

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
MARCH 17, 2011

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:30 p.m. by Darnell Brown.

I. Roll Call

PRESENT: D. Brown
R. Sulik
J. Bacci
S. Kelly
W. O'Malley
G. Starr

Mayor DePiero was absent.

The Secretary informed the President that a quorum was in attendance.

II. Approval of Minutes

MOTION – Mr. Sulik moved and Mayor Starr seconded that the minutes of the March 3, 2011 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that Arthur Karas and Andrew Natale or Jim Dixon registered to speak at Public Session regarding Resolution No. 76-11. Mr. Brown requested that Mr. Karas and then Mr. Natale report to podium to address their comments to the Board.

Mr. Karas thanked the Board for the opportunity to speak. Earlier this week, he reviewed the agenda for today's meeting and discovered that Resolution No. 76-11 for the authorization to reject and rebid the Combined Sewer Overflow Rehabilitation Contract-010 (hereinafter "CSORC-010") was on the agenda for the Board's consideration. Mr. Karas advised that this came as a surprise to his company, C&K Industrial Solutions (hereinafter "C&K"), since the District never notified them of a qualification issue or irregularity in their low bid. C&K therefore concluded that the District found fault with the bid package and/or bid process.

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Mr. Karas stated that "we had been told unofficially from the District that an ex-employee currently working for another contractor protested our bid stating that we have superior knowledge due to the design team work." Mr. Karas advised that "this has been confirmed directly from our ex-employee and another firm from which he tried to solicit support for this protest."

Mr. Karas stated that C&K supplies services, data and information, not design work, and that their "hypothetical superior knowledge was gained by supplying an engineering firm with site data and the sewer division manager at the time was the individual protesting the bid. The data that he and C&K supplied to the design engineers was only part of the data used to design the bid." Mr. Karas stated that there were many sources dating back to before C&K performed similar services for the District.

According to Mr. Karas, this "superior knowledge concept is a dangerous precedent which will lead to higher costs and stifle the essential flow of information." He questioned, "Where and how would the line be drawn on a multi-phase project? If this precedent were set, would not the successful bidder of phase one be barred from bidding on phase two when information, no matter how trivial, is used to establish the phase two bid? If individuals change companies, does this constitute a knowledge change? If a firm responds to an emergency, are they subsequently barred from bidding on the permanent solutions?"

Mr. Karas concluded by stating that "C&K respectfully requests the reconsideration of this groundbreaking precedent setting decision."

Mr. Natale addressed the Board on behalf of Nerone & Sons, Inc. (hereinafter "Nerone"), which initiated the protest. He indicated that Nerone has no knowledge of the references made by Mr. Karas regarding an individual who initiated a protest.

Nerone submitted a bid for the CSORC-010 project which is being brought to the Board for consideration to reject all bids and rebid in which the Board has absolute authority to do so. Mr. Natale stated that on behalf of Nerone, there is nothing we can do if that decision is made; however, Nerone supports it. Under Ohio law, the Board has absolute discretion to reject and rebid a project and under the circumstances and facts that exist, Mr. Natale advised that Nerone encourages the Board to reject and rebid CSORC-010 project.

Nerone maintains that it did submit the lowest and best bid and is entitled to the contract award and would support the Board's decision to reject all bids.

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Mr. Natale stated that the challenges raised by Nerone relates to C&K having been involved as a member of a design team and that what specific work they did is irrelevant. According to Mr. Natale, C&K was paid through Brown & Caldwell, which designed this job, to go in and develop information to be used and incorporated into a competitive bid solicitation. Unlike any other bidder, C&K had access to information relating to how that bid was being formulated and was actually paid to access the work and determine the actual conditions in the field. Mr. Natale stated that "this is not precedent setting nor is it unusual" and that "it goes to the heart of competitive bidding" and would be "an unfair competitive advantage."

Mr. Natale referred to the analogy made by C&K regarding a bidder completing one phase of the job then having a comparative advantage over a second phase of the work and he stated that it does not apply in this situation. Mr. Natale stated, "Similarly, with regard to a contractor that comes in and does an emergency award then coming in to do a permanent fix." In those instances, "bidders for that work are working off plans and specifications of third parties without the input of somebody to bid on the competitive award at a later date." Mr. Natale stated, "This is an apple to apples comparison of bidders who are on equal footing."

Mr. Natale advised that the basis for Nerone's challenge was that the apparent lowest and best bidder at the second time this project was to be awarded was actually paid to participate in the team that developed this District's specifications.

Mr. Natale stated that "if the Board were to elect to reject all bids, I can assure you that you will not see a legal action by Nerone and Sons because there would be no legal basis for anyone to challenge the exercise of the Board's discretion in that regard."

The Board decided to defer this matter to the agenda action items.

IV. Executive Director's Report

Executive Director Ciaccia moved to the first report item and stated that on Tuesday, March 15th, Judge Pokorny conducted the hearing on the District's Motion for [Partial Summary Judgment] in the Stormwater Management Program (hereinafter "SMP") matter. Both sides presented oral arguments and it was a very informative session involving the lawyers bantering back and forth on their positions. Attorneys representing some of the communities in opposition to the SMP were present at said hearing and there were also a few other attorneys present, but it was not a fully packed court room as in the past. We are now awaiting Judge Pokorny's decision on this matter.

Executive Director Ciaccia advised that he wanted to cover a few issues raised by the communities in opposition to the SMP. They continue to allege that the District went

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about this wrongly and that the District should have gone into court prior to adoption of the SMP. The District developed and adopted the program and then took the matter to court for clarification. However, the communities in opposition would have preferred the process to proceed as development, clarification and then adoption. Executive Director Ciaccia explained that no matter which order the District proceeded to adopt the SMP we would still be where we are today in his opinion.

The communities in opposition continue to argue that the District needed to do this on a consent-basis and that every community had to consent, which is an unlikely scenario. The bottom line is that the District would be right where we are today.

Executive Director Ciaccia moved to the next report item regarding the 3320 Woodland litigation and he advised that this matter scheduled for mediation on March 24th and 25th in Judge McCormick's chambers. Executive Director Ciaccia advised that staff will keep the Board apprised of this situation and plans to continue with the strategy which had been previously discussed in executive session.

Executive Director Ciaccia moved to the next report item and advised that the District is scheduled for mediation with respect to the MCT-3 matter in mid-April. At the trial court's insistence, the District has agreed to participate in a mediation process in an effort to resolve the MCT-3 litigation with KMM&K and its partners only if it receives basic information including verified damages from KMM&K and its partners. To date, the District has not received this information. The admitted bribery conspiracy between Bill Schatz, Stanley Lojek and Robert Kassouf has complicated and delayed delivery of this information.

Executive Director Ciaccia stated that Robert Kassouf, managing partner of KMM&K joint venture, recently refused to answer every question asked of him in deposition by invoking the 5th Amendment right of self-incrimination. For one and one-half days, Mr. Kassouf exercised his 5th Amendment right in our deposition of the managing partner of this joint venture.

Executive Director Ciaccia stated that since we have not received the information identified as a "precondition" to our participation in mediation, the tentatively scheduled mediation has been jeopardized. Unless this information is received in the near future, the mediation in mid-April will not occur. We remain hopeful that this information will be forthcoming so that this mediation can proceed. If this information is not timely provided, then we are prepared to abandon the mediation process and proceed with full trial on the merits. The District intends to hold KMM&K and its partners responsible for its overbillings, bribes and completion costs either at mediation or trial. Executive Director Ciaccia indicated that he wanted to apprise the Board of this situation and that it has been over three years since this case went to litigation.

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Executive Director Ciaccia advised that he will provide the Board with an update on the flooding at Southerly during the action items portion of the agenda.

Executive Director Ciaccia requested that either Frank Foley or Scott Broski provide the Board with an update on the situation at the Hillside Party Center in Cuyahoga Heights. He explained that during public session at the past two Board meetings, Emanuele Diligente, addressed the Board regarding the sewer issue at the Hillside Party Center. The District investigated this matter and discussion was turned over to Mr. Foley to provide the Board with the District's findings.

Mr. Foley stated that on March 4th, Water Quality and Industrial Surveillance (hereinafter "WQIS") investigators responded to the Hillside Party Center along with representatives from the Ohio Environmental Protection Agency (hereinafter "OEPA") to conduct dye testing at said location with the consent of Mr. Diligente.

Mr. Foley referred to a slide showing a manhole on East 71st Street in Cuyahoga Heights where the Hillside Party Center's sanitary flow would travel to if connected to the combined sewer.

Mr. Foley referred to a slide depicting a manhole at the back of Mr. Diligente's property and he advised that had the flow traveled into the storm sewers and eventually Mill Creek, dye would have been present in this or a nearby manhole.

Mr. Foley referred to a slide showing an aerial view of the Hillside Party Center. The blue dots represented the storm manholes. Mill Creek was located at the top of the slide. Near the bottom of the slide was the Hillside Party Center.

There were three locations where the dye testing was conducted. Two sets of restrooms were tested as well as kitchen area. Mr. Foley noted that the dye from each of those facilities was found in the combined sewer, but no dye was found in the storm sewer or Mill Creek.

As the WQIS investigators and OEPA representatives were conducting the dye testing, Mr. Diligente showed them a sump pit which he constructed. Mr. Foley referred to a slide showing the building sewer cut into the floor surrounded by a cement block sump pit constructed along with a five gallon bucket with holes and a sump pump. Mr. Foley indicated that the District's investigators did not believe this to be an appropriate connection. Therefore, Mr. Diligente, the Cuyahoga Heights Building Department and the Cuyahoga County Board of Health (hereinafter "CCBOH") were all notified that this did not appear to be a correct connection.

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Mr. Foley referred to a slide depicting another image of the sump pit which appeared to show the discharge from the sump pit exiting the building through an outlet in the front of the building near East 71st Street.

Mr. Foley referred to a slide depicting the outlet pipe. When the sump pump is turned on, the sanitary flow travels from Mr. Diligente's building across the parking lot into a catch basin.

Mr. Brown inquired if this would be considered as an illicit discharge. Mr. Foley replied that WQIS notified the CCBOH since it did not appear to be an appropriate connection. According to the District's Code of Regulations, the enforcement of WQIS focuses on the quality of the discharge as it is entering the sewer system. In this instance, the issue is how the sanitary flow travels into the sewers; and therefore, the CCBOH was notified since they have the authority to enforce Mr. Diligente to make changes to those connections.

Mayor Starr inquired whether the Law Director was intending to make a report wherein he was advised that no report was planned to be given at this time. Mayor Starr referred to the report prepared by Law Director, Marlene Sundheimer, which was included in the Board members' packets regarding the Bricker and Eckler engagement, contract documents, revision and project.

Mayor Starr referred to page 23 of the minutes from the March 3rd Board meeting wherein he questioned if Bricker & Eckler found any recoverable money. According to Mr. Rosati, approximately \$10 million was found to be questionable due to either a lack of documentation of appropriate entitlement to a change order or a lack of documentation supporting the payment amount.

Executive Director Ciaccia advised that Mr. Rosati questioned the recoverability of that money and he advised that it would require more information that we do not have and would not be able to get outside of litigation.

Mayor Starr commented that "this is an astonishing amount of \$10 million that by prima facie there is some indication that it could be recoverable, whatever the percentage, and likelihood of it." He then inquired about the avenues being taken to legally obtain the money.

Executive Director Ciaccia advised that the Bricker & Eckler report was turned over to the Cuyahoga County Prosecutor's Office and that no plans have been formalized as to whether the District plans to further investigate the basis for recovery of the \$10 million. Executive Director Ciaccia believed that the Bricker & Eckler report stands on its own.

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They spoke to certain culture issues of construction practices, some of which were District-based.

Mayor Starr questioned, "What do you mean by District-based?" Executive Director Ciaccia replied that the District carried out the construction programs and the Board agreed to the change orders.

Mayor Starr questioned, "It was the Board's fault because we adopted the change order?" Executive Director Ciaccia indicated that he was not implying that it was the Board's fault, but that Bricker & Eckler have concluded that they do not believe the money is recoverable based on the information on hand.

Mayor Starr replied that "they did not say that here." He then questioned if federal monies were involved wherein Executive Director Ciaccia replied that in some projects they were.

Mayor Starr commented that this becomes a federal jurisdiction issue, not a county or state matter. Executive Director Ciaccia explained that the federal government subpoenaed those records and have been provided with the Bricker & Eckler report.

Mayor Starr pointed out that according to page 24 of the minutes from the March 3rd Board meeting, that information is not true. Bricker & Eckler advised that the federal government's investigation only included the District's contracts relating to the MCT-2 and MCT-3 projects. Executive Director Ciaccia replied that we certainly know of those two projects; however, the federal government subpoenaed all of those records and we are not sure what they are doing with them, if anything.

Mayor Starr inquired whether Executive Director Ciaccia will follow up and provide the Board with further updates. Executive Director Ciaccia affirmed.

Mr. O'Malley referred to an article written by Michael McIntyre's in his Tipoff column in *The Plain Dealer* on Monday, March 7th, relating to the Bricker & Eckler matter. The article explained that the District hired a law firm for \$300,000.00 to examine 20 contracts containing cost overruns. The firm then billed the District \$384,145.73. Then the article highlights a disagreement between Mayor Starr and Executive Director Ciaccia regarding the amount of money that the District was going to pay and at which point Bricker & Eckler decided to back away from the amount of \$84,146.53.

Mr. O'Malley stated that at that time he contacted Executive Director Ciaccia to express his concerns that this article does not shed very good light on the District and Board to the community.

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Mr. O'Malley stated that he received a copy of the Bricker & Eckler invoice dated January 18th backing off the \$84,146.53 and only charging the \$300,000 approved by this Board. Mr. O'Malley advised that Mayor Starr requested that information on February 25th and that "obviously before February 25th you were aware that the bill was \$300,000.00 and that was all Bricker & Eckler was requesting." Executive Director Ciaccia affirmed and explained that Bricker & Eckler advised late last year that they could exceed the \$300,000.00; however, Executive Director Ciaccia advised them that the District was only going to pay \$300,000.00.

Executive Director Ciaccia explained that for their own accounting purposes Bricker & Eckler decided to show the \$84,146.53 as a credit on the District's bill. Therefore, they could account for the additional time spent on the District's contract and this is why the amount shows a deduct on the final bill.

Mr. O'Malley inquired if it was made clear to Mayor Starr at the time the bill was sent to him that the amount was actually \$300,000.00. Executive Director Ciaccia explained that he simply sent the information to Mayor Starr and that there was no conversation between the two at that time.

Mr. O'Malley expressed his displeasure at the bickering displayed in the article and he stated that it sends the wrong message to the public especially during this time in the county.

Mr. O'Malley questioned if Executive Director Ciaccia knew in January that the bill was over \$300,000.00 wherein Executive Director Ciaccia affirmed.

Mr. O'Malley stated that Mayor Starr believes that the revisions happened only because he requested the invoice on February 25th. Mr. O'Malley stated that when the Board approved this contract with Bricker & Eckler on June 20, 2010, it was made clear that the amount would not exceed \$300,000.00. This Board works very hard to watch over the ratepayers' money and at no time did this Board consider exceeding the amount of \$300,000.00.

Mr. O'Malley stated that he was offended by the grandstanding that took place seeing that the Board never planned to spend one penny over \$300,000.00. The information that was given to Mayor Starr clearly showed that Bricker & Eckler backed off the \$84,146.53. Mr. O'Malley explained that this situation casts the wrong shadow on the administration who he believes is doing a very good job and has really cleaned up the procedures that were in place before he joined the District as well as the current administration.

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Mr. O'Malley explained that there are many serious issues at hand throughout the county as well as within our organization. Mr. O'Malley stated that Bricker & Eckler did a very nice job and provided the District with a few other suggestions to "clean things up further" and those are being implemented. Mr. O'Malley wanted to stress to the public that things are different here at the District and given the anticipated rate increases we do not need to cast a negative shadow upon this organization. Mr. O'Malley concluded by stating that hopefully this situation will not happen again.

Mayor Starr commented that "who gets credit makes no difference in terms of cost overruns, errors and oversight." The fact is that the total bill was over \$384,000.00 and that Bricker & Eckler actually exceeded the authorized amount of \$300,000.00 by \$84,000.00-plus. Mayor Starr questioned whether the Board was ever informed that Bricker & Eckler had exceeded the budget amount.

Executive Director Ciaccia clarified that Bricker & Eckler did not go over the budgeted amount. Bricker & Eckler incurred \$84,000.00 on their own and for their accounting purposes they listed the amount of \$84,146.53 on the final invoice as a credit or a discount. Had Bricker & Eckler exceeded the budgeted amount, Executive Director Ciaccia advised that the Board would have been made aware of this, but this was not the case for the reason that they agreed that the total amount to be paid for the engagement was \$300,000.00, which was the budgeted amount.

Mayor Starr stated that he agrees that Bricker & Eckler did not go over the \$300,000.00. He then questioned, "What was their total bill...not what we ended up settling on or what was paid to them, but what was their total bill?" Executive Director Ciaccia replied \$300,000.00. Mayor Starr then stated \$384,000.00 was their total bill.

Ms. Kelly requested of the Chairman that the Board please move its agenda forward. She stated that it does not matter what the amount of bill was because the Board only agreed to pay \$300,000.00 and not a penny more. There is no reason to continue wasting time discussing a moot point.

Mr. Brown commented that it is good to have some discussion on pertinent issues that come before this Board and that people have become passionate about speaking on their concerns and issues that are relevant to the District. There is a lot of history and things that this Board must address going forward. Mr. Brown indicated that it is healthy for the Board to engage in some dialogue and then move the agenda forward.

V. Action Items

Authorization to Advertise

- Resolution No. 59-11 One (1) year requirement contract for 2,100,000 pounds of ferric chloride solution for use at all Wastewater Treatment Plants. Anticipated expenditure: \$306,600.00.
- Resolution No. 60-11 Two (2) year requirement contract for industrial cleaning services for all Wastewater Treatment Plants and the Jennings Road Junction Chambers. Anticipated expenditure: \$190,000.00.
- Resolution No. 61-11 Advertise for bids for the Easterly Wastewater Treatment Plant Screenings Conveyance/Storage Project (EFPI-1). Engineer's opinion of probable construction cost is \$6,780,000.00.

MOTION – Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution Nos. 59-11 through 61-11. Without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals (RFPs)

- Resolution No. 62-11 RFPs for a one (1) year contract with three (3) one (1) year options to renew for a third party administrator for workers' compensation. Cost not-to-exceed \$24,500.00 for each contract term for a total not-to-exceed amount of \$98,000.00.
- Resolution No. 63-11 RFPs for professional services for the Phase I – Design of Oracle iRecruitment Software Module Implementation for Human Resources.

MOTION – Ms. Kelly moved and Mayor Bacci seconded to adopt Resolution Nos. 62-11 and 63-11. Without objection, the motion carried unanimously.

Authorization to Direct Purchase

Resolution No. 64-11

Direct purchase from recommended equipment manufacturer, Serpentix Corporation, a Serpentix P2 Pathwinder Modular Trough Conveyor to collect screenings for the Westerly Wastewater Treatment Center Headworks. Cost not-to-exceed \$45,995.00.

MOTION – Mr. O'Malley moved and Mr. Sulik seconded to adopt Resolution No. 64-11. Without objection, the motion carried unanimously.

Authorization to Enter Into Agreement

Resolution No. 65-11

Three (3) year agreement for the supply of the electrical power generation component for use at the Southerly Wastewater Treatment Plant and/or the District's remote facilities (to be provided).

MOTION – After discussion, Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution No. 65-11. Without objection, the motion carried unanimously.

Mr. Brown requested an explanation on Resolution No. 65-11. Executive Director Ciaccia stated that the District took bids on the electrical supply a couple of years ago and Duke Energy was the lowest and best bidder at that time. The bids for the electrical power are only good for five days and therefore bids were taken earlier so that the contract award could be presented to the Board for consideration at today's meeting. First Energy Solutions was determined to be the lowest and best bidder to provide electrical power for the next three years at a cost of \$13,180,000-plus.

Mr. Brown inquired how the new rates compare to the amount we are currently paying. Director of Operations and Maintenance, David McNeeley, replied that the current rate for electric use at Southerly is .051 cents per kilowatt and that there are varying rates in the outlying facilities. First Energy's bid came in at .043 cents per kilowatt hour.

Authorization to Enter into Contract

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| Resolution No. 66-11 | One (1) year requirement contract with the Farley Company for the lubricants product class for use at District facilities. Cost not-to-exceed \$53,971.50. |
| Resolution No. 67-11 | Five (5) year contract with Case Western Reserve University for amphibian mitigation and monitoring services. Cost not-to-exceed \$64,895.00. |
| Resolution No. 68-11 | Three (3) year requirement contract with Airgas Great Lakes for the supply of industrial gases for use at all Wastewater Treatment Plants, Environmental Maintenance Services Center, and the East Bank Pump Station. Cost: \$151,254.30. |
| Resolution No. 69-11 | Three (3) year contract with Compellent Credit for the Compellent storage area network hardware and software maintenance and support. Cost not-to-exceed \$165,963.00. |

MOTION – Mr. O’Malley moved and Mayor Bacci seconded to adopt Resolution Nos. 66-11 through 69-11. After discussion and without objection, the motion carried unanimously.

Ms. Kelly referred to Resolution No. 66-11 and she inquired if companies invited to bid on District projects provide reasons as to why they choose not to bid on District projects. In this instance, two Small Business Enterprises (hereinafter “SBE”) chose not to bid on this project.

Executive Director Ciaccia explained that the District will inquire as to why a particular company chooses not to bid and in this instance the SBEs did not want to commit to the one-year pricing and wanted to stay within market pricing.

Ms. Kelly questioned if the District found consistency in the reasons as to why companies refuse to bid. Executive Director Ciaccia replied that the issues vary and it depends on the type of commodity that is being bid.

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Authorization of Contract Modification

Resolution No. 70-11

Final adjustment deduct order for Contract No. 3464 with Terrace Construction Company, Inc. for the Miles Avenue Relief Sewer (MARS) project. A cost decrease in the amount of \$97,215.68, bringing the total contract amount to \$1,547,169.92.

MOTION – Mr. Sulik moved and Mayor Starr seconded to adopt Resolution No. 70-11. Without objection, the motion carried unanimously.

Authorization to Adopt Program

Resolution No. 71-11

Authorization to adopt Minority-Owned and Women-Owned Business Enterprise program and revised Small Business Enterprise Program.

MOTION – Mayor Bacci moved and Mr. O'Malley seconded to adopt Resolution No. 71-11. After discussion and without objection, the motion carried unanimously.

Mayor Starr commented that Ms. Kelly and staff spent a lot of time developing this program. He then inquired about the MBE/WBE percentages that will be assigned on projects. Executive Director Ciaccia explained that the District will continue its SBE program and that MBE/WBE goals will be set on a project-by-project basis. Projects will be broken down and the Office of Contract Compliance (hereinafter "OCC") will identify the registered contractors that can perform various subcontracting components. There will no longer be standard 15% MBE and 5% WBE goals established on District projects. Goals will be set on each project individually.

Mayor Starr inquired whether the District has received any opposition from the major construction companies. Executive Director Ciaccia replied that the District held focus groups during the disparity study and some major construction companies participated in that process. Issues were ferreted out between the prime contractors and SBE and MBE firms. Executive Director Ciaccia stated that we are not experiencing any type of opposition.

Mayor Starr inquired if there is historical evidence of discrimination and prejudice in this county and through the bidding process. Executive Director Ciaccia explained that in order to support the MBE/WBE program the disparity study's findings had to support it.

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The statistical area went beyond this county for the reason that we had to include a full range of the counties where contractors who do business with the District reside. The disparity study found a discriminatory basis for amending our SBE program to a MBE/WBE program.

Mayor Starr questioned as to which individuals are considered "Asian-Americans" wherein Executive Director Ciaccia stated that they are defined as "peoples of Far East, Southeast Asia, the Islands of the Pacific, Northern Marianas and the Indian subcontinent."

Mayor Starr inquired if this is a historical basis that people from Japan, China and India have been historically discriminated against. Executive Director Ciaccia replied that it was part of our disparity study findings.

Mr. Brown commented that a lot of good work was completed to reach this outcome. He believed this still to be a "work in progress" and through our experience we will remain flexible and adapt accordingly.

Mr. Brown was hopeful that the District understands the desired results and encourages those doing business with the District to comply with the District's program and address non-compliance accordingly.

The District has a program in place and it is the responsibility of the Board and staff to "shape our effect of the program or to what it becomes." Mr. Brown stated that this program is a tool to be used for the purpose of facilitating the desired outcomes and we must use that tool skillfully.

Appropriation of Easement Settlement Authority

Resolution No. 72-11

Authorize settlement amount to be deposited with Cuyahoga County Probate Court for Euclid Creek Tunnel Easement ECT-13 located in the City of Cleveland, owned by Michelle M. Fuerst. Cost: \$12,000.00.

MOTION – Mr. O'Malley moved and Mayor Bacci seconded to adopt Resolution No. 72-11. Without objection, the motion carried unanimously.

Authorization to Retain Legal Counsel

Resolution No. 73-11

Authorization to retain Craig S. Miller of Ulmer & Berne LLP for legal support of the Combined Sewer Overflow Green Infrastructure Property Acquisition Strategy. Cost: A discounted rate of \$344.25 Per Hour.

MOTION – After discussion, Mr. Sulik moved and Mayor Bacci seconded to adopt Resolution No. 73-11. Without objection, the motion carried unanimously.

Mr. Sulik indicated that he would like to see a cap placed on the services and that staff provide the Board with an update on what has been done and for what amount. He was concerned that this seemed like “an open-ended fee.”

Executive Director Ciaccia stated that the District has not yet determined the extent of its green infrastructure needs. During the consent order negotiations, the District agreed to capture 44 million gallons of combined sewer overflow (hereinafter “CSO”) through green infrastructure. The District is uncertain at this time as to the amount of property is needed to achieve this. In addition, there will be green for gray infrastructure tradeoffs.

Executive Director Ciaccia advised that Ms. Sundheimer does provide the Board with quarterly update reports on litigation services and that capping the legal services at this point may be difficult.

Mr. Brown stated that this is a new frontier and that the Board understands the necessity of those services but that we would like to obtain a monthly or quarterly update report to show the expenditures.

Mr. Brown suggested that contract language be inserted to guarantee that the firm provides the District with an invoice within 30 days of the activity in an effort to prevent three or four month lapses and accumulated billings. Executive Director Ciaccia affirmed.

Executive Director Ciaccia introduced Craig Miller from Ulmer & Berne who was present at the meeting.

Authorization to Amend Resolution

Resolution No. 74-11

Amend Resolution No. 190-10 for the adoption of the District budget as amended for the year ending December 31, 2011.

MOTION – Mr. Sulik moved and Mr. O’Malley seconded to adopt Resolution No. 74-11. Without objection, the motion carried unanimously.

Authorization of Proposed 2011 General Increase

Resolution No. 75-11

Proposed 2011 general increase for all non-collective bargaining employees and special adjustments.

MOTION – Mr. Sulik moved and Mayor Bacci seconded to adopt Resolution No. 75-11. After discussion and without objection, the motion carried unanimously.

Mr. Brown inquired if clerical staff was considered non-collective bargaining employees wherein Executive Director Ciaccia affirmed. He explained that of the 650 District employees 300 of them are unionized. Non-union employees include clerical, management, some field technicians and investigators. Unionized employees include plant operators, plant maintenance, and people working with the interceptors. Executive Director Ciaccia explained that the majority of District employees are non-union, work at-will and do not have civil service protection, which is unusual for a public entity. Resolution No. 75-11 would grant the non-union employees salary increases comparable to what was obtained by union employees through the collective bargaining process.

Mayor Starr questioned if the District is requesting that the unions be treated the same as non-union employees. Executive Director Ciaccia clarified that the District is requesting that the non-union employees be treated the same as union employees with regards to this particular issue.

Mayor Starr inquired if the proposed increases are considered cost-of-living adjustments wherein Executive Director Ciaccia affirmed.

Mayor Starr questioned whether the District grants merit adjustments. Executive Director Ciaccia stated that the District does not at this time and that he would like to consider this in the future.

Executive Director Ciaccia stated that the District adopted a Performance Management program in 2010. Employees establish their performance goals each year. They are then evaluated and rated on their performance at the end of the year, which would be an appropriate time to consider merit adjustments. Executive Director Ciaccia advised that he would like to develop a plan and then present that to the Board.

Mayor Starr indicated that it is worth exploring especially since there are high performing employees that should be acknowledged through extra compensation. He stated that "the only down side I've seen through the years is that that information is public record."

Executive Director Ciaccia agreed and stated that Mayor Starr raised a good point. He explained that the District's Performance Management system is very well documented and shows if employees are performing or not performing. According to Executive Director Ciaccia, some performance management systems are not very good if they are used for punitive reasons only. Some agencies use them for reasons not to promote somebody.

Executive Director Ciaccia stated that for 2011, the District is only requesting the 2% increase for non-union employees, which was negotiated with the unionized employees.

Authorization to Reject and Rebid Contract

Resolution No. 76-11

Reject and rebid the Combined Sewer Overflow Rehabilitation Contract-010 (CSORC-010). Engineer's opinion of probable construction cost is \$6,750,000.00.

MOTION – After discussion, Mr. Sulik moved and Ms. Kelly seconded to adopt Resolution No. 76-11. Without objection, the motion carried unanimously.

Mr. Brown requested an explanation from the District on the reject and rebid of the CSORC-010 project, which was discussed during public session.

Executive Director Ciaccia indicated that both Mr. Karas and Mr. Natale did a good job presenting the issues and that Mr. Natale was correct in stating that it is the Board's purview to decide whether it wants to reject bids.

Executive Director Ciaccia stated that there is some ambiguity and lack of clarity as it relates to the District's specifications and how individuals and contractors in similar situations as C&K, in this instance, who in fact work for the design consultants and are bidding as a prime contractor for the work resulting from that design work.

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Executive Director Ciaccia advised that C&K was a subcontractor to construction contractors on similar projects and one could argue that the prime contractors using them as subcontractors were at an advantage.

Executive Director Ciaccia advised that "it just came out in the wash" and that he was certainly not aware of this arrangement. Some staff members did not make the connection either and now that the connection has been made "it is somewhat of a muddy bid."

Staff's recommendation is to reject and rebid the project. Staff will attempt to bring some clarity to the specifications to make a determination as to what is acceptable and unacceptable. Awarding the contract to either contractor will most likely lead to litigation.

Executive Director Ciaccia requested that the Board reject and rebid the CSORC-010 project to allow staff an opportunity to regroup on this issue. He stated that both contractors are good and have done excellent work for the District. C&K has seemingly done excellent work in their capacities with the design engineer, but we need to bring some clarity to this issue.

Authorization to Ratify Contracts

Resolution No. 77-11

Ratify contracts with various equipment vendors and contractors including Nerone and Sons, Inc. and Kokosing Construction Company, Inc. for the Southerly Emergency Flood Recovery Project. Cost not to exceed \$664,104.55.

MOTION – After discussion, Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution No. 77-11. Without objection, the motion carried unanimously.

Discussion was turned over to Mr. McNeeley and Director of Engineering and Construction, Kellie Rotunno, to provide the Board with update on the flooding situation at Southerly.

Mr. McNeeley announced that through the efforts of the plant staff, engineering and contractors the District has been processing solids since March 4th. Eighty percent (80%) of the equipment is operating and some equipment is damaged but still running. Southerly is operating at capacity.

Ms. Rotunno advised that the District proceeded with two emergency contracts; one with Nerone and Sons and one with Kokosing Construction Company. Approximately one-third of the total allotment has been expended on those contracts. Motors have been repaired or replaced. Pumps have been repaired and a lot of electrical work was completed. There is still more work to be done including the lighting, some work on the blowers and some meters need to be replaced.

Mr. Brown inquired what the District has learned from this situation and whether it could be prevented in the future. Mr. McNeeley replied that we are in the process of gathering data and conducting an investigation. At this point it is all speculation. We are trying to gain a better understanding of the whole situation in an effort to determine the role the weather played versus the decision making.

Authorization to Adopt Ad Hoc Committee on Ethics Charter

Resolution No. 78-11

Recommendation to adopt Ad Hoc
Committee on Ethics Charter.

MOTION – Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution No. 78-11. After discussion, a roll call was taken and the motion carried with one "nay" vote by Mayor Starr.

Mayor Starr indicated that he planned voting "yes" on this resolution but needed clarification on the last paragraph which states that "only trustees who are members of the committee shall be permitted to attend executive sessions of the committee unless the Chair of the committee designates otherwise." He inquired if said provision allows the committee to exclude other Board members from executive sessions and why the Governance and Audit committees are excluded from this provision.

Mr. Brown replied that the Ad-Hoc Committee is charged with reviewing the existing Board practices and consider what might be put in place for the future. This committee holds public meetings and has the authority to adjourn into executive session. He was unsure if the other Board committees have ever gone into executive session. Mr. Brown clarified that every committee meeting is held in a public forum.

A roll call vote was taken on and the motion carried with one "nay" vote by Mayor Starr. Mr. Brown stated that the Ad-Hoc Committee on Ethics Charter passed and he requested that the Committee convene a meeting. Mr. Sulik advised that the Ad-Hoc Committee plans to meet immediately following the April 7th Board meeting.

VI. Information Items

1. 2012 – 2016 Rate Study Discussion.

Executive Director Ciaccia stated that in 2010 the District commissioned a study on its revenue needs for the years 2012 through 2016. The results of that study were available and provided to the Board for its review.

Executive Director Ciaccia advised that he does not think the results contain any “surprises” given the level of the increases that were set. Since he joined the District in 2007 he stated that he was projecting its needs looking ahead to 2012 and the rates under discussion at that time were higher than the current projections.

The District was in the midst of negotiations with the federal government regarding the CSO program and was taking into account the worst-case outcome. He explained that as the negotiations proceeded and an agreement neared staff was able to be less conservative with its projections.

Executive Director Ciaccia advised that the study concludes that an average increase per year for 2012 through 2016 would be approximately 13%. He stated that there are some issues regarding the structure of the rates.

Executive Director Ciaccia advised that the rate study results have been distributed for informational purposes and Board action is expected in a few months. He stated that staff wants to go through the process of holding a series of public meetings, receiving Board input and reaching a final conclusion. He hopes to complete that process by June or July. Executive Director Ciaccia turned discussion over to Director of Finance, Jennifer Demmerle.

Ms. Demmerle advised that the rate consultants from Raftelis Financial Consultants, Bill Stannard and Bart Kreps, were in attendance.

Ms. Demmerle stated that she would briefly explain the rate-setting process and how the rate structure was determined. She advised that she will discuss the key issues and cost drivers that impact rate increases, projections used in developing the financial plan, three alternatives that were developed and which course of action will ultimately be recommended to the Board.

When going through the rate-setting process staff determines its pricing objectives regarding rates. The four objectives include revenue stability, affordability for the disadvantaged customer, rate stability, and the cost of service principal-based rate.

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Once the objectives were determined then the revenue requirements are identified, which include Operation and Maintenance (hereinafter "O&M") expenses, debt service payments to support the Capital Improvement Program (hereinafter "CIP") and cash financing. Once the revenue requirements were determined, the rate structure is designed with the intent of generating enough revenue to support the requirements and meet the pricing objectives.

Some of the key issues and cost drivers that were encountered were substantial cost pressures from certain categories that are market-driven and volatile, which include chemicals and utility costs.

Ms. Demmerle stated that there are additional O&M expenses relating to acquiring assets through the CIP. The CIP is significant and projected to cost \$1.2 billion over the next six years. She advised that staff needs to determine how to fund that program. User fees will not support the CIP and grant funding is not anticipated and therefore other mechanisms need to be explored.

Ms. Demmerle advised that the District has experienced a decline in consumption based on a demand analysis included in the rate study. A 3.1% consumption annual decline is projected going forward and she stated the District needs to examine the rate structure and transition away from a 100% volume-based rate.

Ms. Demmerle advised that the Board adopted a reserve policy in 2009 establishing certain reserve levels. The District must ensure that those levels are sufficient.

Delinquencies have increased and in the last couple of years the uncollectible rate has been 5%. That rate is expected to gradually decrease to about 3% in 2015 through 2016 with the belief that the economy will rebound during the next three years.

Ms. Demmerle advised that treatment flow is another key issue. 40% of treated flow is metered and billed to the customer. The remaining is unmetered flow and called inflow and infiltration (hereinafter "I&I"). That type of flow is water that comes from ground sources and the combined sewer system. She explained that 150% more flow is treated than billed. A structure needs to be developed that will recover some I&I costs that are not metered or billed to the customer.

Executive Director Ciaccia advised that unmetered I&I flow is significant and accounts for 60% of what runs through the system. He wanted to be clear that not only what goes into the combined sewer system is I&I coming from the separated systems on the west side of Cleveland and the suburbs. There should be no notion this is all combined sewage.

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Mayor Starr stated that "besides I&I I'm sure there are cross connections as well" and noted that every year municipalities submit to the District what they spent in terms of capital improvements of storm and sanitary systems. He inquired how to stop I&I and what kind of program the District may have initiated with the communities to address the issue. Executive Director Ciaccia replied by advising that a Community Discharge Permit Program has been established but we have been less than aggressive in pursuing it. He stated that staff is looking to "ramp up" that program but does not want to get "at odds" with suburban communities. He asked Director of Watershed Programs, Frank Greenland, to comment.

Mr. Greenland advised that the Community Discharge Permit Program was established to address I&I and control sanitary sewer overflows in District member communities. He stated that there was much investment at the local level -- primarily to deal with overflows, but also I&I.

Peak flow limitations were established and imposed on communities in locations where local sewers tie into District interceptors. A series of studies were undertaken; the southwest interceptor was conducted in the late 1990s, which included the Cuyahoga Valley and Heights Hilltop interceptors.

Mr. Greenland advised that very detailed engineering studies have been performed to determine whether the District is meeting the interceptor design intent in terms of the service level we want to provide and how well the communities are controlling I&I. He stated that staff is analyzing the results of the studies to identify strategies addressing I&I on a local level.

Mr. Greenland stated that 30 years have elapsed since the intensive sewer system evaluation surveys that supported the interceptor design and the notion of excessive I&I and where communities had to focus.

The District will examine peak flow compliance at the community level, how I&I is impacting treatment plants and other facilities and make recommendations on how the Community Discharge Permit Program should be structured in the future. He stated that "there's some good and bad out there."

Mayor Starr questioned, "Good and bad in terms of management practices of communities?" Mr. Greenland responded by stating "in terms of the levels of I&I that we see during rainfall events." He explained that during a rainfall event the amount of flow in the system can be from 5 to 50 times the amount during dry weather, depending on the location. The systems are constructed in different fashions and there are higher I&I levels in different systems. Mr. Greenland stated that staff will "take a hard look" at whether excessive I&I is present and what should be done to address it.

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Mayor Starr stated that much of this information can be obtained from the Cuyahoga County Sanitary Engineer's office because many communities have maintenance contracts with them unless they operate their own departments. He did not think it was fair for some communities to spend millions of dollars on preventative maintenance while others do not make any investment – "driving up rates for everybody else."

Mr. Greenland advised that peak flow limitations for communities were established and if they underperform, the communities are not preserving the intent of the interceptor network. He stated that staff will monitor the issue of how I&I impacts treatment plant processes.

Mr. Brown followed up by stating that the community compliance checklist also addresses if there is an illicit discharge. He stated that there are Phase One and Two stormwater regulations for separate sewers and some combined areas with nine minimum controls for combined sewer areas. Mr. Brown stated that he was not under the impression that compliance with these controls was elective.

Mr. Brown stated that the District must do a better job sharing expertise with communities regarding how to become compliant because acknowledging that 60% of what the District treats is unmetered implies that 60% of its operating costs for are due to large influents that may be controllable in some communities. Mr. Greenland advised that 30 years is a long time to take a detailed look at where excessive I&I is located and what can be done about it.

Mr. Brown stated that the issue is communicating to communities that they have responsibilities and helping them come into compliance. Mr. Greenland agreed and advised that as the systems age there could be additional problems.

Mayor Starr stated that Mr. Brown raised an excellent point. He inquired if the OEPA performed random audits of the sanitary systems in Region V a few years ago. Mr. Greenland advised that some random in-person audits were conducted. Mayor Starr advised that his community was "one of the fortunate ones to get audited" and that much of that information can come from the audits.

Mr. Greenland stated that the District has been in consultation and is trying to track that process. Staff has been in discussions with the Cuyahoga County Sanitary Engineer's office but there has not been much emphasis on it lately.

Mayor Starr stated that 60% of flow is unmetered, which is a shocking figure and it drives up chemical and utility costs because of the lack of management of local suburbs or political subdivisions. He stated that the communities do not have an aggressive

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program and spending capacity to commit to those improvements and are not performing their jobs.

Ms. Demmerle advised that the CIP is driving the rate increases and accounts for 65% of the accumulative rate increases. 38% of the increase is for CSO LTCP regulatory requirements.

Ms. Demmerle stated that once the key issues and cost drivers were determined staff analyzed projections and developed the financial plan. The 2011 budget was used as the base and O&M projections and certain expense categories were escalated based on historical trends and future demands.

Ms. Demmerle stated that although the District has done a good job with staffing freezes and restructuring the benefits program, the investment required over the next 25 years for the CIP will require additional O&M expenses. She noted that the compounded annual increase in O&M expenses is only 4.4%, which is less than the historical 5%.

Ms. Demmerle advised that \$1.2 billion is projected to be spent on the CIP over the next six years, \$970 million of which has already been awarded or committed because of regulatory requirements. She explained that some of the major CIP projects over the next several years include the Renewable Energy Facility (hereinafter "REF") project, which is construction through 2012; the Euclid Creek Tunnel (hereinafter "ECT") project will begin this year; and the Tunnel Dewatering Pump Station (hereinafter "TDPS") project will continue and peak in 2013 and 2014. When those two are complete the Dugway West Interceptor Relief Sewer (hereinafter "DWIRS") and the Dugway Storage Tunnel (hereinafter "DST") projects will commence and construction will go through 2016.

The original CIP was reduced by 15% to soften the impact on rates. Ms. Demmerle explained that historically only 85% of the budget was spent. Staff felt this reduction and eliminating the general allowances provided a more realistic projection.

Ms. Demmerle stated that the CIP will be funded with a mix of debt and cash financing. 90% of the CIP will come from debt financing. The rate consultants worked with financial advisors to determine the best financing plan in order to keep rate increases as low as possible. The focus is transitioning from the Water Pollution Control Loan Funds (hereinafter "WPCLF") to issuing more revenue bonds. The reason for that is because the flexibility of restructuring the repayments on the bonds helped reduce the impact on the rates.

Ms. Demmerle referred to a table of the District's annual principal and interest payments based on borrowing needs in the next six years. The District will continue the \$35 million in loans, but anticipates going to the bond market in 2013 and again in 2016. The size of

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the debt payments are driven by the CIP, which is a significant driver in cost rate increases.

Ms. Demmerle advised that revenue requirements over the next six years include O&M expenses, debt service payments for the CIP and cash financing. She explained that the rates will need to increase by at least 12% in order to generate the revenue needed to cover those requirements. Keeping the existing rates in place would result in a deficit of \$107 million from 2012 through 2016.

The existing rate structure is based on the volume of water used measured in cubic feet – or MCFs. One MCF is the equivalent of 7,480 gallons. The District currently maintains a minimum charge of one MCF per quarter for all customers, which results in a bill of \$44 in Subdistrict 1 or \$48 in Subdistrict 2 for users who consume less than one MCF. Ms. Demmerle advised that rate equalization is in process per court order and continuing so Subdistrict 1 and 2 rates are equal by 2022.

Mr. Brown stated that the issue associated with the minimum charge is that many customers do not use one MCF; most consumers have not historically used one MCF or greater. He noted that recently more customers are using less and the lifeline cost of maintaining the system is out of kilter with the minimum usage structure. He stated that a discussion will need to be held regarding how to proceed.

Executive Director Ciaccia stated that the minimum usage issue is more profound as it relates to District rates. The City of Cleveland Division of Water (hereinafter "CWD") has established a progressive scale in which the first MCF is billed at a discounted rate and subsequent MCFs are higher. The District charges the same rate for each MCF.

Mr. Brown stated that he had not considered that aspect and inquired if a discussion will be held regarding that issue and if a recommendation will be made. Ms. Demmerle affirmed.

Ms. Demmerle advised that staff developed three rate structure options: maintaining the existing rate structure; keeping the existing rate structure but eliminating the minimum charge; and incorporating a base charge to recover a portion of I&I but eliminate the minimum charge. She provided an overview of each option.

The first alternative was to keep the existing rate structure. She explained that the reason this option was not recommended is because of the minimum charge, which is the top customer complaint and significantly impacts low-volume customers because they are paying for something they have not used.

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The second alternative is to eliminate the minimum charge and maintain the existing rate structure. Ms. Demmerle advised that this option was not selected because the top objective was revenue stability; eliminating the minimum charge would result in no revenue accountability because it would be based completely on consumption. She explained that the industry is trending away from a strict consumption charge and moving towards a fixed and variable fee structure.

Ms. Demmerle advised that the third alternative is the recommended course of action and incorporates a base charge but eliminates the minimum charge of one MCF. She stated that a base charge will create revenue stability, is consistent with cost of service principals, will recover a portion of I&I costs and provides the greatest benefit to small users. The rate structure for affordability programs will be increased as well.

Ms. Demmerle advised that staff recommends increasing the Homestead Program discount from 33% to 40% and implementing a Wastewater Affordability Program in which customers whose income meets a certain level receive a 40% discount.

A bill assistance program called the Crisis Voucher Program is being recommended for those who meet criteria such as a job loss, large medical expenses or divorce. She explained that such customers will be placed on a 12-month payment plan, which will avoid a water shutoff, and the District will be responsible for the first six months of sewer charges up to \$300. This program would be funded at \$500,000 per year over the next five years.

Ms. Demmerle stated that the base charge will be assessed on a quarterly basis at the volumetric rate of one MCF, but there will be no minimum charge. She explained that for a typical residential customer who uses 1.875% per quarter, customers in Subdistrict 1 will average a 12.8% increase in billing or about \$14 a quarter whereas customers in Subdistrict 2 will average an increase of 11.8% or around \$13 per quarter.

Ms. Demmerle stated that small users will receive the greatest benefit from this rate structure because their average bills decrease in 2012 and will not return to 2011 levels until 2014. The average increase for Subdistrict 1 will be about 5.4% -- equivalent to about \$2.00 a quarter -- and smaller users in Subdistrict 2 will see a 4.4% increase -- equivalent to about \$1.90 per quarter.

In summary, she advised that staff wants to implement a base charge to recover a portion of I&I costs that will be assessed on a per-account basis. A minimum one-MCF fee will be eliminated and the affordability programs will be expanded.

Ms. Demmerle advised that there is a minimum increase in the surcharge rates for industrial customers. There are about 120 customers in the program when wastewater

treated is above domestic level concentrations, and a very small rate was added to the base.

The next steps are to hold public meetings, which are scheduled for April and May. Ms. Demmerle stated that she hopes to return to the Board in June for approval. After adoption staff will work with the billing systems and to implement the new rate structure in July. Implementation is expected to take three to four months and the new rates will take effect on January 1, 2012.

Regarding the recommended rate structure option, Mr. Sulik questioned if the base charge and the actual consumption rates would apply to all customers regardless of income level. Ms. Demmerle affirmed and elaborated by stating because the base charge is being eliminated. The \$5.85-per-quarter base charge and the volumetric rate will be based on actual consumption.

Mr. Sulik inquired if seniors in Subdistrict 2 would see a reduction in their bills until 2015, which Ms. Demmerle affirmed. Mr. Sulik pointed out that a small user will actually save money under this rate proposal.

Mr. Brown stated that Ms. Demmerle provided a good overview, but the Board will need time to review the document and working sessions will be necessary to ask questions and be clear on the impacts. He believed this will provide an opportunity is to examine the current state rate structure for customers in each district and in some communities for an accurate comparison and understand how affordability programs in some instances show reductions.

Mr. Brown stated that affordability, which was a major discussion point regarding the CSO LTCP, will be an issue with the rate structure as well. He explained that it is helpful to provide examples of how the rates work for each year.

Mr. Brown stated that there are a lot of questions, and time is needed to analyze the information and for the Board to hold a working session to ask questions and raise concerns.

Mayor Starr agreed that there are a lot of questions. He stated that his question is related to billing accuracy and inquired if CWD will be the District's billing agent in the future. He inquired if staff has analyzed the new program CWD presented to mayors and the alternatives. He advised that he did not expect answers to those questions today.

Mayor Starr stated that he is on "the front lines," receiving phone calls and e-mails about the billing. He stated that he always has hope for the future and it pains him to criticize

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government employees because he is one, but he hopes for improvement with billing. He stated "that will remain to be seen" between now and June.

Ms. Kelly stated that there will be several public meetings between April and June. She thinks it would be beneficial to schedule a working session as soon as possible – prior to the public meetings. Mr. Brown noted that he believed several working sessions would be necessary and asked Constance Haqq to facilitate scheduling such a session.

2. Program Management Status Report and Update – February 2011.

Executive Director Ciaccia reminded the Board that Ms. Rotunno will provide the Program Management Status Report and Update during the next meeting because it was moved to the first Board meeting of the month.

The Board agreed to postpone the Program Management Status Report until its next meeting.

VII. Open Session

Mr. Brown stated that he wanted to make a comment for the benefit of his colleagues regarding comments attributed to Mayor Bacci.

Mr. Brown stated that he was surprised and disappointed that the comments were made. He found them to be inappropriate and the public is looking for the Board or chair to take a position. He stated that he is not an appointing authority, nor is anybody on this Board. Mayor Bacci is an elected official with a constituency and he has an appointing authority.

Mr. Brown stated that each Board member individually and collectively holds themselves accountable to what is said and done. Many things affect the past and future of the District, and unfortunately things happen from time to time that become a distraction to the business at hand.

Mr. Brown reiterated that he was surprised and disappointed by what occurred; however, he thinks the Board must be in a position to accept what has happened and hold Mayor Bacci accountable for what has been done, but also to move forward with District business. He stated that "there is a lot of mumbling and muttering going on" and he wants to be in the position to deal with the issues and get back to business.

Ms. Kelly agreed and advised that she had a discussion with Mayor Bacci. She stated that she was very hurt and personally insulted but felt he was remorseful regarding the events that took place.

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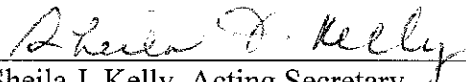
Ms. Kelly recommended Mayor Bacci take the opportunity to undergo anger management and diversity training. She advised that such training would benefit anyone who is dealing with anger or racial issues. She stated that District employees take diversity training and it could benefit not only Mayor Bacci, but anyone who chooses to take it.

VIII. Public Session (any subject matter)


No members from the public registered to speak at Public Session.

IX. Adjournment

MOTION – Mr. Brown stated business having been concluded he would entertain a motion to adjourn. Mr. Sulik moved and Mr. O'Malley seconded the motion to adjourn at 2:14 p.m. Without objection, the motion carried unanimously.



Sheila J. Kelly, Acting Secretary
Board of Trustees
Northeast Ohio Regional Sewer District



Darnell Brown, President
Board of Trustees
Northeast Ohio Regional Sewer District