

CITIZENS' ADVISORY BOARD
EXECUTIVE SESSION MEETING MINUTES
JOINT MEETING with the RMLD BOARD OF COMMISSIONERS

TIME: 7:05 P.M.
DATE: Wednesday, February 22, 2006
PLACE: Reading Municipal Light Department
PRESENT: CAB: Messrs. Lessard (Wilmington), Carakatsane (Lynnfield Center), Norton (North Reading), Vale (Wilmington), and Ms. O'Neill (Reading)
RMLD Board: Chairman Herlihy, Ms. Kearns, Messrs. Hahn, and Soli
RMLD Employees: Messr. Cameron (General Manager) and Mses. Parenteau, Foti, and O'Leary
RMLD Counsel: Kenneth Barna, David Fixler, and John Coyle via conference phone.

1. Call Meeting to Order – R. Lessard

Chairman Lessard called the meeting to order at 7:12 P.M.

2. Calpine Issue – V. Cameron

Note: For continued Minutes of the Meeting, see the attached RMLD Board Executive Session Board Minutes dated February 22, 2006.

3. Adjournment

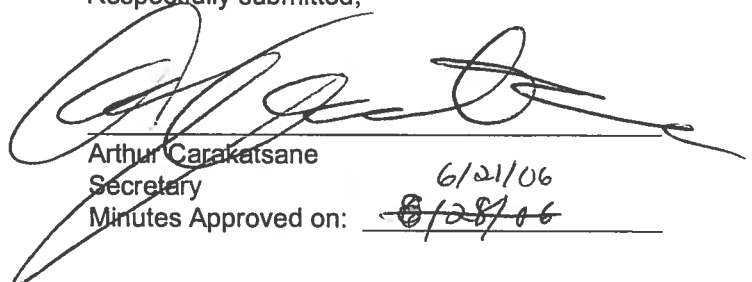
Mr. Norton made the following motion at 7:58 P.M.:

MOVE that the CAB return to Regular Session for the sole purpose of adjournment.
Mr. Vale seconded the motion.

Motion carried by a poll of the Board: 5:0:0.

Mr. Lessard – Aye; Mr. Carakatsane – Aye; Mr. Norton – Aye; Ms. O'Neill – Aye; Mr. Vale – Aye

Respectfully submitted,


Arthur Carakatsane
Secretary
Minutes Approved on: 6/21/06
~~6/28/06~~

/pmo

Reading Municipal Light Board of Commissioners
Executive Session
230 Ash Street
Reading, MA 01867
February 22, 2006

Start Time of Executive Session: 7:14 p.m.
End Time of Executive Session: 7:59 p.m.

Attendees:

Commissioners: Herlihy, Soli, Kearns, and Hahn

CAB: Lessard, Carakatsane, Norton, O'Neill, and Vale

RMLD Staff: Mr. Cameron
Ms. Parenteau and O'Leary

Guest: Attorney, Ken Barna, Rubin and Rudman
Attorney, David Fixler, Rubin and Rudman
Attorney, John Coyle, Duncan & Allen via speaker phone

Calpine Issue

Mr. Cameron opened the meeting by stating that two meetings ago both the Reading Municipal Light Department (RMLD) Board and the Citizens' Advisory Board (CAB) authorized the General Manager to use legal channels to obtain the Escrow Funds from Calpine. Mr. Cameron said that three legal firms Rubin and Rudman, Duncan & Allen, and Kramer Levin Naftalis & Frankel LLP recommended that the RMLD file a petition in the Bankruptcy Court.

Mr. Cameron explained that at the last RMLD Board meeting, he recommended what the three firms were now recommending, but that a CAB Board member and RMLD Board Commissioners had questions and concerns, as a result no formal motion was made. Mr. Cameron said that the sense of the Board after this meeting was that questions needed to be answered. Mr. Cameron stated that this evening, questions can be presented to Attorneys Ken Barna and David Fixler of Rubin and Rudman who work with Attorney, Thomas Mayer of Kramer Levin, New York bankruptcy counsel as well as Attorney, John Coyle of Duncan & Allen who was present by phone.

Mr. Cameron said that both the RMLD Board and CAB had received a Draft Motion to file in the Bankruptcy Court and a memorandum from Attorney John Coyle with his recommendations on this matter.

Mr. Norton said that at this point he had thought that the Calpine matter would have progressed better than it had. Mr. Norton said that, since he would be meeting with the North Reading Town of Selectmen he wanted to know if the Calpine litigation would be protracted because at the North Reading Board of Selectmen's meeting the feeling expressed was that as of March 1, there would be some sort of progress. Mr. Norton wanted to know how long this would be protracted? Mr. Norton questioned, when does the green light go on for a rate increase and how does the remainder of 2005 and 2006 look? Mr. Norton said that he was concerned because if this goes beyond June, it is going to affect the budgets for the schools and municipal side for their utility costs.

Attorney Fixler responded that he thought by going into Bankruptcy Court was the quickest solution. Attorney Fixler explained that under the bankruptcy rules, a preliminary ruling can come within thirty days and a final ruling in sixty days. Attorney Fixler explained that the stay is inapplicable in the State or Federal Court. Attorney Fixler added that in Bankruptcy Court a ruling could be issued that the RMLD should not be in Bankruptcy Court to get the funds in the escrow.

Attorney Fixler said that by going into bankruptcy, RMLD hoped to engage Calpine, to open an avenue to allow some potential funds to be distributed. Attorney Fixler pointed out that RMLD was not successful when they tried to work with Calpine's attorneys to get at least fifty percent of the funds released, but it was not approved at Calpine's highest level. Attorney Fixler added that the federal court does not provide for immediate relief and the motion can get bogged down. Also, the parties run the real risk of the motion being dismissed due to the lack of jurisdiction and landing in Bankruptcy Court anyway.

Ms. Kearns asked Attorney Coyle; whether there was a chance that the Bankruptcy Court would decide that half the escrow funds are the property of Calpine and the other for the bankruptcy claim? Ms. Kearns said that she was referring to pages sixteen to eighteen of Attorney Coyle's memorandum relative to the escrow agreement, and what is the property of Calpine.

Calpine Issue

Attorney Coyle explained that RMLD had a strong argument in Bankruptcy Court in that the escrow is not the property of the bankruptcy estate. Attorney Coyle added that he thought it was a reasonable risk to go into Bankruptcy Court.

Mr. Soli asked Attorney Coyle to address page two of his memorandum, in the first paragraph Section 2 (C). He asked if he thought there would be delays in RMLD's recovery by an argument that the Escrow Account is, in whole or in part, property of Calpine's bankruptcy estate within the meaning of Section 541 of the Bankruptcy Code.

Attorney Coyle replied why he was recommending going to Bankruptcy Court first as opposed to State or Federal Court, was to get a ruling on what the escrow amount was part of the bankruptcy, the court motion to go to Bankruptcy Court first is strategic and is an offensive strategy.

Mr. Soli asked, "Will we be beaten over the head on the property issue?"

Attorney Coyle replied that the escrow is a genuine escrow and there are two scenarios, which need to be understood. Attorney Coyle explained that the escrow account has legal title to it and the bank needs to ensure who is responsible for the escrow funds from a tax point of view.

Mr. Soli asked, how will we fare?

Attorney Coyle replied that the law is on RMLD's side because there is a real escrow agreement and Calpine does not retain control of trust funds.

Mr. Hahn inquired, "What is the risk that the Bankruptcy Court could attach the escrow funds, use these assets to pay other creditors? Is it zero?"

Attorney Coyle replied that he could never promise that zero was not a possibility, something could go wrong, but several lawyers have concluded that the best judgment available support the proposed strategy.

Mr. Hahn asked if the Bankruptcy Court issued an unfavorable ruling, what options are available to RMLD? Could it be, appealed?

Attorney Coyle explained the appeal process.

Attorney Fixler noted that the RMLD runs a risk if it did not go into Bankruptcy Court because it might be back there anyway. If you do not go to Bankruptcy Court initially, you run the risk of being in Bankruptcy Court in a defensive position.

Mr. Hahn said it was his understanding that Calpine's motivation in this case is that it disagrees with the disputed amount. Mr. Hahn pointed out that Calpine has not filed a termination methodology and cannot say the settlement amount is zero. Mr. Hahn said that Calpine has to get the motivation to provide the figures and come up with their termination methodology.

Attorney Fixler replied that he thought Calpine did have a strategy relative to providing their methodology, but the truth of the matter is that Calpine was swamped and the RMLD was not on their radar screen. Attorney Fixler added Calpine was not acting logically.

Attorney Fixler said that the RMLD has exhausted all avenues except for filing a lawsuit, but there is no immediacy on Calpine's behalf because the RMLD is not on their radar screen.

Attorney Coyle added that in a bankruptcy situation action, it is a triage situation for the first four to five months and this is the most plausible explanation for Calpine inactivity with respect to the RMLD.

Mr. Vale added that the original offer by Calpine to give fifty percent of the escrow to the RMLD went pretty high up in their organization before it was denied.

Attorney Barna said that it was Calpine's bankruptcy lawyer in Boston who had agreed to fifty percent, on Friday, but the on following Monday, someone within the Calpine organization, very high up said no.

Mr. Vale asked, "What was the logic in saying, "no"?"

Calpine Issue

Attorney Barna replied that it is all conjecture. Attorney Barna said that Calpine did not want to lose leverage in possible negotiations, as mentioned by Ms. Kearns last month. Attorney Barna said that Calpine was waiting to release the monies pending approval from the Creditors Committee.

Mr. Hahn added, hypothetically, if a Calpine management person agrees to a settlement number, can this be approved by the Bankruptcy Court?

Attorney Fixler explained how that would work.

Ms. Kearns asked hypothetically if Calpine settles before the bankruptcy filing and if the agreement is for \$50 million of which \$42 million goes to the RMLD and \$8 million to Calpine. Ms. Kearns wants to know where the \$8 million will go and the advantage of this approach?

Attorney Fixler replied that the remaining \$8 million will go in the bankruptcy estate.

Mr. Carakatsane said that the RMLD is off Calpine's radar screen; therefore the RMLD needs to fight for the money.

Attorney Fixler said that the bankruptcy filing is a public record except for the contract pricing which is subject to confidentiality rights pursuant to the public records laws of the Commonwealth of Massachusetts.

Mr. Carakatsane stated that three weeks ago he thought the RMLD was going on the offensive regarding the Calpine issue. Mr. Carakatsane said that the motion drafted by Rubin and Rudman was powerful and it should be filed tomorrow. Mr. Carakatsane pointed out that both Boards voted two weeks ago to allow the General Manager to go forward with this legally. Every day that this is not filed is precious to the ratepayers. Mr. Carakatsane has some small suggestions to the draft motion.

Attorney Barna asked Mr. Carakatsane to call Attorney Fixler tomorrow morning with his changes.

Mr. Carakatsane said that he is looking for more explanation in his proposed revisions.

Attorney Barna pointed out that Thomas Mayer would argue RMLD's motion in the New York courts.

Ms. Kearns said that she was cautious about the bankruptcy filing. Ms. Kearns said that she asked Attorney Charles Doherty in her firm who is known for his bankruptcy work whether the filing was a good idea. Ms. Kearns said that Attorney Doherty indicated that bankruptcy is the avenue to pursue given the escrow language is well crafted. Ms. Kearns supports Mr. Carakatsane's idea that, unless fifty percent of the monies are secured from Calpine right now then proceed with the bankruptcy filing.

Mr. Hahn addressed CAB member Mr. Carakatsane's statement about the ratepayer. Mr. Hahn said that the ratepayer was not forgotten. Mr. Hahn said that the Board was not going to rush into a decision, possibly jeopardizing the receipt of escrow funds. The Board should make an informed decision. Mr. Hahn pointed out that there is a lot more information presented this evening than at the last meeting.

Mr. Carakatsane made a motion seconded by Mr. Norton that the Citizens' Advisory Board recommend to the Reading Municipal Light Department's Board of Commissioners that they direct the General Manager to file a motion in Bankruptcy Court as soon as possible FOR ENTRY OF AN ORDER CONFIRMING INAPPLICABILITY OF AUTOMATIC STAY OR, ALTERNATIVELY, ANNULLING THE AUTOMATIC STAY.

Motion carried unanimously 5:0:0.

Mr. Soli made a motion seconded by Mr. Hahn to accept and approve the Citizens' Advisory Board motion that the Reading Municipal Light Department Board of Commissioners direct the General Manager to file a motion in Bankruptcy Court as soon as possible FOR ENTRY OF AN ORDER CONFIRMING INAPPLICABILITY OF AUTOMATIC STAY OR, ALTERNATIVELY, ANNULLING THE AUTOMATIC STAY.

Motion carried 4:0:0. Commissioner Pacino was in Mexico and unable to attend the meeting.

Ms. O'Neill said that she was previously more optimistic that this could be resolved quickly. She said that she was now concerned that by not having the escrow funds this will result in an increased cost in the budget. She said that she would like to see a break out to replace the escrow money. She asked, "How RMLD will find the money?"

Mr. Cameron offered to explain them to Ms. O'Neill. It was determined this could be provided at a later time.

Calpine Issue

Motion to Adjourn

At 7:58 p.m. Mr. Norton made a motion seconded by Mr. Vale that the CAB return to Regular Session for the sole purpose of adjournment.

Motion carried 5:0:0.

Chairman Lessard called for a poll of the vote:

Mr. Vale, Aye; Mr. Norton, Aye; Mr. Carakatsane, Mr. Lessard, Aye; and Ms. O'Neill, Aye.

At 7:59 p.m. Mr. Soli made a motion seconded by Mr. Hahn to return to Regular Session.

Motion carried 4:0:0.

Chairman Herlihy called for a poll of the vote:

Mr. Hahn Aye; Mr. Herlihy, Aye; Mr. Soli, Aye; and Ms. Kearns, Aye.

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

Ellen C. Kearns, Secretary
RMLD Board of Commissioners