that is interested in the leasing in terms of getting down to the nitty gritty.

Mr. Sherman replied yes.

Alderman Pinard asked do you have to have all of this information by October 1.

Mr. Sherman answered that is the date that we are pushing for just for the Memorandum of Understanding, not for the lease agreement. Really what I am trying to get them to do is within the next 20 days or three weeks say we agree that these are the items that we are going to negotiate on and we are going to lay out the fact that all of these items have to be included in there. Now again I think when you read the Memorandum they sent us it was just real soft. There wasn't a lot of detail to it and the conversation I had with them today is I walked through the 15 conditions and they don't have any problems with them but we have to get them to adopt them.

Alderman Pinard asked can we be notified of when they get this to you so we can make a decision before October 1.

Alderman Thibault stated I don't think that is necessary if I understand Mr. Sherman. He is just trying to let us know where they are.

Mr. Sherman replied again what I am trying to do is push them so I can come back to that first Board meeting in October. If we don't hit it because there is a problem or a snag then we don't hit it, but that is the schedule I am trying to keep them on.

Alderman Shea stated you keep referring to they.

Mr. Sherman responded I am talking about the other party.

Alderman Shea asked the other party that is interested in leasing, not the other party that we are going to purchase it from.

Mr. Sherman answered correct. I am talking about the lessee.

Chairman Thibault asked what would you like us to do at this point.

Mr. Sherman stated this is really coming in just to keep you up-to-date on where we are. The only thing...Tom and I kind of talked outside about this is whether Tom feels comfortable enough handling the negotiations for the City. You are talking about maybe a \$14 or \$15 million acquisition. You are talking about maybe a 25 or 30-year lease. If you recall all of the numbers that we put up on the board, you are talking about some significant cash flow items. A lot of money in pilot payments and the issue is does Tom feel comfortable enough handling that negotiation. I am sure he hasn't handled many hydro negotiations before.

Deputy Solicitor Arnold stated obviously I don't go around negotiating this type of lease agreement every day of the week and I would feel much more comfortable and I think the City would be well served to try and bring some expertise in that has more experience in this area and has a better understanding of what industry practice is.

Chairman Thibault asked are we talking about outside counsel here or are we talking about in-house.

Deputy Solicitor Arnold answered it would probably be outside. We could look around the City but when we went through this process back in the original pilot program we interviewed a number of people including some local counsel...

Chairman Thibault asked so you and Tom Clark would review this and decide which way we should go or do you make that decision.

Deputy Solicitor Arnold answered we could do that or...obviously there is an expense involved which is a concern. We have O'Neil, Grills & O'Neil who has quite a bit of experience in this area and I am sure would be willing to assist us.

Mr. Sherman stated I think what I would like to almost do is they are going to send us their documents electronically and Tom and I can go through at least the first cut because Tom knows the indemnity language and the insurance and we can take care of all of those things. Then my thought would be before we sent it to them to just send it out to O'Neil and let them spend four or five hours going through it and saying here are the issues. I am not sure you even need them here to negotiate as long as somebody else has reviewed it before we go back.

Alderman Gatsas stated you started talking about all employees in the union.

Mr. Sherman replied the IBEW has a contract with PSNH. Part of their contract says that if there were ever any sales that their contracts would be part of that sale. Now I believe that the contract expires in 2002 so as part of the settlement agreement with the State and at the PUC they said that anybody who buys any of their generating assets has to absorb their employees, at least through the end of their contract. Now what they have, they have nine hydro facilities in the State. They only have about 12 employees. What they do is when they need flashboards in Manchester, 6 guys come down and do Manchester and then they run up to Berlin and they keep moving their employees around so we don't even know what the allocation is going to be. Now Amoskeag is run remotely. They very rarely have anybody there unless it shuts down and they have to send somebody to do a restart so we have no idea how many employees that is going to be but again both

parties that I talked to said that is not unusual they would put them in their mix and maybe they are up in Maine one day or down in Rhode Island, but they will absorb the employees. Again, they don't want to get five, but they will be there and take their fare share.

Alderman Gatsas asked why don't you want to see a lease agreement with a Memorandum of Understanding.

Mr. Sherman answered I just don't think you can get that all done at that point, especially if you are going out for a long time and you are going to get the nitty gritty done. If I could do it, I certainly would.

Alderman Gatsas asked we wouldn't want to look at lease with the variable blanks.

Mr. Sherman answered we could certainly get you that, yes, but you are certainly not going to get a lease done until you know what the price is and then you know what the lease payments have to be. We can get you that.

Alderman Gatsas stated I certainly don't think we should follow the same...you said you were civic center minded and I don't think we want to...

Mr. Sherman interjected we actually have both documents and we will keep moving on both documents but my feeling is that the MOU will be done before the lease is.

Alderman Shea asked are there any other people interested in purchasing the facility.

Mr. Sherman answered both parties have asked that if the City doesn't purchase it that we don't somehow in this negotiation preclude them from buying it out right but there are others out there.

Alderman Wihby stated I think basically and I think you are trying to do it with this is I don't think the Aldermen want to own this thing. I think if you can lease it and make sure that everyone is covered and it is not going to cost us anything and we can get the electricity cheaper then everybody should be okay with it.

Alderman Shea asked if we issue bonds, we are going to be responsible for the payment of those bonds. The leasing company isn't going to come out the first year and say to us you have invested \$15 million or so and the payments are such and such per year.

Mr. Sherman answered we would back the bonds, not by general revenues of the City but by revenues from the facility and the lease payment. There are two issues about why you would want to have title to this versus just letting someone else come in. One is so that you own the power. Again, you are generating this power at 1 ½ to 2 cents per kilowatt cheaper and the other one is that pilot payment. With the school funding formula, taxes from generating facilities go to the State. If you own it, that pilot payment stays local and you still get the same distribution for school. It doesn't change your distribution. That is a significant cash flow.

Alderman Gatsas stated I have a problem with the last comment you made about if we don't purchase we don't preclude them from purchasing. Now if they are going to be our experts in the negotiations, let's through a number up and they say we don't think you should go more than \$10 million...

Alderman Wihby interjected he is talking about the two companies.

Alderman Gatsas replied what I am saying is what if he says to the City because in this contract they are saying that they are going to help us through the negotiation process and they say well we don't think the City should pay more than \$10 million and they come in and pay \$10.5 million and they own the facility because they really wanted to own it on their own. I say that whatever that is, they can't buy it for less than the difference between what they are telling us we are willing to pay for it plus a 50% premium. Then they should be able to buy it.

Mr. Sherman responded that is a good point. Their issue was let's say it comes in at \$18 million and the City says now that is too rich for us and we walk away...

Alderman Gatsas interjected what does the City care if it is \$25 million if they are picking up from dollar one.

Mr. Sherman replied well they might come back and say we can't make the cash flow work on a lease payment so we can't do it either.

Alderman Gatsas responded and then they come in and buy it at \$19 million.

Mr. Sherman stated what they want to do is partake in the auction.

Alderman Wihby asked will the auction necessarily be cheaper than the City gets.

Mr. Sherman answered no. My feeling is actually that the auction will be higher than what the City pays. We will have the ability to go in and pay what it is worth and not have to worry about somebody who is willing to pay a premium just to get in the market, which is what we saw up in Maine. Bower Power & Light paid a premium to get Maine and then six months later tried to back out of it because they overpaid. There were some reasons that they overpaid. They misunderstood how the tariffs were going to work and the judge said too bad.

Deputy Solicitor Arnold stated just so we are clear, we had some discussion about hiring some outside counsel and I just want a clear direction from the Committee that we have permission to do that.

Alderman Wihby replied what I am understanding is you are not talking a lot of money are you.

Mr. Sherman responded no. Again, we are working on the basics. We just want somebody who understands it to be able to at least review it.

Alderman Wihby asked you have that in your budget anyway don't you. Outside counsel money?

Mr. Sherman answered between us and incidentals, yes.

Alderman Wihby stated if it is going to be a lot then it should come back to us.

Deputy Solicitor Arnold asked do you want to put a cap on it.

Chairman Thibault answered I think that any money we are going to spend on outside counsel should come to the Committee before it is approved, right.

Alderman Wihby stated if it is within your budgets, that is fine.

Mr. Sherman replied if we see that this is going to go on, we will come back. Again, we are trying to get it done in a month. At least the first part.

Alderman Wihby asked what did you do with Item 3.

Chairman Thibault answered we tabled it.

Alderman Wihby stated Steve Tierney passed out something and what I am reading says that solar over 10 years is 287% more than electric.

On motion of Alderman Shea, duly seconded by Alderman Wihby, it was voted to remove Item 3 from the table.

On motion of Alderman Shea, duly seconded by Alderman Pinard, it was voted to receive and file Item 3.

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