

Light Commissioners' Meeting June 18, 2013

Members present were: Dana Blais, Gregg Edwards, Chris Stewart

Employees present were: John Driscoll, Tom Berry

The meeting was called to order at 6:30 p.m. by Dana.

The agenda was approved on a motion by Chris, seconded by Gregg, 3-0 in favor.

Old Business:

The Manager and the Superintendent reported to the Board that there were really no new developments of any significance to report on the Light Plant's progress on Baldwinville Road. Comcast had been thus far responsive to transferring their cable facilities while Verizon had not been. The URD Riser for Sunrise Drive need be coordinated w/ both Comcast and Verizon so it had not been completed as of yet.

The Manager had attempted to meet w/ Bruce Leymaster prior to June 18 but had had to re-schedule his meeting w/ Bruce a few times due to conflicts with both parties. He will have a more detailed progress report at the next regularly scheduled meeting. The manager noted Bruce's particular attention to detail when it comes to these electric rate studies and felt confident that the final product would be a well thought-out one.

There was nothing to report on as of yet regarding the establishment of any OPEB Trust for the Light Plant. Matthew Ide from MMWEC had our actuarial figures and once the Manager had an estimate of the costs involved in setting up the trust the Board would be taking a vote to do so.

New Business:

Reports on the Power Supply Costs for March and April had been prepared for the Board by the Manager to illustrate how each different power resource affects the overall power supply expense. He apologized for forgetting to include the costs for February, which was the real point of the discussion to be had; the major change being the ISO Interchange fluctuation from February to March due to natural gas transportation congestion in New England.

The Manager presented copies of the existing Light Plant Terms & Conditions to the Board and stated that he had sent them to Rubin & Rudman for a legal once-over. He had concerns that over the years some of the material within had possibly become obsolete and/or unlawful due to changing laws and/or regulations in the state of MA. Rubin & Rudman planned to red-line the existing document and present it to the Manager with their suggestions for change, at which time the Manager could present them to the Board for the purpose of a vote on any new changes required. He did not have a timeframe for completion on these.

The Manager discussed with the Board another warrant article to be voted on at the upcoming Special Town Meeting on June 27, 2013, Article #8. This article first appeared at the Special Town Meeting on March 6, 2013 as Article #6, a citizen's petition, and included language to abolish the existing TMLWP Board and promote the Select Board to fill the vacancy. The Manager said that he was confused and furious to see this item back up for discussion and a vote again in June since it was roundly defeated in March by at least a 20:1 margin. He stated that many concerned light and water customers had either called or stopped by the office to ask why the Select Board was doing this again and further, would they continue to do it every 6 months w/ each new special town meeting held.

The Manager's position on this new Article #8 was that it should have been removed from this special town meeting warrant if for no other reason than to not confuse the Town's voters. He was at a loss as to what exactly had changed in the operation of the light and water departments since March to warrant a complete turnaround of the voters this time around. The Manager went on further to state that as far as the Select Board being ready for a move like this, they were not. He stated that the ever-changing make up of not only the Select Board members but also the Town's employees has not been making for a smooth flow of financial transactions between TMLWP and the Town. It was unclear to the Manager how the Select Board intended to take on another \$9.4M worth of financial operations between the light and water departments.

The Manager felt as though Article #8 should be and would be again **defeated** on June 27, 2013. He stated that it wasn't clear to him why 2, 3 or possibly 4 individuals could place this item on a warrant again as it was clearly not the will of an overwhelming majority of the Town's voters to have it pass or even waste time discussing it again.

Other Business:

The Manager felt it important to relay to the Board his thoughts on two issues that were still outstanding which were both related to the Town's processing (or not processing) of some or all of the TMLWP's vendor warrants.

The first of these two issues was the absence of two vendor warrant checks; one for Ferriter, Scobbo & Rodophele (FS&R) for \$2,365.68 and another for Doucette & LaRose (D&L) for \$877.50. Selectman Julie Farrell had deemed the FS&R invoice to be *excessive* and the D&L invoice to be *unlawful*. The Manager was disgusted by both of

these accusations by Julie Farrell, and was particularly so by the fact that NO EXPLANATION WHATSOEVER had been offered to the Manager or to the TMLWP Board by ANY of the Selectmen as to why she had deemed these charges so. The Manager added that considering the extraordinarily high cost of the TMLWP's legal defense over the past several months, mostly due to actions against the TMLWP by Julie Farrell either as a citizen or as a selectman, a legal invoice for \$2,365.68 can hardly be considered excessive.

The Manager went on to say that as far as a legal invoice for \$877.50 being referred to as unlawful, he wanted to know on what basis Julie Farrell was making this claim. Under MGL Chapter 164 Section 56 the manager of municipal lighting "shall have full charge of the operation and management of the plant, the manufacture and distribution of gas or electricity, the purchase of supplies, the employment of attorneys and of agents and servants, the method, time, price, quantity and quality of the supply, the collection of bills, and the keeping of accounts". The Manager felt that his hiring of Attorney Doucette to assist him in the day-to-day operations of the Light Plant for ANY reason at all is not only lawful but directly in compliance with Section 56.

To this day (June 18, 2013) neither the Manager nor the TMLWP Board had been offered any valid reason as to why these checks had been printed out by the Treasurer and then ordered held by Selectman Julie Farrell. He had been engaged in discussions with Nick Scobbo of FS&R over this very issue (which was only appropriate given that it was an invoice for his time) and he had been in agreement with the Manager that this practice is contrary to MGL Chapter 164 Section 56. The statute states that "selectmen in town" (not *selectman* or *selectperson*) "may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive;..."

The Manager and TMLWP Counsel felt that since Julie Farrell was one of five (or four) members of the Town's Select Board that she was prohibited by law to act as the unilateral decider of all TMLWP charges to not be paid. The Manager had previously submitted to the Town a Records Request under MGL Chapter 66 Section 10 asking for any and all documentation supporting (basically) the delegation by the Select Board via an Open Session vote to designate Julie Farrell as a subcommittee of one. He stated that the Town had complied with his request within the allotted time frame and that he had not yet had an opportunity to investigate all of the public records received to make a determination as to whether or not the Select Board took such a vote. The Manager informed the Board that unless he found public records to the contrary, as far as he was concerned the law was being broken and he would pursue further action.

The second of these two issues was that of a timeline of events put together by TMLWP Staff Accountant Jen Belliveau that the Manager thought it critical to share with the Board. The problem stemmed from a sales tax invoice from the MA Department of Revenue (MA DOR) back in March 2012. This was a transitional period for the Select Board's Office for the Treasury, and this invoice was never paid to the DOR, but the funds in the amount of \$1,931.93 had in fact been withdrawn from the Light Plant's account already. The Manager stated that over the next year that several notices were sent to the Select Board's Office regarding the delinquent account status of the Light Plant but these notices never made it to the Light Plant.

Because it seemed to the MA DOR that the Light Plant was ignoring the multiple warnings for non-payment of the original \$1,931.93 invoice from March 2012, a \$75.00 levy was placed against the Light Plant's Century Bank account. It was this levy action that first brought the problem to the attention of Jen, and she promptly made calls to the MA DOR, Town Treasurer Dan Keeney and Town Coordinator Jeff Ritter in an effort to pay this invoice and get this levy released. The Light Plant now had to pay a fine in the amount of \$828.93 to the MA DOR to get the \$75.00 levy released, so Dan now was charged with the task of coming up with town funds to pay the \$828.93 (which they already had in their possession since March of 2012).

Due to the urgent nature of getting this issue resolved, Dan attempted to utilize the town's emergency funds to pay the \$828.93. Wilfred Spring, the Chairman of the Advisory Board, told Dan that he COULD NOT use these emergency funds to pay this now 15 month old invoice. Dan then urged him to reconsider since the Light Plant had had a levy placed against their Century Bank account by the MA DOR due to the Town's not taking care of this invoice over a year ago. Wilfred refused. When Dan asked Wilfred if he could be placed on their (Advisory's) agenda to discuss the matter, Wilfred again refused.

Dan went to the next Advisory Board meeting and pleaded with them for 30 minutes to no avail, so there would be no payment of this \$828.93 to get the Light Plant out of this situation with the MA DOR. The Manager again expressed his extreme dissatisfaction with the Town's handling of all things financial lately as they related to the light and water departments. He added that in addition to this problem, the Town had (particularly since the May 2013 Election) either processed the TMLWP vendor warrants incorrectly, partially, late or not at all in some cases. The Manager went on to remind the Board that under the Town's previous accountant, treasurer and coordinator none of these problems existed, and he added that almost everyone in the Select Board's Office is a relatively new hire.

The Manager also expressed frustration at the lack of communication that existed between town departments now, another relatively new development, and said that the TMLWP should always be informed well in advance of any warrant that will not be processed either not on time or not at all, regardless of the reason(s) why.

At this time [7:55 p.m.] a roll call vote was taken in the Open Session for the Light Board to enter into Executive Session pursuant to Massachusetts General Laws Chapter 30A Section 21 Subsection (2) to conduct strategy sessions in preparation for negotiations with non-union personnel or to conduct collective bargaining sessions or contract negotiations with non-union personnel.

Gregg – "aye"

Chris – "aye"

Dana – "aye"

Dana announced at this time that the Light Commission WOULD NOT be re-convening in Open Session following the Executive Session.

There being no other Open Session business to discuss, on a motion by Gregg, seconded by Chris, 3-0 in favor the Light Commissioners' Meeting adjourned at 7:55 p.m.

Respectfully Submitted,

John M. Driscoll
General Manager