

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
LINDA ULISS BURKE
VINCENT D. MOSCHELLA
Deputy City Attorneys



THOMAS O. GARTNER
BRUCE D. SCHRIMPF
SUSAN D. BICKERT
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
DAVID J. STANOSZ
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK
JAY A. UNORA
DONALD L. SCHRIEFER
EDWARD M. EHRLICH
LEONARD A. TOKUS
MIRIAM R. HORWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
KATHRYN Z. BLOCK
MEGAN T. CRUMP
ELOISA DE LEÓN
ADAM B. STEPHENS
KEVIN P. SULLIVAN
BETH CONRADSON CLEARY
THOMAS D. MILLER
HEIDI E. GALVÁN
JARELY M. RUIZ
ROBIN A. PEDERSON
Assistant City Attorneys

November 26, 2008

Alderman Robert J. Bauman
4th Aldermanic District
City of Milwaukee
City Hall, Room 205

Re: Resolution Authorizing the Assignment to the City of Mequon of the Water
Service Agreement Between the City of Milwaukee and We Energies,
CCFN 080850

Dear Alderman Bauman:

You have indicated that you are not planning to place the above-referenced resolution, which was introduced at the Common Council meeting on October 7, 2008, on the Public Works Committee agenda for the December 3, 2008 committee meeting.

Under Article IV(i) of the Agreement Between the City of Milwaukee and We Energies for the Purchase of Water at Wholesale ("Agreement"), We Energies cannot assign the Agreement without the City of Milwaukee's prior written consent. Article IV(f) of the Agreement requires the parties to "act in good faith and use due diligence in meeting their respective obligations under this Agreement." Further, under Wisconsin law, a duty of good faith is implied in every contract. Wis. J.I. – Civil 3044 (2007).


As Assistant City Attorney Tom Miller informed you this morning, the Common Council's failure to consider the consent request tendered by We Energies could expose the City of Milwaukee to monetary damages if the asset purchase agreement between We Energies and the City of Mequon falls through. It is our understanding that the asset purchase agreement is set for closing by December 31, 2008.

By letter dated September 29, 2008, We Energies submitted a formal request that the City of Milwaukee consent to the assignment of the Agreement to the City of Mequon. It is our opinion that the duty of good faith, both express and implied, requires the Common Council to timely consider We Energies' consent request. To avoid exposing the City of Milwaukee to monetary damages, the Public Works Committee should consider the We Energies' September 29, 2008 consent request in time to allow consideration by the full Common Council at the December 16, 2008 Common Council meeting.

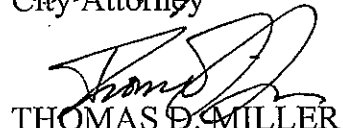
This morning, you informed Tom Miller that you intend to prepare correspondence seeking a formal City Attorney opinion regarding a proposed alternative resolution that you may submit to the Common Council as well as options that the Common Council may have in considering We Energies' consent request. When we receive your questions we will promptly respond to allow the above-referenced file to be heard at the December 3, 2008 Public Works Committee hearing.

If you have any comments or concerns or require any additional information, please do not hesitate to contact the undersigned.

Very truly yours,



GRANT F. LANGLEY
City Attorney



THOMAS D. MILLER
Assistant City Attorney

c: Ronald D. Leonhardt
Willie L. Hines, Jr.
Pat Curley
Carrie Lewis

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