

**Minutes of the
Special Board Meeting
Of the Pittsburgh Water and Sewer Authority
Held on April 5, 2019**

This Special Board Meeting of The Pittsburgh Water and Sewer Authority, having been duly advertised in accordance with the Sunshine Act, was called to order on April 5, 2019, at approximately 9:00 a.m., in the Board Room located on the first floor of 1200 Penn Avenue, Pittsburgh, Pennsylvania 15222.

The following members of the Board were present: Mr. Paul Leger. Participating via Conference Call were: Mr. Jim Turner, Ms. Margaret Lanier and Ms. Deborah Gross.

Absent was Ms. Chaton Turner.

There was a quorum for this meeting.

Present from the staff were: Robert Weimar, Debby Gibson, Debbie Lestitian, Rachel Romano, John Nagel, Edward Barca, Jennifer Presutti, Barry King.

Also present was Mark Nowak of Clark Hill PLC, Solicitor; Vaughan Leer of E Holdings.

Chairperson Leger advised that after the last Board Meeting on March 22, 2019 there was an Executive Session Meeting held to discuss legal matters.

Chairperson Leger asked if there was any public comment. There were no speakers.

RESOLUTIONS

**No. 60 of 2019 Approving the Award for 2019 Sample Collection and Lead Testing
Contract Option 2-PWSA73 to 120 Water Audit and CR Testing**

Funding: Operating and Capital – Cumulative \$636,400.00

Barry King, Interim Director of Engineering, explained the details of this Resolution. Approval is requested for the award of the 2019 Sample Collection and Lead Testing Contract to 120 Water Audit in the amount of \$301,000.00 for LSLR and in the amount of \$335,400.00 for CR testing, for a total of \$636,400.00. The cost will be allocated to the capital budget for the LSLR.

Chairperson Leger entertained a motion to approve for discussion. Ms. Lanier so moved, and Mr. Turner seconded the motion. No discussion held. Board unanimously approved and the Resolution was adopted.

No. 61 of 2019 Approving a Letter Amendment to the November 17, 2017 Consent Order and Agreement to Establish the Compliance Dates for Orthophosphate Chemical Corrosion Treatment

Robert Weimar, Executive Director, explained the details of this Resolution. PADEP and PWSA entered into a Consent Order and Agreement (COA) dated November 17, 2017, for the implementation of specific lead service line and water supply corrosion treatment. The COA established a completion date for the corrosion control treatment to be within 90 days of PADEP's Approval of the Construction Plans. The PADEP will memorialize the schedule for the requisite facilities startups. The PADEP requires a formal Board Approval of this COA time extension for facilities startups.

Chairperson Leger entertained a motion to approve. Mr. Turner so moved, and Ms. Gross seconded the motion. Chairperson Leger motioned for discussion. Ms. Lanier requested a correction on the Statement of Issue. It had the date of the COA as November 17, 2019, and it should be November 17, 2017. Chairperson Leger entertained a motion to amend the Resolution as it was presented to correct the date of the COA to November 17, 2017.

Ms. Lanier so moved, and Ms. Gross seconded the motion. Motion to amend the Resolution was unanimously accepted. The amended Resolution was proposed, seconded and unanimously adopted.

No. 62 of 2019 Authorizing Certain Officers and Officials to Take Action With Respect to the Authority's Indebtedness, Which Includes Issuing New Bonds and Amending Existing Indentures and Other Financing Agreements.

No. 63 of 2019 Authorizing Certain Officers and Officials to Take Action With Respect to the Authority's Outstanding Indebtedness, Including Issuing Refunding Bonds and Amending Existing Indentures and Other Financing Agreements.

**Funding – Resolution 62 – Not to exceed \$160,000,000
Resolution 63 – Not to exceed \$145,000,000**

Chairperson Leger requested that the two Resolutions be taken together as companion pieces since they both involve bond issuance Resolutions and the Board can vote once.

Ed Barca, Treasurer of Finance, explained the details of this Resolution. Resolution 62 authorizes Authority Management to issue a fixed-rate bond with a principal amount not to exceed \$160 million to pay off the outstanding amount on the capital line of credit and amend and/or add supplements to the existing indentures and financing agreements as a result

of completing the transaction described above. Issuing these fixed-rate bonds will replenish the capital line of credit and allow the Authority to continue the progress made with the robust capital improvement plan.

Resolution 63 authorizes Authority Management to issue fixed-rate refunding bonds in a principal amount not to exceed \$145 million to refinance all of the Authority's outstanding subordinate debt and amend and/or add supplements to the existing indentures and financing agreements as a result of the completion of the transaction described above. Refunding the Authority's subordinate debt with fixed-rate debt will terminate roughly 33 percent of all SWAP's within the debt portfolio. This will be considered a credit positive for the Authority as it will help to de-risk the debt portfolio while also providing a clear path to paying off the debt.

Chairperson Leger entertained a motion to approve for discussion. Ms. Gross so moved, and Mr. Turner seconded the motion.

Ms. Gross stated that PWSA has been very eager to explore all options to clear PWSA's portfolio of these bad SWAP deals. She stated that she met with Carrie Sloan of the Roosevelt Institute, who is studying Municipal SWAP deals, and learned that municipalities and authorities are paying too much in termination fees. She asked about PWSA's knowledge and review of the Philadelphia class action suit against its lenders on SWAP financings.

Ed Barca stated that one option that municipalities and utilities have in issuing variable-rate debt is that you can issue variable-rate debt obligations, and roughly every week you have to go hire a remarketing agent, which is usually a bank, who then renegotiates that rate for you on an ongoing basis. Philadelphia is suing banks that have a remarketing practice of resetting the interest rate. That lawsuit alleges manipulation of interest rates from 2008 to 2016. In 2017, the PWSA cleared its portfolio of all variable-rate debt obligations. The PWSA has a sole bondholder for the variable-rate debt. Bank of America and JP Morgan own all the variable-rate debt. The interest rate PWSA pays on that the debt is tied to LIBOR. In PWSA's current debt portfolio, it does not have exposure to a manipulated interest rate.

Mr. Barca stated that the second issue is the cost of termination of the SWAP. As of this week, the termination costs for this refunding only is \$21 million. Ms. Gross stated that it sounded exorbitant and unfair. Mr. Barca stated he was not going to disagree that the termination costs are high. He said the point we need to drive home is that if PWSA does not proceed with the SWAP's it has on the books, there could be more substantial risk that the Authority could incur costs in excess of \$21 million. He stated that given

the opportunity PWSA has to refund this and comply with what the PUC and the rate agencies requested, he believes this is the best path forward.

Ms. Gross inquired further as to the time window and whether this refunding Resolution could be held. She stated that if PWSA were to challenge, legally, the termination fee structure, it would ultimately be relieved from the obligations of those bonds. It is a legal route that other municipalities are taking. Mr. Barca stated that PWSA's bond counselor and financial advisor did research on other outstanding lawsuits surrounding SWAP's and different termination costs. They could not find anything specific to the termination costs. The Philadelphia class action does not challenge the termination costs. As far as market conditions go, PWSA will be tracking this all the way up until closing. If the markets do go against PWSA, and these are not favorable to refund, PWSA will pull away from funding and not proceed forward. Mr. Barca stated that PWSA is trying to work with the PUC to get the PWSA Board's approvals so that PWSA can get the PUC end to move forward with this transaction. PWSA has a landscape of approvals it has to go through before it can get this deal done in the current market.

Mr. Leger stated that PWSA is on a tight schedule as it has to get PUC permission, then has to go to the rating agencies. All of this has to be done before PWSA goes for an auction and closing. He asked if the Board approves this today, could the Board undo it at the next meeting. Mr. Barca stated that the Board could, but that he would be hesitant to approve something today and submit that to the PUC with the potential that it would be unapproved in three weeks. However, he stated that the market is stable, so the rates should stay around 3-1/2 percent interest rate until closing.

Ms. Gross stated there is still 67 percent, hypothetically another \$40 million, of termination fees PWSA could try to get out of if it were to take a legal strategy. Mr. Leger stated that PWSA would still have about 67 percent of the SWAP to be liquidated. He stated that since he is not a lawyer, maybe the legal people can give some advice on this. Is PWSA in a better position if it incurs \$21 million dollars in fees or is it damaged more by that in a legal case than if it simply sued on the potential of termination fees?

Mr. Nowak stated his belief that a decision to pay termination fees is made by the Board's exercising their fiduciary duty in the best interest of the PWSA given the market conditions, risk and advice given at the specific time of the decision. He further stated that the calculation as to whether it is a good business deal or not is a Management and Finance and Board decision.

Ms. Lestitian stated her belief that once you pay the money, it is more difficult to get it back.

Mr. Barca stated that, in his opinion, PWSA needs to be careful about when or if it litigates these banks for these SWAP deals. JP Morgan and Bank of America hold about \$103 million of PWSA debt, and there is over \$300 million of SWAP's. He further stated that if PWSA were to litigate, they could terminate PWSA's SWAP's or sell PWSA's debt. That could leave PWSA on the line for hundreds of millions of dollars, instead of \$21 million. Mr. Turner stated that it is a terrible situation that PWSA is in as a result of terrible decisions that were made many years ago. He commended Mr. Barca on trying to balance the risk and reward. He further stated that he hated the notion of paying the termination fees, but also recognized that they could be much higher. He recommended that the Board proceed with today's vote. In the interim, Mr. Barca can certainly work with Ms. Gross. He stated that he would not be at the next board meeting, but that he would move to approve the Resolution. Mr. Leger said he would add the stipulation that the Board contact Carrie Sloan and whomever else the Board can get involved to find out what PWSA's legal status would be if it joined the class action suit.

Ms. Lanier asked Ms. Gross if she still requested a hold of the Resolution. Ms. Gross stated she needs more education about termination fees and litigation because it could impact the Board's decision. She further stated she will be abstaining from this specific Resolution because she is not sure she is understanding it all and the risks and rewards. Mr. Leger stated that closing is projected to be mid to late June. The Board has adequate time to research this matter, with the ability to pull the refinancing right up to closing. He further stated he thought the Board should proceed so that PWSA does not miss the closing date by some technicality while the market is in PWSA's favor.

Ms. Gross thought it prudent that the Board move forward on the timeline for this Resolution, but continue to do more fact-finding about challenges to the termination fees nationally. Mr. Leger stated that the Board will reach out immediately to the proper people to see what is involved with the litigation and its status. Ms. Lanier stated she just wanted to make sure that by voting for this Resolution, the Board is agreeing to \$21 million in termination fees, but that PWSA still can get out of the deal before closing. Mr. Leger stated that the approval would be for a \$21 million termination fee, but it could be less or more depending on what the status is at the time of closing. Mr. Turner stated he is very comfortable with moving forward with the additional fact-finding as Ms. Gross indicated and thanked her for bringing Ms. Sloan and others to the Board's attention.

Chairperson Leger requested a vote on Resolutions 62 and 63. Three Board members voted yes on both Resolutions. Ms. Gross voted yes on Resolution 62, but asked to abstain her vote on Resolution 63. Resolution 62 was unanimously approved and adopted. With respect to Resolution 63, there were three votes in favor of the Resolution and one abstention. This Resolution was adopted.

ADJOURNMENT OF THE MONTHLY BOARD MEETING

Chairperson Leger entered a motion to adjourn. Ms. Lanier so moved, and Ms. Gross seconded. The motion to adjourn was unanimously approved.

The next meeting will be held on Friday, April 26, 2019 at 10:00 AM.

James Turner, Secretary