



# Minutes

---

**YPSILANTI COMMUNITY UTILITIES AUTHORITY  
BOARD OF COMMISSIONERS MEETING  
Tuesday, January 26, 2010 – 9:00 a.m.  
YCUA Administration Building  
2777 State Road  
Ypsilanti, MI 48198-9112**

**Members Present:** Mark Namatevs, Larry J. Doe, and Gregory A. Peoples.

**Members Absent:** J. Ray Scott and Deedra Climer Bass.

1. **CALL TO ORDER:** Namatevs called the meeting to order at 9:25 a.m.
2. **MINUTES OF THE PREVIOUS MEETINGS:** Motion by Doe to receive and file the minutes of the December 15, 2009 meeting as presented. Support by Peoples. In favor: All. Opposed: None. (Motion carried.)
3. **NEW BUSINESS:**
  - A. **Request to Approve – 2010 Incinerator Emission Testing – Perry M. Thomas**

Mr. Thomas advised the Board that, each year, YCUA has incinerator emission testing requirements as specified in its air permit issued by MDEQ. He indicated that, this year, the Authority was required to test for carbon monoxide and mercury.

Mr. Thomas explained that, on October 26, 2009, YCUA received an information collection request from the United States EPA. He pointed out that the EPA is collecting emission data from nine facilities that operate sewage sludge incinerators that are considered “performers”.

Mr. Thomas also explained that the EPA’s due date for the emission data was February 17, 2010. He further advised that the EPA is developing maximum achievable control technology standards for sewage sludge incinerators, which are known as “Max Standards”. Mr. Thomas stated that the Authority received a list of pollutants for which the EPA wanted emission data and that the EPA will only accept data that is less than five years old. He acknowledged that YCUA submitted to the EPA its compliance and performance report from 2006 and, after their review, the Authority received a list of pollutants that were still required (particulate

matter 2.5 and condensable particulate matter) and a list of requested pollutants (ten metals).

Mr. Thomas confirmed that the MDEQ requirements and the EPA required and requested emission testing results were the basis for the specifications in the bidding documents. He explained that sealed bids were solicited and, while the bids were out, YCUA requested and was granted a 30-day extension from the EPA to submit this data, changing the due date from February 17<sup>th</sup> to March 19<sup>th</sup>.

Mr. Thomas pointed out that six sealed bids were opened on January 13, 2010 and directed the Board's attention to a copy of the results in their Board packets. He also stated that the lowest bidder, Network Environment in Grand Rapids at \$14,610 is a small company that had a good reference from the MDEQ but that could not service YCUA soon enough to meet the March 19<sup>th</sup> deadline.

Mr. Thomas advised the Board that the second lowest bidder, Bureau Veritas in Novi, Michigan, came in at \$15,139. He indicated that Bureau Veritas can schedule YCUA's job during the week of February 8<sup>th</sup> and they have committed to getting the report back to YCUA by the week of March 15<sup>th</sup>.

Mr. Thomas explained that Bureau Veritas has worked with YCUA before, having done the 2007 and 2009 emission testing and that things went very well. He pointed out that due to the availability and past performance of Bureau Veritas, staff is recommending that they be awarded the contract in spite of the \$529 difference in their bid.

Mr. Thomas recommended approval of the 2010 Incinerator Emission Testing contract with Bureau Veritas North America in the amount of \$15,139.

Gregory A. Peoples inquired as to whether the timing is still a bit close if the EPA's deadline is March 19<sup>th</sup> and Bureau Veritas is promising the report only four days prior. Mr. Thomas responded that the job realistically cannot be done any sooner.

Mr. Namatevs concurred that the timing is too tight and suggested that a request to the EPA for a second extension be added to the motion. Mr. Thomas responded that he is of the opinion that the EPA will be amenable to another extension, particularly with the lack of advance notice.

Motion by Peoples to approve the 2010 Incinerator Emission Testing contract with Bureau Veritas North America in the amount of \$15,139 along with formal request to the US EPA for an additional extension. Support by Doe. In favor: All. Opposed: None. (Motion carried)

**B. Request to Approve - Final Change Order re: Road Repair Project  
2009 II - T. Michael Jessee**

Mr. Thomas advised the Board that Mr. Jessee could not be in attendance and that he would make the presentation of this item in Mr. Jessee's absence. He directed their attention to information that was contained in their packets on the repairs to road cuts made during water main projects this past year.

Mr. Thomas explained that the final change order on this project reflects a deduction in the amount of \$21,342.61. He pointed out that the report from Mr. Jessee outlines the details of each change order item.

Mr. Thomas also explained that the final adjustments are all attributable to actual quantities utilized in the repair procedure versus the quantities that were bid. He further advised that there were \$44,000 worth of decreases and \$27,000 increases which net out to a deduction of \$21,342.61. Mr. Thomas stated that staff has reviewed the change order and is recommending approval.

Mr. Thomas recommended approval of Final Change Order re: Road Repair Project in the credit amount of \$21,342.61.

Motion by Doe to approve Final Change Order re: Road Repair Project in the credit amount of \$21,342.61. Support by Peoples. In favor: All. Opposed: None. (Motion carried)

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

Mr. Thomas directed the Board's attention to the Fund Balance Report for December 31, 2009. He then proceeded to give a detailed report of the information contained in the report and answered questions from the Board.

Informational only; no motion from the Board required.

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

Mr. Thomas directed the Board's attention to the Financial Report – Authority Net Assets Report for December 31, 2009. He then proceeded to give a detailed report of the information contained in the report and answered questions from the Board.

Informational only; no motion from the Board required.

**E. Usage Report – Consumption Report - Larry R. Thomas**

Mr. Thomas directed the Board's attention to the Consumption Report. He then proceeded to give a detailed report of the information contained in the report and answered questions from the Board.

Mr. Namatevs inquired as to whether Mr. Thomas finds the decrease of 14% in water sales to be troubling. Mr. Thomas responded that the decrease is due primarily to the extremely wet summer weather that was just experienced.

Mr. Doe inquired as to how many homes in the area still do not have sprinkling meters. Mr. Thomas responded that he does not have that information but that YCUA staff has been very proactive in reducing expenditures in response to the decreases in consumption.

Informational only; no motion from the Board required.

**F. Attorney's Report – Thomas E. Daniels**

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

He indicated that the Meade Westvaco litigation is the matter of most significance. Mr. Daniels explained that, since the Board met one month ago, there have been significant developments in this case. He pointed out that the most crucial of these is the developments in the arguments surrounding Motions for Summary Judgments filed by Meade Westvaco and Bioclimatic, which are motions asking the federal court to dismiss the cases filed by YCUA and the Christman Company.

Mr. Daniels also explained that the judge took the matter under advisement and, on December 23<sup>rd</sup>, the opinion was received. He further advised that the judge denied the motions to dismiss, specifically finding that there was substantial evidence on every one of the plaintiffs' claims including breach of contract, fraud in the inducement, the move to pierce the corporate veil of the larger \$8 billion company, and on the theory of promissory estoppel.

Mr. Daniels stated that the opinion was very thorough and very well-written. He acknowledged that the YCUA director and other staff members have had the opportunity to review the opinion and the Board members are also welcome to do so if they wish.

Mr. Daniels confirmed that discovery issues continue in this matter as well. He explained that YCUA filed a motion to Compel back in June and continues to fight to obtain additional documents that Meade Westvaco attempts to withhold. Mr. Daniels pointed out that a hearing took place in December in which an additional 2,000 pages of documents were ordered that Meade Westvaco had to produce no later than January 27, 2010. He also stated that the parties were back in court subsequent to that order arguing about additional documents and both parties will appear in court again on January 27<sup>th</sup> with the final 26 documents that remain in dispute and that Meade Westvaco continues to attempt to withhold.

Mr. Daniels advised the Board that he has received two written opinions from the judge's magistrate over the course of this particular discovery dispute and that both of those opinions have been in YCUA's favor. He indicated that the hearing tomorrow will be the final attempt to get discovery issues fully resolved.

Mr. Daniels explained that tomorrow, the court will review each document and listen to each party's arguments before making a decision in which the losing party will be required to pay significant costs to the court. He pointed out that, when this order was issued by the court, there were 216 documents in dispute that Meade Westvaco was attempting to withhold under the attorney-client privilege. Mr. Daniels also explained that the court had previously ordered the parties to meet to see if the issues could be resolved prior to coming to court, which was done. He further advised that, when YCUA staff arrived in their office last week, Meade Westvaco presented them with an additional stack of documents that reduced the documents that they were withholding from 216 to 53 and then, after that, there were ongoing discussions that further reduced them from 53 to 26. Mr. Daniels stated that this was the result of more documents being released by Meade Westvaco and not the result of concessions by YCUA.

He acknowledged that the list of 26 was provided to Meade Westvaco yesterday and that he expects to hear from them later today or early tomorrow leading up to the hearing as to their position on these items. Mr. Daniels confirmed that, at that time, YCUA will need to make some decisions about which items it wants to "go to the mat" on in court with the risk that, if it loses on any particular item, the court will order the Authority to pay costs to the court. He explained that the magistrate did this because she has been frustrated that the dispute has gone on as long as it has but that every time she has made a ruling, she has ruled in YCUA's favor; in other words, she understands why these documents should not be withheld but that the matter can only be resolved by issuing these costs.

He pointed out that he will discuss this matter with Mr. Thomas and other key YCUA staff before the hearing tomorrow and try to narrow the list down or even eliminate the list completely, depending on what Meade Westvaco has to say later today.

Mr. Daniels also explained that there is a pre-trial hearing on this matter on February 10, 2010, at which time the court has ordered that the parties be represented. He further advised that Mr. Thomas will be present along with a representative from the Christman Company. Mr. Daniels stated that the pre-trial order specifically states that the court is instructing the parties to appear on that date with client representatives because the court will want to discuss settlement. Mr. Daniels stated that there is no trial date yet but that it will be established for probably sometime in May or June if the settlement negotiations fail.

He acknowledged that none of these developments is out of the ordinary.

Mr. Daniels advised the Board that final resolution is approaching in the matter of the WTUA arbitration appeal. He indicated that, last week, YCUA argued its Motion for Sanctions on the theory that the appeal should never have been filed in the first place and the court ruled in the

Authority's favor. Mr. Daniels explained that the request was in the amount of \$37,795 and that YCUA will find out within the next several days whether WTUA will ask for an evidentiary hearing on the reasonableness of that amount. He pointed out that the matter will hopefully be over at that time although WTUA would still have the right to take the matter to the Court of Appeals once the final order comes through.

Mr. Peoples commended Mr. Daniels for all of his hard work. Mr. Namatevs commented that it is clear that the Meade Westvaco matter is expending a lot of time and energy and indicated that he hopes it can be resolved soon.

Informational only; no motion from the Board required.

**G. Director's Report - Larry R. Thomas**

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

He indicated that he attended a meeting last Thursday for DWSD customers and learned that the rate that YCUA is charged for water will increase on July 1, 2010 by 18.6%. Mr. Thomas explained that the DWSD increase to all customers averaged 9.5% and that YCUA received a higher increase due to an increasing difference in the ratio between its average day usage and its maximum day usage. He pointed out that this is primarily associated with the decrease in the heavy industry such as General Motors and Hydramatic, whose water usage tends to be consistent throughout the year while residential customers' usage varies greatly between hot and cold weather.

Mr. Thomas also explained that YCUA's storage still gives it the ability to maintain its ratio from peak hour to max day at basically zero, which continues to keep the Authority's rate relatively low compared to many surrounding communities. He further advised that no municipality can maintain enough storage to even out its max day.

Mr. Thomas stated that this matter was discussed at last week's Finance Committee meeting and that they requested information on where YCUA's rate falls in comparison to the other contract communities. He directed the Board's attention to a handout listing all of the current and proposed rates of DWSD's customers and proceeded to discuss the information in detail.

Mr. Thomas confirmed that the Finance Committee also requested information regarding the result of passing on the entire 18.6% increase on to YCUA customers. He again directed the Board's attention to a handout outlining those calculations, which he cautioned was only for informational purposes and was not intended to be a request for a rate increase at this time. Mr. Thomas pointed out that these calculations only

account for water and do not take into consideration sewer or the city surcharge. He also stated that, presumably, if you increase the water rate in the city, you would decrease the surcharge correspondingly by 80% of this because the surcharge is intended to raise money to make bond payments and it is a percentage of the total bill.

Mr. Thomas advised the Board that, with the surcharge remaining the same on these preliminary calculations, an 18.6% water rate increase to customers would result in an increase in the City Division of \$2.93 per month to a minimum user and \$5.69 per month for an average user and an increase in the Township Division of \$1.85 per month to a minimum user and \$3.77 per month for an average user.

He indicated that he would provide this data in electronic format to any of the Board members who wished to pass it on to their respective municipal officers.

Mark Namatevs inquired as to why Belleville's rate is going down 18%. Mr. Thomas responded that, while he has not thoroughly researched this, he suspects that this is because both Belleville and Van Buren Township have renegotiated their contracts with much lower peak hour demands. Mr. Thomas explained that both communities have recently passed ordinances which require their residents to water only at certain times of the night when there are no peak usage restrictions. He pointed out that this is usually between 11 p.m. and 5 a.m. Mr. Thomas also explained that passing such an ordinance for YCUA would have no impact because the peak usage is controlled by the Authority's storage capabilities.

He further advised that he is also of the opinion that Belleville and Van Buren Township are making a gamble that these lower peak usages will actually occur and that, if people violate the ordinance and water their lawns during the day anyway, they will be faced with additional charges from DWSD. Mr. Thomas stated that YCUA's contract, on the other hand, is reasonable and realistic.

Mr. Namatevs inquired as to why there is so much disparity in the rates charged to the various communities. Mr. Thomas responded that it has to do with the ratio of commercial versus residential users as well as elevation and distance from the Detroit water plants.

Mr. Doe inquired as to whether the \$2.93 estimated is totally the cost of the water itself or whether it includes costs for servicing. Mr. Thomas responded that this figure included everything and that the cost of the water alone would total about half of the \$2.93. He acknowledged that about 50% of the water budget is for the cost of water and the rest is for infrastructure.

Mr. Doe commented that it makes sense to him that, theoretically, it would be possible to only pass on the cost of the water itself rather than also

increasing the delivery charges, which is not costing the Authority more. Mr. Thomas responded that this is possible and that, while some of the other costs such as utilities will increase as well, it is presumed that they will not increase as much as the cost of the water from DWSD.

Mr. Thomas confirmed that since this rate does not go into effect until July, YCUA will not see the increase until August and there will not be a rate increase to the customers until the new fiscal year begins on September 1<sup>st</sup>.

Mr. Doe inquired as to whether DWSD needs approval from the state for these rate increases. Mr. Thomas responded that the only approval needed is from the Detroit City Council.

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 – T. Michael Jessee**

Presenting this item in Mr. Jessee's absence, Mr. Thomas reminded the Board that this item was not approved at the November Board meeting and was referred to the Finance Committee at the December Board meeting after a presentation by Dan Nawrot of Rainbow Construction.

He indicated that the Finance Committee met last Friday and reviewed the change order in detail. Mr. Thomas explained that each of the items was either requested specifically by YCUA or requested by the road commission because of field conditions. He pointed out that the Finance Committee made a recommendation to the Board to approve the change order, despite the length of time that has elapsed since it was first drafted.

Mr. Thomas also explained that the change order is legitimate and ought to be paid. He further advised that Tom Daniels researched legalities surrounding the timing issues and that there is nothing in state statutes or the contract that would release the Authority from its responsibility to pay. Mr. Thomas stated that, additionally, Mr. Daniels researched the issue of paying interest on the retainage and discovered that the state statute does require that it be paid. He acknowledged that calculations show that interest due to be \$2,903.96.

Mr. Thomas confirmed that the interest rate has varied from year to year with the lowest being .15% currently and the highest in 2006 at 4.73%. He explained that this reflects money market rates. Mr. Thomas pointed out that the original change order amount was \$17,222.45.



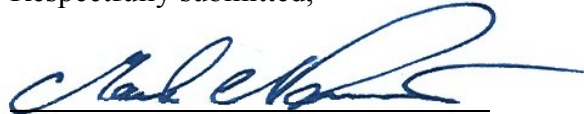
Mr. Doe inquired as to whether the state statute can be applied to situations where bonds have been secured. Mr. Daniels responded that the statute only applies to retainages that are held fully in the Authority's control and not to situations where loans or bonds are concerned.

Mr. Thomas recommended approval of Change Order No. 1 re: Sweet Road Project in the amount of \$17,222.45 with interest on the retainage.

Motion by Peoples to approve Change Order No. 1 re: Sweet Road Project in the amount of \$17,222.45 with interest on the retainage. Support by Doe. In favor: All. Opposed: None. (Motion carried)

6. **STATEMENTS AND CHECKS:** Motion by Doe to pay the bills in the amount of \$3,805,440.01 with an addendum in the amount of \$8,673.75. 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 10:16 a.m. Support by Peoples. In favor: All. Opposed: None. (Motion carried)

Respectfully submitted,



MARK NAMATEVS, Vice Chair

