



PUBLIC NOTICE

**COMMITTEE OF THE WHOLE MEETING
LANSING BOARD OF WATER & LIGHT BOARD OF COMMISSIONERS**

May 10, 2022 – 5:30 P.M.

**Board of Water & Light Headquarters - REO Town Depot
1201 S. Washington Ave., Lansing, MI 48910**

BWL full meeting packets and public notices/agendas are located on the official web site at <https://www.lbwl.com/about-bwl/governance>.

AGENDA

Call to Order

Roll Call

Public Comments on Agenda Items

- 1. Committee of the Whole Meeting Minutes of March 8, 2022 **TAB 1**
- 2. Energy Presentation **INFORMATION ONLY**
- 3. Return on Equity (ROE) Agreement **TAB 2**
 - a. Return on Equity (ROE) Resolution **TAB 2a**
- 4. Rate Structures **INFORMATION ONLY**

Other

Adjourn

POSTED 05-06-22

Maria Koutsoukos
BWL Interim Corporate Secretary
(517) 702-7069

Electronic Distribution:

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Exec. Staff & Security	City Council Office
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Outside Agenda Recipients	City Attorney

COMMITTEE OF THE WHOLE

Meeting Minutes

March 8, 2022

The Committee of the Whole of the Lansing Board of Water and Light (BWL) met at the BWL Headquarters-REO Town Depot located at 1201 S. Washington Ave., Lansing, MI, on Tuesday, March 8, 2022.

Committee of the Whole Chair Sandra Zerkle called the meeting to order at 5:30 p.m. and asked the Interim Corporate Secretary to call the roll.

Present: Commissioners Sandra Zerkle, Beth Graham, Semone James, DeShon Leek, Tony Mullen, David Price and Tracy Thomas, and Non-Voting Members: Larry Merrill (Delta Township), Douglas Jester (East Lansing), and Brian Ross (DeWitt Township)

Absent: Commissioner Dusty Horwitt

The Interim Corporate Secretary declared a quorum.

Public Comments

There were no public comments.

Approval of Minutes

Motion by Commissioner Thomas, **Seconded** by Commissioner Graham, to approve the Committee of the Whole Meeting minutes of January 11, 2022.

Action: Motion carried. The minutes were approved.

Motion by Commissioner Leek, **Seconded** by Commissioner Graham, to approve the Special Committee of the Whole Meeting minutes of February 15, 2022.

Action: Motion carried. The minutes were approved.

Approval of Amendments to Governance Policy and Rules of Procedure

The Committee of the Whole reviewed the amendments to the Governance Policy and Rules of Procedure and made the following recommendations.

Motion by Commissioner Price, **Seconded** by Commissioner Graham, to strike in Governance Policy 1) b. and 1) c., require modifications if necessary, and to leave the language as stated in the current document.

Action: Motion carried.

Motion by Commissioner Price, **Seconded** by Commissioner Leek, to strike in Governance Policy 2) a., the replacement of BWL with City of Lansing, and to leave the language as stated in the current document.

Action: Motion Carried.

Motion by Commissioner Price, **Seconded** by Commissioner Graham, to strike in Governance Policy 2) b., the deletion of attempt to, and to leave the language as stated in the current document.

Action: Motion Carried.

Motion by Commissioner Price, **Seconded** by Commissioner Leek, to strike the insertion of Governance Policy 2) c. and to leave the language as stated in the current document.

Action: Motion Carried.

Motion by Commissioner Price, **Seconded** by Commissioner Mullen, to strike in Governance Policy 2) b. i., the deletion of must and insertion of should, and to leave the language as stated in the current document.

Action: Motion Carried.

Motion by Commissioner Graham, **Seconded** by Commissioner Price, to strike the insertion of Governance Policy 2) e. and 2) f. and to leave the language as stated in the current document.

Action: Motion Carried.

Motion by Commissioner Price, **Seconded** by Commissioner Mullen, to strike the deletion of Governance Policy 2) b. i., 2) b. ii., 2) b. iii., and 2) b. iv. and to leave the language as stated in the current document.

Action: Motion Carried.

Motion by Commissioner Zerkle, **Seconded** by Commissioner Price, to strike in Governance Policy 3) a., the deletion of full and exclusive, and to strike replacing BWL with Board of Commissioners, and to leave the language as stated in the current document.

Action: Motion Carried.

Motion by Commissioner Zerkle, **Seconded** by Commissioner James, to strike in Governance Policy 3) e., and modifications if necessary, and to leave the language as stated in the current document.

Action: Motion carried.

Motion by Commissioner Price, **Seconded** by Commissioner Graham, to approve the Resolution to amend the Governance Policy and to forward to the full Board for consideration.

Action: Motion Carried.

Motion by Commissioner Price, **Seconded** by Commissioner James, to amend in Rules of Procedure 1.2.1, two Voting Members to four Voting Members.

Action: Motion Carried.

Motion by Commissioner James, **Seconded** by Commissioner Graham, to strike, in Rules of Procedure 1.2.2, delivered personally and insert provided; to strike, left at his or her place of residence or business; and to insert, acknowledgement of notice is required from each member of the Board and may be in the form of an electronic communication.

Action: Motion Carried.

Motion by Commissioner Price, **Seconded** by Commissioner Leek, to strike in Rules of Procedure 1.5.1, two Voting Members and insert four Voting Members.

Action: Motion Carried.

Motion by Commissioner James, **Seconded** by Commissioner Graham, to strike in Rules of Procedure 1.5.2, the provisions for, and insert, Section 1.2.

Action: Motion Carried.

Motion by Commissioner Price, **Seconded** by Commissioner James, to accept the amendments in Rules of Procedure 1.6.2.

Before voting on the changes to Rules of Procedure 1.6.2, Commissioner Merrill stated that he opposed the change from may to shall in the first sentence as shall is a definite action and may is a permissive action. Commissioner Merrill read from Robert's Rules of Order which states that a section in an organization's rules of procedure authorizing by whom special meetings shall be called, shall specify the board chairperson or specify a number of members nearly equal to a quorum and the number of days of notice required. Both Commissioner Mullen and Commissioner Merrill stated that there is a provision to recuse one's self from voting if there is a conflict of interest.

Commissioner Price withdrew his motion.

City attorney Mr. Jim Smiertka responded that the Open Meetings Act states that Non-Voting Members can be in closed sessions of meetings, but if there is a conflict of interest the non-voting member may be privy to confidential information. If there is a conflict of interest as stated in the ethics ordinance, a two thirds vote of the members will remove the non-voting member from the closed session. Mr. Smiertka added that the word shall indicates a mandatory action and the word may indicates a permissive action, and that allowing Non-Voting Members to vote to go into closed sessions needs to be removed.

Motion by Commissioner Price, **Seconded** by Commissioner Leek, to strike in Rules of Procedure 1.6.2, no, and to insert, a; to strike, any, and to insert, a; to insert, unless; to strike the deletion of shall, and to strike the insertion of may; to strike, which the non-voting member or the municipality(s) the represent has; to insert, the closed meeting poses a conflict of interest to the non-voting member or the municipality the non-voting member represents; to strike the insertion of, or a financial interest other than as a citizen of the municipality; to strike, conflict of interest; to strike determined and insert resolved; to insert vote; and to strike, before the main question shall be voted on, and if the non-voting member is recused, they shall be prohibited from voting on or participating in the closed session.

Action: Motion Carried.

Motion by Commissioner Graham, **Seconded** by Commissioner Price, to strike in Rules of Procedure 2.1, at the regularly scheduled meetings in November of each year, the Board shall name the newspaper in which the notice shall be published.

Action: Motion Carried.

Motion by Commissioner Graham, **Seconded** by Commissioner James in Rules of Procedure 3.1 and 3.2, to insert, or the majority of serving Voting Members of the Board.

Action: Motion Carried.

General Counsel Mark Matus noted that using, Members of the Board serving, rather than, Members of the Board appointed, was preferable.

Motion by Commissioner Leek, **Seconded** by Commissioner James, to strike in Rules of Procedure 5.1.2, and Non-voting Members.

Action: Motion Carried.

Motion by Commissioner Price, **Seconded** by Commissioner Graham, to strike in Rules of Procedure 5.3, not participate in discussion or any decision regarding the issue and shall refrain from discussing the issue with any Board member or staff; and to insert, and shall recuse themselves from all discussions, deliberations and decisions related to the issue with any other Board Member or BWL staff.

Action: Motion Carried.

Motion by Commissioner Price, **Seconded** by Commissioner Graham, to strike in Rules of Procedure 5.3, not participate in discussion or any decision regarding the issue and shall refrain from discussing the issue with any Board member or staff; and to insert, and shall recuse themselves from all discussions, deliberations and decisions related to the issue with any other Board Member or BWL staff.

Action: Motion Carried.

Motion by Commissioner Graham, to strike in Rules of Procedure 6, the insertion of Paragraph I, A Commissioner can hold the position of Board Chairperson or Board Vice Chairperson for not more than two (2) years, in a five-year period of time. A Commissioner can serve as Board Chairperson or Board Vice Chairperson multiple times while serving as a Member of the Board of Commissioners as long as it is not more than two (2) consecutive years or two (2) years within a five-year period of time.

Commissioner Price made an amendment to the motion on the floor to strike the insertion of Paragraphs I, II and III in Rules of Procedure 6.

Commissioner Thomas and Commissioner Leek spoke in support of the insertion of Paragraph II, A Commissioner who serves as Chairperson or Vice Chairperson of the Board cannot serve as the Chairperson of a Standing Committee other than the Executive and Board Pension Fund Trustees Committees, in Rules of Procedure 6.

Commissioner Price made an amendment to the motion on the floor to strike only the insertion of Paragraphs I and III and to insert Paragraph II in Rules of Procedure 6. 1) A Commissioner can hold the position of Board Chairperson or Board Vice Chairperson for not more than two (2) years, in a five-year period of time. A Commissioner can serve as Board Chairperson or Board Vice Chairperson multiple

times while serving as a Member of the Board of Commissioners as long as it is not more than two (2) consecutive years or two (2) years within a five-year period of time; III) The Chairperson shall not appoint the Nominating Committee Chairperson. The Nominating Committee Chairperson position and committee will be determined solely by those formally sharing interest and finally be consensus or vote in the Committee of the Whole Meeting leading up to the election process; II) A Commissioner who serves as Chairperson or Vice Chairperson of the Board cannot serve as the Chairperson of a Standing Committee other than the Executive and Board Pension Fund Trustees Committees.

Action: Motion Carried (Yeas 6: Commissioners Graham, James, Leek, Price, Thomas, Zerkle) (Nays 1: Commissioner Mullen, would like all three paragraphs stricken)

Motion by Commissioner Price, **Seconded** by Commissioner James, to strike in Rules of Procedure 8.1, the insertion of, the Secretary shall be known as the Corporate Secretary and the Director of Corporate Governance.

Action: Motion Carried.

Motion by Commissioner James, **Seconded** by Commissioner Graham, to insert in Rules of Procedure 8.2, Exit Interviews – Unless otherwise determined by the Board of Commissioners, an exit interview shall be offered by the Chairperson of the Human Resources Committee in accordance with the Board of Water & Light exit interview procedure two weeks prior to the departure or retirement of a Charter position.

Action: Motion Carried.

Motion by Commissioner Price, **Seconded** by Commissioner James, to insert of in Rules of Procedure 9.1.2, Committees shall have no authority to exercise the collective powers and duties of the Board of Water & Light Commissioners except as expressly authorized by an adopted resolution of the Board of Water & Light Commissioners.

Action: Motion Carried.

Motion by Commissioner Price, **Seconded** by Commissioner Graham, to strike in Rules of Procedure 9.2.1, the insertion of, and Environmental; and to strike in Rules of Procedure 9.2.5, the insertion of The Environmental Committee paragraph.

Action: Motion Carried.

Motion by Commissioner James, **Seconded** by Commissioner Leek, to strike in Rules of Procedure 9.2.2 and 9.2.4, oversight, and to strike, recommendations to the Board of Commissioners related to.

Action: Motion Carried.

Motion by Commissioner Graham, **Seconded** by Commissioner Leek, to strike in Rules of Procedure 9.2.3, at its annual organizational meeting; to leave in, endeavor to; and to insert, pursuant to Section 6 Annual Organization.

Action: Motion Carried.

Motion by Commissioner Graham, **Seconded** by Commissioner Leek, to accept the technical changes in Rules of Procedure 9.4 through 9.8.

Action: Motion Carried.

Motion by Commissioner Price, **Seconded** by Commissioner Graham, to strike in Rules of Procedure 9.10, the deletion of two thirds, and to leave the language as stated in the current document.

A discussion was held whether an affirmative vote of two thirds or an affirmative vote of the majority would be the correct terminology in 9.10 Discharge of Consideration. It was determined that Rules of Procedure 9.10 Discharge of Consideration was already addressed in Robert's Rules of Order and didn't need to be included in the Rules of Procedure. Commissioner Price withdrew his motion.

Motion by Commissioner James, **Seconded** by Commissioner Graham, to strike Rules of Procedure 9.10 Discharge of Consideration from the document.

Action: Motion Carried.

A discussion was held on Rules of Procedure 10.1.3 Preparation of Agenda regarding whether all requested agenda items would be addressed with the suggested strikes and insertions. Rules of Procedure 10.1.4 Changes to the Agenda states that Voting Members determine what can be on the agenda. It was also determined that any items that weren't placed on an agenda could be addressed under Other Business on the agenda.

Motion by Commissioner Price, **Seconded** by Commissioner Graham, to insert in Rules of Procedure 10.1.3, the Board Chairperson with the assistance of the Corporate Secretary in consultation with the Committee Chairperson, and the General Manager within eighteen (18) hours prior to; to strike three days preceding; to strike, for informational purposes only; and to strike, however, the agenda is subject to unilateral change by the General Manager before the meeting.

Action: Motion Carried.

A discussion was held on Rules of Procedure 12.5 Ex Parte Communications. General Counsel Mark Matus will review the premise of ex parte communications as it pertains to the BWL and respond back to the Commissioners.

Commissioner Merrill inquired whether a transcript of a hearing under Rules of Procedure 12.8 Transcript had the same record retention schedule as minutes of a meeting. General Counsel Mark Matus will reply back to the Commissioners about BWL's record retention policy for minutes and transcripts and the requirements of Michigan state law. The Board of Commissioners will vote on Rules of Procedure 12.8 at the next Board meeting.

Commissioner Mullen was excused from the meeting at 8:00 p.m.

Motion by Commissioner James, **Seconded** by Commissioner Thomas, to insert in Rules of Procedure 13.1 Attendance, the Corporate Secretary shall submit official documented attendance in a report to

each Commissioner annually and to the Mayor and City Council before the reappointment of a Commissioner.

Commissioner James withdrew the motion to insert in Rules of Procedure 13.1 Attendance, the Corporate Secretary shall submit official documented attendance in a report to each Commissioner annually and to the Mayor and City Council before the reappointment of a Commissioner.

Motion by Commissioner Price, **Seconded** by Commissioner James, to insert in Rules of Procedure 19.6 Hiring Consultants, however, if a majority of voting members of the Board present at a regular or special Board meeting, as expressed by a vote of the members, believe that there could be a conflict of interest between the Board and Management of the BWL, the in-house counsel shall be recused. The Board shall then request that outside legal counsel be hired.

Action: Motion Carried.

Motion by Commissioner James, **Seconded** by Commissioner Price, to strike in the second paragraph of Rules of Procedure 19.7.1, Executive Committee, and insert Board.

Action: Motion Carried.

Motion by Commissioner James, **Seconded** by Commissioner Leek, to approve the Resolution to amend the Rules of Procedure and to forward to the full Board for consideration.

Action: Motion Carried.

Return on Equity (ROE)

General Manager Dick Peffley reported that BWL and the City of Lansing have discussed a two-year \$25 million Return on Equity agreement with a rate that is about 6.0%. The previous two year's rates were 6.55% and 6.76%. CFO Heather Shawa stated that the City of Lansing presents its budget at the end of March and BWL will present its budget to the Commissioners in May with a revenue forecast.

Commissioner James commended GM Peffley and CFO Shawa on providing information to the Commissioners.

Commissioner James inquired about a longer term for the Return on Equity agreement. GM Peffley responded that as there is an expected increase in income in the next couple of years, which would result in a larger payment amount at the same percentage rate, a two year agreement is preferred.

Commissioner Merrill asked for a comparison of Return on Equity agreements with other utilities and national benchmarking. GM Peffley responded that the agreement will be based on a percentage amount rather than a flat amount as a percentage is easier to justify in the budget, and that is what other utilities are doing. CFO Shawa responded that BWL benchmarking was in line with the median for utilities of BWL's customer base size and at 6% BWL would be at the \$25 million agreement. GM Peffley responded that BWL would bring a ROE recommendation to the Board for approval.

Cyber Security Update

Chief Information Officer, Rod Davenport, provided a brief cyber security update. The conflict between Russia and Ukraine is causing an increased risk in cyber security events. Although no events have occurred, the environment is being watched.

Other

GM Peffley stated that an update on the ground water issue will be provided to the Commissioners by the end of this week. He added that the first of the two pandemic relief fairs would be held on Wednesday, March 9th at the Grier Community Center and the second on Tuesday, March 15th at Letts Community Center.

Motion by Commissioner Graham, **Seconded** by Commissioner Thomas, to excuse Commissioner Dusty Horwitt from tonight's meeting.

Action: Motion Carried

Adjourn

Chair Zerkle adjourned the meeting at 8:35 p.m.

Respectfully Submitted
Sandra Zerkle, Chairperson
Committee of the Whole

**AMENDMENT NO. 6 TO AGREEMENT
BETWEEN THE CITY OF LANSING AND
THE BOARD OF WATER & LIGHT**

This Amendment No. 6 is entered as of this ___day of ____, 2022, by and between the City of Lansing, 124 W. Michigan Ave., Lansing, MI 48933, hereinafter referred to as “City,” and the Board of Water & Light, 1201 South Washington Ave., Lansing, Michigan 48910, hereinafter referred to as “Board.” The City and the Board are each a “Party” and, collectively are the “Parties.”

STATEMENT OF PURPOSE

- A. The Parties entered into an Agreement dated June 30, 1992 (the “Agreement”), a copy of which is attached as **Exhibit A**;
- B. The Parties entered into Amendment No. 1 to the Agreement on December 17th, 2001, which expired June 30, 2012, a copy of which is attached as **Exhibit B**;
- C. The Parties entered into Amendment No. 2 to the Agreement on June 30, 2012, which expired June 30, 2017, a copy of which is attached as **Exhibit C**;
- D. The Parties entered into Amendment No. 3 to the Agreement on December 23, 2013, which increased the Board’s annual payment to the City to 6.1% of its revenue from retail and wholesale sales of chilled water, electric, steam, heat and water utilities for the preceding 12-month period ending May 31st of each year (the “Payment”). A copy of Amendment No. 3 is attached as **Exhibit D**;
- E. Amendment No. 3 also extended the term of the Agreement for an additional year beyond that provided for in Amendment No. 2, such that the Agreement expired June 30, 2018, unless extended in writing by the Board of Commissioners and the City Council of Lansing;
- F. The Parties entered into Amendment No. 4 to the Agreement on July 1, 2018. Amendment No. 4 extended the terms and provisions of the Agreement by an additional two years such that the Agreement expired June 20, 2020, unless extended in writing by the Commissioners of the Board and the City Council of Lansing. A copy of Amendment No. 4 is attached as **Exhibit E**; and
- G. The Parties entered into Amendment No. 5 to the Agreement on July 1, 2020. Amendment No. 5 extended the terms and provisions of the Agreement by an additional two (2) years. Further, the Parties agreed that the Board would pay to the City a fixed dollar amount for each of the Fiscal Years 2020, 2021, and 2022 as follows: FY2020 \$23,100,000: FY2021 \$25,000,000: and FY2022 \$25,000,000. It was also agreed that in addition to the amounts described in the preceding paragraph, for each of FY2021 and FY2022, the Board would pay to the City an amount determined as follows:

(the Board's revenue from retail and wholesale sales of chilled water, electric, steam, heat and water utilities for the preceding 12-month period ending May 31st minus \$409,836,066) multiplied by 3%). A copy of Amendment No. 5 is attached as **Exhibit F**.

Including as modified by this Amendment No. 6, and by the prior Amendments Nos. 1-5, the Parties desire to extend the term and modify the return on equity payment calculation of the Agreement.

AGREEMENT

The Parties therefore agree as follows:

- 1) The term of the Agreement is extended by an additional two (2) years, such that the Agreement shall automatically terminate on June 30, 2024, unless extended further by the Commissioners of the Board and the City Council of Lansing.
- 2) The Board shall make return on equity payments to the City for the two fiscal years commencing on July 1, 2022, in the amount of 6% of total Board operating revenues, excluding inter-utility sales, as reported in the Board's audited financial statements.
- 3) Payments shall be made quarterly within 30 days after each quarter's end. Any changes to operating revenues or inter-utility sales after a quarterly payment has been made, such as in the case of a year-end audit adjustment, will be adjusted for in the subsequent quarter's payment.
- 4) This Agreement as amended contains the entire Agreement and any terms, conditions or provisions not contained in this Agreement as amended are not binding on either Party.
- 5) This Agreement shall inure to the benefit of the Parties to the Agreement.
- 6) This Agreement, or any of its terms or provisions, shall not be waived, modified or otherwise altered except as agreed in writing and executed by both Parties.
- 7) Except as modified in this Amendment No. 6, the Agreement shall remain in full force and effect. Nothing herein releases the Board from any payments it is obligated to make pursuant to the previous amendments to the Agreement.

[Signature page follows]

IN WITNESS WHEREOF the parties have signed this Amendment No. 5, and it shall become effective on the date first above written.

CITY OF LANSING

By: _____
Andy Schor, Mayor

By: _____
Chris Swope, City Clerk

BOARD OF WATER & LIGHT

By: _____
Richard R. Peffley
General Manager

By: _____
Maria Koutsoukos
Interim Corporate Secretary

Approved as to form only:

Approved as to form:

City Attorney

Board of Water & Light
Legal Counsel

Approved as availability of funds:
Account No. 101-674100

Controller

Proposed Resolution
Return on Equity (ROE) Renewal

WHEREAS, the City of Lansing has expressed a desire to continue the Agreement Between the City of Lansing and The Board of Water & Light dated June 30, 1992 (the Agreement), which has been subsequently extended by means of five Amendments thereto in 2001, 2012, 2013, 2018 and 2020, respectively;

WHEREAS, the Board of Commissioners Committee of the Whole (COW) considered the City of Lansing's request on May 10, 2022;

WHEREAS, the General Manager recommended the Agreement be extended by two (2) years at a rate of 6% of total operating revenues, excluding inter-utility sales, which would be memorialized as Amendment No. 6;

WHEREAS, the COW has considered the proposed Amendment No. 6, agreed with the General Manager's recommendation and approved the Amendment, including authorization for the General Manager to execute the Amendment, and the Amendment shall be forwarded to the Board of Commissioners for approval at the May 24, 2022 meeting.

RESOLVED, the proposed Amendment No. 6 to the Agreement Between the City of Lansing and The Board of Water & Light dated June 30, 1992 is approved by the COW, including authorization for the General Manager to execute the Amendment, and shall be forwarded to the Board of Commissioners for approval at the May 24, 2022 meeting.