Minutes

YPSILANTI COMMUNITY UTILITIES AUTHORITY
BOARD OF COMMISSIONERS MEETING
Tuesday, December 15, 2009 – 9:00 a.m.
YCUA Administration Building
2777 State Road
Ypsilanti, MI 48198-9112


Members Absent: Mark Namatevs.

1. CALL TO ORDER: Scott called the meeting to order at 9:03 a.m.

2. MINUTES OF THE PREVIOUS MEETINGS: Motion by Peoples to receive and file the minutes of the November 24, 2009 meeting as presented. Support by Doe. In favor: All. Opposed: None. (Motion carried.)

3. NEW BUSINESS:
   A. Request to Approve – YCUA Resolution No. 09-20 re: Application for Additional Credited Service – Gwyn Belcher

   Ms. Belcher advised the Board that a Teamster employee has requested the opportunity to purchase six months of service, which requires the employee to pay the costs associated with it. She indicated that it also requires a signed resolution from the YCUA Board, which was included in their packets. Ms. Belcher also explained that this is the typical MERS resolution for this request.

   Ms. Belcher recommended approval of YCUA Resolution No. 09-20 re: Application for Additional Credited Service.

   Motion by Doe to approve YCUA Resolution No. 09-20 re: Application for Additional Credited Service. Support by Bass. In favor: All. Opposed: None. (Motion carried)
B. Request to Approve – YCUA / DWSD Water Contract Amendment No. 1 – Larry R. Thomas

Mr. Thomas advised the Board that this is an amendment to the contract with DWSD signed in 2008. He indicated that, when the contract was signed, the Authority estimated its usage and peaking factors and DWSD committed to certain pressures at YCUA’s connections. Mr. Thomas also explained that the contract calls for a reevaluation of these estimated amounts after a two-year period. He pointed out that this amendment is the result of that requirement.

Mr. Thomas explained that, in the two years since the contract was signed, the Authority’s usage has decreased due to economic and weather conditions. He further advised that the reduced usage and peaking factors are contained in amendment no. 1.

Mr. Thomas stated that YCUA staff has reviewed the estimates in this amendment and has determined that they are in line with the estimates that the Authority had proposed to DWSD. He acknowledged that these estimates are used in determining the rate that YCUA pays for water. Mr. Thomas confirmed that the amendment is of particular importance at this time because it is almost a certainty that DWSD will be instituting a lookback provision in their water contracts, which they will use to determine their revenue requirements and to set rates during the budgeting process at the beginning of the year. He explained that, because in the past few years there has been less usage than estimated, DWSD has collected less revenue than the budget calculations have shown.

Mr. Thomas pointed out that DWSD currently has a lookback provision in place for its wastewater contracts. He also stated that this amendment adjusts YCUA’s usage downward to reflect its anticipated amount of usage.

Mr. Thomas recommended approval of YCUA / DWSD Water Contract Amendment No. 1.

Larry J. Doe inquired as to how this affects the Authority’s budgeting process and how much revenue is expected to decrease. Mr. Thomas responded that it does not affect YCUA’s revenue but rather its expenses and that it is impossible to know by how much until the actual usage is determined. He added that the Authority has estimated conservatively so that its peak usage is sustainable in the current economic environment.

J. Ray Scott inquired as to what provisions exist in the budget in the event that it turns out that the usage estimates are too conservative and YCUA ends up owing DWSD more money than forecasted. Mr. Thomas
responded that it makes no difference if the Authority goes over the usage estimates but that exceeding the DWSD peak hour and day would result in a higher rate. He indicated that, if this were to occur, YCUA would need to negotiate another amendment with DWSD. Mr. Thomas also explained that all of the contract communities are at the mercy of DWSD in this regard. He pointed out that YCUA has over an average day’s worth of storage in its system, which greatly reduces the risk of this occurring.

T. Michael Jessee added that YCUA does a very good job of controlling its peaking factors, especially in terms of the Authority’s storage capabilities. He indicated that a standard operating procedure on this topic recently developed by Jeff Castro was submitted to other communities in order to assist them in controlling their peaking factors.

Mr. Scott interjected that YCUA has done its homework and has been able to negotiate one of the better contracts in the DWSD system. He added that DWSD has reaffirmed its relationship with YCUA and that the relationship between the authorities is excellent.

Gregory A. Peoples commented that the Authority has done the best forecasting possible using all of the controllable and knowable factors available.

Motion by Peoples to approve YCUA / DWSD Water Contract Amendment No. 1. Support by Bass. In favor: All. Opposed: None. (Motion carried)

C. **Fund Balance Report** - Larry R. Thomas

Mr. Thomas advised the Board that this report is not yet available to due to the re-scheduling of the December Board meeting for the holiday season. Mr. Thomas added that the report will be emailed to the Board as soon as it is available. Mr. Scott stated that Mr. Thomas has an open door policy and is happy to call or visit with any questions they may have.

Informational only; no motion from the Board required.

D. **Financial Report – Authority Net Assets** - Larry R. Thomas

Mr. Thomas advised the Board that this report is not yet available to due to the re-scheduling of the December Board meeting for the holiday season. Mr. Thomas added that the report will be emailed to the Board as soon as it is available.

Informational only; no motion from the Board required.


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Informational only; no motion from the Board required.

F. Attorney’s Report – Thomas E. Daniels

Mr. Daniels advised the Board that he has one item to report on.

He indicated that the Meade Westvaco matter has proceeded to federal court in Detroit to allow YCUA to respond to Motions for Summary Judgment filed by Meade Westvaco and Bioclimatic. Mr. Daniels also explained that a two-hour hearing took place, which was attended by Larry R. Thomas. He pointed out that John Herrygers from the Christman Company was unable to attend but that he was later briefed. He pointed out that the judge did not provide a decision that day, which was unexpected, but rather the judge indicated that he would issue a written opinion and decision at an undetermined later date.

Mr. Daniels explained that this judge’s pattern is to do this sort of thing rather promptly, so he expects to receive something within the next 30 days. He further advised that it is hard to tell how things went based on the judge’s questions and the way the hearing was conducted but that his sense of it is that the judge certainly understood the case and had read all of the materials submitted by both sides. Mr. Daniels stated that he is hopeful for a favorable result because of the way the judge reacted to the presentations.

Informational only; no motion from the Board required.

G. Director’s Report - Larry R. Thomas

Mr. Thomas advised the Board that he has two items to report on.

He indicated that he wanted to alert the Board that revenue is down significantly from what was budgeted due to continued reduction of sales of water due largely to the very wet summer and fall weather. Mr. Thomas also explained that this is not particularly unusual but what is unusual is that WTUA is sending less sewage this year than they have in the past. He pointed out that they are in the process of adding storage capabilities to their Haggerty Road facility and replacing all of the pumps in that area.

Mr. Thomas explained that the work on their wet well was anticipated to be completed in a matter of a few weeks but that it has dragged on for several months and is probably going to last until the middle of January. He further advised that this has caused WTUA to send less sewage to
YCUA because they cannot send any sewage from their Joy Road pump station into the Haggerty Road pump station, which pumps to YCUA.

Mr. Thomas stated that this has reduced WTUA’s flow to YCUA to about 70% of what it normally has been, resulting in about $500,000 in lost revenue by the end of the year. He acknowledged that YCUA is reducing expenses to match that lost revenue. Mr. Thomas confirmed that he has also been talking with Aaron Sprague, Director of WTUA, about the possibility of sending extra flow once the wet well is completed. He explained that as part of their normal activities, part of their flow is sent to Wayne County and part to YCUA, so the potential is there to send some of Wayne County’s flow to YCUA. Mr. Thomas pointed out that Mr. Sprague is receptive to the idea but the amount of flow has yet to be determined. He also stated that Wayne County does require WTUA to send some flow to them.

Mr. Thomas advised the Board that this is not dire but that it is a factor that is complicating operations. He indicated that, with the incinerator being down for an extended period, expenses are also decreasing at this time.

Larry J. Doe inquired as to whether any layoffs were anticipated in light of this situation. Mr. Thomas responded that layoffs are not anticipated at this time but YCUA staff will be keeping a close eye on the situation and that everything necessary will be done. He added that the situation is likely to be very short-term and that operational staff will be needed once the flows return.

Mr. Thomas advised the Board that the second item is that there are two bond sale closings scheduled for January. He indicated that the closing documents will need to be signed by the Board Chair and Secretary – Treasurer some time during the holidays. Mr. Thomas also explained that arrangements will be made to obtain their signatures.

Informational only; no motion from the Board required.

4. OLD BUSINESS:

There was no old business for the month.

5. OTHER BUSINESS:

H. Request to Approve – Change Order re: Sweet Road Project – Dan Nawrot of Rainbow Construction Company advised the Board that his company did work in Ypsilanti Township on the Sweet Road sanitary sewer and pump station a number of years ago. He indicated that, at the November YCUA Board of Commissioners meeting, a change order
relative to that work in the amount of $17,222.45 was submitted but declined by the Board. Mr. Nawrot also explained that he was asking for the change order to be reconsidered at this time. He pointed out that he would be happy to examine the change order in greater detail and address the Board’s questions and concerns.

Mr. Nawrot explained that, when the project was completed seven years ago, Brad Fraker and the other engineers could not agree with him on the items in the change order. He further advised that, due to his own failure, the item was never followed up on and the disagreements never resolved.

Mr. Nawrot stated that he recently decided to put the matter to rest by signing off on the engineers’ figures and foregoing the additional $9,000 he felt he was due. He acknowledged that, because of decreases in work as a result of the current economic condition, he has had more time to go back and address issues that he was too busy to resolve in past years.

Mr. Nawrot indicated that most of the items in the change order are balancing quantities. Mr. Jessee interjected that the balancing items on this change order total $7,337.80 but that the total being requested is $17,222.45. He proceeded to provide the Board with a written summary of the balancing items as well as the additional items requested.

J. Ray Scott interjected that he is astounded that, considering the amount of money being requested, there has been no contact from Rainbow Construction regarding this matter for a time period as lengthy as seven years. He indicated that it is his understanding that the Board, in light of the number of years that have passed, has declined to consider the change order and that he stands by the Board’s decision.

Deedra Climer Bass added that she is of the opinion that this is perhaps not the best venue to address this issue. She indicated that Mr. Nawrot has acknowledged that this item was not brought forward sooner due to an oversight on his part and that it was recently done in light of the difficult financial times. Ms. Bass also explained that she is not prepared to make a decision on this item today and suggested that it be referred to Mr. Jessee to fully investigate the items in the change order and present the findings for the Board’s consideration at a later time.

Gregory A. Peoples indicated that it was the Board’s determination that the contract had been satisfied with the recent payment of Rainbow’s final payment request and that the Authority is not obligated for this additional amount. Mr. Peoples recommended referring this item to the Finance Committee for further review in order to possibly formulate an informed recommendation to the Board for reconsidering the change order.
Mr. Scott concurred with the recommendation. Mr. Jessee agreed as well and indicated that he would examine the items line-by-line with YCUA project staff and Tetra Tech representatives and come up with a report for the Finance Committee’s consideration.

Mr. Scott added that he appreciated Mr. Nawrot’s presentation but feels confident that YCUA has satisfied its contractual obligations, which is a matter of record. Mr. Nawrot responded that he has issues with that statement in that he is appreciative that YCUA has paid the final payment request but that he was of the opinion that there was supposed to be interest incurred on that retainage, which has not been paid. Mr. Scott responded that he would agree that there was interest due had the payment been withheld by YCUA for any reason. He indicated that the payment was not made because it was simply not requested for seven years.

Mr. Nawrot indicated that the monies involved should have been held in an interest bearing account, the proceeds of which should have been paid to his company. Mr. Scott responded that he is aware of no state statute requiring contract retainage to be held in an interest bearing account. He reminded Mr. Nawrot that the Board is being very generous and responsive to his request and cautioned Mr. Nawrot from continuing in this manner.

Mr. Jessee advised the Board that this matter was introduced to him approximately four months ago. He indicated that, from the information he received, his initial reaction was that the change order was justified but that the inexplicable time lapse is a major issue for him. Mr. Jessee also explained that he has spoken with Mr. Fraker on this matter and that Mr. Fraker advised him that he contacted Rainbow Construction three or four times in the fall of 2002 in an attempt to resolve this issue and that Rainbow continued to argue over the details of the change order.

Ms. Bass interjected that her concerns are that it could end up costing the Authority more in the long run if Mr. Nawrot has any legal recourse to get the money and that it could damage their mutual working relationship if this is a company that YCUA wishes to continue doing business with. She indicated that she does not necessarily think that YCUA is obligated to pay the change order but that she is concerned whether it is good business to not do so.

Mr. Scott responded that he understands her concerns but that he is of the opinion that the burden of responsibility for the resolution of this matter for the past seven years has not been YCUA’s nor is it now. Mr. Peoples concurred. Mr. Scott added that it is highly unusual for a Board to reconsider a decision such as this and that it is very generous to be willing to
do so despite a number of red flags. He added that he feels that Mr. Nawrot’s behavior in his presentation is very relevant in this matter.

Larry J. Doe added that his main objection is that items in this change order can no longer be accurately identified or substantiated now that such a lengthy amount of time has passed. He indicated, however, that he believes that YCUA is obligated to pay the change order and is responsible for allowing this matter to stay on the books for so long without contacting Mr. Nawrot for an explanation. Tom Allbaugh responded that Brad Fraker was the contact person in this matter and that he pleaded with Mr. Nawrot on numerous occasions to resolve the issues surrounding the change order and that Mr. Nawrot refused.

Thomas E. Daniels interjected that he cannot give a legal opinion without further investigation but assured the Board that he will be looking into the matter in full detail so that the Finance Committee can make a legally-informed recommendation.

Motion by Bass to refer Change Order No. 1 re: Sweet Road Project in the amount of $17,222.45 to the YCUA Finance Committee for further consideration. Support by Peoples. In favor: All. Opposed: None. (Motion carried)

6. STATEMENTS AND CHECKS: Motion by Bass to pay the bills in the amount of $2,034,991.40 with an addendum in the amount of $9,446.25. Support by Peoples. In favor: All. Opposed: None. (Motion carried)

7. PUBLIC COMMENTS:

There were no public comments for the month.

8. ADJOURNMENT: Motion by Doe to adjourn the meeting at 10:06 a.m. Support by Peoples. In favor: All. Opposed: None. (Motion carried)

Respectfully submitted,

MARK NAMATEVS, Vice Chair
APPLICATION FOR ADDITIONAL CREDITED SERVICE
Member Certification and Governing Body Resolution

MEMBER
Name:
SSN:
DOB:
Age:
Spouse's DOD:

EMPLOYER
Name: Ypsilanti Comm Util Auth
Number/Div: 8106 / 12

CALCULATION DATE - 12/1/2009
(Estimate Not Valid After 2 Months)

BENEFIT PROGRAMS
Benefit B-2
Benefit F55 (With 25 Years of Service)
Benefit FAC-3 (3 Year Final Average Compensation)
10 Year Vesting

ESTIMATED FAC ON CALCULATION DATE: $69,657.40

CREDITED SERVICE
Member's Service Credit as of Calculation Date:
Type of Credited Service to be Granted:
Amount of Credited Service to be Granted:
Total Estimated Actuarial Cost of Additional Credited Service:

BENEFIT CALCULATION ASSUMPTIONS
1. It is assumed that the Member will continue working until the earliest date for unreduced retirement benefits. If the Member terminates prior to becoming eligible for unreduced benefits, the Employer understands and accepts that the actuarial cost will be different from the actuarial cost shown above.
2. The Member's Final Average Compensation (FAC) is projected to increase 4.5% annually from the date of purchase to the date of retirement.
3. The Plan's Investment Return is projected to be 8% annually.

THE ADDITIONAL CREDITED SERVICE IS PROJECTED TO RESULT IN THE FOLLOWING CHANGES:

<table>
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<tr>
<th>Retirement Date</th>
<th>Age</th>
<th>Service Through</th>
<th>Total Service</th>
<th>FAC</th>
<th>Annual Benefit</th>
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<tbody>
<tr>
<td>Before Purchase</td>
<td>5/1/2015</td>
<td>55 yrs., 0 mths.</td>
<td>4/30/2015</td>
<td>29 yrs., 10 mths.</td>
<td>$88,412.53</td>
</tr>
<tr>
<td>After Purchase</td>
<td>5/1/2015</td>
<td>55 yrs., 0 mths.</td>
<td>4/30/2015</td>
<td>30 yrs., 4 mths.</td>
<td>$88,412.53</td>
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Note: MERS is not responsible for any Member or Employer supplied information, or any losses which may result if actual experience differs from actuarial assumptions. The Member and Employer are responsible for reviewing the information contained herein for accuracy, and assuming the risk that actual experience results in liability different than that estimated.

MEMBER CERTIFICATION
I certify that the above information is correct and accurate. If this is a purchase of qualifying “other governmental” service, I certify that the service has not and will not be recognized for the purpose of obtaining an increasing a pension under another defined benefit retirement plan.

Signature of Member

Date

GOVERNING BODY RESOLUTION
As provided by the MERS Plan Document, and in accordance with the Employer’s policy there under, the additional credited service described above is hereby granted this Member by Resolution of the Governing Body of YCUA, at its meeting on December 15, 2009. The Employer understands this is an estimated cost, calculated using actuarial assumptions approved by the Retirement Board. Any difference between the assumptions and actual experience will affect the true cost of the additional service. For example, changes in benefit programs through adoption or transfer of the affected employee to a division with ‘better’ benefits; increases in wages other than 4.5% per year; and changes to the anticipated date of termination, will affect the actual cost of the additional service (increase or decrease). Thus, actual future events and experience may result in changes different than those assumed, and liability different than that estimated. The Employer understands and agrees that it is accountable for any difference between estimated and actual costs.

Signature of Secretary - Treasurer

Date
APPLICATION FOR ADDITIONAL CREDITED SERVICE
Member Certification and Governing Body Resolution

MERS Use Only

<table>
<thead>
<tr>
<th>Payment Received:</th>
<th>Member Payment:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Credited:</td>
<td>ER Payment:</td>
</tr>
<tr>
<td>Signed:</td>
<td>ER Payment Amortized:</td>
</tr>
</tbody>
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PAYMENT OPTIONS
The Member's share of the cost may be any amount from zero up to the total estimated actuarial cost, and is due at the time of purchase. The Employer's share is the balance of the total estimated actuarial cost not paid by the Member, and may be paid either in lump sum or amortized over 25 years. Amortizing the total estimated actuarial cost of this purchase over 25 years results in a first year employer contribution of $376.00, increasing 4.5% each year thereafter. Amortization for closed divisions is set according to your annual valuation.

If the Member pays a portion of the total estimated actuarial cost, and the Employer pays the balance, the Employer’s adjusted first year contribution can be determined using the following formula:

\[
ER's \ Share \ of \ Actuarial \ Cost = Total \ Actuarial \ Cost - Member \ Payment \\
Adjusted \ First \ Year \ ER \ Contribution = ER's \ Share \ of \ Cost \times First \ Year \ ER \ Contribution = Total \ Cost
\]

STEPS FOR PROCESSING APPLICATION FOR ADDITIONAL SERVICE CREDIT

1. The cost estimate (Application for Additional Service Credit) is valid for 2 months from the calculation date.
2. If you are paying for the additional service by a rollover distribution from another pension plan (or traditional IRA), you must follow these steps:
   • Contact the other plan administrator (or trustees) to determine their rules for a distribution of your funds.
   • Complete the form “Certification of Qualified Rollover to MERS”. After plan administrator signs form, return the completed original to MERS.
   • Send signed, approved Application for Additional Service Credit to MERS prior to sending any payment. If employer is amortizing any of the cost, include a letter from employer stating this.
   • MERS’ Finance Department will provide wiring instructions, if needed.
3. If you have any questions, please call MERS Employee and Retiree Services at 800-767-2308, or go to www.mersofmich.com. MERS is a tax-qualified plan under section 401(a) of the Internal Revenue Code, pursuant to IRS Letter of Favorable Determination dated June 15, 2005.