

MINUTES OF THE MEETING OF THE COMMISSION

June 10, 2014

The regular meeting of the Board of Commissioners of Public Utility District No. 1 of Whatcom County was called to order at 8:00 a.m. by Commissioner Jeff McClure. Said meeting was open to the public and notice thereof had been given as required by law. Those present included Commissioner Mike Murphy, Commissioner Paul Kenner and Legal Counsel Jon Sitkin. Staff: Steve Jilk, General Manager; Ann Grimm, Administrative Assistant; Brian Walters, Director of Utility Operations; Annette Smith, Director of Finance; Duane Holden, Manager of Construction and Facilities; Rebecca Schlotterback, Manager – Contracts and Regulatory Compliance; Alec Strand, Project Manager; and, Lew Gaskill, Accountant 1. Public attending: Carole Perry, citizen and Max Perry, Forestry Advisory Board.

◆ **Public Comment**

Carole Perry wants to encourage the Commissioners to attend the other water meetings that have been going on around the county. She indicated some of the second-hand information coming forth from these has been hard to understand. Perry attended a water forum last month and saw several Commissioners there and was pleased they were able to attend. She said attending these meetings gives a different level of understanding the issues at hand. Perry also commented on the language of the Whatcom County Franchise Providing Water Utility Agreement with the PUD reciting: *“Granting Public Utility District No. 1 of Whatcom County, a Washington Municipal Corporation, a Franchise and the right, privilege, and authority thereunder to locate, set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use facilities in, upon, over, under, along, across, and through the franchise area to allow for the provision of water service.”* Perry said she can’t evaluate the wording but it is timely and the scope sounds far reaching, but maybe it is necessary. Max Perry said he is concerned about the number of Executive Sessions discussing the agreement and would appreciate summaries of the sessions.

Legal Counsel Sitkin replied that what Perry read is the “title” of the agreement and it is nomenclature, that is, the wording is meant to cover all means. For example, if the agreement did not include the word “under” and the PUD wanted to seek approval to build a water line *under* a County road, a new franchise agreement would have to be initiated. Sitkin said that the franchise agreement is not a land use or environmental approval, it is just like an easement, and very similar to other franchise agreements that the County has with private utilities allowing use of right-of-ways to provide service such as Puget Sound Energy for pole placements, Trans Mountain or Cascade Natural Gas for underground pipelines or even the PUD’s electric transmission pole placements. The franchise agreement does not grant authority or consent but calls out the terms and allocations of risks; it does not address actual service. The majority of the language in the agreement is mandated from the County.

Max Perry commented that the request for this franchise agreement is to enlarge the service area (the agreement cites *all* of Whatcom County). Sitkin explained that if the agreement did not cover all of Whatcom County, granting separate easements by location would elongate the process and become very costly.

Commissioner McClure stated that the Commissioners try to be involved and attend the forums in person and when unavailable, they do monitor the videos that have been produced from these meetings. He added water is a complex issue and thanked the Perry’s for their comments.

◆ **Approval of the Meeting Minutes and Claims**

The Commissioners were presented with the Minutes of the regular meeting held May 27, 2014 and the following Claims of June 10, 2014.

VENDOR NAME	AMOUNT
3-D CORPORATION	- 1,170.00
APPLIED INDUSTRIAL TECHNOLOGIES, INC	- 1,155.56
BAY CITY SUPPLY	- 287.08
CARL'S MOWER & SAW, INC	- 38.61
CHMELIK SITKIN & DAVIS	- 6,847.85
CORNERSTONE MANAGEMENT, INC.	- 15,033.83
CRABTREE, DEVIN	- 18.71
CULLIGAN NORTHWEST	- 69.07
FASTENERS, INC	- 47.66
FERNDALE ACE HARDWARE	- 169.36
FERNDALE TRUE VALUE HARDWARE	- 6.49

FRONTIER	-	733.29
GUARDIAN SECURITY SYSTEMS, INC	-	282.62
HARDWARE SALES, INC .	-	350.48
HAWLEY'S AUTO SUPPLY	-	13.39
HD FOWLER CO, INC	-	256.31
HEALTH PROMOTIONS NORTHWEST	-	90.00
LAPLAUNT, DAVID	-	165.13
LES SCHWAB TIRE CENTER	-	20.45
MORTIMER, TOM	-	585.00
MURRAY SMITH & ASSOCIATES	-	22,671.79
CESCO NEW CONCEPT CHEMICAL PRODUCTS	-	55.14
NORTH COAST ELECTRIC COMPANY	-	11.28
NORTHWEST MOWING & GARDENING	-	447.42
NORTHWEST PROFESSIONAL SERVICES	-	550.00
NW RECYCLING	-	108.50
PLATT ELECTRIC SUPPLY CO	-	404.28
PORTAL WAY FARM & GARDEN	-	1,018.59
PUGET SOUND ENERGY, INC	-	12.62
REGENCE BLUE SHIELD	-	33,438.46
REISNER DISTRIBUTION, INC	-	1,548.40
SMITH, ANNETTE	-	112.00
SPECIALTY ENGINEERING, INC	-	55,002.86
STELLAR J CORPORATION	-	275,703.73
UNIVAR USA, INC	-	1,498.44
UTILITIES UNDERGROUND LOCATION	-	28.50
VERIZON WIRELESS	-	1,128.04
WA ST DEPT OF L&I BOILER	-	280.70
WASHINGTON DENTAL SERVICE	-	2,435.15
WASHINGTON ENVIRONMENTAL	-	280.00
WASHINGTON TEAMSTERS WELFARE	-	8,794.80
WESTERN FLUID COMPONENTS	-	36.03
WHATCOM FARMERS CO-OP	-	10.86
WONDERWARE PACWEST	-	11,488.79
XEROX CORPORATION	-	96.97
GRAND TOTAL	-	\$ 444,504.24

ACTION: Commissioner Kenner motioned to approve the Minutes of the regular meeting held May 27, 2014 and the Claims of June 10, 2014. Commissioner Murphy second the motion. Motion passed unanimously.

◆ **Approve 2015 Budget Development Process**

This is a request for the Commission's approval of the schedule for the development of the 2015 District Operating and Capital Budgets and approval of rates and charges for water and electric services for 2015. The proposed schedule allows time for work sessions by the Commission before adopting the final budget and rates, meetings with the customer groups to gather input to estimate the rates as well as a public hearing to allow for public/customer input to the Commission for the budget and rate setting process. Jilk said in the past, there were two different customer meetings held to seek input. Last year the District held one customer meeting which followed the first draft budget presentation to the Commission but prior to the public hearing. Our customers indicated that one meeting was sufficient for information and feedback.

Schedule:

- August 12, 2014.....Commission receives 2014 First Half Financial Report
- September 9Commission Work Session to discuss budget parameters for 2015
- October 28.....Draft 2015 Budget presented to Commission
- November 3 – 7.....Customer Meetings on draft budget
- November 25.....Public Hearing on 2015 Budget/Rates
- December 92015 Budget and Rates/Charges approved

Commissioner Murphy asked if additional information for the budget would be provided prior to the August 12 First Half Financial Report. Jilk replied that the Strategic Planning Process, which would have culminated with the 2015 budget development, was postponed due to the upcoming election and number of candidates. Jilk indicated that the development of the 2015 budget can move forward without that Planning Process taking place. The public hearing date is tentatively set for November 25. Commissioner McClure asked if it is required to take action on this item. Jilk said it is not a required action but he would like an affirmation of dates.

ACTION: Commissioner Murphy motioned to approve the 2015 Budget Development Schedule. Commissioner Kenner second the motion. Motion passed unanimously.

◆ **Project Update – Water Treatment Plant 2 (RW-1)**

Holden presented an update on the Plant 2 upgrades and redesign project. Highlights included:

- The End is in Sight: The County was out the other day and is preparing the certificate of occupancy permit. The septic system and the storm water system “as built” drawings have been submitted with one small minor adjustment but as per plan.

-Final Electrical Inspection: Passed!

-Punch List: Walk-through was completed yesterday. Although a lengthy list, some items are more substantial than others and Holden is verifying the list to see if some items are the responsibility of the contractor or the PUD.

-Landscapers: Here this week.

-Final Startups and the Second Phase Milestone for testing of the existing basins which were modified with new flocculators, gates, catwalks, etc. began pumping water into/through the basins. Adjustments seem to be going well.

-Operational Testing: Has been ongoing for three (3) days and is going well.

-Punch List Timing: The contractor has a lot of work to do and has brought on more employees to finish the work.

-Preliminary Corrective List: Holden has been working with the contractor on this.

Overall, things are looking good and the anticipated final completion date is about six (6) weeks out.

ACTION: No action requested. Information only.

◆ **Manager’s Report**

WPUDA July Association Meetings

The WPUDA July meetings will be hosted by the Okanogan PUD July 18 – 20th in Omak. Any Commissioners interested in attending, contact Ann Grimm for arrangements.

Water Forum

The League of Women Voters is sponsoring another water forum this Saturday, June 14 at the Whatcom County Council Chambers from 9:30 a.m. to noon. The focus: What are the major issues with water supplies and uses in Whatcom County? And, what would a comprehensive and reasonable solution look like?

WPUDA Attorneys Meeting

Sitkin recently attended the WPUDA Attorneys Conference. About 25 PUDs and other public utilities attorneys were in attendance at this semi-annual conference. Topics heavily discussed were power generation and water. Highlights included:

- 1) Discussion on the Substitute Senate Bill 5173, which passed during the 2014 legislative session. To summarize: The bill grants two unpaid holidays per calendar year to all employees for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church or religious organization. The employer must allow the employee to take the unpaid holidays on the dates selected by the employee unless the employee’s absence would impose an undue hardship on the employer or the employee’s position is necessary to maintain public safety. The bill further requires the Office of Financial Management (OFM) to establish in rule the definition of “undue hardship.” The bill’s effective date is June 12, 2014.
- 2) Department of Health Priority Policy regarding Consolidation of Water Systems
Kitsap PUD signed an Interlocal Agreement with Kitsap County in 1953 to be the “purveyor of last resort” – when a water association is failing or fails in administration- placed into a receivership by the State DOH, and to work with water resource agencies as a Satellite Management Agency (SMA) at the request of the County. Skagit County has a similar arrangement where it actually owns several smaller water associations. Kitsap PUD owns approximately 30 water systems and operates another 100 water systems providing services such as certified water operators and financial management.

Smaller systems and water associations simply don’t have the resources to keep up with infrastructure/replacement costs and changes in regulations. The DOH is working with PUDs on how to make it more feasible for PUD’s to own and/or operate smaller water systems. Currently,

Whatcom PUD has five grants through the DOH, who has recognized the issues and is offering help to these small water systems. Assistance from the DOH is voluntary. Sitkin added that there are now for-profit companies that are acquiring water systems (instead of a County or PUD) but the costs appear to be greater to the customer/end user.

- 3) **Electric Service and Water Service to Marijuana Growers**
Regardless of I-502, the cultivation of marijuana is a violation of federal law. The US Attorney General has indicated that in certain circumstances it will not enforce federal law, but reserves the right to re-visit this policy, providing no safe harbor to any operator of a marijuana growing operation. The District's historical practice has been to provide water (and electrical) services to any lawful use/operation consistent with PUD policies; historically the District has deferred to the local, state and federal governments to determine what is or is not a lawful use. The District's water contracts have a provision that the operator's comply with all governmental authority and requirements, which would include federal criminal law, as well as local zoning laws. The U.S. Bureau of Reclamation recently announced that pot growers are (still) not allowed to use federal irrigation waters. Citing that the City of Wenatchee recently denied a business license to a grower claiming violation of a federal law, Sitkin noted other positions being taken by Bonneville Power Administration (federal) continue to evolve. Potential litigation related to providing electric and water utility services to marijuana growers, by the District, will be discussed during today's Executive Session.
- 4) **Continuing Disclosure Obligations related to the Issuance of Securities**
The Securities and Exchange Commission announced it had fined a municipal bond issuer for making misleading statements in an offering statement. The case involved a municipal corporation formed to fund development of a regional multi-use arena and hockey rink in the city of Wenatchee, Washington. The SEC found that the official statement for bond anticipation notes issued to fund the project failed to inform investors about debt capacity limitations and an adverse feasibility study. The SEC brought administrative claims against the issuer and others for negligent violations of Sections 17(a)(2) and (3). The SEC assessed fines of \$20,000 against the issuer and \$10,000 each against the project developer and its CEO, as well as \$300,000 against the underwriter and \$25,000 against the lead investment banker. Sitkin said that in the short term the SEC is encouraging entities to disclose material matters that were not initially disclosed by offering reduce penalties if discloser risks are identified.
- 5) **Nuclear Power – Energy Northwest continues to advocate nuclear power for electricity generation.**
- 6) **Electric Power Generation off of Gravity Fed Water Lines**
New technology is allowing the generation of electricity with “turbine” type equipment placed inside high pressure water lines. Electric loads are not known yet with the new technology but it may be something worth exploring for the PUD.

Whatcom County Comprehensive Plan

The County's Planning and Development Division is in the process of updating the County Comprehensive Plan. County Planning has asked the PUD to comment on the Utilities, Essential Facilities and Economics chapters of the plan.

- ◆ Sitkin requested an Executive Session to discuss potential litigation on federal law and the use of water for marijuana growers. Sitkin stated no formal action will be expected to be asked of or taken by the Commission following the Executive Session. He estimated the time for the Executive Session will be approximately 20 minutes.

There being no further business for the regular meeting, the Commission adjourned at 8:44 a.m. to Executive Session.

- ◆ **Executive Session Adjourn**
There being no further business for the Executive Session, the Commission reconvened to the regular meeting at 9:09 a.m.
- ◆ **Adjourn**
There being no further business for the regular meeting, the Commission adjourned the regular meeting at 9:10 a.m.

President/Commissioner

Secretary/Commissioner

Commissioner