

April 18, 2011

Rogers Waterworks and Sewer Commission

Minutes

The Rogers Waterworks and Sewer Commission held its regularly scheduled monthly meeting at 4:00 PM, Monday, April 18, 2011, in the Commission Room of the Rogers Water Utilities Administration Building, 601 S. Second St. Commissioners in attendance were Don Kendall, Guy Cable, Jene` Huffman-Gilreath, Travis Greene, and Roger Surly. Rogers Water Utilities (RWU) staff in attendance were Tom McAlister, Joyce Johnson, Mark Johnson, Johnny Lunsford, William Evans, Earl Rausch, Keith Carpenter, Cary Roth, Paul Burns, and Robert Moore. Others in the audience were Alan Wooten, Robert Frazier, and Derrel Smith. Chairman Greene called the meeting to order at 4:03 PM.

Chairman Greene apologized for missing the previous meeting, and asked the attorneys to brief him on the status of the illegal exaction lawsuit. Alan Wooten, Managing Partner for Warner, Smith, and Harris (WSH), said that the plaintiff's attorney had filed a lawsuit asking the court to find the Commission, RWU, and the City of Rogers in contempt of court. He said that the City Attorney had already file a motion to dismiss, alleging that the resolution passed by the Council last year did not bind the present Council, that the resolution was not binding, and that the court could not coerce the City Council to pass any ordinance. Wooten said that the Commission's only response would be to remind the judge that the Commission and the Utilities had done everything it was supposed to do up to the point where the charging of lower impact fees (as agreed to in the resolution) rendered a legal impossibility by the Council, who is the rate making and policy making body for the City of Rogers. At the hearing Wooten planned to ask the judge for guidance on how to proceed, he said.

Kendall opined that, since the Commission, the RWU, the Judge, and the plaintiff, had all acted in reliance to the resolution, that the resolution was a contract or part of a contract.

What was the timeline? someone asked. Wooten opined that the judge would set a hearing in a couple of weeks.

What about any personal liability? Someone asked. Wooten said that this was not the type of contempt charge whereby Commissioners were thrown in jail. He said that the Commissioners had no personal liability.

Finally, there was a motion by Cable, second by Surly, to approve the minutes of the March meeting. All in favor, motion carried.

Greene recognized Johnny Lunsford, Sewer Field Operations Team Leader. Lunsford recognized Keith Carpenter, Sewer Field Operations Tech II, for 10 years of service to RWU and the citizens of the city of Rogers.

Greene recognized Cary Roth, Environmental Services Coordinator. Roth recognized Paul Burns, Industrial Pretreatment Coordinator, for 15 years of loyal service to RWU and the citizens of Rogers.

Greene recognized Joyce Johnson, RWU Controller. Johnson presented the Commission with financial reports for March 2011. She said that, although the Water Department operated at a loss for the month, the water department was still ahead of budget and ahead of last year, and that the Water Department might actually show a profit for FY '11. She said that the Sewer Department was well ahead of budget.

Cable praised the staff for controlling expenses, but noted a budget item that exceeded the budget, called "sewer field repair". Lunsford reminded the Commission that the Sewer Department purchased some "pipe patch" materials in order to patch holes in sewers from the interior (no excavation required), which exceeded the original budget. Johnson said that she had discussed the reasonableness of capitalizing the pipe patch material with Lunsford. She said she would discuss the issue with the auditors.

Surly asked Johnson how RWU budgeted for penalty revenue. Johnson said that penalty revenue projections were based on a percentage of the revenue projections. How did the penalty process work? Surly asked.

Johnson said that city ordinance requires that a penalty be added after the water bill is due, and that customers in arrears over thirty days were subject to disconnection. The reality of the situations was that people had at least three weeks between the billing date and the due date. Sometime after the due date, a list was developed by the billing computer, and door hangers were printed with a warning to pay the past due amount or be subject to disconnect from the water

system. A \$10 dollar fee was added to the bill for the door hanger. If the customer did not contact the water department before the shut-off date, the customer was shut off, and charged a \$20 reconnect fee. Johnson said that customers could call and make arrangements to pay and not be shut-off.

Surly wondered if the fees were high enough to cover the expense of sending an operator to a residence to hang a door hanger or shut-off a meter. Tom McAlister, RWU Manager, said that the Commission set the fees at the current level a long time ago, and the fees had not increased mainly due to the hardship on customers already in fiscal distress. He said that RWU did not charge extra for NSF checks while most merchants and banks did, for the reason already stated.

Surly asked if RWU needed to budget additional monies for contingent liability if the illegal exaction lawsuit is resurrected. What about plaintiff's attorneys' fees? he asked. Wooten said that the plaintiffs attorney's probably would be asking for more money.

Surly commented that the unaccounted-for water percentage always jumped every March. Why was that? Johnson said that water demand increased in the springtime, but reading meters and billing for water used ran a couple of months behind the actual purchase of water from Beaver Water District. Therefore, the trends to watch were the annual unaccounted for water percentages, she said.

Continuing, Johnson presented the Commission with the bids for property insurance for 2011. Three agencies bid this year, she said. Johnson said that she was advised by the attorneys that bidding for periods for longer than a year were not expressly permitted by the State of Arkansas. The low bid, with the current \$10,000 deductible was from Farris, for \$34,435.

Surly asked if earthquake damage was covered. Johnson said she did not think it was. After some conversation, there was a motion by Kendall, second by Cable, to approve the low bid from Farris Insurance. All in favor, motion carried.

Continuing, Johnson presented the Commission with the required "red flag policy" report, which updated the Commission on the Utilities' efforts to keep private data private (avoid identity theft). She reported that policies and procedures were adequate, and no changes were necessary. There was a motion by Greene, second by Surly, to approve the "red flag policy report" as presented. All in favor, motion carried.

Greene recognized Mark Johnson, Utilities Engineer. Johnson presented the Commission with a short spreadsheet detailing the status of the capital projects in which the Commission had a pecuniary interest. The report was accepted without comment.

The Commission meeting adjourned at 4:47 PM.

Respectfully submitted,

Tom S. McAlister, Acting Secretary
Rogers Waterworks and Sewer Commission

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