

**MINUTES OF THE AUBURN MUNICIPAL POWER AGENCY
TUESDAY, FEBRUARY 15, 2011
AT 4:00 P.M.**

Member Present: Dennis Zach, Chairperson, John Montone, Luke Rybarczyk, Nancy Hussey, Mike Luksa, Bill Graney and James Wride

Members Absent: Mayor Michael Quill and Krste Biljanoski

Ex Officio Absent: Vijay Mital

Staff Present: Christina Selvek, Vicky Murphy, Andy Fusco and Bill Lupien

Staff Absent: Anthony DeCaro and Bruce Ross

Chairperson Dennis Zach called the meeting to order on Tuesday, February 15, 2011 at 4:00 p.m.

Mr. Zach: Introduced Jim Wride new member appointed by Council. Next item on agenda did everyone read the corrected minutes. Motion made by Mike Luksa and seconded by Nancy Hussey. All in favor.

Next item Mill Street hydro update. That has been going around and around. Chant was in contact with us last week because there was another NYSEERDA RFP out on incremental power, which Mill Street probably would have been eligible for but it had to be in by last Thursday. This comes out every year and we can apply for it next year but would only for improvement on the plant. If we made say 1,000-megawatt hours one year and we upgraded the plant so it doubled that the other 1,000 hours would fall under that incremental grant. Chant is interested in helping develop whatever hydro there is on outlet, but told them Mill Street was on hold to move ahead at this point. Asked them to look at the contract that we sent them and see how close they could come to without spending a lot of money on it.

Mr. Fusco: The next step for Chant is to submit their proposal what it is that they propose to do for us for Mill Street only. We want Mill Street to be addressed first and once we have a comfort level with our operator on Mill Street we will talk about other opportunities down stream and possibly

one upstream. My recommendation to you is to tell Ted to send us a proposal asap.

Mr. Zach: I was talking with Ted and telling him where we were at, we were going to make an upgrade choice and that would be pretty much on hold and go back to our original band aid project. The place is costing us money; the FERC permit is probably going to get questioned in August when they do the next inspection. We don't want to lose that and trying to figure what Council might go along with probably better chance if we looked at doing the band aid fix ourselves and Chant said they a customer that would take power at \$50 a megawatt which still isn't enough money to make it fly. I am open to ideas on how to move ahead but I Vicky's proposal that we just getting running again as cheap as we can let it run for a 1or 2 and see if we can do an upgrade down the road. Everything is a total loss if it is sitting there the yearly cost of just sitting there is pretty good or sell it the whole thing dam and all.

Mr. Fusco: Chant should make a proposal that is most financially attractive to him and us we are partners. If he thinks he can install hardware at his cost to have the generation power 270 to 300 days a year and we can make money doing that he should propose that. If he thinks that is too much of a risk that he can't make money putting in apparatus that generates power at low flows then come up with a proposal, what ever it is let him make a proposal.

Mr. Zach: At what rate in order to make the project attractive we have to get above that 8 cent a kilowatt hour or it is not going to fly.

Mr. Fusco: If his proposal is I can't conceivable methodology for getting Mill Street up and running in the current client because the price of electricity is so low we ought to have that in hand.

Mr. Zach: I told him I would get back him after today's meeting with some idea as to where we want to go. I think Vicky' idea would be most acceptable at this time. If we are going to try and save the FERC permit this is the way to go. Chant would be interested if we just want to fix it up band-aid it they would be interested in bidding on the work.

Mr. Montone: Why don't we request that they submit something in writing and have it here in 2 weeks or a week.

Mr. Zach: I will do that. Looking at the options as far as that power is concerned we would have a lot of work to do if we were going to try to figure out how to wheel it or whatever at this point. I will get back to them and have them make a proposal on the contract that we sent them.

Next item on agenda update on the landfill generation project. We know there is a study going on at this point that we don't know the results of. One of the items that we should be looking at we never finished punch list with CH Auburn. The heat exchanges need to be moved on they are there but have not been hooked up. That was part of the original project to get the exchanges in place and installed.

Mr. Montone: Vicky is you involved in the discussions for the possible buy out of the plant?

Ms. Murphy: I have provided lot information for it they are not done yet. But I am involved.

Mr. Zach: Are they putting a value on some of the stuff that was never completed?

Ms. Murphy: Not to my knowledge.

Mr. Montone: Who is running this?

Ms. Selvek: Corporation Counsel Office.

Mr. Montone: Shouldn't this agency be involved in this? Where are they getting their information from in this negotiation?

Mr. Fusco: Mostly through passwords that he has been provided the numbers that are able to be generated from the internet based on the password you provided, the numbers that Vicky has been able to get based upon the both the internet and the numbers that CH Auburn and the items that Mark Palesh had brought to the attention of Mark Cordero that did not appear to be dealt with primarily in the workups.

Mr. Montone: Something just came up about the transfer trip situation I copied everyone on that many times it all had to do with the transfer trip and what was going on with NYSEG and the whole situation, that is negotiable

item that should be talked about and dealt with, I don't think anybody legally understands that. If we are shut out of the operation to an extent we can't information into it that might be of value.

Mr. Fusco: I think the perception or the fear that you are being shut out is misapprehended. Scenario I see is based upon the information that Mark Palesh was able to supply to Cordero is we are going to have a second preliminary set of numbers soon. I think the next step will be for us and the managers to take a look are there items of value which Mr. Cordero

Mr. Montone: Do you know who owns the transformer, the substation, the demarcation point, the wires, how can you negotiate when you don't know what property

Mr. Fusco: We are not negotiating.

Ms. Hussey: I thought we were pricing determining some financial information.

Mr. Fusco: Not a negotiation what we are trying to do is trying to make a determination of what the thing is worth and what it would likely generate the income for the next 13 or 14 years where we to buy so you could then determine whether the asking price is worth it or not. If asking price and value that Mr. Cordero's firm determines are about the same I think then you enter into negotiations. What this agency can do at this junction once that Mr. Cordero gets to a point that he has preliminary numbers done if you all can see additions or subtractions that he may have missed. The purpose of the study is not to negotiate but purpose is fact gathering.

Mr. Rybarczyk: Don't you think some time could have been saved if you had the courtesy to let Denny what was going on and you are saying after Mr. Cordero makes his proposal why not save a step and include people that actually do know. Denny never had the courtesy of a letter saying we are investigating. We just found out now the extent that it is going.

Mr. Zach: I had 4 calls from NYSEG asking questions. We have metered power coming out of the plant. When you start negotiating the value then you have to consider all the things in here that weren't completed on the punch list.

Mr. Fusco: This is not a negotiation it is a fact gathering process to determine what the anticipated value of the asset is. We can all sit down together and see things what is missed. I am hopeful in talking to John Rossi that we should some more preliminary numbers from Mark within 2 weeks. I will get it to both of you and another set of eyes may something that Mark Cordero may have missed.

Mr. Zach: Before CH Auburn gets to comfortable about doing anything we need to get the heating exchanges hooked up they are part of the contract. I would suggest that you mention to Mark the negotiable part of this these interconnect bullets an invoice came through in a large amount that was part of the agreement in the amount of \$274,000 that is for the interconnect and the transfer trip.

Mr. Montone: In the Service Agreement before the Interconnect Agreement it was giving prices or totals in there and those we had arguments and talks with CH Auburn back and forth with Mike Voltz saying the transfer trip was not part of the interconnect and again copies were made on all the engineering work to everybody involved here. In the beginning the Service Agreement was in place told us what the prices would probably be and then there was an RTU that was taken out of there that was never used so that is why I said in my emails somebody better go through that line by line and Mark Cordero should have that in his hands.

Mr. Fusco: In sitting in at least 3 meetings with Mark Cordero I think what we have been trying to do is continually try to find value to try to justify the eventual purchase.

We know what our price is and we know what our output is that is a normal quantity and too it is an essential element for this facility were we to buy it to become qualified exempt requires generation of 2 fuels electricity and in our case hot water that is an element in statute so we have to be able to sell hot water. So any notions that anyone might have that there are people out there looking to diminish the value I that is an incorrect perception.

When we get close to the final document as many eyes as we can have take a lot at the preliminary numbers and say did you think about this, did you think about that that is important.

Mr. Zach: Hopefully we will have some kind information or request for information coming out of the next study before the next meeting.

I had a meeting with the Mayor and John Rossi last week and I think I emailed everybody some information did anybody read it. Basically the question was about our legal right to sell power. John told me that we were a not qualified generator and that we would have to buy the plant out in order to do so and he suggested we call some people which I have done and I am still hung up on the fact that there is 50 some agencies in this state and there is only probably less than 4 that actually generate power to get their buying and selling power on a regular basis. He also suggested that I call Tony Modafferi who is the Executive Director of the Muni and described our situation to him and he pretty said they are describing our situation with behind the meter distribution in our own park that he isn't seeing a difference between us and Solvay or any other people in the same distribution. He would basically agree with the Ginzer report on our ability to sell power behind the meter.

Mr. Montone: He also told me he has never proposed or made an assumption that the City of Auburn could not sell power to anybody. So he basically saying in his mind and in reality we can join the NEUA because we have neither customers and we own a distribution line, just like Solvay we have distribution lines and metered customers. We have a tariff that is filed with the New York Power Authority not the Public Service Commission. There is a difference between full requirement and partial and only difference is where you buy your power. We buy all our power from the Power Authority so we are full requirement and we use their rules and regulations. If we bought partial power or generated our own power then it is possible that we would fall under the Public Service Commission.

Mr. Fusco: We may well end up doing both.

Mr. Montone: There are some sections that you need to look at under PERPA under 201 it has all been revised about qualifying generators and different things like that. They need to be looked at and we have said this a hundred times we have a legal opinion we want to see what the second opinion is. Have not seen that in writing yet. That is a request.

Mr. Zach: I think 3 meetings back we voted that we wanted Ginzer to give us a free conference call and we would listen to his opinion and tell

him where we are at and I would like do that will set it up asap and we will call a special meeting. I have also set up a meeting with Nozzolio and maybe Valsky too and see if we can get some sort of understanding and find out exactly what we have to do because my concern is we have a customer that is right on the very edge at this point and if we don't figure for sure that we can supply heat and power it is walk. Unfortunately if we don't have customer I don't care who owns the plant whether we buy it out or somebody else does if we don't have the ability to sell our excess heat and power that place is just going to keep right on losing money.

Mr. Fusco: We can commit to the sale of heat.

Mr. Zach: We have been for a long time but everything is on hold about selling power no body is going to make an investment unit you say yes and get into some kind of energy service agreement and nice thing about the ESA is that our price on electric is static and if somebody else did buy it out they buy that contract with it and we still get the power that is part of the deal and their buy out whether the City of Auburn buys it or somebody else buys it. Advantage for the City to buy it would be the fact that we would be making a profit that somebody else would. We can make power and right now we can make power with natural gas cheaper than what our base rate is set up for what the contractors we are under, my concern is how are we going to get some kind of letter of intent or start an ESA agreement with the Pellet Factory or anybody else so that we can get something started this year so by the end of this year we are actually recovery some revenue. Presently we are losing a bundle because the ISO prices are so low that without being able to sell to a customer of our own inside the park we are in trouble. Probably if we bought it out and registered with the PSC we could even go outside the park. We should take a look and some other legal opinions because I am not sure Kevin Brock knows our situation, I wouldn't mind sitting down and talking with him. They are in the process of renegotiating our renewal with NYSEG, which we have to have until we do come up with a customer. Right now it is going into the ISO going in at a loss and will stay that way until we can market it.

Mr. Fusco: Doesn't go into the ISO it goes to NYSEG at 80% of the ISO price.

Mr. Montone: There is another situation there too we are getting market face rates minus 80% of that. That 80% is a negotiated item with NYSEG

and that was going to go away and reason it was put in there because they paid us retroactive back to the first of last year. I am not involved in this negotiation but still the situation is they have to pay the ongoing price of whatever the market it, it does go to the ISO it is scheduled by NYSEG so it goes into them. If Kevin is negotiating that why hasn't he called me up and asked me some questions about some of these things?

Mr. Fusco: Call him and ask him.

Mr. Montone: So I have permission to talk to this fellow publicly then.

Mr. Fusco: Have you ever called him?

Mr. Montone: I talk to him quite a bit but not on my Solvay situation. He was invited to this committee here to meeting and he never showed up when the City first hired him he said he would come and talk with us and he hasn't done that. As I said earlier let's see his opinion we have not seen his opinion.

Mr. Fusco: You will soon.

Mr. Montone: Be good to have 2 opinions no doubt about that.

Mr. Fusco: There will only be 1 Kevin will be definitely here is what I think you can do here is what I don't think you can do. Jeff's was you can do this and maybe something will happen. That is a fair reading of Jeff's letter. You can do something and maybe there will be ramifications and maybe there won't.

Mr. Montone: That is also an opinion of yours. That is why we want to have a conference call.

Mr. Zach; We will do a conference call I am not stopping there I am looking at all the answers we belong to the American Public Association I have a call into them. I would Kevin to be involved in this conference call and hope that the Public Power Agency will also give us some information back. Senator Nozzolio is on the Energy Commission and he has some utility background and I am hoping that he will give us some information. I am looking for answers because a lot of people are doing it and certainly there seems there ought to be a way for us to come up with an answer saying

yes we are getting to the point one way or the other we buy the plant, somebody else buys the plant or whatever we can commit to a business and say yes we are going to sell to you. All this investment I can't believe from the Federal government and NYSERDA all the grant moneys and studies that have gone into this that I don't think anyone ever envisioned us having a problem to sell the power. There has to be a way to do it.

Mr. Fusco: Mr. Chairman you asked me 2 weeks ago to investigate the situation in Oswego. Who knew that the energy supplier had been given a tax credit by the County of Oswego for the ability to be able to sell the energy that would otherwise have been violable of their tariff. I didn't know until Denny asked me to research that and to find out. So what happened in the Oswego case is that the County of Oswego to be able to sell low cost energy to potential developers gave a tax break to the utility which was Energy Nuclear in exchange for the tax break the utility allowed them to sell power to existing or future customers at a lesser value than the utility does. We did not approach NYSEG to offer them a tax break.

Mr. Montone: NYSEG doesn't sell power they transport it distribution provider. We can buy power from the same company you are talking about. Deregulation changed all that so we can buy power anywhere just like that County did.

Mr. Fusco: There is the potential for us to be able to say to NYSEG what can we do for you to allow us to do this for users. For example NYSEG would be under no obligation to provide stand by power were we sell on our own. We may be able to negotiate with them with some type of set off to make it attractive to offer stand by power to our potential users. That would be I think an important element in our application to the Public Service Commission were we to register our tariff. In any event that is why Oswego is able to do it.

Mr. Montone: You told us why Oswego could do it but you didn't why we can't do it.

Mr. Fusco: I am trying to formula a methodology, which will allow us to do it but are we going to sell it to a utility or sell it to the ISO are we going to incur transmission costs or not there are questions that need to be resolved.

Mr. Montone: That is why we would act behind the meter at the Wastewater Treatment area and sell the power through our distribution lines.

Mr. Fusco: Here is the problem I have seen in all the behind the meter decisions.

Mr. Montone: Describe behind the meter.

Mr. Fusco: All I am going to tell you is what I have seen because there are some reported behind the meter decisions from the Public Service Commission were you a qualified facility you can do it. In this case because CH Auburn is the owner of the facility they are they ones are the qualified exempt producers.

Mr. Montone: That is why I brought up Section 201 of the PERPA law look that up we can't discuss that now but look it up and you will see that it also says you don't have to own it.

Mr. Zach: If we did come up with a customer down there and we petitioned NYPA and all though everyone says all the blocks are gone but it was my understanding if you had a little bit of clout you might get a little bit of a block there is no reason why I we were able to get power from NYPA right now that we couldn't distribute in the park on our distribution just like they do elsewhere even though we wouldn't be a full use customer or whatever the term is all our power would be coming from them. But there is also a lot of studying going on right now about using NYPA as the more aggressive economic developer in the State. We could register as an ESCO and buy and sell power just like the rest of them. There are probably about 12 people in the City of Auburn marketing power right now. There is one that I would like to bring up here that approached me a little while ago. We have to answer the questions soon and are we going to answer them soon enough that we can convince Council to say we can enter into an agreement for a period of time. Our price for power was static in that contract no matter who buys it. If we bought it out we could produce it cheaper I am sure we wouldn't for the first few years will look to pay it off as far as we could. Should somebody else buy it out that contract that we have with CH Auburn as far as the purchase of power is part of that sale. The price on the electric is still static. We should be able to enter into some sort of Service Agreement with an interested party to sell them the heat and power until we can start turning a profit on that plant and reduce out losses.

There is no way we are going to stop losing money down there without a customer. It is all about the customer and what can we do and how soon can we do it to save the only one that we know of right now and the nice thing about the one we are looking at he is going to take all of our excess. We don't have to market it with 4 or 5 different people, he is going to take all our heat and all our excess power and maybe even a little more. We have to be able to move ahead I just don't see the risk with us involved with us being able to tell customer yes we are going to sell you the power we already voted on a base rate you know what the heat it you have accepted the electric and to be honest he could buy it from NYSEG cheaper than what our base rate is but he has agreed to do it as long as we set some sort of a term and that is what I would like to take to Council. We have to save this plant or are we going to lose it and try to figure out how we are going to replace it.

Ms. Hussey: Has he ever put in an offer to purchase yet? We have a base rate.

Mr. Montone: He doesn't know if he can get power what is he going to do buy land that he can't use? He got a letter from Corporation Counsel telling him we don't know if we can sell power yet.

Ms. Hussey: He can buy it from the market correct? It is not that he doesn't have power at his proposed facility.

Mr. Graney: If he gets it from NYSEG then he can't go and get it from us there is a stranded cost to pay for and he would be a customer of NYSEG.

Mr. Zach: He agreed 2 months ago to make a Purchase Offer on the property with a letter of intent and that is what we are looking for we have to commit to sell power for a period of time, he will make the Purchase Office, he has to do all of his environment stuff yet I don't know how much money he has tied up in the research in this I know he researched resizing the plant two different times so I am sure he has some pretty good investments made already.

Mr. Montone: There also is another developer looking at another parcel there. He is waiting for the outcome of this.

Mr. Zach: I don't see regardless of where we go where the risk is because if somebody else buys the plant out we might have to answer the question of registering as a PERPA, we have to move ahead or we are just going to keep losing money. We have to decide yes we are going to sell this power.

Mr. Montone: Is that what Kevin is looking for us to become registered with PERPA because the County just did that and it took 2 weeks.

Mr. Zach: When we do that conference call maybe the County's attorney would sit down with us too, I haven't asked him yet. Everything we do hedges on that one question right now are we going to be able to enter into Energy Service Agreement with a customer down at the park. I don't see the risk.

Mr. Fusco: For you there isn't.

Mr. Zach: I understand there isn't but at the same time our rates aren't going to change. Our contract is good no matter who owns it. If somebody buys it out for 15 years that contract stays with it so our profit ratio should still stay the same. We voted on the electric rate that has been approved by Council and we voted on the heat rate. We know roughly on that basis selling it all what the revenue would be.

Mr. Montone: I have a question does that mean that resolution that we voted on two of them actually I think are in limbo?

Ms. Hussey: Why would they be in limbo?

Mr. Montone: So why would not the City Manager or whomever does that send a letter to the developer saying these are our rates. Whoever sends those letters that is what he is waiting for. He is waiting for us to say you can buy the power at whatever the rate we set and the heat at this rate. He is not waiting for it to come from the agency.

Ms. Hussey: You are saying we can send him a letter saying this is confirming what the rates established are but an Energy Services Agreement a letter of intent for Council to enter into an Energy Services Agreement is a whole different situation.

Mr. Montone: That is what he is looking for.

Ms. Hussey: Then I think this agency has been misunderstood on what he is looking for because Denny keeps saying we have to give him a letter of intent for him to obtain financing and an Energy Services Agreement.

Mr. Montone: Energy Services Agreement would have the rates that have been established by City Council in it already we can't change them now Council voted on them.

Ms. Hussey: But they are two different things one is confirming what a rate is that was passed by Council Resolution another is making an agreement to enter into a contractual arrangement with him.

Mr. Montone: Using the rates approved by City Council.

Ms. Hussey: I am looking for an answer you just said all he is looking for is a letter establishing the electric rate this much per kilowatt hour.

Mr. Montone: The same rate that we would have to give to anybody else so that is basically an established tariff.

Ms. Hussey: But there is a distinction between just telling somebody what the rate is but there is a distinction between what I and the rest of the agency has been lead to believe he is looking for a recommendation from this agency to sell the power and for a certain duration and that is totally different.

Mr. Fusco: We can make the letter to him contingent upon regulatory approval.

Ms. Selvek: That is what he is looking for a commitment and if we can sell him power without the City getting into trouble. So we need Kevin to make a formal legal opinion at this point on whether or not we can sell power.

Mr. Fusco: That is not for me to say that is for Council to say. There is this mechanism that we are going to have to end up taking but we have to have Council do that. You can make recommendations on this board but it is Council that establishes policy and it is Council that creates the game plan

in which we are going to earn income for the City or perhaps great liability for the City.

Mr. Zach: What is the risk for Council we have a 15 year contract whether we buy it out or not our rate is a known established rate for the period of that contract what is the risk to Council to say yes we will sell you the power granted we might have to do purchase thing or whatever but is the risk to Council to say we can sell you power and we can do so at this rate for said period of time.

Mr. Fusco: If our regulatory scheme is not approved or we sell it without regulatory approval the risks are 3 fold actually.

- A. We run the risks of fines from the Public Service Commission, which could run hundreds of thousands of dollars.
- B. We run the risk of lawsuit liability from NYSEG for illegally competing with them.
- C. We violate our contract with Central Hudson specifically the provision in our contract with Central Hudson 3.6 of the ESA, which says that we will abide by all rules and regulations and law for the sale and resale of our assets in this case electricity and will hold CH Auburn harmless.

So we may not only be liable to one but we may be liable to the other. So that is the downside risk.

Mr. Zach: So what is the immediate answer to expedite this?

Mr. Fusco: If I knew the immediate answer I would be down at OTB right now. Time takes time and I realize that your motivations in this care are noble. The fact the electricity market is where it is right now is the key problem not this other thing that is going on regarding the Pellet Factory. Let's keep our eye on the ball for starters. I admire your enthusiasm about what needs to be done here and I think you are doing it for a noble cause but if you act prematurely without us following the law you run risk for not you personally but eventually Council who approves anything runs the risk of liability.

Mr. Rybarczyk: At this point I think what we are really looking for can we make a motion to have whoever is responsible to send a letter to the Pellet Factory stating that we will send them heat and electric at the given rate, conditioned upon regulatory scheme.

Mr. Zach: There is a motion on the floor by Luke Rybarczyk that we send a letter to the Pellet Factory with our intention to sell the heat and power at our rate pending regulatory approval. Do I hear a second?

Mr. Montone: I second that motion.

Mr. Zach: Any further discussion?

Ms. Brower: (Came in middle of meeting) Does that then have to go to Council?

Ms. Hussey: Andy if we send a letter stating that we are committing to sell the power conditioned up regularly approval are we getting into a little detrimental reliance as far as Kamyar relying on that as some type of a binding agreement or commitment?

Mr. Fusco: If it is specifically conditioned upon regulatory approval that we don't receive I don't think that creates a problem.

Mr. Montone: If you looked at the letter of intent that he handed to I believe the City Manager, Corporation Counsel and some other people it specifically stated all that stuff right in there and that was done about 9 months ago. All he was looking for was something signed saying that he would get these rates and they haven't done it yet.

Mr. Rybarczyk: I have a motion any more discussion? We are not making a commitment because if we don't get the regulatory approval we can't sell it to him that is the big "if". But yet he still has something that says if we get regulatory approval he will be able to buy.

Ms. Brower: May I hear the motion?

Mr. Zach: There is a motion on the floor that we recommend to Council that they ask the Mayor to send a letter to the developer of the Pellet Factory letter of intent for us to sell the power and heat to them at the agreed

upon rate pending regulatory approval. All in favor show hands. All agreed and carried.

Mr. Lupien: The contract that we have with O'Connell Electric, Luke looked up the energy bills for Casey and Falcon Parks I think it was \$86,000 we paid for demand \$89,000 I can get together with Vicky and Christine find out exactly what we are charging for the energy, does this agency have any problem me bringing a Change Order to Council asking for permission for a Change Order to O'Connell to run that line up to Casey and Falcon Parks. I won't do it if I don't think it is cost beneficial but we already know what it cost us, we will find out what the electric costs us I want to bring it up to Council and have them vote on it because this contract is getting old and it needs to be closed out or amended. I would work with Denny to find out exactly what we need to put in for the Change Order and get a price from O'Connell. Take a couple weeks to get together so before the next meeting maybe at that time I will have already had something on the agenda for Council to approve, but I don't want to do that if you guys are against it. We don't have a firm O'Connell estimate yet but I would like to bring that up and let Council vote on it. If they say no then we can always run it with the new contract but while we have the exiting contractor and existing engineer it will be a lot cheaper to do it now at last year's contract prices.

Mr. Zach: Give me a call Bill and I will help you with that.

Mr. Montone: We are going to hold a special meeting I am going to make a recommendation at some point to go through the Local Law and we will need to listen to whatever legal to explain the General Municipal Law 360 to us which all the other Munies use and Auburn also uses which gives you the right to sell power. We are going to go through that.

Mr. Fusco: Go through Local Law just to square the 2 glitches in our By-laws.

Mr. Montone: I understand that is one of the questions I have under old business.

Mr. Zach: We are at it – old business. Tall Trees specifically talked about how many people are in the room to vote on whatever. We have 9 people on this agency so what is considered majority?

Mr. Fusco: For any resolution to pass it is going to require 5 votes of the 9. So that you can understand it think of everybody who is absent as a “no” vote that is basically what the Court of Appeals says.

Mr. Montone: Basically put in place because if you 4 have and 2 voting yes and 2 voting no then it never gets passed.

Mr. Fusco: Let’s say you have 5 people present which is a quorum to conduct business and now something passes by a 4 to 1 vote it is a defeat. You need 5 affirmative votes for every resolution. Think of every person who doesn’t come to a meeting at a “no” vote that is the easiest way to understand it. Ironically Tall Trees was decided in 2002 or 2003 and of course our By-laws are 2004 all I can assume is whoever wrote the By-laws didn’t know the Court of Appeals ruling. To see that provision in the By-laws is not unusual.

Mr. Montone: Talked about in the Local Law too.

Mr. Fusco: If I do we are not going to put a whole new referendum to the people. What we would rely on and say you have 6 people present you have a 4 to 2 vote if you say it passes that would be illegal.

Mr. Montone: So you can’t rely on the Local Law?

Mr. Fusco: Correct. Even were a Local Law passed under the guise of Municipal Home Rule the Court of Appeals has declared that it is an area that is preempted by the State of New York so that you can’t do that it has to be a majority total number of people on the board to pass a resolution.

Mr. Montone: Ok, what was your discrepancy about the financial thing in there?

Mr. Fusco: My discrepancy with the financial thing is whether this board has the ability to spend one item at a time. As I understood the motion from a month ago the 4 people who voted in favor of the resolution were seeking to do was to create a fund of income that was owned by the Auburn Public Power Agency and we could spend out of that on certain items.

Mr. Montone: That is what is says in the Local Law.

Mr. Fusco: Doesn't say that. That is what it says in the By-laws the Local Law says that the expenditures by this agency have to be made or approved by Council. That by Council language that is in the Local Law is omitted from the By-laws so that if we wanted to spend 50 cents for a box envelopes we being the APPA couldn't do it only Council can do it.

Mr. Montone: In the Local Law it states that we can set up an account overseen by the Treasurer a separate account just like we had last year a budget but even if we establish revenue coming in from sale of power.

Mr. Fusco: That is in there the question that came up last month taking money out of that account to buy this.

Mr. Zach: How did they do it this year they spent all the money out of it. There was \$50,000 in there at one time.

Mr. Fusco: I thought it was \$30,000 but whatever it was that it not my issue it is whether Council appropriates funds or not my issue is now we have one I don't care if we get it from Council or whether we get from revenue on Division Street now we have this account that theoretically according to a motion made last month we control. The problem is now we take the money out of the account. Let's say we want to buy a box of envelopes we want to buy new pencils we can't do that. Because the Local Law says Council has to do it. It says expenditures that is why I use box of envelopes and pencils for an example. Even the smallest item any expenditure only Council can do. Put the Local Law and the By-laws side by side and you will see that distinction it literally jumps of the page. The Local Law overrides the By-laws and because the Local Law requires the expenditure be made by Council and the By-laws will theoretically allow us to do it on our own.

Mr. Montone: We have always gone by our Local Law.

Mr. Fusco: There is a discrepancy I am saying you need to conform the By-laws to the Local Law. Right now some one reading the By-laws could easily come away with a conclusion that if we wanted to spend money on a surveyor and we had this fund we could do this, no Council can do it and only Council. So that is the problem the Local Law is more restrictive than the By-laws. The By-laws need to be amended.

Mr. Montone: Would you copy that page to me and send it to me because the way I read it it is different there are certain things we have to go to Council for approval in the Local Law. As you get down to hiring a Director or hiring employees all those different things now if you hire an employee that is the agency's responsibility according to the Local Law

Mr. Fusco: I would say that is an expenditure John. This is a guess on my part I wasn't around back then as I sat and looked at all the various changes that went into the documents to create us at the beginning whoever came up with this idea seemed to conceive that we would be an independent and autonomous authority.

Mr. Montone: That is not true says right in it with approval of City Council on certain things, I was involved we put that in there

Mr. Fusco: Let me finish because the original drafts used the word authority as the document changes what you can see happening is that there is more and more control by Council retained and less and less autonomy vested in this group.

Mr. Zach: Let me ask you this down the road God willing we are selling power we have customers we are looking at brining other businesses in or whatever, let's take an example, say the Water Department or DPW they have a budget they sit down and figure what has to come out of it expenditures, that is basically what was done with the budget with this agency the same thing. City Council approved it the money comes out the Comptroller doesn't ask anybody just comes from where it was designated to come from. Down the road if the DPW decides to buy a new pick up truck that goes through Council doesn't is?

Mr. Fusco: Correct.

Mr. Zach: Any kind of basic expense but a lot of the daily operations there is no way that Council is going to be able to say on top of it that is basically the same with this agency because

Mr. Fusco: I don't read in the 2004 Local Law language that would distinguish our day to day expenses over say extraordinary (could not hear). The Local Law does not make that distinction.

Ms. Brower: If Council approves a budget that has office supplies and a certain amount in it after that

Mr. Montone: Cost not to exceed

Mr. Fusco: I think what could happened is for Council to do and this is policy all I am doing is going through and noticing a difference in the words of the By-laws and the Local Law. The Local Law is more restrictive than the By-laws. The By-laws have to be at least conforming to the Local Law. What you could do because obviously you don't want overseeing every box envelopes and pencils you can come up with a Procurement Policy that allows us to spend money at a certain level without Council approval. In looking up the ramifications of the vote of a 4 to 1 vote last month regarding expenditures I happen to note in the language of the Local Law is different than the language of the By-laws and we have to conform our By-laws that is all I am saying.

Mr. Montone: It says right here the members may with the approval of the City Council to arrange a temporary financing prior to the receipt of revenues sufficient to meet current costs or expenses or obtain such advances from City Treasurer as may be authorized it does say with approval of City Council. This is the By-laws. We need to make it right that is why I want to have an open discussion on not only General Municipal Law 360 we need some answers on that because somebody's interpretation of this is all wrong and we also need to go through the General Local Law that was voted on and mandated by the people of this community to do something to lower the cost and bring economic development here and right now we are at a road block. We are going to get another opinion basically that is all we are going to get I think maybe we should just resolve this Power Agency because somebody is tying our hands on every thing we are trying to do. It makes no sense to sit here and talk about Mill Street or anything else if we are not going anywhere. Mike and I have been at this since 2004 from the very beginning and even farther back than that. We are going with a professional lawyer out of Washington, DC that represents over a 100 municipalities and this City will not take its opinion and I don't understand that. It is very frustrating to me, very frustrating because I deal with this professional lawyer every single day on many many bigger issues than we are dealing with here. When I am hearing from Corporation Counsel that we can't sell power because we are not this or that or different from other Munies I talk to the MUA Director all the time, I talk with Kevin

Brock on other issues and I talk with Public Service Commission, Jeff Ginzer and I have talked with them from the very beginning of this. Said we can sell power if you establish an area where you are developing maybe you can become PERPA if you want if you build a facility, which we have done. What happened to the situation where you said we have vested interest in we are part owner.

Mr. Fusco: We were told by Jeff and Derek that we had some type of

Mr. Montone: You were telling us that we had vested interest in it.

Mr. Fusco: All I know is what I was told.

Mr. Montone: \$1.9 million dollars in there but the point of it is if we register with PERPA we don't necessarily have to own the plant even if we do that would be the smart thing.

Mr. Fusco: If we did we would be exempt from any regulatory scheme.

Mr. Montone: PERPA will allow you to negotiate without Public Service Commission individual contracts for people to sell power. I know this because I deal with it and I know this is a fact every single day. I don't want to be told by somebody that this opinion is wrong or whatever and it is not.

Mr. Fusco: I never told you it was wrong. I checked that opinion and it says you can do something and maybe and maybe not there will be a downside liability.

Mr. Montone: There is a downside and upside to everything in life and you don't have to worry about if I had to worry about someone suing me or suing us or all those different things I can do that on a daily basis in Solvay. I need from you and John Rossi a distinction between what Solvay is and what Auburn is going to be you can show me that and I have been asking for it 9 months now since April since this letter came out I have not got an honest answer from anybody we got a run around and that is what is happening here.

Mr. Fusco: I disagree wholeheartedly and understand that I look at doing my job

Mr. Montone: I know you are trying to do what you have to do.

Mr. Fusco: What I think I have to do is protect the members of City Council from entering into an agreement that they have no authority to do because the downside ramifications of proving you right can be more expensive than what we personally are enduring.

Mr. Montone: Why did Corporation Counsel allow them to enter into an agreement with CH Auburn?

Mr. Fusco: At that juncture I think both John and I relied on Jeff Ginzer. Between you and I if I knew then what I know now I might not have entered into that agreement with CH Auburn.

Mr. Montone: Why did Corporation Counsel review it then?

Mr. Fusco: We did review it we were relying on Mr. Ginzer.

Mr. Zach: Ok, that is why we are going to do the conference call. I sat right in a meeting with the Mayor and Mr. Rossi the other day and I asked them about the opinion that he asked Jeff Ginzer to send him back and he looked me in the eye and he said it is all wrong. John told me and the Mayor was there and he said the Ginzer opinion was all-wrong.

Mr. Fusco: I don't want to speak for John because he is not here I think a fair characterization of Ginzer's letter a fair reading of it is that you can sell power and maybe nobody will come against you.

Mr. Montone: Kevin is going to give you something different?

Mr. Fusco: Yes he is going to tell us exactly why we can't sell power without regulatory approval and he is going to recommend a regulatory approval that we will be able to sell power.

Mr. Montone: I talk with the Public Service Commission and they haven't had too many discussions with Kevin Brock on this issue.

Mr. Fusco: Because I don't think there is any point at this juncture in pursuing what we had hoped to pursue in the past. If my recollections of my meetings with Derek Dyson and discussions with Ginzer is that the CH Auburn contract would have given us some type of vested right some type of buy out ability that was greater than the public at large. Now Denny said it many times in meetings that are in minutes of this organization, you when you were Chairman said it twice that Auburn had some type of buy out ability that could be construed as ownership interest in my opinion equitable interest not vested and then I truly believed that you thought it was in there because you convinced me.

Mr. Montone: It says we have the ability to buy the plant out at whatever the rate is that we negotiate with them. They didn't give us first right or any of those things.

Mr. Fusco: We get nothing for paying for 15 years, we get nothing. (Recorder turned off at request of Mr. Fusco).

Mr. Zach: I will try to set it up and I will call a special meeting when I can get the conference call set up.

New business: I was approached by National Energy they have a new program out. All the bigger ESCO's are starting to work through brokers instead of sending their own people out. The one I am looking at here I am going to take to Manager and see what he thinks but it is not here yet but he showed me the website and basically what it is there is a whole list of ESCO's in there might be 15 with all their prices on it for electric and gas. The way they are looking to market this is you can get on your computer at home pick out the way you want and sign up and will they will do a fixed. Most of the multiple level ones that are selling power now are just selling on the market there are a bunch of them in town already calling people up and telling them they can save them money on their electric bills. This month they are looking to mass market through municipalities and counties and whatever and if the City would be interested in letting them market in the City whoever chooses and says I am going to pick one of these the City would get a credit of \$2.00 a month for that customer and if he chooses gas you get another \$2.00. The prices are always good I saw 5 or 6 on that list that were under 7 cents residential market. Have to pay delivery on top of it but still cheaper than what most people are paying. I will take it to Mark and see what he thinks about it and bring it back to the next meeting. That was

the best energy marketing that I have seen in quite a while. Probably all the major ESCO's will sign up as it will save them marketing and so it might be something that could turn into a decent revenue.

Any other new business?

Mike Luksa made a motion to adjourn seconded by Luke Rybarczyk. All in favor. Meeting adjourned at 6:00 p.m.