

UTILITIES SERVICE BOARD MEETING

May 20th, 2013

Utilities Service Board meetings are recorded electronically or stenographically and are available during regular business hours in the office of the Director of Utilities.

Board President Swafford called the regular meeting of the Utilities Service Board to order at 5:02 p.m. The meeting was held in the Utilities Service Board room at the City of Bloomington Utilities Administrative Building in Bloomington, Indiana.

Board members present: Tom Swafford, Pedro Roman, Sam Frank, John Whikehart, Tim Mayer, Ex-Officio, and Tom Micuda, Ex-Officio. Staff members present: Patrick Murphy, Tamara Roberts, Michael Horstman, Tom Axsom, Phil Peden, Mike Hicks, Jon Callahan, John Langlely, and Jane Fleig. Others present: Sue Mayer and Pete Batule.

MINUTES

Board member Roman moved and Board member Frank seconded the motion to approve the minutes of the May 6th meeting. Motion carried, 4 ayes, 3 members absent, (Roberts, Ehman, Banach).

CLAIMS

Board member Roman moved and Board member Frank seconded the motion to approve the ACH payments as follows:

Vendor invoices that will be submitted to the Controller's Office on May 17th included \$0.00 from the Water Utility; \$1,051,740.80 from the Wastewater Utility; and 0.00 from the Wastewater/Storm water Utility. Total Claims approved, \$1,051,740.80.

Motion carried, 4 ayes, 3 members absent (Roberts, Ehman, Banach).

Board member Roman moved and Board member Frank seconded the motion to approve the ACH payments as follows:

Vendor invoices that will be submitted to the Controller's Office on May 20th included \$221,327.51 from the Water Utility; \$19,668.00 from the Wastewater Utility; and 0.00 from the Wastewater/Storm water Utility. Total Claims approved, \$240,995.51.

Motion carried, 4 ayes, 3 members absent (Roberts, Ehman, Banach).

Board member Roman moved and Board member Frank seconded the motion to approve the claims as follows:

Vendor invoices submitted to the Controller's Office on May 24th included \$1,143,948.69 from the Water Utility; \$185,296.17 from the Wastewater Utility; and \$4,512.94 from the Wastewater/Storm water Utility. Total Claims approved, \$1,333,757.80.

Motion carried, 4 ayes, 3 members absent (Roberts, Ehman, Banach).

Wire transfers and fees for the month of February 2013:

Board member Roman moved and Board member Frank seconded the motion to approve the wire transfers and fees for the month of February 2013 in the amount of \$308,136.48.

Motion carried, 4 ayes, 3 members absent (Roberts, Ehman, Banach).

Interoffice Memo Payment Certificate No. 1 for the construction of the Lake Griffy Dam Improvements project:

Engineer Phil Peden presented an interoffice memo detailing the first payment certificate from the Lake Griffy Dam Improvements Project for approval by the Board. The pay estimate for the grant-funded work by Dave O'Mara Contractors is for \$86,118.43. Work completed includes fence removal, installation of the access road to the intake tower, 50% completion of clearing debris from inboard slope, 50% completion removal of trees and woody vegetation, replacement of riprap, and installation of 8" concrete in spillway floor.

Mr. Peden updated that in the next week or two they will begin to remove the concrete inboard slope, weather-permitting.

Board member Roman moved and Board member Frank seconded the motion to approve the Interoffice Memo Certificate No. 1 for the construction of the Lake Griffy Dam Improvements Project in the amount of \$86,118.43.

Motion carried, 4 ayes, 3 members absent, (Roberts, Ehman, Banach).

REQUEST FOR APPROVAL OF CHANGE ORDER NO. 3 FOR DILLMAN ROAD WASTEWATER TREATMENT PLANT EFFLUENT FILTER REHABILITATION PROJECT

Capital Projects Manager Mike Hicks presented this item. The project had started as an emergency measure to rehabilitate filters number 1 and 2 of the four filters at Dillman Plant. Later it was discovered that the other filters were also in bad shape and so a change order had been completed to have the contractor replace all four filters. This is the third and final change order, which will allow CBU to close out the project with the contractor, City Infrastructure Inc., and has three items included. The first item is payment for additional anthracite media, which was necessary after some media loss during start-up and adjusting controls. There was a significant amount of anthracite needing to be purchased, about five inches, and CBU made an agreement with the contractor who was thought to be responsible as well as the supplier of the underdrain system, Roberts Company. It was agreed that those two parties would pay about 70% and CBU would pay about 30% (\$13,200.00), as CBU had some responsibility in the contracting for controls and instrumentation with a third party.

The second item is a credit for the deletion of chemical grout injection. Each bidder included a unit price for 50 lineal feet of crack repair. In the end, only about 30.5 feet were needed. Therefore the contract price is decreased by \$3,861.00.

The third item is a reconciliation of the work allowance. Each contractor's bid included a \$25,000 work allowance for general items that may come up. CBU chose to use nearly all that money for a third party that was doing the programming and SCADA configuration. \$22,171.52 of the \$25,000 was used, and so the contract is reduced by the difference of \$2,828.48.

The net adjustment will be a contract price increase of \$6,510.52. In the next round of claims the Board will see the final payment to the contractor, and with that CBU can request a maintenance bond and release retainage for this completed project.

Board member Roman moved and Board member Frank seconded the motion to approve Change Order No. 3 for Dillman Road Wastewater Treatment Plant Effluent Filter Rehabilitation Project.

Motion carried, 4 ayes, 3 members absent (Roberts, Ehman, Banach).

OLD BUSINESS:

Director Murphy updated the Board regarding a customer appeal from a previous meeting, for which the Administrative Subcommittee had also held a meeting. The Board had posed some additional questions and expressed a desire in seeing additional charges reinstated for the petitioner, Mr. Matt Cascio. Project Coordinator Nancy Axsom and Mr. Murphy have discussed those issues, and have asked City Attorney Vickie Renfrow to review. She is working on an advisory memo that will be brought forth to the Board in the weeks to come.

Deputy Director Langley brought forward an update on Upland Brewing Company (UBC), which submitted a letter with proposed alternatives for the high-strength surcharges under dispute from November, 2012. The letter was passed out to the Board, and suggests three different ways of averaging charges to UBC. Mr. Langley recapped that several weeks ago at a meeting of the Administrative Subcommittee, the committee brought forward a recommendation to deny UBC's appeal. Staff supports that recommendation to the full Board. Both the rate ordinance and the sewer ordinance require that Utilities apply extra charges to wastewater containing excessive BOD levels. CBU staff collected a sample in November which measured 10,600 ppm. The CBU limitation on BOD is 300 ppm. Customers discharging BOD waste in excess are surcharged in accordance with CBU rules and standards of service, and that is what was applied here. Prior to sending that bill to UBC, pretreatment staff reviewed the laboratory procedures, the ordinance and departmental rules, and the calculation of the bill to verify the accuracy of the charges. Staff determined that the charges were correctly calculated. UBC appealed the surcharge to the Administrative Subcommittee and that hearing was held on April 8th. The Subcommittee approved a recommendation to the full Board to deny the UBC appeal. At its April 8th meeting the full Board agreed to allow two more weeks for staff and UBC to review the facts of the case and discuss further. That meeting was held about two weeks ago, and the matter was discussed at length. The staff's positions did not change as a result of that meeting.

The letter presented to the Board proposes three different methods of calculating an average of BOD charges. However, the rules and ordinance require that extra-strength charges be calculated on actual measurements, not averages. Staff is again recommending that UBC's appeal of Nov. 2012 surcharges be denied.

Board President Swafford asked for any updates from the Administrative Subcommittee. Subcommittee Chair Whikehart stated that the Subcommittee has not met subsequent to its initial recommendation, and the recommendation for denial stands.

Board Member Roman stated that the letter is dated from today, May 23rd. He clarified that the recommendation by staff is to deny UBC's proposed alternatives from the letter. Mr. Langley confirmed.

Mr. Whikehart added some observations. The original letter from UBC, dated Feb. 2013, has references in it that suggest the data is inaccurate. Yet, there is no evidence to support that. That letter states that UBC feels the surcharges are excessive and do not represent the true effluent discharged. There is no evidence that the test itself was inaccurate. Certainly the amount is higher than it has ever been, so he understands the statement that the charges are excessive. However there is nothing to state that the sample was wrong. Even today's letter mentions "we're caught between common sense and the ordinance", and that probably happens to us all of the time. With respect to the data being more representative of the actual effluent discharge the letter states, "it is clear that the BOD and TSS data was not accurate for the month of November, and should be considered an outlier", but there is no evidence to support that statement. Whenever Mr. Whikehart reviews these appeals, he looks at the following questions: Are the rules and regulations clear? In this case, it seems they are. The second question is whether they are consistently applied? It seems as though this is the case as well. Finally, is there evidence that the data is inaccurate? Not seeing anything to suggest that much, Mr. Whikehart has no alternative but to vote to deny.

Mr. Pete Batule, Vice President of Operations for UBC, spoke. The letter to the Board presents more data points, across more months. If the data is viewed over time, with more samples pulled it becomes more accurate, and that is the argument UBC is trying to make.

Board President Swafford commented that when looking at the BOD data, there are only two out of a dozen months in which UPC comes close to meeting the limit. Mr. Batule understands that based on their process, there will be BOD levels in excess, but argued that the data over time shows that spikes as high as the November one are unusual and unrepresentative of their process. Mr. Swafford pointed out that in November, BOD's are at 10,600 ppm. In February, they were at 7,500 ppm, still a high amount not far off from November. December, January, and February were still very high. Mr. Batule clarified that as of February, they are looking at one sample per week. UBC understands the surcharges and is agreeable to paying them, but November seems excessive. The alternatives proposed include a couple of different ways to include more data points and be more representative of what they are discharging.

Board Member Frank asked if there is any other sampling method which conforms with the law. Deputy Director Langley replied that a measured value is required, and CBU has applied those charges for the month consistently for about thirty years. CBU believes the ordinance is being uniformly applied. Mr. Langley had additional data to share with the Board which included a data set dating back several years, also showing occasional spikes even higher than November's. At that point in time, CBU questioned the validity of the sample and decided not to apply those charges. These spikes did exist prior to November, and are expected to exist in the future. The samples collected in prior years were from manholes, meaning the waste had already been discharged to CBU.

Board Member Roman asked about the ordinance which sets charges for excessive amounts of BOD and TSS. Mr. Langley clarified that it is a rate for BOD in excess of the 300 ppm. Mr. Roman asked if the ordinance states how and when the samples are done. Mr. Langley said it does not. There is a standard method for analyzing BOD (waste that pulls oxygen out of the water and is harder to treat than domestic septage). Utilities across the United States use surcharges to level the playing field so that household customers are not subsidizing businesses. Pretreatment Coordinator Tamara Roberts added that CBU incorporates EPA requirements for all contaminants sampled for. For BOD, an EPA

rule specifies the method and the type of sampling based on the type of contaminants, whether it's a grab sample or composite. Some contaminants cannot be composited. BOD is one, as it has a short holding time of 24 hours. CBU does not do composite sampling because it is so labor and time intensive. Staff would have to go out one day to set up the sampling, let it run for 24 hours, come back the next day, and take the sample to the lab. CBU has been doing grab samples. Mr. Roman asked if it is fair to say that in this case the samples and the laboratory treatment of those samples were correct. Mr. Langley replied affirmatively. Mr. Roman also clarified that neither the ordinance nor CBU rules require a sample to be made at a certain time. Ms. Roberts affirmed, and pointed out that it would need to be in the month for which the charges were applied. Mr. Roman stated that is a business practice CBU has followed for many years, and the business practice UBC is arguing against is not in the ordinance or rules, just common policy of CBU. So the practice which has been used for quite some time could be reevaluated at some time if staff and the Board are interested. Mr. Roman asked who sets limits on BOD and TSS. Ms. Roberts explained that those are set in the ordinance, and are based on an average of a high use residential customer. Other utilities around the country or state are using 250ppm. Mr. Roman asked Ms. Roberts if she feels the levels used for surcharges are adequate and she did agree they are reasonable.

Mr. Roman stated that the permit for UBC establishes a certain level of discharge, which is violated constantly. Ideally, UBC will have the tools in place to keep the discharge within the levels in the permit. The argument is not about the peaks. Mr. Roman is more concerned about the constant excessive discharge levels and would like a more universal solution for permitting in such cases.

Mr. Batule reiterated that UBC is well aware of the BOD levels and that those will occur at peak time. From an economic standpoint, putting in a full treatment facility is not attainable at this point.

Board Member Mayer asked if staff had looked at other micro-breweries and how these issues are handled elsewhere. Ms. Roberts shared that she had recently attended a national training which included this topic in one of the sessions. Other utilities are finding the same high-strength, high BOD, high solids, and PH fluctuations. Ms. Roberts spoke to several others about their surcharges and how they are applied, and found that while there is variation in sampling and surcharge application, CBU seems to be following similar procedures. There is a distiller in Indiana which samples every day, but that is a much larger company than UBC. If CBU had unlimited resources, of course there is room for improvement, but the reality is that CBU staff does the best they can with limited resources. Staff has worked well with UBC to allow more sampling and assure they have been treated fairly, but staff also needs to assure other customers are being treated fairly. In summary, other places are having similar issues and are looking at ways to deal with it. Some are looking at separating high strength waste from medium and low strength, or doing different things with their solids. Hopefully CBU can keep working with UBC on these issues moving forward.

Mr. Whikehart wished to disclose that Ivy Tech and UBC have had recent discussions, and are exploring a partnership between Ivy Tech's Biotechnology degree program and UBC to assist with their sampling efforts, especially given the proximity of the two organizations. That is a potential partnership, unrelated to this historical issue, and Mr. Whikehart does not believe he has a conflict in voting on the matter today.

Mr. Swafford stated that CBU has rules and regulations, and treats everyone the same. He hopes UBC can figure out a way to address some of these issues.

Board member Whikehart moved and Board member Frank seconded the motion to deny the appeal of Upland Brewing Company's November 2012 surcharges.

Motion carried, 4 ayes, 3 members absent, (Roberts, Ehman, Banach).

Director Murphy clarified that UBC should not be characterized as being in violation, as previously stated. They exceeded a strength level. CBU will work with UBC moving forward and afford that opportunity to any customer.

Deputy Director Langley added that he appreciates the Board's support as well as the professionalism displayed by UBC in working through this appeal process. He looks forward to a very positive relationship in the future.

NEW BUSINESS:

N/A

SUBCOMMITTEE REPORTS:

N/A

STAFF REPORTS:

Director Murphy reported that staff will begin working with Board President Swafford on the budget. He also asked that if any Board members will be absent in June or July to please inform him, as CBU would like to have the budget approved by the Board before passing it onto the Mayor.

Additionally, CBU has begun the purchase of vehicles previously discussed with the Board.

PETITIONS AND COMMUNICATIONS:

ADJOURNMENT:

The meeting was adjourned at 5:42 p.m.

L. Thomas Swafford, President