

# **MINUTES OF THE ANNUAL MEETING OF THE NEW YORK CITY WATER BOARD**

May 15, 2009

The Annual Meeting of the New York City Water Board (the “Board”) was held on May 15, 2009 at approximately 8:30 a.m. at the New York City Department of City Planning, 22 Reade Street, Spector Hall, New York, N.Y. The following members of the Board were present:

Alan M. Moss;  
Marcia Bystryn  
Donald A. Capoccia;  
Dawn S. Davis;  
Amaziah Howell;  
Mehul Patel; and  
Benjamin Tisdell

constituting a quorum. Mr. Moss chaired the meeting, and Kathy Blyn served as Secretary of the Meeting.

## **Roll Call**

The first item on the agenda was the Roll Call, the results of which are indicated above.

## **Adoption of Minutes**

The second item on the agenda was approval of the minutes of the Board’s previous meeting held on April 3, 2009. There being no discussion, upon motion duly made and seconded, the minutes of the Board’s meeting held on April 3, 2009 were unanimously adopted.

## **Adoption of Fiscal Year 2010 Annual Budget**

The third item on the agenda was the adoption of the Board's Fiscal Year 2010 Annual Budget. William Kusterbeck, the Treasurer of the Board, explained that the Board is required to adopt a budget pursuant to the Financing Agreement and that such budget is based on certifications from the New York City Municipal Water Finance Authority (the "Authority") with respect to the Authority's expenses and debt service, the Office of Management and Budget of The City of New York (the "City") with respect to the City's expenses in connection with the operation and maintenance of the City's water and waste water system and the rental payment pursuant to the Agreement of Lease (the "Rental Payment") and from the Board's engineering consultant, AECOM, USA, Inc., as well as the Board's own anticipated operating expenses. Mr. Kusterbeck then summarized the components of the budget. A brief discussion ensued after which a motion was made to adopt the resolution set forth with respect to the Annual Budget. The motion was seconded and, there being no objections, duly adopted.

**WHEREAS**, the Board has received certification from the New York City Municipal Water Finance Authority (the "Authority") regarding the Authority's Budget for the fiscal year commencing July 1, 2009 ("Fiscal Year 2010") reflecting Authority Expenses and estimated Aggregate Debt Service (as such terms are defined in the Authority's General Revenue Bond Resolution); and

**WHEREAS**, the Board has received certification from the Director of Management and Budget of the City of New York (the "City") regarding: the amounts which the City reasonably anticipates it will have expended during Fiscal Year 2010 in connection with the operation and maintenance of the water and waste water system as described in paragraphs (a) through (e) of Section 8.1 of the Agreement of Lease dated as of July 1, 1985, as amended, between the Board and the City (the "Lease"); and the rental payments requested by the City for Fiscal Year 2010 pursuant to Section 8.2 of the Lease; and

**WHEREAS**, the Board has received certification from AECOM USA, Inc., Consulting Engineer, pursuant to Section 8.3(a)(ii) of the Lease to the effect that amounts certified by the

City for costs incurred or to be incurred in connection with paragraphs (a) and (b) of Section 8.1 of the Lease are reasonable and appropriate; and

**WHEREAS**, the Board has reviewed a proposed budget for the Board's own anticipated Expense Fund operating expenses for Fiscal Year 2010; and

**WHEREAS**, the Board has reviewed the proposed Annual Budget for the Board's expected expenditures for Fiscal Year 2010 (the "Annual Budget") based on the above-described certifications and Board Expense Fund budget, and has determined that such provision for anticipated expenditures is reasonable and appropriate to enable the Board to exercise its powers and carry out its purposes in accordance with the New York City Municipal Water Finance Authority Act; it is therefore

**RESOLVED**, that the Annual Budget of the Board for FY2010, a copy of which is annexed hereto, be and is hereby adopted.

### **Adoption of Fiscal Year Rate Schedule**

The fourth item on the agenda was the adoption of the Board's Water and Waste Water Rate Schedule. Steven Lawitts, Executive Director of the Board, advised the Board that hearings with respect to an increase in water rates were held in each of the five boroughs as well as before the Finance and Environmental Protection Committees of the City Council. He thanked those who had testified and noted that the input at those hearings was taken seriously. He referred to the April 3, 2009 meeting of the Board where a recommendation of a 14% increase was made and reported that the recommended increase was now 12.9%. He explained that various initiatives, such as the Department of Environmental Protection ("DEP") reducing its operating budget by \$24 million through personnel reductions, reduction of overtime and other measures, as well as a reduction in debt service costs and somewhat better revenue collection had made it possible for the recommended increase to be reduced. Mr. Lawitts

elaborated on certain of these factors. He then described changes to be made to certain regulations with respect to denial of access and theft of services and mentioned a rate structure study that compares New York City's water rate structure with those of other large cities and also looks at potential structural changes to the rate structure. He indicated that such study would be discussed at the Board's June meeting. A brief discussion ensued.

David Weprin, Chairman of the Finance Committee of the City Council, then addressed the Board. He stated that he opposed the 12.9% increase and that double digit increases have been occurring with frequency and pose additional hardships on building owners, seniors, small businesses and others. He suggested four methods to reduce rate increases: that costs be capped, that the Board seek relief from unfair federal and state mandated costs, that charges be treated as use taxes and that rental payments made by the Board to the City be restructured with respect to amounts that are not related to the water system. He then gave Mr. Lawitts a stack of petitions with respect to the increase. He finished his address by asking that the Board postpone its vote and find additional savings. A representative of James Gennaro, Chairman of the Environmental Protection Committee of the City Council, then addressed the Board. He protested the notice provisions relating to the account administration fee with respect to denial of access that was scheduled to be adopted as part of the Board's Rate Schedule as being unfair. He also urged that a study be done with respect to the sustainability of the Rental Payment.

Each of the Board Members then commented on the actions before them. Mr. Howell referred to the Board's responsibilities with respect to the provision of clean, safe, reliable water for New Yorkers, indicating that he would prefer that rates be lower but it is not possible and that he supports the increase. Mr. Patel stated that he has served on the Board for six months and enjoyed working with the Board, DEP and the Commissioner. He went on to say that he

attended all the public hearings, that comments and inputs received have been useful, and that it is necessary to balance the needs for infrastructure and planning. He stated that he looked forward to the new study on management of goals and that he hopes this will be the largest rate increase he will have to vote for as a Member. Ms. Bystryn stated that she supports the increase; she also has listened to the various comments from the public and that subjects such as water conservation, equity and the Rental Payment require deliberation. Ms. Davis stated that she has served on the Board for the last five years. She stated that she is pleased that this increase is lower than first anticipated and that it is important to keep looking for savings. Mr. Capoccia expressed the view that it is unfortunate that conservation, which is a good thing, results in decreased revenue. He also noted that there is a good market for the Authority's bonds. Mr. Moss thanked everyone for their input and addressed the issue of the Rental Payment. He pointed out that it is contractually required, that the Board does not have the discretion to ignore the amount certified by the City and, therefore, the Board is obligated to pay it. He referred to the study with respect to other water systems that will be reviewed at the June meeting. A motion then was made to approve the resolution set forth below with respect to the rate increase. The motion was seconded and, there being no objections, duly adopted.

**WHEREAS**, the Board is authorized pursuant to Section 1045-g(4) of the New York City Municipal Water Finance Authority Act (the "Act") to establish, in accordance with Section 1045-j of the Act, fees, rates, rents or other charges for the use of, or services furnished, rendered or made available by the water and waste water system of the City of New York; and

**WHEREAS**, in accordance with Section 1045-j(9-a) of the Act, public hearings concerning certain proposals regarding water and waste water system rates and charges were held in each borough of the City on April 27, 28, 29 and 30, 2009, and transcripts of said hearings have been received and reviewed by the Board; and

**WHEREAS**, in accordance with certifications received from (i) the New York City Municipal Water Finance Authority (the "Authority") with respect to the Authority's annual budget for the fiscal year commencing July 1, 2009 ("FY2010"), (ii) The City of New York (the "City") with respect to (a) the amounts which the City reasonably anticipates it will expend during FY2010 in connection with the operation and maintenance of the water and sewer system and (b) rental payments requested from the Board, and (iii) AECOM USA, Inc., Consulting Engineer, with respect to the reasonableness of the City's certification of certain expenses, the Board has on this day adopted its annual budget for FY2010; and

**WHEREAS**, based on the requirements set forth in the Board's annual budget for FY2010 and the testimony and reports submitted at the aforementioned public hearings, the Board has determined that, effective July 1, 2009, the water rate for all in-City customers, flat rate and metered, should increase by 12.9% over the rate in effect in Fiscal Year 2009 and the rate for waste water services should remain at 159% of the applicable water charge; and

**WHEREAS**, the Board has further determined that the Billing Policy Proposal relating to the extension of the Frontage Transition Program through Fiscal Year 2012, and the establishment of new Miscellaneous Fees and Charges, in particular an Account Administration Fee and Attributed Consumption Charges, to be applied when an owner, pursuant to Board Regulation No. 3, Denial of Access, fails to provide or facilitate access to a premises as required by DEP and where DEP makes a determination, pursuant to Board Regulation No. 4, Theft of Services, that a theft of services has occurred, all as set forth in and described in the Public Notice and Public Information Book dated April 2009, should be approved as recommended by staff; it is therefore

**RESOLVED**, that the FY2010 Rate Schedule (a copy of which is attached hereto as Exhibit A), which reflects an increase of 12.9% for in-City water rates, the extension of the frontage transition program to June 30, 2012, and the establishment of an Account Administration Fee and Attributed Consumption Charges in connection with Denial of Access and Theft of Services, is approved; and be it further

**RESOLVED**, that the Executive Director shall prescribe a Grace Period Program to be applied to the implementation of the

Theft of Services Account Administration Fee and Attributed Consumption Charges which Program shall provide at a minimum a 120-day grace period from the July 1, 2009 effective date of the FY2010 Rate Schedule wherein customers who at a minimum (i) self-report to DEP in a signed written statement a non-compliant condition at their premises in sufficient detail to enable a DEP inspector to locate and verify the condition; (ii) correct such condition within 30 days of the end of the Grace Period as established by the Executive Director and (iii) provide or facilitate access at a time and in a manner acceptable to DEP to verify both the existence and subsequent correction of the Theft of Service condition shall have Attributed Consumption Charges limited to the charge that would be applied to consumption at the 50<sup>th</sup> percentile for the applicable class of property and meter size as determined by DEP and as set forth in Exhibit B attached hereto, and shall have retroactive billing at such consumption level limited to a maximum of 2 years from the start of the Grace Period, July 1, 2009; and be it further

**RESOLVED**, that the Executive Director may establish such other terms and conditions of the Grace Period Program that he considers reasonable and appropriate.

### **Approval of Revised Regulation No. 3, Denial of Access, and New Regulation No. 4, Theft of Services**

The fifth item on the agenda was approval of revised Regulation No. 3, Denial of Access and new Regulation No. 4, Theft of Services, which had been alluded to by Mr. Lawitts earlier in the meeting. Mr. Lawitts indicated that in response to comments at public hearings with respect to the notification requirements of these regulations, the proposed regulations were amended to require notice by both certified and regular mail. He explained that a 120 day grace period with respect to the implementation of the theft of services regulation has also been initiated, pursuant to which during a 120 day grace period, if a property owner self- reports a theft of services condition and subsequently corrects such condition, the property owner will be billed at the 50<sup>th</sup> percentile of average use for the applicable type of property rather than at the 95<sup>th</sup> percentile as originally

prescribed in the regulation. In response to a question by Mr. Tisdell with respect to enforcement, Mr. Lawitts described a number of initiatives including a City wide audit program to install transmitters and meters and the comparison of DEP records with records of other City agencies. Mr. Tisdell then indicated that improved enforcement will hopefully ameliorate the decrease in revenues resulting from the drop in consumer consumption. A motion was made to approve the resolution set forth below with respect to these regulations. The motion was seconded and, there being no objections, adopted.

**WHEREAS**, the Board is authorized pursuant to Section 1045-j of the New York City Municipal Water Finance Authority Act (the "Act") to establish, fix and revise from time to time fees, rates, rents and other charges for the use of, or services furnished, rendered or made available by the water system and wastewater utility systems (the "System") of the City of New York ("the City") at a level sufficient to provide funds to pay for the operations, maintenance and financing of the System; and

**WHEREAS**, the Board is authorized pursuant to Section 1045-g(3) of the Act to make and amend rules and regulations governing the exercise of its powers and duties and the fulfillment of its purposes; and

**WHEREAS**, the Board is authorized pursuant to Section 1045-h(8) of the Act to adopt rules and regulations to provide for the discontinuance or disconnection of the supply of water or the provision of sewer services or both by the City for nonpayment of fees, rates, rents or other charges; and

**WHEREAS**, the Board finds in the interest of equity and fairness to all System customers, that all users of the System should be billed for services received in accordance with the provisions of the Water and Wastewater Rate Schedule and that in meeting this objective New York City Department of Environmental Protection ("DEP") must gain access to a customer's premises in order to inspect water and sewer service connections and record consumption measured by the installed meter in order to ensure the accuracy of charges; and

**WHEREAS**, the Board finds that the theft of services by a customer, whether by direct action or by the toleration of actions

taken by others, negatively affects the Board's ability to levy and collect rates and charges in a fair and equitable manner from all properties connected to the System and imposes additional costs on every responsible customer of the System; and

**WHEREAS**, the Board's obligation of equity and fairness to all customers requires it to adopt prudent and assertive measures to be used to secure access to a customer's premises and to discourage theft of system services; and

**WHEREAS**, pursuant to the Act, the Board previously adopted Regulation No. 3, Discontinuance of Water Supply and/or Sewer Service for Denial of Access, which authorizes DEP to terminate water and sewer service to customers who fail to provide access to their premises thereby preventing DEP or its agents from inspecting water and sewer service at the premises; and

**WHEREAS**, to provide the Board and DEP with an additional means to enforce access to a premises when water and sewer customers, after reasonable notice, fail to provide and/or facilitate access to their premises, DEP has proposed certain modifications to Regulation No. 3, among which are amending the title of the regulation to "Denial of Access", authorizing the imposition a Denial of Access Account Administration Fee and Attributed Consumption Charges, and conforming all relevant service termination provisions to those of the Board's Regulation No. 2, Discontinuance of Water Supply and/or Sewer Service Because of Nonpayment; and

**WHEREAS**, DEP has also proposed a new Regulation No. 4, Theft of Services, which is intended to discourage the impairment of system revenues and recover reasonable charges for services provided but not billed or paid by the owner in cases where a theft of services determination is made by DEP; and

**WHEREAS**, the Board has reviewed a revised Regulation No. 3, Denial of Access, and a proposed new Regulation No. 4, Theft of Services, which are set forth and annexed hereto and has considered the recommendations of staff and believes that the proposed revisions to Regulation No. 3 and the proposed new Regulation No. 4 are reasonable and appropriate; it is therefore

**RESOLVED**, that the proposed revisions to Regulation No. 3 and the proposed Regulation No. 4 as described above and in the form annexed hereto are hereby approved and adopted effective July 1, 2009.

### **Upstate Rate Report and Schedule**

The sixth and final item on the agenda was the Upstate Rate Report and schedule for adoption of Upstate Rates. Mr. Lawitts explained that many of the factors used in determining the rates for customers in the City, such as the cost of delivery and treatment of water, are applied when determining the rates for upstate customers, while costs incurred exclusively within the City, such as the costs of in-City water distribution and sewage collection and treatment, are not taken into account. He explained that one or more hearings will be scheduled with respect to this rate and that the Board will be asked to adopt such rate at its meeting in June. A brief discussion ensued with respect to the scheduling of the hearing and the next meeting of the Board.

### **Adjournment**

There being no further business to come before the board, upon motion duly made and seconded, the meeting was duly adjourned.

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