

Minutes of the Joint Steelton Borough Council-Steelton Borough Authority Meeting

March 19th, 2018

5:30PM

Call Meeting to Order: Mr. Brian Proctor, President of Steelton Borough Council, called the meeting of the Joint Steelton Borough Council-Steelton Borough Authority to order at 6:35pm.

PRESENT:

Maria R. Marcinko, Mayor

Brian Proctor, Council President and Authority Member

Michael Segina, Council Vice-President and Authority Member

Keontay Hodge, Council Pro-Tem and Authority Member

Kelly Kratzer, Council Member

Dennis Heefner, Council Member

Natashia Woods, Council Member

William Krovic, Council Member

Allan Ausman, Chairman of Steelton Borough Authority

Ryan Maxwell, Vice Chair of Steelton Borough Authority

Kathy Handley, Steelton Borough Authority Member

David A. Wion, Steelton Borough Council Solicitor

Michael Solomon, Steelton Borough Authority Solicitor

Douglas Brown, Borough Manager and Authority Secretary

Ed Ellinger, Herbert, Rowland and Grubic, Inc., Borough and Authority Engineer

Kathy Pape, McNees, Wallace and Nurick, Specialty Counsel

Thomastine Leggett-Robinson, Executive Assistant

Approval of Minutes from Previous Special Meeting: There was no previous meeting from which minutes were required. Ms. Maxwell asked if she would receive minutes for this meeting. Mr. Brown replied that the Boards would receive minutes from the meeting.

Special Order of Business:

Approval of Request for Proposals for Purchase of Steelton Borough Water and Wastewater Systems

Kathy Pape, McNees, Wallace and Nurick, LLC

Ms. Kathy Pape of McNees, Wallace & Nurick, LLC presented the draft Request for Proposals for purchase of the Steelton Borough Water and Sewer Systems. Ms. Pape apologized for sending the information late. However, the attorneys were trying to get the best price consideration and the best non-price consideration language drafted, and it was also vetted thoroughly with McNees attorneys versed in challenging asset sales in order to make it as legally air tight as possible. Therefore, they felt the extra time was worthwhile for quality purposes. Ms. Pape stated that she would present the RFP to the Boards without requesting action to allow for adequate review.

Ms. Pape started by reviewing the Executive Summary and RFP for water authority assets. She explained that the presentations and discussions are being held separately for water and sewer assets so no one can allege that the Authority didn't do what was in the best interest of the water customers and the Council be accused

of not doing what was in the best interest of the sewer customers. The description of the assets will be different but the substantive considerations and language in the RFPs are the same.

Ms. Pape reviewed some of the conditions that have prompted exploring a sale of both systems including:

- Heavy reliance on one large industrial user for water revenues whose usage had declined in recent years
- Increased debt burdens for both water and sewer funds
- The need for large capital investment, including possible construction of a water filtration plant, to meet future DEP/EPA environmental regulations under the Safe Drinking Water and Clean Drinking Water Acts
- A limited rate base to absorb rate hikes due to increasing cost pressures
- Limited ability to absorb new debt to pay for capital needs

Ms. Pape then outlined changes in the state law that have made sales of utility systems more favorable for sellers, including changes found in Act 12, 66 Pa. C.S. § 1329 and 66 Pa. C.S. § 1351, *et seq.* which allow for a market value valuation of utility systems and allow utility companies to spread capital costs over entire rate bases (example: the cost of a capital project in Steelton could be spread across hundreds of thousands of users of a large company as opposed to just 2,500 users of Steelton's system.) This favorable change in the law coupled with the benefits of economies of scale provided by a large user could benefit Steelton in a sale.

However, Ms. Pape made it clear that approving the Request for Proposals was not commitment to a sale; rather, it is an early due diligence step that will be taken by both boards to acquire the data needed to properly evaluate the feasibility of a sale. Ms. Pape pointed out that we must know the value potential buyers are willing to pay for the systems and compare it to the costs of keeping both systems. Concurrent with the RFP process, both boards will be receiving: a capital cost study outlining the capital needs of both systems and the costs of keeping both; an asset inventory of both system's assets and their value; an expert valuation by a PUC-certified appraiser to give an independent value of the system; additional data to inform a decision. The RFPs are just one of many steps in gathering the data needed to evaluate selling or keeping the systems.

Ms. Pape then reviewed the components of the draft Request for Proposals for both systems with the Boards. Ms. Pape noted an Executive Summary that outlines key provisions in the drafts. Ms. Pape further noted that this meeting would simply be a review due to the fact that the draft RFPs were just submitted to both boards for review. Mr. Brown stated that the Boards will meet again on Tuesday, March 27th to consider voting on releasing the RFPs. The boards will then have one week to review both documents and submit any questions to Ms. Pape and her team prior to March 27th.

Ms. Maxwell noted that she was supportive of pushing a voting meeting back one week due to the fact that the RFP draft language was received late.

Ms. Pape then reviewed key provisions of the Draft RFP, entertaining questions from Board Members during the presentation. Ms. Pape noted that the RFP contains both monetary and non-monetary considerations on which proposals will be scored. On a 100-point scale, Bidders will be scored up to 70 points for their monetary offer and 30 points for non-monetary considerations.

Monetary Offer (70 points):

- **Purchase Price: Buyer’s Monetary Offer for Both Systems**

Non-Monetary Offer (30 Points):

- **Protection of Employees’ Jobs**
 - Salary – Ms. Pape noted that potential buyers typically pay higher wages than Steelton’s current wages for water/sewer employees. The language in the RFP requires buyers to hire all existing water/sewer employees at pay rates at least at their current level and with benefits comparable to current benefits.
 - Retirement – Ms. Pape noted that most companies offer a defined-contribution plan like a 401-K. Existing employees could roll over their pension benefits or the Borough could arrange for early-retirement benefits. Ms. Pape suggested that this labor piece will be part of the process if both boards move with a sale.
 - Healthcare – The RFP currently requires healthcare to be similar to existing coverage. However, Ms. Pape noted that companies have their own healthcare and employee cost sharing rates. The AFSCME Union could negotiate with a buyer on these items.
- **Rate Freeze for 6 years:** Ms. Pape noted RFP language that requires a six-year freeze on rate increases from time of purchase. It was asked if the freeze could be incremental. Ms. Pape noted that we can put whatever rate controls we would like in the RFP. Ultimately, like other non-monetary considerations, this could impact the price offers made by respondents.
- **Requirement to Make Capital Improvements in Steelton’s Water and Sewer system:** In order to protect investment in Steelton’s water and sewer systems, language was placed in the RFP draft that requires bidders to submit a capital plan for investing in Steelton’s systems and make said capital investments in the systems.
- **Low Income Customer Assistance Program** The RFP also requires bidders to submit a plan/detail of their low-income customer assistance program. A benefit of a larger company is that they can provide assistance to customers, something Steelton does not have the capacity to do. The RFP would require bidders to outline such assistance.

The language provided for the Board’s review is as follows:

PRICE CONSIDERATION: 70 POINTS MAXIMUM

The amount of the Price Consideration that the undersigned Bidder offers to pay for the Water System defined in the Request for Proposals issued by the Steelton Borough Authority on March 20, 2018 is US\$ _____ [in numbers], _____ [in words] United States Dollars.

NON-PRICE CONSIDERATION: 30 POINTS MAXIMUM

The undersigned Bidder offers the following non-price consideration:

1. *As the Authority favors a joint sale of both its Water System and the Borough's Sewer System, Bidder shall confirm whether it will respond to both this RFP and the RFP for sale of the Borough's Sewer System.*
2. *Bidder shall demonstrate a history of legal, financial, and regulatory compliance with regard to water operations. Bidder shall also disclose all citations, violations, consent agreements, fines, penalties and the like that*

it has received or been a party to within the last ten (10) years relating to its ownership and/or operation of water systems in Pennsylvania.

3. *Bidder shall demonstrate its ability to deliver safe and reliable water services for the benefit of customers.*
4. *Bidder must provide a detailed list of capital improvements that it will commit to the System during the ten (10) years subsequent to the acquisition.*
5. *Bidder must offer employment to all current employees of the Borough, who are assigned to the Water System in positions substantially similar to their current positions with substantially similar wages and benefits, including retirement benefits. Bidder will explain what the wages and benefits will be.*
6. *Bidder shall not increase rates for water service for a period of six (6) years following the Closing Date and shall provide a plan for phase-in of rates after expiration of the stay out.*
7. *Bidder shall propose and explain a financial assistance program for qualified low-income customers.*
8. *Bidder shall provide a plan for implementing monthly billing for all customers of the Water System.*
9. *Bidder may provide any other commitments that would add value to the customers of the Water System.*

Mr. Heefner stated that he wanted to be cautious about moving too quickly and stated that he felt the “train was leaving the station” too fast. Mayor Marcinko echoed this sentiment and stated that she wants to make sure both Boards and herself are fully equipped with information to discuss with the public.

The Boards then discussed having a series of public meetings after the RFP is released to discuss the process and reasoning for exploring a sale.

Ms. Maxwell stated that she would like to have more time to review the RFP in detail and have questions answered regarding her concerns. Mr. Ausman seconded this sentiment.

Ms. Pape then reviewed the projected schedule of milestones for moving forward with the project. The dates are goals, but are subject to change based on any delays in deliverables.

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| • March 19-March 26 | Review of Draft RFPs and Approval to Release to Bidders |
| • February 26-March 26 | Prepare Engineering Assessment of Assets---HRG |
| • March 26-April 4 | Prepare draft Appraisal of Assets---Scott Madden |
| • Weeks of March 19 and 26 | Schedule Due Diligence Meetings and Tours---SGA |
| • March 27, 20-18 | Advertisement of RFP |
| • April 11 | Final Appraisal Issued Scott Madden |
| • April 16 | Bids Due---Bidders |
| • April 16 | Joint Council/Authority Meeting to Open Bids and Award Contract---Steelton |
| • _____ | Joint Council/Authority Meeting to review and Approve Asset Purchase Agreement |
| • May 31 | Complete Negotiation/Execution of Asset Purchase Agreement---Steelton/SGA/McNees |
| • May 31 | PUC Application Filed---McNees |
| • Nov. 8 or Dec. 6 | PUC order Entered |
| • December 15 | Close Sale of Assets---Steelton and McNees |

Mr. Heefner asked if it is possible to sell the water system or sewer system separately and keep one, noting that the Sewer Fund has a significant surplus and reserve and is a “money-maker” for the Borough. Ms. Pape stated that it is possible but that it is not realistic and a better value will be realized by selling both systems.

Mr. Heefner further stated that he does not believe that the steel mill is performing as bad as some claim and that their decline in usage cannot be as bad as presented. Mr. Brown stated that there will be full usage numbers provided to the boards as part of the process of reviewing the data.

Mr. Heefner further asked if the Borough and Authority have considered disposal of vehicles, equipment, and property that is shared between the highway, water, and sewer departments and whose cost is split evenly between the General, Water, and Sewer Funds. Ms. Pape responded that the Borough and Authority can dispose of any equipment it chooses in the sale and keep what it wants. She stated that the equipment/vehicles would not make a significant difference in the sale offer. Mr. Brown further stated that not all equipment is split three ways and that the Borough has vehicles and heavy equipment assigned to each Department. Mr. Brown stated that he would review this. He also stated that the Borough Garage and Salt Shed would not be included in a sale.

Mr. Ausman asked if the proposed schedule of milestones was unnecessarily aggressive and if it could be slowed down to allow thorough and careful consideration during each step. Ms. Pape responded that the times listed could be compressed or moved back.

Ms. Hodge stated that she thought the Joint Water-Sewer System Review Committee had recommended that the RFP be voted on and released at this meeting. She asked why that changed. Ms. Maxwell responded that it was because the RFP drafts were received late and the boards wanted more time to review the drafts before approving. Ms. Hodge responded that she just wanted clarification since the planned action had changed from the previous committee meeting where the RFP was discussed.

Ms. Pape reiterated that the reason to issue the RFP now is so that potential bidders can begin to do their due diligence, ask questions and prepare their proposals that will give the Council and Authority specific value of the system. This information is needed to compare to other data as part of the review.

The Boards then discussed having a public hearing at the Steelton Highspire High School Auditorium and deliberated on whether to hold the meeting before or after RFPs are received. It was discussed that a public meeting (or series of public meetings) will be held once all of the data is received.

Ms. Maxwell asked if there was a law that prohibits or allows utility companies to raise rates at anytime during the year. Ms. Maxwell stated that a main concern is the control of rate increases, especially given the limited income of some residents.

The response was no. There are no limits on how many times a private company can propose to increase rates. However, rate increases must be justified, presented to and approved by Pennsylvania Public Utility Commission, which makes rate increases regulated and prevents compounding/frequent rate increases. Ms. Maxwell then asked if rate controls are included in the non-monetary conditions in the RFP. Ms. Pape replied yes, rates cannot be raised for six years, and they must present a plan for phasing in the rates in year seven and out. Ms. Maxwell - clarified that the RFP will only bind the rates for six years and after that period they will have to have a plan in place, but it is not legally binding if they don't stick to the submitted plan. Ms. Pape responded that Ms. Maxwell is correct, however, as the RFPs are being reviewed the bids will be compared during the selection process and the information regarding the phase-in plan will be one component of determining whether or not the bid is acceptable. Ms. Maxwell asked if the bidder could change their mind and make an alternate rate increase. Ms. Pape responded that the bidder is making a commitment on the

phase in of rates that they will be held to as part of the sale. The response clarified Ms. Maxwell's concern. Ms. Hodge stated for the record that the RFP's being considered are to legally find out what we can get for the water and sewer systems, to investigate the options and not to necessarily say that either board is committing to selling the systems. This is something we are trying to do, legally, as a Borough to see what the asset is worth and if it would still be an asset in the future compared to the projected costs/benefits of keeping both systems. Ms. Pape responded that both boards have hired consultants to determine what the system is worth, they are doing an appraisal of the system, and concurrently doing an asset inventory and capital cost analysis. The RFP is being issued to determine what proposers will pay. Ms. Pape reiterated that the language in the RFP is very clear that the Borough and the Water Authority are under no obligation to accept any proposals.

Mayor Marcinko then asked for additional clarification on how employees will be protected, including wages, benefits, and job stability if a sale were to take place. Ms. Pape pointed to the language in the non-monetary considerations in the RFP. Ms. Pape stated that if a sale were to take place, the Borough would work with employees to establish transition work agreements and the buyer would need to recognize the union. She also stated that the potential buyers pay higher wages than Steelton's pay rates, so employees would most likely see a pay increase.

With the information presented and thoroughly reviewed, the Boards tabled action to allow for further individual review for the proceeding week. Both boards were instructed to provide Ms. Pape and Mr. Brown with any comments, questions and proposed revisions to the draft RFP. The Boards will then meet at a publically advertised meeting on March 27th, 2018 to consider taking formal action on the revised Requests for Proposals.

Public Comments:

Other Business:

Adjournment: At 7:42 pm, Mr. Segina moved and Mr. Heefner seconded the motion that the Joint Session end and the Council resume the scheduled meeting. The motion passed by a unanimous vote of the Council.

Respectfully Submitted,



Douglas Brown, Secretary