

**MINUTES OF A MEETING OF THE
DuPAGE WATER COMMISSION
HELD ON THURSDAY, NOVEMBER 13, 2008
600 E. BUTTERFIELD ROAD
ELMHURST, ILLINOIS**

The meeting was called to order by Chairman S. Louis Rathje at 7:30 P.M.

Commissioners in attendance: T. Bennington, E. Chaplin, T. Elliott, L. Hartwig, W. Maio, G. Mathews, W. Mueller, W. Murphy (by teleconference), A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Commissioners Absent: None

Also in attendance: Treasurer R. Thorn, R. Martin, R. M. Richter, M. Crowley, T. McGhee, J. Schori, E. Kazmierczak, F. Frelka, M. Weed, and J. Nesbitt

PUBLIC COMMENTS

None

APPROVAL OF MINUTES

Commissioner Hartwig moved to approve the Minutes of the October 9, 2008 Regular Meeting of the DuPage Water Commission. Seconded by Commissioner Mathews and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

TREASURER'S REPORT

Treasurer Thorn presented the Treasurer's Report for the month of October 2008 which showed receipts of \$7,137,808.00, disbursements of \$6,782,185.00, and a cash and investment balance of \$74,384,155.00.

Commissioner Bennington moved to accept the October 2008 Treasurer's Report. Seconded by Commissioner Chaplin and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

COMMITTEE REPORTS

Administration Committee

Commissioner Zay reported that the Administration Committee reviewed and recommended for approval Resolution No. R-63-08: A Resolution Awarding a Contract for the Supply of Self Contained Breathing Apparatus (SCBA) and Associated Services and Accessories. Commissioner Zay also reported that it was the consensus of the Administration Committee to concur with the General Manager Review Process outlined in Commissioner's Murphy's Memorandum dated October 1, 2008.

Engineering & Construction Committee

Commissioner Maio reported that, except for Resolution No. R-61-08, the Engineering & Construction Committee reviewed and recommended for approval the Pay Requests and Resolutions listed on the Committee's Agenda. With respect to Resolution No. R-61-08, Commissioner Maio reported that the Committee decided to defer the discussion to the Regular Meeting New Business Agenda Item.

Finance Committee

Commissioner Mathews reported that the Finance Committee recommended for approval the Accounts Payable.

CHAIRMAN'S REPORT

None

MAJORITY OMNIBUS VOTE AGENDA

Commissioner Hartwig moved to adopt the items listed on the Majority Omnibus Vote Agenda in a single group pursuant to the Omnibus Vote Procedures. Seconded by Commissioner Elliott and unanimously approved by a Roll Call Vote:

Majority Omnibus Vote

- Ayes: T. Bennington, E. Chaplin, T. Elliott, L. Hartwig, W. Maio, G. Mathews, W. Mueller, W. Murphy, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje
- Nays: None
- Absent: None
- Item 1: Resolution No. R-56-08: A Resolution Directing Advertisement for Bids on a Contract for the Construction of Corrosion Protection and Control for the South Transmission Main (Contract TS-8/08)—"Majority Omnibus Vote"
- Item 2: Resolution No. R-59-08: A Resolution Authorizing the Disposal of Certain Personal Property Owned by the DuPage Water Commission—"Majority Omnibus Vote"
- Item 3: Resolution No. R-63-08: A Resolution Awarding a Contract for the Supply of Self Contained Breathing Apparatus (SCBA) and Associated Services and Accessories—"Majority Omnibus Vote"

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- Item 4: Resolution No. R-64-08: A Resolution Approving, Ratifying, and Accepting New Pricing Exhibits to the Electricity Sales Agreement with Exelon Energy Company—"Majority Omnibus Vote"

SUPER/SPECIAL MAJORITY OMNIBUS VOTE AGENDA

Commissioner Poole moved to adopt the items listed on the Super/Special Majority Omnibus Vote Agenda in a single group pursuant to the Omnibus Vote Procedures.
Seconded by Commissioner Chaplin and unanimously approved by a Roll Call Vote:

Super/Special Majority Omnibus Vote

- Ayes: T. Bennington, E. Chaplin, T. Elliott, L. Hartwig, W. Maio, G. Mathews, W. Mueller, W. Murphy, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje
- Nays: None
- Absent: None
- Item 1: Resolution No. R-57-08: A Resolution Directing Re-Advertisement for Bids on a Contract for Valve Actuator Replacement (Contract VA-1/08)—"Super/Special Majority Omnibus Vote"
- Item 2: Resolution No. R-58-08: A Resolution Directing Advertisement for Bids on a Contract for Quick Response Electrical Work (Contract QRE-4/08)—"Super/Special Majority Omnibus Vote"
- Item 3: Resolution No. R-60-08: A Resolution Approving and Ratifying Certain Task Orders under a Master Contract with Consoer Townsend Envirodyne Engineers, Inc. at the November 13, 2008, DuPage Water Commission Meeting—"Super/Special Majority Omnibus Vote"
- Item 4: Resolution No. R-62-08: A Resolution Approving and Ratifying Certain Work Authorization Orders Under Quick Release Contract QR-8/08 at the November 13, 2008, DuPage Water Commission Meeting—"Super/Special Majority Omnibus Vote"

OLD BUSINESS

With respect to the request by the City of Naperville to supplement the cost of relocation of the Commission's transmission main at 75th Street and Washington Avenue, General Manager Martin noted that the question is whether and to what extent, if any, the Commission should pay for the cost of relocation. General Manager Martin added that historically, in cases of right-of-way conflicts with municipal facilities, the Commission has always followed a "first in time; first in right" philosophy regarding relocation costs

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such that, if new Commission facilities required the relocation of pre-existing municipal facilities, the Commission would pick up the cost and vice versa.

General Manager Martin noted that the Staff Attorney had spoken to a representative from the Office of the State's Attorney for DuPage County, regarding responsibility for the cost of relocating, and relayed the following points taken from her review of the intergovernmental agreement between the City and the County, as amended from time to time:

- The initial 2001 agreement stated that the City was already in the process of constructing the DuPage River Trail "adjacent" to the proposed road widening improvements that were the subject of the agreement; that "Segment Two" of the City's project, the underpass at 75th Street, would be completed as part of the proposed road widening project; and that the City and the County would arrange for the DuPage County Forest Preserve District and the Naperville Park District to maintain the DuPage River Trail.
- The most recent amendment to the agreement, a Fourth Amendment dated June 24, 2008, states that the City and the County agree to construct the underpass as part of the project for the purpose of accommodating pedestrians and bicyclists; that the underpass is not within the right-of-way of 75th Street but, rather, Washington Avenue; and that the County will not be participating financially in the cost of, or have any responsibility for the future maintenance of, the underpass, the approach paths east and west of the structure, or the path through the structure; and that the City is solely responsible for watermain and sanitary sewer relocations.

Finally, General Manager Martin noted, as requested by the Board at its meeting of October 9, 2008, representatives of the County and Naperville were in attendance to make a formal presentation to the Board and answer questions regarding the project, its funding, and the request for the Commission to share in the cost of relocation.

Jim Holzapfel, City of Naperville Department of Public Utilities, 400 S. Eagle Street, Naperville, Illinois, reported that the conflict was actually between the Commission's 30-inch transmission main along 75th Street and a proposed ramp that would provide access to the proposed bike path tunnel under Washington Avenue just west of 75th Street. Mr. Holzapfel also reported that the City had offered to pick up 55% of the cost of the relocation, with the Commission paying the County's 45% share of the joint project.

Commissioner Hartwig inquired whether the proposed 55%/45% split was based upon the cost of the entire joint project, including the underpass. Mr. Holzapfel acknowledged that the County was not paying for the underpass, but that the bike path was a part of the County's trail system and the ramp way was part of the County's system.

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Commissioner Murphy commented that Naperville was 100% responsible for the maintenance of the underpass and the County was not participating financially in its construction, yet Commissioner Poole stated at the last meeting that the underpass was "solely a County improvement."

After Mr. Holzapfel confirmed for Commissioner Murphy that the portion of the Commission's pipeline to be relocated was within the right-of-way of 75th Street, Commissioner Maio questioned whether there was an alternative design that did not require Commission relocation. Mr. Holzapfel responded that the underpass was needed because of the widening of Washington Avenue to six lanes. Both Commissioner Maio and Hartwig noted numerous locations in the County where the County's trail crosses six lane streets that have additional turning lanes for which no underpass was provided.

Commissioner Hartwig asked whether underpasses are "required" by DuPage DOT for all streets with six or more lanes. Morgan Cotten, DuPage County Department of Transportation, 421 N. County Farm Road, Wheaton, Illinois, explained that the tunnel is not required by DPDOT "per se," but is a safety feature for pedestrians because the City is expanding Washington Street from four lanes to six lanes. Mr. Cotten added that the City recommended putting in an underpass and DPDOT thought it was appropriate.

With respect to the existing roads within the County that have up to eight lanes and pedestrian crossings without a need for an underground tunnel, Mr. Cotten explained that those roads with eight lanes have large medians that a pedestrian is able to wait on if the light changes and one were to get stuck in the middle of traffic. Mr. Cotten added that due to the close proximity of the west branch of the DuPage River, a larger median could not be constructed for the Washington Avenue expansion.

Commissioner Hartwig questioned why the County was not participating in the cost of the underpass if the need for the underpass was due to such a unique circumstance. Commissioner Hartwig explained that he would feel more comfortable with the notion that the underpass was, in fact, a joint project if the County had a financial stake in its construction. Commissioner Hartwig added that from what he has heard to date, it seems as if the County is saying the underpass is a good idea; that it's nice, but not necessary so the County is not paying for it. Mr. Cotten responded that the County was not participating in the cost of the underpass because the City agreed to pay for it. Mr. Cotten added that when you have joint projects, it is hard to determine precisely whose cost is whose, speculating perhaps it was just a negotiated point.

Commissioner Zay commented that the City was the party who decided to install the underpass and, therefore, he did not feel there was any need to debate whether the County was or was not paying a portion of the cost. After Mr. Cotten confirmed for the Commissioners that the affected portion of the trail is not a designated right-of-way, Commissioner Hartwig explained that whether the County was participating in the cost of the underpass was relevant in determining the negative precedent that would be established by the Commission changing its historical position and picking up a portion

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of the cost of the relocation. As explained by Commissioner Hartwig, if the underpass is a City project, then an extremely negative precedent would be established, but if the underpass were a County project, then not such a bad precedent would be established. Commissioner Hartwig reiterated that in determining which is which, he would feel better if the County had a financial stake in the construction of the underpass.

Commissioner Zeilenga confirmed that the path is maintained by the County and the underpass will be maintained by the City.

Commissioner Maio inquired as to why the City did not ask the County to pay for its share of the "joint project" instead of approaching the Commission. Mr. Holzapfel responded that the City did not approach the County because the cost of relocation is borne by the utility in the right-of-way. Commissioner Maio then summarized that it was the City using the County's authority to force the Commission to move instead of asking the County to pay.

Before moving on to the next Agenda item, Resolution No. R-55-08, Commissioner Mathews confirmed that the City's proposed 55%/45% split with the Commission was based upon the City's and the County's cost sharing arrangement for the entire joint project, with the Commission picking up the County's proportionate share of the entire project. Commissioner Hartwig expressed his belief that DPDOT would've approved the crossing at grade and, therefore, the underpass should rightly be characterized as a City project. Chairman Rathje confirmed that Naperville had received approximately \$7MM from the Commission as a result of the FY 2008 rebate.

After noting that Resolution No. R-55-08 does not have anything to do with who is paying for the relocation work and that, no matter who pays for the work, the Commission would still contract for and supervise the relocation, Commissioner Hartwig moved to adopt Resolution No. R-55-08: A Resolution Directing Advertisement for Bids on a Contract for the Construction of South Transmission Main Relocation—75th and Washington Streets, Naperville (Contract TS-7/08). Seconded by Commissioner Bennington.

In urging a "no" vote on the motion, Commissioner Murphy highlighted the following key points from the approved minutes of October 9, 2008, Board meeting:

- The approximately 500 L.F. of relocation required is necessary solely to avoid conflict with the City's proposed pedestrian tunnel.
- The proposed pedestrian underpass crossing would have had little or no impact on Commission facilities if it had been located along an alignment the City presented to the Commission at a design meeting held several years earlier with City representatives.
- Commissioner Poole stated that the proposed pedestrian tunnel is solely a County improvement in County right-of-way.

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- General Manager Martin countered that staff understands that the proposed pedestrian tunnel is a City improvement and that the County is not paying any part of the cost of the proposed pedestrian tunnel.

Commissioner Murphy added that the County's statutory authority to require governmental utilities to relocate their facilities at their own cost applies only to County improvements—which the underpass is not—and that the justification for the cost sharing proposed by Naperville is weak and sounded like subterfuge in light of the County's lack of any financial contribution toward the proposed pedestrian tunnel. Commissioner Murphy concluded his remarks by questioning whether either the Mayor of Naperville or the County Board Chairman was aware of the situation or whether staff was manipulating the facts.

At which point, the motion to adopt Resolution No. R-55-08: A Resolution Directing Advertisement for Bids on a Contract for the Construction of South Transmission Main Relocation—75th and Washington Streets, Naperville (Contract TS-7/08) was approved by a Roll Call Vote.

Ayes: T. Bennington, E. Chaplin, T. Elliott, L. Hartwig, W. Maio, G. Mathews, A. Poole, J. Zay, D. Zeilenga, and L. Rathje

Nays: W. Mueller, W. Murphy, and F. Saverino

Absent: None

After Commissioner Mueller confirmed that the Village of Lombard was in negotiations with the residents of the DuPage County York Center service area, Commissioner Mueller moved to table ratification and further refinement of a narrowly defined time-limited further waiver of the capital cost recovery charge for the DuPage County York Center service area as conditionally approved at the meeting of October 9, 2008. Seconded by Commissioner Bennington and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

NEW BUSINESS

General Manager Martin reported that eight bids were received on Contract PSD-7/08: Contract for the Construction of Electrical Generation Facility and Office/Garage Expansion for the DuPage Pumping Station, all of which were below the engineer's estimate of \$21,958,847.00 except the highest. General Manager Martin also reported that staff and the engineers evaluated the bids received from, as well as references and other background materials regarding, each of the three low dollar bidders in order to determine whether their respective qualifications and credentials met the requirements for award of the Contract stated in the General Instructions to Bidders and Article VIII, Subsection 11(b) of the Commission's Bylaws, including asking each of the three low dollar bidders to respond to two Requests for Additional Information and providing an opportunity to meet with staff and the engineers to discuss the materials submitted with

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their bids and in response to the first of those Requests for Additional Information, as well as other relevant information.

Based upon all of the information provided, General Manager Martin recommended that the Contract be awarded to the third low dollar bidder, Williams Brothers Construction Company in the amount of \$16,970,000.00, as the bid most favorable to the interests of the Commission. Among the factors highlighted by the General Manager in making this recommendation, was the fact that the PSD-7 project would be significantly larger than any other project undertaken by the two low dollar bidders, adding that almost 2/3rds of the PSD-7 project (including the cost of the generators) involves highly complex electrical work requiring precise synchronization (paralleling) between four 2,500 kW generators at a single site; and the fact that the two low bidders either had no reported experience installing generators of any kind or reported experience installing only small, unparallelled generators (≤ 400 kW at five separate school sites), with the third low dollar bidder providing examples of projects it has handled involving the installation of $\geq 1,000$ kW unparallelled generators at numerous sites including 10 operating water and wastewater treatment plants.

Staff Attorney Crowley commented that even though the Commission is not vested with unbridled discretion in awarding the contract, courts will generally defer to the discretion of public officials except where fraud, corruption, unfair dealing or favoritism, gross injustice, illegality, palpable abuse of discretion, or arbitrary, capricious action is shown. Staff Attorney Crowley added that staff was not aware that the Commission had ever employed the services of the third low bidder or its major proposed subcontractor, Morse Electric, or of any personal or professional association between Commission staff or Commissioners and third low bidder or Morse Electric, and the Commissioners concurred with that assessment.

Commissioner Murphy moved to adopt Resolution No. R-61-08: A Resolution Awarding a Contract for the Construction of Electrical Generation Facility and Office/Garage Expansion for the DuPage Pumping Station (Contact PSD-7/08). Seconded by Commissioner Mathews and approved by a Roll Call Vote.

Ayes: T. Bennington, E. Chaplin, T. Elliott, L. Hartwig, W. Maio, G. Mathews, W. Murphy, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: W. Mueller

Absent: None

Before moving on to the next Agenda item, and after offering to abide by any cost-sharing recommendation that may be reached among the participants, Commissioner Murphy moved to convene a meeting among Commission representatives Chairman Rathje, General Manager Robert Martin, and Staff Attorney Crowley, City of Naperville representatives Mayor Pradel and City Manager Marshall, and DuPage County representatives Chairman Schillerstrom and a representative from the Office of the

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State's Attorney for DuPage County, regarding responsibility for the cost of relocating the Commission's South Transmission Main at 75th and Washington Streets, in Naperville. Seconded by Commissioner Hartwig and approved by a Roll Call Vote:

Ayes: T. Bennington (pass), T. Elliott, L. Hartwig, G. Mathews, W. Murphy, A. Poole, F. Saverino, and L. Rathje

Nays: E. Chaplin, W. Maio, J. Zay, and D. Zeilenga

Absent: None

ACCOUNTS PAYABLE

Commissioner Mathews moved to approve the Accounts Payable in the amount of \$44,981.02 subject to submission of all contractually required documentation. Seconded by Commissioner Chaplin and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, L. Hartwig, W. Maio, G. Mathews, W. Mueller, W. Murphy, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: None

EXECUTIVE SESSION

Commissioner Zay moved to go into Executive Session to discuss matters related to personnel pursuant to 5 ILCS 120/2(c)(1) and (2). Seconded by Commissioner Mueller and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, L. Hartwig, W. Maio, G. Mathews, W. Mueller, W. Murphy, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: None

The Board went into Executive Session at 8:30.

Commissioner Mathews moved to come out of Executive Session at 8:50 P.M. Seconded by Commissioner Mueller and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Hartwig moved to approve the salary increase for General Manager Martin, retroactive to May 1, 2008, in accordance with the discussion in Executive

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Session. Seconded by Commissioner Maio and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, L. Hartwig, W. Maio, G. Mathews, W. Mueller, W. Murphy, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: None

Commissioner Zay moved to adjourn the meeting at 8:52 P.M. Seconded by Commissioner Elliot and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

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