

**MINUTES OF THE CHESHIRE TOWN COUNCIL SOLID WASTE COMMITTEE
MEETING HELD ON TUESDAY, NOVEMBER 25, 2014 AT 6:30 P.M. IN ROOM 207,
TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410.**

Present

Robert Oris, Chairman; Liz Linehan, Sylvia Nichols.

Staff: Town Manager Michael A. Milone; Town Attorney Alfred Smith.

1. ROLL CALL

The clerk called the roll and a quorum was determined to be present.

2. PLEDGE OF ALLEGIANCE

The group Pledged Allegiance to the Flag.

3. COVANTA CONTRACT REVISIONS FOR THE WASTE-TO-ENERGY PLANT

Committee Chairman Oris stated that the meeting will focus on the information regarding an amended contract with Covanta as the company converts the facility from a waste to energy plant to a pure transfer facility plan.

Town Manager Milone explained that Cheshire takes its trash to the Wallingford Waste to Energy facility along with 4 other towns in a consortium...Hamden, Milford, North Haven and Wallingford over the past 24 years. For 20 years CRRRA operated this plant and other plants around the State. The Council, in 2008, decided it was in the best interests of the Town...and the 4 other towns agreed...to not extend the contract with CRRRA, but to contract with Covanta Energy to take over the operation of the plant. In 2010 Covanta took over the operation of the plant, and there is a 10 year contract with two 5 year renewals with Covanta.

In 2014, Covanta realized it is not economically feasible to continue operating a waste to energy plant; operating costs are higher than anticipated; the facility is the smallest regional waste to energy plant in the State; costs cannot be spread amongst many users; and electrical rates are not what they were when the plants was originally constructed. Mr. Milone cited an example. CRRRA was selling electricity for 20 to 21 cents per kwh when the open market was selling it at 4 to 5 cents per kwh, so there was generation of a significant amount of revenue. When the agreement expired and was not extended, there was about \$5.6 million received by Cheshire, representing about 13% of the overall reserves. There was about \$45 to \$50 million built up in the reserves over the years because of the electricity revenue which was not needed to balance the budget. The tip fee could not be reduced because it would have brought in much outside waste to the facility. There was an artificially high tip fee to keep the market level; generation of a large surplus; and large surplus of revenue from the electricity. When the CRRRA contract was not renewed, Cheshire received \$5.6 million, or 13% of the overall reserve amount.

In 2010 the Town Council went with Covanta; the tip fee was more competitive and fixed; surcharges with Covanta would have limits; CRRRA indicated it would pass along

additional charges to the towns; and there were more attractive tonnage commitments with Covanta.

Mr. Oris asked for clarification on the \$5.6 million to Cheshire, and if this was the electrical revenue share in an account to the municipalities. In the original contract he noted there was call for an electrical revenue share, but it was never disbursed to the towns.

It was explained by Mr. Milone that CRRA established multiple reserve accounts i.e. a landfill post closure reserve account. Any excess revenue was captured by CRRA in a reserve account rather than going back to the towns, plus the tip fee was higher, generating a surplus. CRRA held onto the surplus which accumulated over 20 years, and the reserves aggregated to about \$50 million. Now, Covanta is in a situation where the model is no longer working at the smaller plant...but would work at a much larger plant with more towns coming in with waste. About 9 months ago, Covanta reached the conclusion to convert from a waste to energy to a transfer station, but the towns were not informed until recently. With this conversion Covanta can cut 90% of staff, electrical costs to run the facility will go down to nothing, along with other savings. There will be the cost of transferring the waste to Bristol or another facility.

The municipalities wanted something in return, and there were two options -- a lump sum payment or reduction in the tip fee. The 5 towns chose the reduction in the tip fee to \$65 per ton, with savings of about \$37,000 in the first year and more in each subsequent years. There is another benefit to taking the savings as a tip fee reduction, at the end of 5 years, the tip fee can be reset based on the market average. With the lower tip fee now, when the towns renegotiate to reset the tip fee they start from a lower base. It is likely the matter will end up in arbitration, splitting the difference. The towns go in at a \$65 tip fee and Covanta comes in at \$60, it will be probably be split between \$60 and \$65. This makes better sense and is more economical for Cheshire.

Mr. Milone cited two key things to note – Covanta can use the site as a transfer facility, and the 5 towns would have a reduced tip fee. Other issues of importance were stated by Mr. Milone.

1. There is the option under the amended agreement to use the Bristol facility if there is a decision to not go through the Wallingford facility as a transfer plant. If Covanta were to terminate the agreement with the towns there would be a place to take trash. The tip fee would be less at \$60 a ton, and it is \$70.30 a ton in Wallingford. Covanta operates the Bristol facility.

Attorney Smith commented on two options going to Bristol – a short term agreement and a long term agreement. There were negotiation provisions that Bristol would treat the 5 towns the same way as current Bristol member towns.

This is part of the amended agreement, and Mr. Milone said each municipality can make its own decision on going to Bristol, with a short term agreement of 5 years or

long term agreement of 20 years. For the short term the tip fee is fixed; for the long term it would be the tip fee set at the Bristol facility.

In the original Covanta agreement each town had to meet a minimum tonnage each year. Cheshire's tonnage was 7,000 tons. If only 6,000 tons were delivered there could be a charge for the 1,000 tons not delivered at the tip fee. In the last few years Covanta has received enough spot waste from outside to make the facility operate and there has not been imposition of this charge. The amended agreement only requires meeting 48,000 tons; last year the towns had almost 52,000 tons; and now the minimum must be met by the 5 towns in aggregate.

With regard to "put or play" Attorney Smith said towns deliver the amount of waste or pay. This change would not only aggregate the towns' waste at 48,000 tons a year, but the fixed remedy if the level is not reached, gives Covanta the right to terminate the agreement.

Mr. Oris cited this as one of his concerns in the agreement; there is a 6 month time period to find an alternate facility; and he questions Cheshire having the option to pay the difference or Covanta can terminate the contract. Mr. Oris said this would be helpful for the town...to pay to meet the minimum requirements.

According to Mr. Milone this is the call of the Town Council. When Cheshire moved away from CRRA into Covanta the 5 towns had the foresight to put some of the windfall each town received into a reserve fund for the facility in Wallingford. The towns have \$2 million in aggregate for the 5 towns to use. If we were unable to meet the minimum tonnage the towns could go to the \$2 million reserve and make up the difference. The towns can offer to pay Covanta and eliminate the need for termination.

It was suggested by Mr. Oris that this language be added into the contract...that if the minimum requirements are not met, Covanta could require payment from the towns.

Attorney Smith advised all 5 towns must agree to this option, and this is something the town attorney will look into and report back to the Council.

Regarding the timing and process and expectations for the towns to respond to the amended agreement, Attorney Smith said Covanta wanted this completed months ago. North Haven has approved the amended agreement; Wallingford tabled the matter due to concerns about what happens to the host community's benefits; Hamden, Cheshire, Meriden have not approved the agreement.

Mr. Milone noted the date was "December 10, 2014" and this date gets moved around. He said the Council can take more time and get answers to questions.

Mr. Oris stated we must look at what we have; Council can review and make a decision; and Council can provide the Town Manager with more information.

The business model has changed because energy prices are now deregulated, and Attorney Smith reported energy costs continue to decrease and the burn plants can no longer compete.

Mr. Milone explained that with the Covanta original agreement, there is no sharing of electrical revenues with the towns. The agreement with Covanta calls for them to assume all the revenue generated from electrical and none of the reserves are shared with the towns.

Mr. Oris has never seen the 1st amendment, but has seen the 2nd amendment to the agreement.

Regarding the Covanta agreement, Mr. Milone advised that the 1st amendment to this agreement was done 3 years ago, and was forwarded to Councilors. The amendment was done for the benefit of the municipalities. While the towns had \$2 million in a reserve account, they wanted Covanta to agree to increase the tip fee beyond what they were going to impose, so there could be continued contributions to the reserve. The towns wanted a \$1.50 increase in the tip fee, with the understanding the \$1.00 was Covanta's, and the 50 cents would be transferred to the towns to build up the reserve account. This amendment had agreement and Covanta also agreed to manage the account. The concerns were a depleted reserve with the 5 towns not having anyway to continue with a reserve account. Mr. Milone stated this is the only piece of the 1st amendment.

Ms. Nichols asked about selling all the electric generated and why her electrical costs continue to increase with CLL&P getting 50% of the increase.

In reply, Attorney Smith said CL&P is building in the costs of the various pipe lines used to bring in natural gas. There is no market for the costs to generate the electricity.

Mr. Milone said that CRRA was getting 20 cents per kwh from CL&P, and on the open market it was selling for 4 or 5 cents per kwh. When there was negotiation of rates with CRRA it was known there was a guarantee of 20 years, prices were locked in, and it was never expected that the market would drop as it did. CRRA is a quasi-public agency so there was sharing of the revenue at the end of the contract. With Covanta there is no sharing of the revenue.

When these plants were built and permitted, Attorney Smith said there was a law in place requiring utilities to purchase electricity at a fixed rate. When the plant got out of the generation business the plant could not stand on its own.

The issue of right of first refusal was raised by Mr. Oris. He asked about the towns having the right to purchase the facility in the future and if there is benefit or value to this. He asked if there is this right as a transfer station.

Attorney Smith said the market is telling us there is no value in that, and Covanta is closing the waste to energy plant operation. He does not think the towns have the right as a transfer station.

Mr. Milone stated the towns do not have the right, and it was never contemplated that the towns would get into the solid waste business. If Cheshire is successful its solid waste numbers should continue to go down.

Regarding the right of first refusal Mr. Oris believes there is this right because it continues forward, with nothing in the 2nd Covanta agreement that says otherwise. This gives towns the right to purchase the facility as a transfer station, but there is a question on whether there is value to this down the road as a transfer station.

This issue never came up in the meetings and Mr. Milone said there could be this right of first refusal. The problem is owning a transfer station, and also having a site to which trash can be brought. We would have to pay for the operation of the facility and transfer the waste to another facility contracted for waste disposal.

Mr. Oris said the Covanta transfer station would be similar to the transfer station facility owned by A. J. Waste. In reality, the town could take its material to A.J.'s facility at a competitive price.

According to Attorney Smith the difference is Covanta has a contract facility that it can send waste to at a set price.

Mr. Milone told the committee A.J. has a transfer facility for material that cannot be disposed of in the normal solid waste stream. The site has the bulky stuff, electronics, and may not take the traditional waste picked up for Cheshire. Mr. Milone noted that Cheshire had a transfer station on Waterbury Road, and decided to close the site because A.J. did the same thing at the same price the town was charging.

Section 8.5 Surcharge Termination – this provides a one year increase in costs to Covanta of \$500,000 or more or in the aggregate of the entire contract term of \$3 million or more...they can terminate. Mr. Oris asked about this section.

Attorney Smith said there has always been a change in law provision in the agreements, i.e. environmental regulations becoming more stringent, purchase of more expensive pollution control equipment...and the contract provides for how the money gets allocated by Covanta and the municipalities. Here it is a little different because stakes are not as high. For the subject facility Covanta still wants the ability to terminate the agreement if restrictions become more stringent.

Mr. Oris noted the termination right is specific to change in law or events of Force Majeure. Without Covanta getting permits they have the right to terminate, but the town has the right to move to Bristol.

This was heavily negotiated and Attorney Smith said much time was spent reducing Covanta's discretion when they can pull the plug.

Amended Agreement, Page 4, #11 – Mr. Oris read an excerpt into the record.

Mr. Milone stated there has always been a prescribed route (in the original contract) to be followed, but he will confirm this and advise the Council.

Amended Agreement, Page 11 (o) Tip Fee – Mr. Oris commented on this section stating the annual increase being CPI, ranges from 1.75% to 3.5%.

Regarding this section, Mr. Milone said this will likely go to arbitration in July, and the tip fee will be reset. The range is 1.75% to 3.5% for the next 4 years on the new base.

Mr. Oris is talking about “after the first 5 years” and we know the number is \$65 and we are not going to arbitration, as the first reset is 5 years from now.

It was explained by Mr. Milone that the reset date is July 2015, and this is why we wanted the tip fee to go down. It does not change the fact that we will negotiate a reset of the \$65. Whatever that reset is, it becomes the new base. On that base, each and every year, the tip fee can be increased within the stated range.

Stating he did not get this, Mr. Oris said we are agreeing to a contract which says \$65, but only for a short period of time, because we are going to arbitration again. He questioned why it was not negotiated before now.

According to Attorney Smith one of the options was to freeze the tip fee at a higher rate than \$65 for 5 years, but other towns were not in agreement.

Right now the market average is \$60, and Mr. Milone reported that the Wallingford facility is the highest of all facilities in the State, even at \$65. The feeling of the 5 towns is that our tip fee will go down as a result of the reset, and it was not locked in at a higher than \$65 rate for a few years when there is the chance it will be reduced, even further than \$65. If we went in at \$70 a ton, went to arbitration, the towns would get hit harder.

Attorney Smith said the consensus of the group was to get to the reduced \$65 tip fee.

The committee was told by Mr. Milone to remember that each year the \$70.30 fee is increased by 1.75% to 3.5%. After 5 years starting at a lower base there is savings of \$31,000 the first year, and more in each subsequent year, to a total of about \$175,000.

The “sponsorship of community outreach programs” was questioned by Mr. Oris, who asked for clarification.

Mr. Milone explained that there are promotions of electronic recycling programs in the towns, support of local recycling, and the towns call on Covanta to support outreach programs. Cheshire has not called on Covanta as there has not been a need to do so.

With Covanta's transfer station, Mr. Linehan asked if this affects the town's relationship with A.J. Waste.

In response, Mr. Milone said it could affect the town's contract with A.J. If Cheshire sends waste to Bristol there is a longer drive and additional hauling costs. A.J. may want to come back and renegotiate his contract. Mr. Milone will review the contract with A.J. to see if there is a provision regarding change of site. He will inform the Town Council.

Attorney Smith said this would be an issue if Covanta terminates the transfer station.

If Cheshire is supplying an "under amount" of waste to the transfer station, Mr. Oris said the town should have the right to make up the difference. If Covanta terminates, A.J. will have to come back to the Council because the hauler will have a longer drive.

For clarification, Mr. Milone advised that the Policy Board membership is the five (5) Chief Executive Officers (CEOs) of the towns of Cheshire, Meriden, Hamden, Wallingford, North Haven.

Mr. Milone reviewed the issues/questions that require his follow-up and information to the committee and the Council.

- Termination – put or pay; can the towns pay the balance and prevent Covanta from terminating the contract.
- Right of First Refusal – do the towns have still have this right; Attorney Smith will research this issue.
- Route to the plant – has it changed; why is there specificity on the route in the amended agreement.
- Waste to Bristol – review contract with A.J. Waste regarding travel; would the contract have to be renegotiated.

If Covanta cannot get approvals for the transfer station, Mr. Oris said the company has the right to terminate, and Cheshire is forced to go to Bristol. He asked about negotiation of some economic benefit if Covanta does not get the approvals, and if Covanta has this right today. Mr. Oris questioned whether the town is put in a worse situation by agreeing to the subject contract, whereby the transfer station approvals are not granted to Covanta. He asked if Covanta can terminate now for any reason other than default, and commented on more risk to the town if State approvals are not received. Cheshire would have potential additional costs by A.J. Waste transporting

material to the Bristol site. Mr. Oris' assumption is Covanta not getting the State approvals for a transfer station, and continuing to operate as a waste to energy plant.

If that were to happen, Attorney Smith said they would increase the tip fee, forcing Cheshire to look to another facility.

The reset is in July 2015 and Mr. Milone said the tip fee can increase from 1.75% to 3.5%.

With tip fees state wide at \$60 and Cheshire paying \$70 a ton, Mr. Oris questioned the basis on which the tip fee could be increased.

Attorney Smith said it is facility specific, and the economies of scale in a smaller plant are not as good as a larger plant.

Mr. Milone read a clause in the current contract into the record..."can increase the tip fee every year by 1.75% to 3.5% based on CPI". If the CPI is not 1.75% the tip fee can be increased by this amount regardless of what other markets are.

If Covanta does not get approval, Mr. Oris said they can move forward under the old contract and raise the tip fee to any amount they choose.

Stating that is incorrect, Mr. Milone said the range is still 1.75% to 3.5%. Once there is a 5 year reset, his understanding is there is still the range of 1.75% to 3.5% for future annual increases after the reset.

Mr. Oris said there would be no cap on the reset. When we get to a reset number Covanta could say \$90 a ton because this one facility does not make money.

Mr. Milone said they could try to do that. Attorney Smith said there would be the dispute resolution provisions and the company has to demonstrate the facts. If Cheshire were to terminate the town would go to Bristol, which has a \$60 per ton fee...a decrease of \$10 per ton...but the hauling costs would go up. With 7,000 tons it equates to \$35,000 a year. The question is what A.J. Waste would charge to go to Bristol.

Attorney Smith advised that the 2nd amendment does not change the definition of a facility and the right of first refusal is for the "facility". In the original agreement the facility is defined as the recourse recovery facility.

Mr. Oris recommended moving this item to the full Town Council with the Solid Waste looking for more information, and the 4 items to be reviewed and discussed.

MOTION by Ms. Nichols; seconded by Ms. Linehan.

MOVED that the Solid Waste Committee move the Covanta Contract Amendments to the full Town Council, with identification of the four areas of discussion (Termination/Put or Pay, Right of First Refusal, Route to the plant, Waste to Bristol facility) before a decision is made.

VOTE The motion passed unanimously by those present.

4. ADJOURNMENT

MOTION by Ms. Nichols; seconded by Mr. Linehan.

MOVED to adjourn the meeting at 7:29 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk