



HINGHAM MUNICIPAL LIGHTING PLANT

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General Manager

Paul G. Heanue
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Board Members

John A. Stoddard, Jr., Chairman
John P. Ryan, Vice-Chairman
Walter A. Foskett, Secretary

August 4, 2011

Board Members: Walter Foskett (WF), John Ryan (JR) & John Stoddard (JS)

General Manager: Paul Heanue (PH)

Attendees: Alan Posner (AP), Gus Bregnard (GB), Panos Tokadjian (PT), Mike Menton (MM), Joan Griffin (JG), Diedre Lawrence (DL)

JS: I'd like to call the meeting to order at 6p.

The 1st order of business is to approve the minutes from last month's meeting.
(after reading)

WF: Paul, please get us the minutes prior to the meeting so we can review and have any necessary edits in place. I have a few changes to these before we vote.

PH: Sure thing

JS: We'll hold off on voting on the July meeting minutes pending any possible changes.

PH: The next order of business is a presentation by Attorney Diedre Lawrence on MGL Ch. 164, the open meeting law and public records. I thought it'd be helpful to have her explain these since I'm new in my position and we also have a new board member.

DL: I am here tonight at the request of the manager and the board to discuss Ch 164, the open meeting law and public records. I have copies of an outline for everyone on the Open Meeting Law. Attorney General Martha Coakley's requires the signature of any new member certifying they have read this. (DL reads the Open Meeting Law Guide.)

She then explains how Board Members are covered under Ch 164. Their general charge is to Construct, Purchase, Lease, and Operate and Maintain the plant in accordance with the town establishing it. Ch 164 also provides that the board appoints a General Manager, who under the direction and control of the board has full charge of the operation of the plant. The manager is responsible for all the day to day operations of the light department and all the administration tasks. He is also charged with preparing an annual budget which is presented to the board. He has to manage the collection of bills and reporting of accounts in accordance with state regulations and DPU policies.

The Board's duties are mostly to engage in Policy Activities, i.e. they approve personnel policies, they establish the terms and conditions for electric service, which the General Manager prepares for their approval, and they are also responsible statutorily for approving any rate changes. The Board also has other general authority, i.e. accepting lien laws, participating in self insurance. The annual financial reports and budget which are presented by the General Manager are voted on by the board, and this can impact the light departments operations in a significant manner. Typically boards vote whether to sign onto certain contracts for example for a construction project, where contracts are subject to public bidding or public works contracts. Some contracts up to a certain value may be delegated to be signed off on by the Manager. The board also has the exclusive authority of when

to appropriate depreciation funds. The board acts as the Chief Executive Officer for Collective Bargaining, though the board can delegate that to the Manager.

DL then cited some cases to show examples of where problems arose between the board and the manager over division of duties and how they interact. One discussed was where a Board interfered with the selection of a vendor. Another was about a Board that improperly weighed in on personnel decisions, i.e. performance evaluations, promotion, raises. In those cases The Boards were sued and the plaintiffs prevailed.

DL then moved onto what a board member is covered for in terms of liability. All public employees are covered by the Tort Claims Act and as a board member you are considered a public employee. As such, you are eligible to be indemnified for both intentional and unintentional torts that are committed while acting under the scope of your duties. A board member can be indemnified for up to \$1,000,000. You are not covered for some things, i.e. ethics violations, criminal charges or if you are acting outside the scope of your duties. If you are sued for ethics violations, criminal charges or something you've done which takes place outside your scope of proscribed duties you can be sued personally.

Public Records and Open Meeting Laws were discussed next. DL started off by saying that email communications and telephone calls can all constitute violations of the Open Meeting Law if certain conditions are met. Because this is only a 3 member board a quorum is reached when 2 contact each other. Anytime there is an email or a telephone call between two board members the Open Meeting Law can be violated if you are discussing anything regarding the business or policy of the Light Department. This also applies to topics that board members discuss that may become the subject of deliberation at a meeting at a later point in time. Social exchanges and some scheduling issues are not included in this. According to the Attorney Generals Office, a meeting is taking place any time there is either a conversation or email exchange between board members constituting a quorum and a deliberation of any kind, including a verbal or email exchange, takes place. An email or call from one board member to the manager does not constitute a meeting this because you have not reached a quorum. The GM is not a Board Member. All emails are considered a public record. If you make a mistake, if you discuss a personnel matter or put something in an email that should not have been there, the text of the email should be introduced in an Executive Session.

JR then asked DL to discuss Executive Sessions. DL talked about what is appropriate to discuss in an executive session and what is not. She started with personnel matters – those in which you are discussing the reputation, character, physical condition or mental health of an individual, or discussing discipline or complaints against an employee. Employees have a right to be notified prior to an Executive Session at which any of these things are going to be discussed. The employee can demand that this be discussed in an open session rather than executive session. Strategy with regards to litigation and collective bargaining can be discussed in Executive Session. Preliminary screening of new candidates and mediation is also fair game for Executive Session. DL finished the discussion saying that anyone with questions on this or the other things she discussed can forward them to PH who will forward them to me.

PH brought up the status of allowing credit card and online payments and ebilling. We had almost decided to go with a company that other munis and The Town are using (Invoice Cloud) but we decided to more closely examine their fees in comparison to Cogsdale and 2 other vendors. We feel a more in depth investigation of the fee structures is required.

Other Business: PH reported that the warrant signatures have been signed by JS and WF. He also reported that a Thank you note has been received from the Hingham Farmers Market for allowing them to put a notice of theirs in with the July bill. An email was received on July 19th that talks about the Hingham Government Study Committee being finished with looking at the light plant as part of the study. There was an email from Panos talking about the new peak of 54.04 reached during the heat wave two weeks ago. An email was received regarding the Linden Ponds bankruptcy – their attorney asserts they will be paying us 100% of what is owed. A discussion between PH and WF regarding this issue and how much Linden Ponds owes the Town of Hingham.

JR moved that the meeting go into Executive Session to discuss litigation and WF seconded it. Vote taken and unanimous to go into Executive Session. Present are John Ryan, Alan Posner, Walter Foskett, Diedre Lawrence, John Stoddard and Paul Heanue.

Executive Session discussion

JR: I'd like to make a motion to come out of executive session for the purposes of adjourning.

WF: 2nd.

Vote taken to come out of executive session for the purposes of adjourning.

Meeting adjourned at 8:05pm.

Executive Session

Litigation:

AP opened the session by first outlining the GRS case for everyone. The law suit, which was originally filed in 2006, was brought by the light department against GRS which ran a landfill gas facility in Randolph. The case has been moving very slowly mostly because their lawyers have filed a motion to dismiss as well as many, many others. 95% of the document exchange has now been completed and we are about halfway through the deposition process. Remaining depositions are John Tzimorangas, Eileen McGettigan and Laurie Heffron. Depositions should conclude this year and the trial will begin in 2012.

There are two issues in this case: one is that energy was never produced as committed to in the contract and the other is that there was a 5 year forecast breach. Our expert, Mayhew Seavey, estimated that we should file for \$19m, \$800,000 of this is in interest alone. The outcome of the trial is tough to predict and could turn largely on the judge and how he sees things. We went to a mediator to try to come to a settlement. He suggested a settlement of \$2m to which we agreed. He discussed this with GRS but they stuck with their initial offer of \$12k.

Alan also pointed out that GRS is in a good financial position and have a fund from which they are paying their legal expenses. He feels that there are too many variables involved for him to make a solid prediction on the outcome of the case. He feels whatever the outcome there will certainly be an appeal which could take another year or 2 to litigate. The cost to go to trial could be as much more as \$300 to \$400k, which is the same number that has already been spent per year to date. The other thing to consider is the provision in the contract that says in case of a lawsuit the party who prevails gets the other side to pay their attorneys fees which is a huge risk. So far GRS has already spent \$4.7m on legal fees. If they win they may not get this whole amount, but a good portion of it. WF feels that there must be some way to force them into a settlement. AP is open to hearing any ideas of how this could be done. JR suggests we find out who will get whatever money is left in this defense fund as they may have an interest in settling. A discussion follows as to who owns this legal fund and if finding out this might help in some way.

PH points out that \$1.5m has already been spent on this case and poses the questions as to whether or not it makes sense to continue litigating. Alan suggested another strategy would be to have a client to client discussion regarding a possible settlement. This might prove to be difficult, as up to now, their litigation team is the only representatives that we have met from the other side. DL reiterated that she feels it is bad faith on the behalf of GRS legal team because they are not open to even discussing a settlement. Alan feels that GRS are trying to drag out this case as long as possible.

DL then brought up the MMWEC arbitration, with involves a breach of several Project Sales Agreements. MMWEC is not properly allocating expenses to the PSA Holders. An arbitration demand was submitted in December of 2009. We are now finished with document discovery. Depositions were in progress but are now on hold for 2 weeks as a settlement is now being discussed. There are 8 munis involved and the total damages will be somewhere in the range of \$2-3m. In order to settle MMWEC will have to agree that the allocations will have to be rectified going forward. There will be a meeting at MMWEC next week with our forensic accountant, John Sullivan. The next step should be that we get Nick Scobo, MMWEC's Attorney, to meet with our lawyers. Alan feels that Nick Scobo is ready to settle, as he has charged MMWEC huge fees up to now.

Alan asks to return to the GRS case, as he feels that we wouldn't have gotten this far if we didn't have something in our argument. He also would have advised us to drop the case, if he felt that we would lose. However he wants everyone to be aware that it is a risky case, and that it looks like GRS probably will not settle, but will go to trial, which is unusual.

Other Business

WF brought up an incident where John Ryan showed up at a sub-station for a tour and was refused entry by Panos Tokadjian because of safety and other issues. DL felt that because the substation is not a public building and could be a dangerous facility he was correct in refusing JR entry. DL observed that if JR had discussed with PH this wouldn't have happened. JR felt that because he had PH's permission to meet with GB that it was a logical extension that he should have been allowed entry into the sub-station. DL said that in future if he wanted entry to a plant or needed paperwork etc, that he should go through PH. JR said that he did this, but was still refused entry. DL suggested that PH come up with a policy on how to handle situations like this in the future. JR went there to investigate an outage that happened recently.

PH: The outage was caused by the heat wave last week. On the day of the outage our highest electrical load ever was reached at 58.8 megawatts. The previous all time high was the day before at 54.04 megawatts.

JS asked when was the last time we lost a circuit because of an overload?

PH answered, not in 25 years, which is a great record, but now that we know it can happen we have to have a plan in place to move load.

A discussion followed on the benefits of having a SCADA System which would allow you to monitor load remotely.

JR: I'd like to make a motion to come out of executive session for the purposes of adjourning.

WF: 2nd.

Vote taken to come out of executive session for the purposes of adjourning.

Meeting adjourned at 8:05pm.