



Established

1996

SPRINGFIELD WATER AND SEWER COMMISSION

POST OFFICE BOX 995
SPRINGFIELD, MASSACHUSETTS 01101-0995
413-452-1300

Minutes of Meeting

December 13, 2023

The Springfield Water and Sewer Commission held a public meeting on December 13, 2023, in accordance with Chapter 2 of the Acts of 2023.

Chairwoman Otero called the meeting to order at 9:00 a.m. and announced the Commissioners that are participating. Secretary for the Commission Jaimye Bartak called the attendance roll:

Daniel Rodriguez, Present
Vanessa Otero, Present
Matthew Donnellan, Present

Also Present
Joshua Schimmel, Executive Director
Norm Guz, Commission Counsel
Anthony Basile, Comptroller
Domenic Pellegrino, Director of Finance
Steven Frederick, Director of Wastewater Operations
Theo Theocles, Director of Legal Services
Jaimye Bartak, Communications Manager/Secretary to the Commission
Attorney Bruce Leiter

Also Participating Remotely
Katie Shea, Educational Outreach Manager
Darleen Buttrick, Director of Engineering
Jim Laurila, Director of Water Operations
Christina Jones, Deputy Director of Water Operations
Jennifer Boulais, Director of Human Resources
Rick Gomez, Director of IT
Raemarie Walker, Deputy Director of Finance
Colton Andrews, Pioneer Valley Building Trades Council
Mike Langone, Plumbers & Pipefitters Union
Joe Traghese, Laborers Local 999
Atty. Nicole Decter (representing PVBTC)

Business Matters

1. Approve the minutes of the meeting held on November 16, 2023, without reading, because copies were furnished to each member of the Commission for their review.

UPON MOTION DULY MADE BY COMMISSIONER DONNELLAN AND SECONDED BY COMMISSIONER RODRIGUEZ

VOTED YES –

COMMISSIONER RODRIGUEZ

COMMISSIONER OTERO

COMMISSIONER DONNELLAN:

to approve minutes of the meeting held on November 16, 2023.

New Business

2. PLA Discussion with Pioneer Valley Building Trades Council.

Executive Director Josh Schimmel introduced Colton Andrews as President of the Pioneer Valley Building Trades Council.

Mr. Andrews explained that he has met with Mr. Schimmel and Commission attorneys and staff on several occasions to share proposals and ideas and address any misconceptions of Project Labor Agreements (PLAs). Mr. Andrews noted that Director of Legal Services Theo Theocles sent follow-up questions and that he responded to those.

Mr. Andrews provided a presentation that explained that a PLA is an agreement between the project owner, general contractor, sub-contractors, and labor trades. Mr. Andrews's presentation explained a PLA offers safe working conditions, economic development, employment and educational/apprenticeship opportunities, access to a skilled workforce, and small business participation.

Mr. Andrews's presentation continued that a PLA increases job access for women, low-income workers, Veterans, and expands career opportunities through job training. The PV Trades Council provides training facilities. The key element of a PLA is union recognition, though it does not inhibit non-union workers from participating. A PLA has a dispute-resolution provision that establishes a process for grievances and a plan for jurisdictional disputes. It also can incorporate diversity and inclusion strategies if those terms are negotiated into the PLA.

Mr. Andrews's presentation continued that all workers come through the dispatch system with their trade and respective locals, and the unions dispatch priority workers based on the request and availability. Contractors prioritize requests based on job skill needs.

Commissioner Otero thanked Mr. Andrews for his presentation. Commissioner Otero noted that hiring local and DEI/apprenticeship programs are important to her and the Commission. Commissioner Otero noted the Commissioners' fiduciary responsibility and that their decisions cannot put the Commission at risk of litigation and/or increased project cost or schedule. The concern is *Callahan vs. City of Malden*, which exposes the Commission to litigation that could stall the project to the point where it increases costs. Commissioner Otero noted that bidding documents can address the hiring goals and ideas that could be set forth in a PLA.

Atty. Nicole Decter for the PV Building Trades Council noted that *Malden* does not prohibit PLAs. Atty. Decter explained that the court ruled that projects must be of appropriate size, timing, complexity, and schedule that suggest a PLA is an appropriate project delivery method. The public project owner also must go through a deliberative process to determine its use. Atty. Decter noted that the West Parish Water

Treatment Plant (WTP) project is not dissimilar in cost to the Holyoke Soldiers Home project, which is under a PLA. Atty. Decter argued that in her opinion the WTP project meets the conditions for a PLA as established in *Malden*, especially because the project affects drinking water and must meet the schedule and hiring requirements of WIFIA funding. Atty. Decter noted that the difference between the prevailing wage and collective bargaining agreements would be marginal, and that DCAMM found this to be the case with the Soldiers Home. Mr. Andrews added the cost difference would be \$1-2 per trade hour and would account for training and apprenticeship.

Atty. Decter explained that in cases where PLAs have been struck down by the courts (Braintree, Quincy, and Fall River), all were situations that were not in line with *Malden*.

Commission Counsel Norm Guz thanked Atty. Decter for educating the Commission on PLAs in the area. Atty. Guz noted that the *Malden* case presents a two-part test that holds that a PLA cannot be upheld unless a project is of such size, duration, timing, and complexity that competitive bidding *cannot be otherwise achieved*. The WTP project is indeed complex, but the Executive Director, Procurement Officer, and design engineer have not informed the Commission that the project cannot be bid without a PLA. The Commission has issued RFQs and has qualified four general contractors, of which three are union. Of the 48 subcontractors, 35 of them are union. The Commission also just completed a \$137M pump station and \$25M clearwell project, both without PLAs. Based on the facts and *Malden* case, Atty. Guz stated that he could not see how a PLA would be upheld for the WTP project if challenged.

Atty. Guz continued that WIFIA loan requirements, and resident, minority, and women employment and participation can be achieved through bidding documents. Atty. Guz noted that his findings were based solely on his review of the *Malden* case and the fact that the project needs to be put out to bid in February. Atty. Guz recommended the Board not proceed with a PLA for the WTP project.

Commissioner Rodriguez noted that the Commissioners' responsibility is to protect and guard the operations of the Commission, and in doing so they must rely on the recommendations of staff. Commissioner Rodriguez noted that a PLA was never presented with the York Street Pump Station (YSPS) project and hiring goals were still met.

Mr. Andrews responded that the YSPS project delivery was Construction Manager at Risk (CMR), which made it a different case. The WTP project is being bid as a general contractor project, with three union and one non-union (from Colorado) contractors qualified. Mr. Andrews noted that the *Malden* case has stood the test of time, and there were no protests for the Soldiers Home. Mr. Andrews suggested that the Commission's inexperience with PLAs may be contributing to hesitation. Mr. Andrews noted that MWRA has had PLA projects. Mr. Andrews added that due to the WTP's timeline and complexity and his understanding of the constraints of the Massachusetts workforce, he does not know where a non-union contractor would be sourcing their workforce.

Commissioner Rodriguez commented that there was general agreement on utilizing a local workforce, but that those requirements could be addressed and met in bid documents. Commissioner Otero added that apprenticeship goals are equally important, and could also be addressed in the bid documents.

Mr. Andrews responded that that unions train almost 78% of the trades across Massachusetts, and that the union can provide the workforce and apprenticeship opportunities. Outside contractors do not have established apprenticeship programs. Mr. Andrews pointed out the Soldiers Home, I-91 Viaduct Project, MGAM and CRC Trade Factory as successful PLA projects. Mike Langone of the Plumbers and Pipefitters Union added that there is not a non-union plumber and pipefitting apprenticeship program in Massachusetts.

Commissioner Otero noted that 75% of all trades are union, and that outside contractors will therefore need to utilize union labor and meet the goals of the contract with the Commission.

Mr. Andrews responded that while DEI requirements can be built into bidding contracts, there is not much the owner can do if the contractor is not delivering on DEI goals. A PLA would also include a no-strike and lockout clause that supersedes contract negotiations, which would protect the Commission from labor unrest.

Commissioner Otero commented that a PLA still leaves the Commission open to an injunction or litigation due to *Malden*. Atty. Decter responded that the Soldiers Home is an example of why the Commission is not at risk of being sued, since it is a simpler project than the WTP yet has a similar estimated budget. The Soldiers Home PLA has not been challenged.

Atty. Decter continued that she disagreed with the analysis of the Commission's counsel. *Malden* did not determine that a project owner has to demonstrate that a PLA is the *only* possible project delivery method. Rather it has to demonstrate that a PLA is the preferable way to meet all of a project's priorities in cases where the project was of sufficient time, duration, complexity, and scope, and there was a deliberative process to weigh these factors. Atty. Decter noted that recent PLA projects around the state are often smaller, but none of them have been challenged.

Commissioner Rodriguez noted that he did not view the question as union or non-union, but whether there is a risk in pursuing a PLA.

Atty. Guz re-stated his recommendation that a PLA presents too much risk of litigation. Atty. Guz noted that the Board needs a recommendation to pursue a PLA from a board member, staff, or counsel to proceed, and that has not resulted during the pre-qualification process or through legal review. *Malden* clearly states that a PLA can be used only when the project *cannot otherwise be achieved* without one, so it would likely not withstand the test of *Malden*.

Mr. Andrews requested another meeting to process this discussion. Mr. Andrews added that a PLA agreement should be able to be negotiated fairly quickly.

Commissioner Otero thanked everyone for the discussion and responded that all would be hearing from the Board again regarding another meeting or a decision.

The Board voted unanimously to go into recess at 10:08 AM.

The Board voted unanimously to resume open session at 10:17 AM.

3. Financial Update: Report by Comptroller.

Comptroller Anthony Basile reported on November statements. There was a cash flow increase due to a drawdown of \$13 million of WIFIA funds.

The revenue budget is similar to what was projected last fall. It is down due to reduced usage and decreased production at Solutia. This has led to a \$800,000 projected deficit. There is a \$1.3 million revenue shortfall, but interest earnings are \$2 million over projections, which will resolve the deficit.

The Operating Budget is projected to be 98% spent. There is just under \$1.5 million in unexpended balance in the Operating Budget. A balanced budget is expected at this point.

There has been \$34 million expended in the capital budget, and spending is on track to meet the \$85 million budget.

There is \$126.9 million in cash. Unrestricted cash was increased by \$13 million. There is 37% unrestricted cash. Commissioner Rodriguez requested showing only the quarterly cash analysis or when there is a significant change.

There is \$7.5 million in total outstanding receivables, with \$1.7 million over 60 days old. These are normal trends.

There was \$980.6 million in assets, and \$721.4 million in liabilities.

4. Consideration of Utility Billing Credit Summary and Summary of Accounts Receivable November 2023: Report by Director of Finance.

Director of Finance Domenic Pellegrino reported net billings just under \$8 million, 6.4 million in collections, for an accounts receivable balance of \$6.5 million.

Commissioner Otero asked about the impact of the customer assistance program (CAP). Mr. Pellegrino responded that LIHEAP approval letters are now being sent to applicants, and the letters include the Commission's CAP application.

There were 6,101 accounts with receivables over 60 days, totaling \$1.7 million.

There were 96 credits issued for a total of \$17,257.09.

UPON MOTION DULY MADE BY COMMISSIONER DONNELLAN AND SECONDED BY COMMISSIONER RODRIGUEZ

VOTED YES –

COMMISSIONER RODRIGUEZ

COMMISSIONER OTERO

COMMISSIONER DONNELLAN:

to approve credits in the amount of \$17,257.09 as presented.

5. Water and Sewer Updates: Report by the Executive Director.

Mr. Schimmel reported that another HAA5 notice is anticipated in January.

Mr. Schimmel reported on the meeting with the HHS Subcommittee on November 16. Education will continue through neighborhood council meetings.

The Abbey Brook pipe restoration is almost complete.

Mr. Schimmel reported that staff recently interviewed 2 firms to provide counsel on labor issues. A term and not-to-exceed amount will be added to the contract.

UPON MOTION DULY MADE BY COMMISSIONER DONNELLAN AND SECONDED BY COMMISSIONER RODRIGUEZ

VOTED YES –

COMMISSIONER RODRIGUEZ

COMMISSIONER OTERO

COMMISSIONER DONNELLAN:

to authorize the Executive Director to enter into an agreement not to exceed \$100,000 for contract negotiation and labor issues with Dupere Law Offices in the form substantially as presented until June 30, 2024.

Educational Outreach Manager Katie Shea reported on visits to several career fairs at high schools to promote the Pipeline Program. Commissioner Otero recommended reaching out to the New North Citizens Council Youth Build Program to promote the Pipeline Program and scholarship.

Director of Engineering Darleen Buttrick reported that the Abbey Brook project is nearly complete, with pressure and leak testing this week. The WTP design is wrapping up. The 42” EDV project will be bid in early January. The Backwash Facility is now fully online and the second transmission main tie-in is now being tied in. The Locust Street project work will continue into the winter. FY23 sewer improvements are complete and final restoration will take place in the spring. The Bernie Avenue water main bid opening will take place next week. The Provin tank rehabilitation is being re-bid.

Director of Human Resources Jen Boulais reported that negotiations with the unions is opening soon. Work is ongoing in updating the employee manual.

Director of IT Rick Gomez reported that the data center work is wrapping up in early January.

Director of Legal Services Theo Theocles reported that there is a large volume of bidding and housing court cases to enforce payment agreements. The Commission has officially opted out of the 3M PFAS settlement.

Mr. Basile reported that the ACFR was filed with GFOA.

Mr. Pellegrino reported that 3 more SRF loans were closed, including for the ICIs for \$28 million, for the second half of the clearwell project, and the final loan for the YSPS.

The next meeting will be on January 11, 2024 at 9 AM.

6. Consideration and/or action on any other matters that may come before the Commission at this meeting.

None considered.

Executive Session

7. Consideration of Authority for Settlement of Motor Vehicle Accident: Report by Director of Legal Affairs.

AT 10:43 AM UPON MOTION DULY MADE BY COMMISSIONER OTERO AND SECONDED BY COMMISSIONER DONNELLAN

**VOTED YES –
COMMISSIONER DONNELLAN
COMMISSIONER OTERO
COMMISSIONER RODRIGUEZ:**

to enter into executive session to discuss litigation for settlement of a motor vehicle accident. It was determined that holding the discussion in public session could be detrimental to the Commission's position in the negotiation of the litigation. It was announced that public session will not resume at the end of executive session.

Submitted By:



Jaimye Bartak, Secretary

Exhibits Considered:

November 16, 2023 Meeting and Executive Session Minutes
Monthly Financial Report
2023 November Finance Director Rpt
Contracts Signed by Josh Schimmel
Cobble Reservoir Capacity Levels
Presentation by PV Building Trades Council