

**MINUTES OF THE
HVCEO
MEETING OF FEBRUARY 26, 1999
AT BROOKFIELD, CT TOWN HALL**

MEMBERS AND ALTERNATES IN ATTENDANCE

Brookfield. First Selectman Bonnie Smith
Danbury Mayor Gene Eriquez
New Fairfield. First Selectman Patricia Gay
New Milford. Mayor Arthur Peitler
Sherman. First Selectman Donna Tuck

OTHERS IN ATTENDANCE

State Representative Jeanne Garvey, Paul Corey and Cat Nguyen of the DPUC's Utility Operations and Management Unit, from CL&P George Breitwieser, Raul DeBrigard, Bob Gates and other's, Harris Kretsge, Wally Choi and others from J.P. Morgan Securities, assisting J. P. Morgan staff was Attorney Laura Wilson of White & Case, assisting the municipalities were Attorneys Ted Backer and Dan Casagrande of Pinney, Payne et al representing Danbury and New Fairfield, Jon Chesto of the News Times, from the Candlewood Lake Authority Bruce Lockhart, Harold Mayer and Larry Marsicano, Elaine LaBella of the Housatonic Valley Association, and Jonathan Chew of the HVCEO staff.

CALL TO ORDER AND PUBLIC COMMENT The meeting was called to order by Vice Chair Arthur Peitler at 9:30 A.M. Attendees introduced themselves. There was no public comment.

**DISCUSSION ON CANDLEWOOD LAKE SALE,
CONSERVATION AND MANAGEMENT**

Paul Corey of the DPUC opened the discussion by stating that a draft document had been prepared that would extend by one month the current 3/1/1999 DPUC deadline for agreement on Candlewood Lake beach purchases and conservation easement issues. He stated that if CL&P hydro project auction agent J.P. Morgan, Inc. and the municipalities agree in principal today as to a policy direction for these issues, then the parties can jointly apply for a one month extension.

State Representative Jeanne Garvey reviewed some ideas on how the process could develop and also an Associated Press news release dated 2/12/1999 that discussed how the Puget Sound Energy Company in the State of Washington may shut down the White River hydroelectric Project, a move that could mean the draining of Lake Tapps Reservoir there.

Shorefront homeowners had been told by the utility that the project may be discontinued due to high costs. Also that "the utility likely would drain Lake Tapps unless someone else stepped forward to pay for maintaining the water delivery system to the Lake, including the dam and dikes." It was just this type of crisis that we must prevent, Representative Garvey said.

Harris Kretsge of J. P. Morgan then distributed a handout and made a presentation of a suggested approach to manage the current Candlewood Lake issues. He suggested three separate tracks, each to result in their own development process and final document. These are 1) sale of CL&P owned beaches to the municipalities interested, 2) a Candlewood Lake maintenance agreement, and 3) a conservation restriction for the bottomland.

This three pronged approach was in reaction in part to the issues raised by the municipalities draft conservation easement. This 1/7/1999 proposal, formulated by the municipality's attorneys Ted Backer and Dan Casagrande, included restrictions (e.g. on filling, mining, dumping, environmentally detrimental activity) that would apply in perpetuity to the Candlewood Lake bottom land, defined as below the 418 foot contour line. This draft conservation easement would also prevent any permanent draining of the Lake below the 418 foot contour line.

The lakeshore strip of water and shorefront from the 418 foot contour up to the 440 foot contour that the future utility will own would be largely unaffected. Use of water for power generation would also be unaffected, and there would be no restraint upon the utility meeting its Federal Energy Regulatory Commission (FERC) permit conditions.

As for the proposed right of first refusal to purchase when and if the FERC license is ever surrendered, this right would be applied to all of the utility land up to the 440 contour line, not stopping in the water at the 418 foot contour line.

Mr. Kretsge noted that the contents of the 1/8/1999 draft conservation easement and right of first refusal to purchase formulated by the municipality's attorney had basically been divided into item 2, the proposed maintenance agreement, and item 3, the proposed conservation restriction/right of first refusal. The presentation of the three track process by Mr. Kretsge, followed by discussion points upon them, was as follows:

TRACK 1) Sale of CL&P owned beaches (and expansion in New Milford) to the municipalities. He noted that the municipalities of Danbury, New Fairfield, Sherman and New Milford had expressed an interest in purchasing the beaches in their jurisdictions. In addition, New Milford seeks to expand Lynn Deming Park to the north. Mr. Kretsge stated that the sale of parcels currently in beach use as well as the New Milford expansion should be based upon appraisers determinations of fair market value.

To meet FERC conditions it will be necessary for the utility owner to retain certain restrictions, such as insistence upon permanent beach use, no property development, etc. Also, the parcels should remain within the FERC regulatory boundary.

A related discussion point was municipal hesitance to be required to apply to FERC in Washington for minor maintenance items involving the beaches. The response was that FERC cannot regulate any entity but the utility licensee, that the proposed Lake encompassing maintenance agreement to be negotiated would set standards for thresholds after which the licensee would need to be the applicant to FERC, not the municipality. The licensee would be reviewing municipal changes below the 440 contour elevation in any case, to assure conformance with its FERC license.

Paul Corey of DPUC stated that it may be possible to have CL&P be the applicant to FERC on beach purchase issues, rather than the interested municipalities themselves. This process could be on a different time track than the others. Raul DeBrigard of CL&P stated that the Brookfield position of not pursuing purchase of the CL&P owned beach in that Town is not a problem for either side, as the current public recreational use will continue on that property in any case.

It was stated that due to the limited one month extension for agreement it may be useful to have only one appraisal, selected by agreement of both parties. Municipal leaders stated that they expected little or no appraised value in these beach properties, as their use is mandated to continue under the FERC license as solely public recreation in nature. Additional discussion followed.

TRACK 2) Lake maintenance agreement:

Under this proposal, a permanent Lake Maintenance Committee would be established. Its charge would be to ensure that the new Lake owner, the Candlewood Lake Authority, municipalities, CT DEP, etc. all communicate and work together towards maintenance of a first class recreational resource. A funding source for administration of the proposed Committee has not yet been determined.

The agreement they negotiate would incorporate the most important practices CL&P as the current owner currently performs, and it would be requested that FERC insert these items in the upcoming license renewal. But some currently voluntary practices would remain to be negotiated with the new owner directly. Some Lake maintenance expenses would also be negotiated by this group, he said.

Mr. Kretsge also stated that this second item is being suggested as a convenience to the affected

municipalities, that J.P. Morgan does not see it as a mandated requirement to insure a proper auction.

HVCEO members stated their preference for having as many issues as possible placed in the FERC license itself, rather than being left out of the license and therefor placed in this proposed new management agreement. It was noted that maintenance items that are formalized in the FERC agreement do not necessitate any new local funding, which is to be avoided.

Jon Chew spoke to that part of the January 1999 DPUC decision on the CL&P Divestiture Plan which formalized the obligations currently practiced by CL&P on a voluntary basis. He had been told by a DPUC spokesperson that these were as defined in Late Filed Exhibit HD-03, and issued a memo stating that they were conditions of the sale. (Note: these HD-03 items include 1) every other year winter deep drawdown for weed control, 2) off year winter partial drawdowns to prevent ice damage, 3) annual Candlewood Lake Authority funding, 4) hunting allowed on CL&P property, 5) biweekly Dykes Point interpretive tours, and 6) use of CL&P owned Sand Island for Bass fishing tournament administration).

But Paul Corey of DPUC advised that it was incorrect to state that these items were mandated by DPUC to be conditions of the present sale. Rather, it was required by DPUC that CL&P submit these six items as part of its relicensing application to FERC, for FERC to then decide to what degree they should become formalized as specific relicensing conditions.

Paul Corey then stated that one purpose of the proposed Candlewood Lake management agreement and related committee would be to deal with the specifics of key issues such as weed control as time and technology changed, that FERC might set a condition that the owner must address weed control to preserve recreational quality, but that the specifics might best be changeable by local agreement, without a complicated recourse back to amending the FERC license.

Bob Gates of CL&P stated that the draft relicensing application to be released in March will be useful to this discussion as it will list all proposed responsibilities for the new owner. This will be a very definitive list for municipalities to react to.

TRACK 3) Conservation restriction/right of first refusal to purchase:

This item should be designed to ensure that the Lake is maintained as a recreational resource in the unlikely event that the FERC license is ever surrendered, Mr. Kretsge stated. He felt that while the license surrender issue may be remote, an agreement to protect against impacts if it did is indeed worthwhile.

He envisions that the state or municipalities would have the right of first refusal to purchase. The rights conferred by this conservation restriction must be purchased at fair market value.

Attorney Laura Wilson assisting J. P. Morgan noted that if the license were ever surrendered, FERC could direct which agency, state or local, was to be offered ownership or control. If the municipalities want to have a conservation easement that grants them first right of refusal to purchase the Lake as the FERC license is surrendered, with the second right offered to the state, then could this conflict with FERC's right of assignment, she asks. There was also worry that the municipality's proposed easement might affect long term value by hindering a future private sale of the Lake, this to be reflected now by reducing the current purchase price in the auction.

Attorney Ted Backer assisting the municipalities stated that the draft conservation easement included wording to the effect that if in the Lake owner's judgment any provision of the conservation restriction conflicts with any provision of the FERC license, then the easement would have no effect. This broad permissive wording for the owner essentially invokes the conservation restriction only when a FERC license is no longer present, he stressed.

He also suggested that the proposed municipal right of first refusal could be "subject to all U.S. laws and FERC regulations," and that the goal is to have wording in the easement that is well established

on precedents in Connecticut law, assuming that federal law may be less applicable in the future if the Lake is not FERC regulated. The representatives of DPUC, J.P. Morgan and CL&P then caucused to coordinate their position.

Paul Corey of DPUC then stated that the concept of a restrictive easement running with the land in perpetuity could be problematic. The proposed right of first refusal to purchase is much more viable and easier to achieve, he said.

For the conservation easement to be considered by DPUC and J.P. Morgan, the municipalities would need to pay fair market value for it in the immediate future. Also, that a utility company wishing to sell in the future would need a clause allowing it to force the municipalities to accept ownership at some realistic cost, to prevent the conservation easement from taking much of the value.

Mr. Corey noted that it is expensive to decommission any power facility, and that FERC will require the utility to pay these costs. Costs of dam maintenance, pumping, etc. after the surrender of the FERC license cannot still be tied to the utility. Also that CL&P can't give any rights away at a discount due to the strict requirement that revenues be raised by this auction to pay off the company's very substantial stranded costs, he said.

HVCEO members commented that DPUC is still required to balance public benefits and private profit, and that the public interest should not be lost in this issue. Representative Garvey stated that in any balancing of private use versus recreational use for Candlewood Lake, the recreational uses and benefits should obviously dominate.

NEXT STEPS

Attorney Dan Casagrande suggested that it would be of mutual interest for the J.P. Morgan- DPUC team to provide draft documents as to how it wishes to proceed with the three items discussed, rather than have the local side formulate them.

It was then agreed that J.P. Morgan drafts of the first two items would be provided on or before Friday, 3/5/1999. On the third track item, the conservation easement/right of first refusal to purchase, the J.P. Morgan-DPUC team stated that there were few complications in proceeding with the right of first refusal text. Giving the state the right of second refusal also needs to be considered.

However, that there was no value in proceeding with the conservation easement unless the municipalities were willing to consider 1) payment up front for the easement and 2) acceptance of a mandate (a "put option") to be placed upon them to be the future purchaser of last resort, for a dollar sum greater than zero. The four members present agreed to proceed with discussion on this basis (Danbury Mayor Gene Eriquez had left the meeting to preside at a noon dedication ceremony at this point).

It was agreed that draft agreements on the three points would be formulated by the J.P. Morgan and DPUC attorneys. The municipality's attorneys will maintain contacts with the other attorneys, investigate appraisers available, and prepare an issues analysis for a special meeting with the five municipalities in preparation for the next meeting of the full group.

The four HVCEO members present then signed a letter of request to DPUC for an extension by one month for completion of negotiations on these issues.

It was agreed that the municipalities and their attorneys would next meet at 9 A.M. at Brookfield Town Hall on Monday, March 8, 1999.

This meeting would then be followed by a meeting of the full group present at this meeting on Friday, March 12, 1999, also at 9 A.M. at Brookfield Town Hall.