

Reading Municipal Light Board of Commissioners

Regular Session

230 Ash Street

Reading, MA 01867

May 20, 2003

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READING, MASS.

Start Time of Regular Session: 7:02 p.m.

End Time of Regular Session: 8:10 p.m.

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Attendees:

Commissioners: Hughes, Pacino, Soli, Herlihy and Ensminger

RMLD Staff: Mr. Cameron, General Manager

CAB: Mr. Carakatsane

Guest: Reading Daily Times Chronicle

This meeting of the Reading Municipal Light Department (RMLD) Board of Commissioners May 20, 2003 is being broadcast at the RMLD's office at 230 Ash Street, Reading, MA. This meeting is being video taped for distribution to the community television stations in North Reading, Wilmington and Lynnfield.

Chairman Pacino called the meeting to order at 7:02 p.m.

Article 7, Annual Town Meeting, April 28, 2003, Vote to Approve Order Proposing Charter Amendment

Mr. Pacino asked Mr. Cameron to cover this item.

Mr. Cameron stated enclosed in the packet is a letter from Assistant Attorney General, Robert Ritchie, Director, Municipal Law Unit in Springfield, Massachusetts. Essentially, it accepts and sees no conflict between the proposed Article 7 and the laws and Constitution of the Commonwealth of Massachusetts. This has to do with Article 7 that was passed by Town Meeting on April 28. The reason Mr. Cameron asked the Chairman to have the meeting this evening is because at a previous meeting the Chairman stated he did not want the General Manager to take any action until such time as he found out the Article 7 went to the Attorney General's office. At that time the Department did not know when the decision would be made. Mr. Cameron noted on May 13 this letter from the Assistant Attorney General was sent to the Town of Reading Selectmen then subsequently sent to him. Mr. Cameron called and alerted the Board that not only had he had found out that the Selectmen had appeared to have sent the Article 7 on May 2 it had been received by the Attorney General on May 5. The Attorney General then sent out his letter with his opinion that there was no conflict with State law on May 8. Mr. Cameron did not know this was sent. Mr. Cameron asked the Town Manager for a copy of this and there was a mix-up. Mr. Cameron only received a stamped copy of the final Article 7 from the Town Clerk. The next part of the process is that Article 7 will be placed on the Town election ballot in the spring of 2004. If it is okayed it becomes part of the Charter. The RMLD needs to follow it. If it is voted down it goes away.

Mr. Pacino pointed out to the Commission this is on the agenda in case the Board wants to take action it should take it now if it so desires. Mr. Pacino inquired of Mr. Cameron what is the Department's recommendation?

Mr. Cameron replied he has had conversations with people who have gone through this process know this process. The first comment from these people is they are very surprised it went through this quickly.

Mr. Hughes asked for clarification of Mr. Cameron, define what you mean by this "quickly" can you define that?

Mr. Cameron replied when the Attorney General receives a Charter Amendment and has twenty-eight days to review the amendment. The fact this was received on the 5 of May and returned dated May 8, three days to review this. The surprise was that it was turned around so quickly. Mr. Cameron noted it was stated by the Town of Reading that their special counsel Murphy, Hess, Twomey and Lahane had contacted the Attorney General's office and ran this amendment by them therefore they were ready to receive this. That might have been some of the explanation as to why this was approved so quickly. The Town of Wilmington had sent in their position paper on the Article, which is in the Board package tonight. It is dated May 8. He believes Mr. Ritchie had not received this correspondence prior to rendering his opinion. The RMLD did not send anything to the Attorney General's office due to the fact the Department was waiting for notification that something was being sent to this office.

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Also, Mr. Cameron stated the Board's direction to him was to do nothing until he found something was going to the Attorney General. Mr. Cameron noted from discussing this with other people it is binding but you can make comments to the Attorney General's office to add such things, as this may have been an oversight. Others have said that you might want to get clarification on how they came to the opinion, Mr. Cameron is unsure if that is the right thing to do. Right now what the Department has is a binding document that says there is no conflict between Article 7 and state law.

Mr. Pacino had a question if Chapter 30B excluded the power contracts. From what Mr. Pacino sees is the Attorney General's office still states it excludes contracts. Mr. Pacino inquired of Mr. Cameron how are you going to run the Department under 30B?

Mr. Cameron replied the first acid test would be when the Department does a power contract if someone wants to write to the Attorney General's office and states the Department is not operating under 30B. Mr. Cameron would then reply to this by stating under Article 7 under the Charter power contracts are excluded as far as 30B is concerned then the fur may start to fly.

Mr. Ensminger added there is an important distinction and Rubin and Rudman point this out. If 30B had been adopted through vote of this Board, he believes the literal language within 30B would not have allowed the Board to exempt those specific types of power contracts. Because Reading Town Meeting imposed Ch. 30B on the RMLD / RMLB via Article 7 under the Home Rule Charter provisions (Ch. 43B, Sections 10 and 20), the exempting of power contracts is permissible. That limitation on 30B can be placed by a higher authority within the town that is in fact what the Attorney General has said has happened here.

Mr. Pacino inquired if the Board has received a copy of the Town's legal opinion, has that come down?

Mr. Cameron replied he has not been sent nor asked for a copy.

Mr. Pacino reiterated the legal opinion presented at Town Meeting was sprung on us that night. There was no prior disclosure; it was not given to us upfront. Mr. Pacino noted if they had received this upfront they may have changed their opinion quite frankly, but it is water over the dam.

Mr. Hughes had a couple of items he wanted to discuss. Mr. Hughes has a question. Can the Board reconsider the vote taken by the Board concerning Article 7?

Mr. Cameron asked what is the purpose?

Mr. Pacino reiterated he couldn't see the purpose at this point.

Mr. Hughes told the Board he went to an MMWEC meeting last Thursday in Sturbridge. There were a lot of people in attendance and the sense was they were quite surprised the Attorney General acted so quickly in this decision being the timeframe was three to five days. The group within MEAM is going to ask the Attorney General for a ruling on this as to how come it was ruled on so quickly. They are a group of General Managers who are concerned with the domino effect, a snow balling effect for the other departments (municipal electric utilities). Lastly, there has been quite a bit of e-mails between the Town Manager and the General Manager concerning this situation. Mr. Hughes stated he was taught that possess infallibility was a virtue of a highly regarded person in the religious field. According to the below e-mail from Peter Hechenbleikner to Mr. Cameron, Mr. Hechenbleikner thinks to be infallible. The e-mail Mr. Hughes received which was quite upsetting from the Town Manager to Mr. Cameron, "I apologize for hanging up today, but I have no tolerance for people doubting my word." The day we had talked and you requested the material that was sent to the AG on Article 7, I asked Paula Schena to see that it went to you via Jeanne Foti. She put it in the interoffice mail. The Town Clerk had just completed it - there was more to it than just sending a certified copy of the vote. We did not include a cover letter on it - we don't have the staff time for that, but I believe that the material was self-explanatory. You can of course choose to believe that or not - it's your choice." Mr. Hughes stated he thought we had overcome this, we had moved to communicate together. Mr. Hughes noted he hopes as one member of the Board we are not going to lay down and cease to be functional to the Board of Selectmen and the Town Manager; it is a matter of opinion.

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Mr. Ensminger stated in response to this he spoke to the Town Manager relative to this e-mail and was told that it was a simple bureaucratic delay there was some words exchanged and the two Managers patched this up. They know they have to work together. Mr. Ensminger would leave this between the Managers.

Mr. Pacino added it is between the Managers at this point.

Mr. Carakatsane had a couple of things to add. First the CAB has not had a chance to formally meet and digest any of this. As a Lynnfield representative the letter from the AG's office was quite a bit of surprise to him. He has been wrong before and he will be wrong again. As far as he understood the law is quite succinct. Mr. Carakatsane spoke with the Chairman of the Board of Selectmen for the Town of Lynnfield last night and the Town Manager today. Mr. Carakatsane believes they are considering at their next meeting which is not until next week sending a letter supporting Wilmington's position letter to the Attorney General's office. Mr. Carakatsane's personal initial reaction is he is wrong. The Attorney General's office approved this right away. Mr. Carakatsane noted obviously the Attorney General's office had an advanced copy of this rightly or wrongly. It did not happen under other Attorney General's apparently does under this one. He stated that the law firm used by the Town is "quite connected."

Mr. Pacino noted he wanted a record to show that Mr. Carakatsane is speculating his own thoughts.

Mr. Carakatsane agreed, he is speculating his own thoughts. What Mr. Carakatsane pointed out is in law is you learn to put two and two together quite often. Mr. Carakatsane added one initial reaction of his is well okay move on it still has to go to vote. The second reaction is this is always subject to challenge. Mr. Carakatsane would expect Wilmington to be very vehement about this. They are he assumes considering filing suit because this is what led to things fourteen years ago. Mr. Carakatsane also pointed out that any citizen could file suit in this sort of matter. Mr. Carakatsane's personal view is that the Article would not stand up to judicial review and it would be overturned rather quickly. Mr. Carakatsane did however point out he was wrong with the Attorney General's office, he could be wrong with the judicial review. Mr. Carakatsane noted the CAB would be meeting at the beginning of the next month and he assumes it will be on the agenda.

Mr. Hughes noted relative to Mr. Carakatsane's opinion relative to the law firm having been somewhat familiar with the Attorney General's office. The attorney from the law firm at Town Meeting when he made his presentation he did cover words to the effect that they were quite familiar with the process in the Attorney General's office and that they did communicate with them regarding this. It is factual the law firm did emphasize this that evening.

Mr. Pacino added these comments are not to be interpreted as a position of the Commission.

Mr. Cameron wanted to follow Vice Chairman Hughes' remarks a little while ago. Mr. Cameron stated he and Town Manager, Peter Hechenbleikner did have a conversation last week and subsequently the next day we had one of our monthly meetings and talked this out. Mr. Cameron noted we have a relationship but we have the right to disagree with each other which is a healthy disagreement and that is fine.

Mr. Pacino was surprised at the speed that it came back so quickly. Mr. Pacino expected a week not three days. Mr. Pacino's opinion is the Attorney General has ruled here the power contracts are out of 30B that was the Board's major contention. Mr. Pacino personally feels the Board should take no action to appeal the actions of the Attorney General at this point and it would be his recommendations to the Commission as to where we are coming from see where it plays out. Mr. Pacino does have a concern on what may happen with the outside Towns because eighty percent of the customers are outside of the town. Mr. Pacino hates to think that two Town Meeting votes and they are out. Mr. Pacino sees this as a possibility it scares him at this point to fight the same battle we fought fourteen years ago and we are very close to that in all truthfulness. Mr. Pacino hopes is wrong, he is absolutely positively wrong.

Mr. Soli noted at Town Meeting he expressed some reservations about the wording of Article 7 and the wording was changed. Mr. Soli pointed out it what it says, "all contracts shall be made in accordance with M.G.L. Chapter 30B" period. All contracts shall be made in accordance with M.G.L. Chapter 30B that is pretty plain. Mr. Soli added there is another sentence "contracts for the purchasing of power shall not be subject to M.G.L. Chapter 30B." Mr. Soli then inquired in 2005 contracts start expiring is that when they start?

Mr. Cameron replied the Department has one that expires at the end of 2005, one big one.

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Mr. Soli pointed out if somebody says all contracts shall be made in accordance with M.G.L. 30B and the bidders say how can we do this? Mr. Soli noted the drafting of the Article was shoddy our contracts could be at risk.

Mr. Cameron reiterated any of the new one contracts?

Mr. Soli replied the new ones at a minimum, as there is a contradiction. Mr. Soli stated we should try to get that clarified. Mr. Soli pointed out in 2005 he does not want to be here and the bidders say get us a legal opinion, as we are uncomfortable with that. We are bidding seventy million dollars worth of power and we want to make sure we get paid. Pure contradiction, first you say all then you say well I didn't quite mean that.

Mr. Herlihy does not know if anyone can answer this. Do we anticipate the Attorney General responding to Wilmington?

Mr. Cameron replied he has no idea.

Mr. Herlihy inquired would the Attorney General respond does he owe them a response?

Mr. Cameron replied I think it was an opinion put in related to the Article 7. Mr. Cameron noted since the Attorney General's letter came back he does not assume they have said they would reconsider given the fact they were given something after the opinion was sent out.

Mr. Pacino noted as he understood it they could reply but are not required to.

Mr. Herlihy stated obviously we would get notified of that to some degree.

Mr. Cameron replied he would hope so if not Wilmington would get notified.

Mr. Herlihy inquired MEAM is challenging this?

Mr. Cameron replied he went to a MEAM meeting last week. This was taken up at the MEAM meeting and he explained what happened. Mr. Cameron noted MEAM might ask for clarification through their own attorneys.

Mr. Hughes clarified Mr. Pacino had mentioned that at this point you did not see the need of the Board to appeal the letter sent by Assistant Attorney General Ritchie.

Mr. Pacino replied yes. Mr. Pacino stated the opinion 30B is carved out and that was our position that we had a problem with the 30B we supported that position.

Mr. Hughes asked of Mr. Pacino if down the road getting caught short?

Mr. Pacino replied if we get called on it we can go to Town Meeting at that point and potentially change it at that point if it becomes a problem. The door is not closed, it may not be open a lot but it is not closed.

Mr. Carakatsane noted his suspicion is that both North Reading and Lynnfield will consider supporting Wilmington's position. Often times not that these things are done all that often, it is the volume of objection from the outside that will determine if the Attorney General's office will respond. Mr. Carakatsane also pointed out that you have seen in the various legal opinion letters via our way citing many cases in which the Attorney General's opinion has been overruled. They are not the end arbiters or final decision-maker they are right and wrong. Mr. Carakatsane also pointed out that he suspects the three surrounding towns and the CAB may consider taking independent action as they have their own separate budgets.

Mr. Ensminger commented that we can move forward and he hopes the surrounding towns do see the benefit of these reforms. Mr. Ensminger noted that in all the discussions he had heard there was not much of a quarrel with most of the substance that was proposed by the Task Force in which has now been voted by Town Meeting and ruled to be not in conflict with State statute by the Attorney General. It will do nothing but benefit the ratepayers. As the Chairman has pointed out, the one sticky wicket has been dealt with, i.e., the exempting of power contracts from 30B.

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There was an overwhelming vote of Town Meeting and he expects the voters of Reading will adopt this by a large margin in spring. It is time to move on.

Mr. Hughes added could Mr. Ensminger reiterate the fact if in other words this goes before spring Town Meeting.

Mr. Ensminger interjected it goes to the voters at the next annual election.

Mr. Hughes inquired it would fall on the sitting Board to hire the Accountant?

Mr. Cameron replied hire the Accountant and appoint counsel.

Mr. Soli noted he is uncomfortable with the 30B exclusionary wording in Article 7. Mr. Soli thinks the Board should direct the General Manager to write to the Attorney General and say this appears conflicting to us. One sentence says all and the next one no we don't quite mean that. Mr. Soli suggested ask for their interpretation as we contract for power significant amounts of money. Also ask for some basis whatever interpretation they give us. They looked at this and they said there is no conflict.

Mr. Ensminger asked of Mr. Soli you are just interested in clarifying that the language absolutely excludes the power contracts. Mr. Ensminger noted one doesn't read one sentence and the other sentence get a disjointed sense of what they say together.

Mr. Soli replied he is seeking interpretation of the law.

Mr. Hughes inquired if the Selectman liaison from Reading was informed of this meeting.

Mr. Ensminger replied they have a meeting tonight.

Mr. Soli made a motion seconded by Mr. Hughes to that the Reading Municipal Light Department Board directs the General Manager to seek Attorney General clarification regarding the apparent conflicting phrasing of Article 7 legal support "all contracts shall be made in accordance with M.G.L. c.30B. Contracts for purchasing of power shall not be subject to M.G.L. c.30B and to provide legal support example for this interpretation."

Mr. Pacino inquired of Mr. Soli what he meant by case law example he needed clarification?

Mr. Soli replied somewhere in the case it will express precedents for this interpretation.

Mr. Carakatsane suggested adding legal support instead of case law.

Mr. Ensminger agreed with Mr. Carakatsane to the change in the language.

Mr. Pacino added Mr. Hughes is in agreement with this and will be accepted as part of the main motion.

Motion carried by a show of hands.

Motion carried 4:1:0. Mr. Herlihy voted against this motion.

RMLD Governance Advisory Committee and RMLD Oversight Task Force

Mr. Pacino stated he received a memorandum from the Town Manager that the Oversight and the Ad Hoc have been both excused.

Mr. Ensminger pointed out that he was at the meeting and both groups were discharged with thanks.

Mr. Soli had a question in last Friday's paper it said Dan Ensminger, RMLD Governance Advisory Committee (RGAC) Chairman, thanked the Selectmen he also stated etcetera, etcetera. Mr. Soli did not know Mr. Ensminger was still Chairman of that Committee?

Mr. Ensminger inquired of Mr. Soli what did they call him, as he did not get the *Chronicle*?

Mr. Soli replied RGAC Chairman.

RMLD Governance Advisory Committee and RMLD Oversight Task Force

Mr. Ensminger replied he resigned from the RGAC effective the date of his swearing in as a Light Board member. It should state "former Chairman." Mr. Ensminger will ask for a retraction.

Update on ENE Meeting of Tuesday, May 20, 2003

Mr. Pacino updated the Commission stating he and Mr. Cameron met with the ENE Board of Directors this morning in Foxboro. Mr. Pacino explained the computation performed by Nelson, Adam and Dickson. On sheet two and three the Board of Directors commissioned Nelson, Adam and Dickson who are the Department's auditors, which may be in conflict in what they are doing here. They commissioned this to get their information to calculate the value of the ENE investment on the RMLD's withdrawal. The Agreement calls for an accountant agreed to mutually by both parties that did not happen. It is an internal document for the Board. Mr. Pacino then turned to the balance sheet, the audited financial statement. Next is found the Operating Agreement and the 2.3 withdrawal calculation. Mr. Pacino found out that the Nelson, Adam and Dickson computation is off. If you look at the balance sheet they took twenty five percent of the members' equity. The way the Agreement reads that gets subtracted from the RMLD's share of liabilities. Their computation shows the Department will get nothing back. Mr. Pacino has come up with the Chairman's fair equity computation. Mr. Pacino has taken out the accounts payable and the customer deposits. In the balance sheet the accounts payable agency accounts and the accounts receivable agency accounts are the related accounts that are covered. Mr. Pacino argued to have the customer deposits under restricted cash customer deposits taken out of the computation at the meeting held this morning but he was uncertain as to how successful this was. Mr. Pacino noted the Operating Agreement clearly states in Item C the company's total liabilities is where the Department has a problem. Mr. Pacino asked for a literal interpretation on that and he is unsure they got this. Mr. Pacino added they did get some agreement on the restricted deposits. ENE kept telling him in accounts receivable there was some risk involved and it should be part of the computation. Mr. Pacino noted there are some choices the Board has to think about.

Mr. Ensminger asked for clarification on this.

Mr. Pacino noted if you look at the balance sheet on the accounts payable agency accounts go to accounts receivable agency accounts. Mr. Pacino then asked Mr. Cameron to explain how ENE handles it trading.

Mr. Cameron stated if you look at the balance sheet the second line down is restricted cash customer deposits \$2.4 million that represents customers who they perform trades for. These customers have to put up cash to back up the trades for a certain amount of cash and also includes what they call that if margin accounts where they have done a deal with a counter party and within the contract with the counter party it says if the investment rating of the counter party goes below investment grade, they have to put up a certain amount of cash. You look at the long term pricing of the contract versus the long term pricing of the New England Power pool and if the pool pricing is higher the counter party has to put up that much money to back the contract. Mr. Cameron noted the RMLD is now setting up a margin account with one of our counter parties. The \$2.4 million is restricted cash they cannot touch this cash. Mr. Cameron pointed out the offset is the liabilities of the customer deposits. Mr. Cameron noted the agency accounts represent monies flowing through ENE. ENE does not make deals on its own. It makes deals for its members and its accounts. They are an agent for these accounts. They have \$4.1 million in accounts receivable that would be outstanding monies owed to people ENE has done deals for that has not cleared yet but is still owed on a contractual basis. Mr. Cameron then turned to the liability portion account payable agency accounts. This represents monies owed to counter parties that also have to flow through ENE. Both of these line items are in restricted cash and we got ENE to agree that this really a liability if you can't touch the money. The accounts payable is a different story. There is a real question of whether there is any risk that lies with ENE. The way the money flows through ENE, whether somebody backed off on a deal and said no and that was not the deal, then another party said yes that was a deal and the risk bounced off the party that said I am not performing in this deal and it came back and hit ENE. It does not appear to Mr. Cameron that is absolutely the case. This was discussed at the meeting. The two large portions of this liability are the customer deposits and the accounts payable, which make up \$6.0 million of the \$6.2 million. Several times ENE said you are not going to change the Operating Agreement. Several times he and Mr. Pacino replied to them they were not down there to change the Operating Agreement they were down there to get some clarification on the calculation that was made.

Mr. Pacino pointed out Item C, the company's total liabilities that are a problem. Originally, Mr. Pacino thought when the Agreement was set up that contingent liabilities in the Final Agreement meant total liabilities. Mr. Pacino noted the Commission made a decision to withdraw and it did not have all the facts. Mr. Pacino noted they might have overlooked the facts at this point. Mr. Pacino noted they made the argument because the \$3.6 million is funded, the \$2.4 million is funded and it is crazy to ask us to pay for twenty five percent of an amount you already have.

Update on ENE Meeting of Tuesday, May 20, 2003

Mr. Hughes noted Mr. Pacino made a point to state we were not fully informed before we made this decision to withdraw who is preventing us from being fully informed, ENE or the Department?

Mr. Pacino replied there are two parties to blame here. The Commission as they made the ultimate decision as they did not ask enough questions, they did not look at the Agreement, the Commission is at fault.

Mr. Hughes inquired who else as there are two parties?

Mr. Pacino replied the Department as they should have brought this to our attention too but that does not relieve the Commission of the ultimate decision.

Mr. Hughes inquired is it cast in concrete that we withdraw?

Mr. Pacino replied that is one of the ideas he and Mr. Cameron had discussed after the meeting. Mr. Pacino noted the Department could rescind its withdrawal in order to protect our investment and the idea one of the Board of Directors suggested that we should sell our interest. Mr. Pacino is unsure if there is a buyer we could sell our interest to. The options are to let the whole investment go, withdraw and sell or make ourselves such a nuisance that they would buy us out and go litigate potentially the issue we have here. They wanted to get an independent accountant that would rule what total liabilities are and Mr. Pacino's sense is they will come back with the same interpretation of Nelson, Adam and Dickson's findings.

Mr. Hughes inquired as to the monetary value that the Department would lose?

Mr. Pacino replied right now \$289,000, ENE continues to lose money and the Department could be on the hook for more money. Mr. Cameron will address this concern.

Mr. Cameron replied ENE was set up as an LLC, limited liability corporation, that our initial investment was at risk however after that we were completely protected. It says in the contract the withdrawing member would be liable for nothing below zero. If the redemption price is equal to zero or a negative number, the Company shall have no obligation to the withdrawing member. Mr. Cameron pointed out one item, which is interesting in this calculation is that, the nature of the power supply business and the way ENE books the power supply business if they do twice as much business next year this year as they did in 2002 and the prices remain the same the liability will go up by a factor of two. Instead of the account payable being at \$3.6 million it could be \$7.2 million. The equity could rebound and it could go up to \$2.0 million. This is a high volume low margin business. You need to churn a lot of kilowatts hours to make money. They could double their liability and equity could go to \$2.0 million but you can see by the calculation if you want to withdraw your share is still zero. If your in your share is worth one quarter of \$1.460 million, the day you step out the door your share is worth zero. Mr. Cameron noted he had members say to them my equity is not the important thing it is the savings I garner out of ENE. The RMLD disagrees with the philosophy of those members. The RMLD did very little business with ENE because of the philosophy of how you value trades with regards to clearing price. The philosophy was always that we kept our eye on the equity and hoped that the equity or dividend would be returned to the RMLD. The wording in the contract is sticky as far as trying to get any equity out of this company. Mr. Cameron noted when this company was first formed the RMLD melded their systems with Connecticut Municipal Electric Energy Company, Braintree Electric Light and Taunton Municipal Light Department and the RMLD took advantage of some rules in NEPOOL. The synergy created by those rules saved the four systems a lot of money. The RMLD's share of that was about \$1.750 million over a year. Out of that savings the RMLD put in \$500,000. Mr. Cameron does believe since the Operating Agreement was signed the market has changed and ENE's strategic purpose has changed. ENE has gone into the water business and the conservation service. They would trade in Pennsylvania, Maryland and New Jersey but they have not done this since 1999. In the RMLD books that money would be reflected on the balance sheet as a loss. Right now we have the year-end statement from ENE reflecting a certain amount of equity that the RMLD still has and is reflected as ownership in companies that would be written down if in fact if we just let this investment go

Mr. Pacino noted that the Department is still part of ENE until January 2004. Discussion came up about getting a representative from Reading on the Board, which has to be appointed.

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Mr. Cameron added the Department is not taking any services from ENE. Mr. Cameron pointed out they do have a commercial auditing service which does a good job however; the Department has not contracted to use them.

Mr. Pacino noted he is not asking for any action on this issue this evening this is just a presentation.

Mr. Soli inquired do you have any opinion about the long-term viability? Most businesses go broke.

Mr. Cameron asked the long-term viability of ENE?

Mr. Soli replied yes.

Mr. Cameron replied their power supply has been carrying the day for them through 2002. As they try to branch out into water conservation services, energy conservation services they are spending money that is being paid out of the power supply marketing services. Mr. Cameron did not see a lot of activity in the water conservation services and unsure if there is a lot of hope for this year. Mr. Cameron noted it was a good winter the reservoirs are full it is in one of their statements diminishing the need for a more concerted effort for conservation.

Mr. Pacino added the bottom line is they continue to hemorrhage money. Mr. Pacino then pointed that out to them and their response was because you all don't buy from us. It was an interesting response.

Mr. Cameron replied through March their cumulative net income is \$98,000 in the red. Mr. Cameron noted you could see on the balance sheet their cash position went down around \$43,000.

Mr. Pacino inquired if the full Board had copies of the full audit report?

Mr. Cameron replied no and would forward it to the Commission. Prior to the next Board meeting the Commission will get the audit reports for the last three years.

Mr. Pacino noted they would then see what the next step would be.

Mr. Soli added this is the classic definition of between a rock and a hard place. Mr. Soli's suggestion was to negotiate out whatever we can get.

Mr. Herlihy was in agreement with this concept.

Mr. Ensminger added litigation generally benefits one party.

Mr. Pacino added he would agree. Mr. Pacino blames the Board a bit. The Board made a politically based decision instead of looking at the facts. In the future going forward they need to look at the facts not and not make a political facts. The Commission should not be influenced by some outside influences as the Commission did.

Mr. Cameron noted he hears what Mr. Pacino is saying however, the fact still remains there is a huge gap between the perceived liabilities and what the net equity is. Mr. Cameron does not see this gap closing.

Mr. Herlihy noted when he looked at this Agreement it was written in such a fashion that we can check out anytime we want but we can never leave. Mr. Herlihy is still proud of the vote the Commission took last year to get out of this. Mr. Herlihy never felt for one minute that it was in the best interest as a Department, for the ratepayers or the Town to be a part of this venture. Mr. Herlihy does not see the Department ever making its money back. Mr. Herlihy did not expect this being a half million-dollar loss. Mr. Herlihy added there is symbolism in the top half of a ship it literally looks like a sinking ship. Mr. Herlihy has always viewed ENE as a sinking ship.

Mr. Herlihy would rather be in the water than get back on that boat and that boat is only going to sink farther down the line if we get back on it. Mr. Herlihy noted he does not want to stay with this venture. The Commission will try to get our money back some way or some how. ENE was selling the Department stuff we did not want at prices that were too high. One of the best things the General Manager did last year was to move our conservation services in house. It saves the Department a ton of money and we are doing a better job of it than they would do.

Update on ENE Meeting of Tuesday, May 20, 2003

Mr. Herlihy never wanted to be part of this. Mr. Herlihy noted we may need to take a loss on this but as a Board does not need to hang our heads low for doing what is the best interest of the Department.

Mr. Pacino replied no. Mr. Pacino noted what was being presented is information and facts. Mr. Pacino is not asking for no course of action. Mr. Pacino sees three potential options: 1. let it go and be done with it 2. rejoin and see if we can sell our interest 3. see if there is a buyer 4. negotiate or litigate and see what we can get out of it.

Mr. Cameron reiterated what he told the Commission about ten minutes or so ago. Two of the members of ENE do not value their investment and it is more of the savings they get for ENE doing services for them. Mr. Cameron is unsure where the allies are and if the Department has any. Mr. Cameron addressed Mr. Soli's question what is the long-term viability of this company; he is not sure. Mr. Cameron added what he would like to do is talk to Chairman Pacino about this issue. Mr. Cameron pointed out the Department is really cornered on this issue because of the way the Agreement is written and the way general accounting principles are laid out. Mr. Cameron would like to have further discussions on this. Mr. Cameron does not disagree with Mr. Herlihy because the decision was a good decision given the fact the Department does not take a lot of services from them. Mr. Cameron suggested the Commissioners as well as himself not beat themselves up too much that we did not do a lot of investigation. Mr. Cameron pointed out the facts are the facts. Mr. Cameron stated there is liability there and equity. The equity is twenty five percent. What the liability is that could be a jump ball.

Mr. Soli asked the General Manager to check with the other three members and maybe one of them wants to be half owner at a negotiable price.

Mr. Cameron replied that is one of the things we talked about. However, when they look at your hand and your hand is not very good he is not sure how much they want to give us.

Mr. Soli added they might want to be a half owner because it can be worth something.

Mr. Herlihy wanted to commend the General Manager for dealing with this issue. Mr. Herlihy also extended thanks to the Chairman for taking time to go Foxboro this morning.

Mr. Hughes added he has complete confidence in the Chairman and the General Manager to go ahead and discuss the nuts and bolts of this. Mr. Hughes wanted an update at the next Board meeting.

Mr. Cameron noted in closing the market has changed substantially since that Operating Agreement was written and it has not changed to the Department's benefit, vis a vis how they value their trades.

Motion to Adjourn

At 8:10 p.m. Mr. Hughes made a motion seconded by Mr. Soli to adjourn the Regular Session.

Motion carried by show of hands. Motion carried 5:0:0.

Mr. Pacino called for a poll of the vote:

Mr. Soli Aye; Mr. Herlihy Aye; Mr. Pacino Aye and Mr. Hughes Aye; and Mr. Ensminger Aye.

A true copy of the RMLD Board of Commissioners minutes as approved by a majority of the Commission.

Daniel A. Ensminger, Secretary
RMLD Board of Commissioners