

**SEACOAST UTILITY AUTHORITY
REGULAR MEETING**

November 19, 2008
Seacoast Utility Authority Board Room

MINUTES

CALL TO ORDER: 3:00 PM

PLEDGE OF ALLEGIANCE

ROLL CALL:

PRESENT: Don Noel, Chair
Robert Weisman, President Pro-Tem
Maria V. Davis, Vice Chair
Joseph Lo Bello, Member

ABSENT: Ron Ferris, Member

ALSO PRESENT: Nat Nason, General Counsel
Rim Bishop, Executive Director
Mary Ann Stiles, Authority Clerk

*****THE FOLLOWING ITEMS WERE PLACED ON THE CONSENT AGENDA*****

APPROVAL OF MINUTES FOR MEETING OF OCTOBER 22, 2008

Move to approve the minutes for meeting of October 22, 2008.

APPROVAL OF INVOICES

Move to approve invoices as follows: Howard C. Osterman, Inc. in the amount of \$900.00; Boyle Engineering Corporation in the amounts of \$4,222.46; \$3,062.40; \$940.00; \$1,618.00; \$1,300.00; \$14,744.40; \$1,419.00; and \$2,494.50; and Nason, Yeager, Gerson, White & Lioce in the amounts of \$17,011.76; \$17,690.20; \$405.00; and \$967.50; for a total of \$66,775.22.

AMENDMENT TO THE DEVELOPER AGREEMENT FOR CHRIST FELLOWSHIP CHURCH

Move to approve execution of an Amendment to the Developer Agreement for the project known as Christ Fellowship Church, as recommended by staff.

CAFÉ MONET DEFERRED CONNECTION CHARGE PAYMENT AGREEMENT

Move to approve execution of a Deferred Connection Charge Payment Agreement between Seacoast Utility Authority and Duane Lowery and Betty Batho, for the project known as Café Monet, as recommended by staff.

MIRASOL WALK – RECLAIMED WATER AGREEMENT – REPLACED EXISTING CLASS “B” WITH CLASS “A”

Move to approve execution of a Class “A” Supplemental Reclaimed Water Agreement for the project known as Mirasol Walk, as recommended by staff.

THREE LIFT STATION CONTROL PANELS

Move to reject unresponsive Custom Pump and Controls, Inc. and Barney’s Pump, Inc. bids and to award purchase of Three Lift Station Control Panels to Alltec Corp d/b/a Digital Control Company, the lowest responsive bidder and whose bid will best serve the public interest in the amount of \$40,300.00, as recommended by staff.

AUTHORITY BOARD MEETINGS FOR 2009

Move to approve the 2009 Authority Board Meeting Schedule, as recommended by staff.

HOLIDAY SCHEDULE FOR 2009

Move to approve the Holiday Schedule for 2009, as recommended by staff.

MOTION

Board Members Davis/Lo Bello moved to adopt the Consent Agenda.

The motion carried unanimously.

*******END OF CONSENT AGENDA*******

SEACOAST UTILITY AUTHORITY BOND ISSUE RATE EVALUATION – HOWARD C. OSTERMAN, INC.

Mr. Howard Osterman explained to the Board that in 2006 a rate study was adopted, new rates put into place and it coincided with SFWMD’s imposed water restrictions. Over the next five months, the restrictions resulted in reduced revenue at a five month cost of \$1.1 million in water and sewer revenue. At that time, this Board authorized a study to determine an appropriate revenue response. In May of 2008, the Authority adopted a program of emergency restriction surcharges for revenue restoration purposes; designed to restore the losses experienced as a result

of the restrictions and to stem further losses. By then the losses had increased to \$2.1 million and were continuing to accrue at the rate of \$300,000.00 per month. By October 31, 2008, the Authority had recovered most of these losses and was on track to recover all of these losses in the spring of 2009, depending upon water sales. Mr. Osterman reported that the revenue restoration program worked exactly as it was intended to work and has accomplished its goals.

Mr. Osterman then stated that the Board needs to turn its attention to the question of appropriate rates given the prospect of permanent restrictions as proposed by SFWMD. At the time the emergency surcharge was put into effect, it was assumed that there would be an end to the two day per week water restriction. However, not only has it continued, but apparently it will be made permanent. In looking at the most recent results of operation, staff feels that the Authority can discontinue the emergency surcharges on all of its customers. Unfortunately, this doesn't put the Authority in a fiscally whole position. Since the time that restrictions and the surcharge became effective, many economic forces have changed. Mr. Osterman detailed the major increases in costs related to electricity, treatment chemicals, the meter reading program, maintenance and repairs, fuel, diesel and oil and much more totaling approximately \$3.3 million dollar in increases. Mr. Osterman explained that he and staff should consider every way to reduce the impact of these increases. The message he is presently conveying to the Board is that despite staff's best efforts, increases in operating and capital expenses will still be substantial. Added to that is approximately \$2 million annually to adjust for the new debt service with the new bonds that will shortly be issued. Mr. Osterman explained that Finance Department Manager Daniela Russell is doing everything possible to put more debt service on the back end of the bond issue to level the payments.

Mr. Osterman stated that he has no conclusions to offer at this time, but that he and staff are suggesting a workshop meeting at the December 17 Authority Board meeting be established at which time they will submit specific rate schedules and comparisons as well as financial forecasts and results. Mr. Osterman further stated that the Authority should consider the fact that bond rating agencies will soon be evaluating Seacoast's financial performance. Mr. Osterman feels that it would behoove the Authority to get its financial house in the best shape it reasonably can, consistent with its responsibility to customers. No one is making light of the fact that all of these things have to be taken into consideration with regard to the impact on customers.

The other subject that Mr. Osterman wanted to discuss is the subject of indexing rates. Mr. Osterman stated that some of the shocks of rates and surcharges that have been experienced in recent years can be and would be ameliorated to a large extent if the Authority adopts the Federal government's operating cost index for utilities of our type. Mr. Osterman went on to explain how this indexing would have worked had it been in effect already. The increase in expenses that Mr. Osterman gave earlier is not fully covered by indexing, but he hopes that the Authority will consider the leveling effect that rate indexing has on most cost factors. It will not be a cure all, but he feels that certainly Moody and Standards reports look very favorable on indexing because they know it shortens the lag that is normally attendant to rate increases and adjustments. From this Board's point of view, it at least gives some relief in not having to deal with increases on an annual or semi-annual basis.

In summary Mr. Osterman stated that it is good news, bad news. The good news is the program for surcharges worked fine, but in the meantime, certain things continue to get out of hand and staff does not see where these costs will be covered.

President Pro-Tem Bob Weisman asked for clarification of intent. Mr. Weisman stated that the Authority has a surcharge in place. Mr. Osterman stated that surcharge would be removed and the rates would be restructured. The surcharge was not meant to be permanent and Mr. Osterman does not feel that the surcharge which was placed on the base charge is the best way to go long term. There should be greater emphasis put at the top end of the commodity scale so that luxurious uses of water pay more than they have historically. Staff feels that the surcharge should be substituted with a rate structure that spreads it out more.

President Pro-Tem Bob Weisman stated that he does not want to go through a public hearing process if there is no reason to do so at present if the Authority is going to end up near where it is now in gross revenues.

Vice Chair Maria Davis stated that the Authority represented to the public that once the Authority was able to discontinue the surcharge, it would. We did not represent that we may have to increase the rates after that. Vice Chair Davis is very concerned that the Authority represented that when it caught up, we would be done.

Mr. Osterman stated that the Authority did generally represent that and furthermore, the Board asked staff to report periodically regarding how the Authority is doing. This has been done on a regular basis. Mr. Osterman stated that the Board never said that this means that there will not be increases in the future. Vice Chair Davis said she is uncomfortable with it happening so quickly. Mr. Osterman stated that the reason it is happening so quickly if the surcharge is removed with nothing to replace it, the Authority will then begin the \$300,000.00 a month losses all over again. It would be nice to give the public a breather, but even at the current rate of sales with two day per week watering, it would mean \$250,000.00 loss per month.

Chair Don Noel asked for clarification on what the surcharge covered. Mr. Osterman explained that surcharge has covered the revenue lost with water restrictions as well as the losses that were continuing with water restrictions. There has been some increase in sales that is unexplainable with the restrictions. This is not enough to change things, but gives a little better results.

Chair Don Noel stated that the Authority has collected \$2.6 million, but had lost \$3.6 million. Mr. Osterman stated that the Authority actually lost over \$4 million, but he had isolated the major items of increase. More discussion took place.

Chair Noel stated that the Board did not receive a financial this month, so he feels he is not getting all the math and the Board is at a disadvantage with not being able to look at figures. Mr. Osterman reiterated some of the expenses for the Board. More discussion took place.

Executive Director Rim Bishop explained that there are two separate issues here that he would like to explain. First of all, the revenue restoration surcharge was exactly what it was titled to be. It did not give any consideration to changes in expenses; it was to make up revenue lost from the

high volume water sales when water restrictions went into place. The target was approximately \$3 million; it is projected that this amount will be made by March of 2009.

On that basis, the Authority did make representations to the public that said that when the lost revenue was made back, the Authority would revisit the surcharge. What Mr. Osterman is stating is that it is time to revisit the surcharge on that basis.

In the intervening time since the 2006 rate revision, there have been some extraordinary and unforeseeable expenses that the Authority is incurring, and the Authority needs to review those before walking away from the surcharge entirely. Staff has addressed the revenue side, now they are looking at the expense side. Some of the expenses given were in broad terms, and what staff proposes to do is give the Board an analysis of expenses coupled with the revenue picture at the December 17 workshop if the Board agrees to it.

Vice Chair Maria Davis stated that she understands the issue. She reiterated that the Authority just approved a budget for 2009 that balanced revenue projections with expenses. Now we are only in November and she wants to know how these expenses can have escaped notice during the budget process – she is having difficulty understanding this.

Mr. Bishop explained that the reason the budget was balanced was because staff had projected the surcharge to continue throughout the coming fiscal year. Staff did not know that customers were going to use more water than projected under Phase II restrictions. More discussion took place. Mr. Bishop explained that staff feels that the Authority should reconcile all of these changing forces at one time in a workshop, make a rate recommendation to the Board, which could be that the rates stay the way they are, or it could be that staff asks that Seacoast keep a certain portion of the surcharge to help offset the recent extraordinary expenses encountered. The intent was for Mr. Osterman to address the Board regarding the surcharge and inform the Board that there is more to it on the expense side that had not been addressed.

Chair Don Noel clarified that this would mean do away with the surcharge and put a rate increase in place. Executive Director Rim Bishop stated that it is altogether likely that staff will ask the Board to increase the rates as they were adopted in the year 2006. President Pro-Tem Bob Weisman stated that when the Board adopted the 2006 rate increase, that increase was supposed to carry the Authority through the construction of the new Hood Road plant, was it not? Mr. Bishop stated that it was, but staff's point is that unforeseeable expenses have been experienced since then that have caused staff to come to the Board with this issue. Board Member Joe Lo Bello indicated that with the way the economy is changing dramatically every day, the Board cannot look backwards; it needs to project forward at this point. Mr. Bishop stated that is what staff and consultants are suggesting presenting findings to the Board at a workshop. Mr. Bishop stated that the numbers given by Mr. Osterman will be refined dramatically for the workshop. Mr. Bishop stated that staff wanted the Board to know that there are some expenses that were not foreseen that should be incorporated going forward and if they are not, borrowing the money is going to be more of a challenge. If the Authority seeks to issue debt without sufficient rates in place, the Authority is going to have a hard time getting a reasonable interest rate or even selling the bonds. Board Member Joe Lo Bello stated that there is a chance of that happening. More discussion took place regarding the bonds.

President Pro-Tem Bob Weisman stated that he would like to wait for March 2009 to hold a public workshop or public hearing and not begin them in December. He feels the financial markets should clarify by then, good or bad. Staff would have more information regarding the cost of the new plant and much other information. Mr. Weisman stated that he would rather defend keeping the surcharge rates than removing the surcharge and go through a rate increase again. He feels this is bad public policy. Mr. Osterman stated that the Authority would then be delaying the bond issue because the Authority does not have a good enough revenue picture to go forward with a bond issue. More discussion took place regarding the bond issue, the bids for the plant conversion, etc.

Chair Don Noel stated that he agrees with President Pro-Tem Bob Weisman, but he would like to look at the numbers in more detail and asked what the format would be for the public workshop. Executive Director Rim Bishop explained how the public workshop would work and explained that is why the Board does not have the numbers today, staff wished to present them in greater detail at a workshop. The public workshop is for discussion and if the Board does not wish to move forward with public hearings and rate increases, that would be the end of it for now. Mr. Osterman explained in more detail.

Mr. Osterman then asked for some indication of the Board's feeling regarding rate indexing so that staff may know how to put together its package. Chair Noel stated that he has been an advocate of indexing for a long time.

MOTION

Board Members Weisman/Lo Bello moved to set public workshop for December 17, 2008 at 3:00 PM to consider Seacoast Utility Authority Water, Sewer and Reclaimed Water Rate Ordinance, as recommended by staff.

Board Member Joe Lo Bello asked why a public hearing is necessary at this time. Attorney Nat Nason explained why the public workshop and public hearings are necessary and how it all works, including the need for a rate ordinance. More discussion took place. President Pro-Tem Bob Weisman feels that this is premature, but he made this motion for the purposes of a detailed discussion.

AMENDED MOTION

Board Members Weisman/Lo Bello moved to set public workshop for December 17, 2008 at 3:00 PM to consider Seacoast Utility Authority Water, Sewer and Reclaimed Water Rate Ordinance, on the basis that no public hearing is scheduled at this time.

The motion carried unanimously.

RESOLUTION NO. 9-2008, AUTHORIZING AUTHORITY STAFF TO PROCEED WITH PLANNING THE FINANCING OF THE MEMBRANE CONVERSION PROJECT; AUTHORIZING THE AUTHORITY TO CONTRACT WITH CONSULTANTS FOR THE FINANCING; EXPRESSING INTENT TO REIMBURSE EXPENDITURES ON THE PROJECT WITH PROCEEDS OF THE FINANCING

Executive Director Rim Bishop stated he included staff's recommendation in the Board package. Chair Don Noel stated that he promised Mr. Skip Miller an opportunity to address the Board.

MOTION

Board Members Davis/Lo Bello moved to approve Resolution No. 9-2008, Authorizing Authority Staff to Proceed with Planning the Financing of the Membrane Conversion Project; Authorizing the Authority to Contract with Consultants for the Financing; Expressing Intent to Reimburse Expenditures on the Project with Proceeds of the Financing, as recommended by staff.

Skip Miller with Ruden, McClosky, Smith, Schuster & Russell asked the Board to consider his firm as bond counsel or disclosure counsel for the upcoming financing. Mr. Miller introduced his partner, Attorney Lee Worsham. Mr. Miller explained that the firms staff is recommending are good firms, but in certain respects, he feels his firm is uniquely qualified for this particular financing. Mr. Miller noted that he distributed a proposal and will not go over it in detail. Mr. Miller stated that they are a full service law firm and what they bring to the table for a financing like this is the expertise of the other non-bond layers in the firm which includes Mr. Worsham, whose specialty is environmental law. Mr. Miller thanked the Board for their time and said his firm would love to have the opportunity to work with the Authority. No questions from the Board at this time.

President Pro-Tem Bob Weisman asked if staff could explain why they are recommending the two particular law firms that are being recommended. Executive Director Rim Bishop stated that staff recommended Holland & Knight because they offer an exceedingly low cost proposal which is less than 50% of County scale for Bond Counsel services. They have been continuously been providing high quality service to Seacoast for several years and staff felt they are the best selection. He further stated that for Disclosure Counsel, Edwards & Angel, Mr. Bishop took Finance Department Manager Daniela Russell's recommendation on that as she has had exposure to this firm in the past and he has excellent credentials as well. Both of these proposals are below the threshold of cost that requires a selection committee.

The motion carried unanimously.

HEALTH CARE RENEWAL 2008/2009

Chair Don Noel stated that he feels the Authority is penalizing those employees on POS and steering them towards the HMO. Mr. Bishop responded to this. There was some discussion. Mr. Kurt Gehring of the Gehring Group explained about the out of area benefit and how there were very few employees requiring it.

MOTION

Board Members Weisman/Lo Bello moved to award year 2009 group medical insurance contract to Aetna, dental insurance to Dental Decisions, life and long-term and short-term disability insurance to Lincoln Financial, employee assistance plan to Horizon Healthcare Services and to deposit up to \$21.00 for each of 24 pay periods into each eligible employee's Section 125 Flexible Spending Account, and to extend to qualifying "domestic partners" such benefits as are available to employee spouses, as recommended by staff.

The motion carried unanimously.

OTHER BUSINESS

COMMENTS FROM BOARD MEMBERS

Board Member Joe Lo Bello wished everyone a Happy Thanksgiving. Chair Don Noel also wished everyone a Happy Thanksgiving and well wishes for all.

ENGINEERING REPORT

Engineer's Report included in Board package. Bruce Mowry was present for questions. None were asked at this time.

STAFF REPORT

HOOD ROAD MEMBRANE CONVERSION PROJECT

Executive Director Rim Bishop told the Board that the site plan for the Hood Road WTP project is going before the City Council in Palm Beach Gardens tomorrow evening for, hopefully, final approval.

SFWMD WATER USE PERMIT RENEWAL

Executive Director Rim Bishop updated the Board that the Authority is still waiting for questions from SFWMD staff. The Authority has sent them a reminder with no response.

SFWMD CHALLENGE TO YEAR ROUND IRRIGATION RULE

Executive Director Rim Bishop stated that Attorney Nat Nason would report on this. Attorney Nat Nason stated the SFWMD will go to public hearing on the final version of that rule on December 11, 2008. Attorney Nason stated he will attend; he will speak and will tell the SFWMD at that time that the Authority intends to challenge it. The City of Fort Lauderdale and the City of Boca Raton also intend to challenge this rule with the possibility of other entities joining. He is working with counsel who represent those entities as well as SFWMD utility counsel. In essence, before that time period, he will be submitting a statement of lower cost alternatives, which he explained in detail. From what Attorney Nason is hearing from a variety of sources, this rule is being driven from Tallahassee down and we are unlikely to get a favorable audience from the SFWMD Board as a result of that fact. Therefore, Attorney Nason expects to

be filing shortly after the December 11th hearing a formal rule challenge. Again, Attorney Nason explained fully that these filings will be made by all entities challenging and they will all be consolidated and put in front of an administrative law judge by statute within 30 days of that time period. Things should happen quickly in December and January and he will keep the Board apprised of all that happens. Attorney Nat Nason stated that they are ready to do what it takes in order to get this particular permanent two day a week water restriction rule revoked as it applies to the Authority. If this happens, some of the adverse rate consequences the Authority has had may be alleviated.

President Pro-Tem Bob Weisman asked if Attorney Nat Nason is aware that SFWMD has asked local governments to pass resolutions in support of their program. Mr. Weisman stated that he is not bringing the one for Palm Beach County to his Board unless directed to and if this happens, he will vote against it. Attorney Nason stated he had heard of that. Mr. Bishop stated it is actually worse than that, passing a resolution will be a requirement to renew a consumptive use permit in the future. More discussion took place.

Chair Don Noel asked about the alleged fines that the Authority is going to receive from SFWMD. Attorney Nason responded and explained. Attorney Nason stated that he does not feel these fines can be levied against the Authority. There was a question as to whether the lack of permit would affect the bond financing. Mr. Howard Osterman stated that the bond rating agencies know that this is happening all around, not just the Authority, so it should not hurt the bond financing in any way. He further stated that there is a growing feeling that there is no statutory authority to what SFWMD can do. Much more discussion took place. Mr. Clark Bennett reinforced what Mr. Howard Osterman stated about the rating industries (Mr. Bennett had spoken to all three rating industries) and it would not affect the bond financing.

Attorney Nat Nason asked the Board if they would like to have Ed Weinberg, the Authority's environmental consultant, come to a Board meeting to explain to the Board what is happening.

Board Member Joe Lo Bello stated that if it is not predictable or measurable, usually the rating industries do not take it into consideration. More discussion took place.

SELECTION OF BOND UNDERWRITER

Executive Director Rim Bishop stated that Clark Bennett has provided staff with a standard RFQ form that is used in soliciting underwriter proposals. At such time as it is known that the project will move forward, staff publish the RFQ, have the Committee review the proposals and then come to the Board with a recommendation. The other alternative would be to have different groups come before the Board and let them choose. No vote needed as the Board was in agreement with the RFQ process recommended by staff.

COMMENTS FROM THE PUBLIC

None

ADJOURNMENT

There being no further business to come before the Authority, Board Members Davis/Weisman moved to adjourn at approximately 4:04 PM.

APPROVAL:

DON NOEL, CHAIR

MARIA V. DAVIS, VICE CHAIR

ROBERT WEISMAN, PRESIDENT PRO-TEM

RON FERRIS, MEMBER

JOSEPH LO BELLO, MEMBER

ATTEST:

MARY ANN STILES, AUTHORITY CLERK