

**Delaware Sustainable Energy Utility**  
Meeting of the Oversight Board  
DNREC - 89 Kings Hwy., Dover, DE 19901  
January 17, 2013 – 8:00 A.M.

**1. Welcome**

Board Chair Sen. Harris McDowell called the meeting to order at 8:24 AM. Present were Senator McDowell, Michael Sheehy, Kristopher Knight, Randy Day, Roger Jones, Dr. Charles Wagner, Sec. Collin O'Mara, Robert Underwood. Also present were Tony DePrima, Executive Director, Lisa Gardner, Office Manager, and Frank Murphy, SEU General Counsel.

**2. Approval of Minutes**

**a. November 15, 2012 – Oversight Committee** - A motion was approved unanimously to adopt the minutes of the November 15, 2012 board meeting previously circulated.

**3. SEU Business**

**a. Recommendation for Bond Counsel** - The Committee (consisting of Michael Sheehy, Executive Director Tony DePrima, and Frank Murphy) reported on the Request for Proposal process to retain a law firm to serve as bond and tax counsel for the SEU. Tony DePrima gave a detailed overview of the Committee's work, including that three law firms responded to the RFP and each of the three firms was interviewed by the full Committee. He informed the Board that the Committee had unanimously agreed to recommend that the SEU enter into negotiations with the Drinker Biddle team lead by Baird Brown. This was the bond and tax counsel team that represented the SEU in its successful 2011 bond issue, the first of its kind in the nation. Tony DePrima informed the Board that the three law firms were comparable in terms of hourly rates that would be charged. The Committee concluded that, given Drinker Biddle's prior experience, cost savings could be realized, as Drinker would not be starting from scratch, if it handled the next proposed bond issue, having drafted the documents for the 2011 bond issue. Furthermore, Drinker had the most relevant experience, having handled the 2011 bond issue, and was least likely to be faced with conflicts that might come into play in future bond issues. The other firms were well regarded, but considering all factors, the Committee recommended that the Board commence discussions with Drinker Biddle and Baird Brown.

After discussion and questioning by various Board members, a motion was made and approved unanimously to have Tony DePrima commence negotiations with Drinker Biddle to serve as the SEU's bond and tax counsel for a three year period, with options for two, additional one year terms, as reflected in the RFP. Tony DePrima will be assisted by Frank Murphy. The Board discussed the fact that the Executive Committee might be called upon to approve the final contract, in order to expedite work on the bond issue presently under consideration involving Red Clay School District.

**b. Consideration of Statements**

#### **i. F. Murphy Legal Services – November and December 2012**

A motion was made and approved unanimously to approve the November 2012 (\$10,221.93) and December 2012 (\$3,754.95) legal statements.

#### **ii. NW Financial – November 2012**

A motion was made and approved unanimously to approve the November 2012 statement (\$2,555.00) from NW Financial, the SEU's financial advisor.

**c. Revised Loan Policy** - Executive Director Tony DePrima reported on the SEU's revised loan policy. After his presentation and Board discussion, a motion was made and approved unanimously to keep the SEU's current loan policy in place for the time being, and have it apply to all SEU loans. In addition, the motion included the Board's instruction that the Finance and Audit Committee work with the Executive Director to further review the loan policy, including the effects of Davis-Bacon, and make recommendations at the next Board meeting about the loan policy.

**d. Red Clay School District – Energy Efficiency Performance Bond** - Executive Director Tony DePrima gave a comprehensive report on the status of the proposed bond issue for the Red Clay School District. Secretary O'Mara praised the bond program and the Red Clay initiative, indicating that it can serve as a model for the State and other school districts throughout Delaware, and this is the type of program the SEU was created to do.

There was discussion about the loan fee to be charged by the SEU in connection with the Red Clay and future bond issues.

A motion was made and approved unanimously to authorize Tony DePrima to proceed with the SEU Energy Efficiency Performance Bond issue for Red Clay, with an indication of a loan fee of 50 basis points, subject to future decision of whether the fee would be paid up front or over time.

### **4. Reports**

#### **a. Finance & Audit Committee Report – January 11, 2013**

There was a report by the Committee and discussion about the draft 2010 Financial Statements prepared by BDO. Board member Kris Knight led the discussion.

After discussion, the Board agreed that for calendar years 2010 and 2011, that the SEU would treat the funds received in hand by DRNEC pursuant to the RGGI auction as the "gross amount" of funds from the auction for the purpose of determining the SEU's 65% share.

There was discussion about the fact that the SEU's bank accounts are now only insured to the current federal limit of \$250,000. There is a need to invest RGGI funds to obtain a return while they are not being used. However, there is also a need to keep the funds secure and not at a risk

of loss. Secretary O'Mara suggested contacting the Delaware Community Foundation for insight into how it is handling the investment of its funds.

There was discussion about page 9 of the 2010 draft Financial Statements on the subject of "Related Party Transactions." The Board agreed that the State of Delaware is a related party for purposes of the Financial Statement reporting, as several Board members were employees of the State of Delaware in 2010, and that is also true at present.

There was discussion about clarifying the language that appears on page 3 of the draft Financial Statements related to the sentence about Management's election to omit the statement of cash flows.

The Committee indicated that the SEU's 990 for 2010 were in need of amendment. BDO is to handle the amendment.

A motion was made and passed unanimously to approve the draft 2010 Financial Statement with changes/additions recommended by the Board and the Finance and Audit Committee: 1.) on page 9, "Related Party Transactions," 2.) based on assumptions stated at the meeting, on page 6, clarification of the treatment of RGGI funds received by the SEU from DNREC, and 3.) on page 3, Management's election to omit the statement of cash flows. Kris Knight will work with Tony DePrima and Frank Murphy to suggest appropriate changes and clarifying language on these and any other issues that arise, so that the 2010 Financial Statements can be finalized.

## **b. Executive Director's Reports (T. DePrima)**

### **i. Monthly, Bond, and SREC Budget Reports**

### **ii. Activity Report for November/December 2012**

Tony DePrima provided comprehensive reports to the Board. He discussed the upcoming review by the General Assembly's Joint Sunset Committee and his preparations. Tony DePrima also indicated that the Board's 2013 Conflict of Interest forms will be due for filing.

## **5. New Business/Old Business**

None.

## **6. Public Comment**

The Board heard public comment and responded to questions posed by the public.

## **7. Executive Session – Personnel Matters {Pursuant to 29 Del C. §10004(b)(9)}**

### **a. Annual Review - Executive Director**

A motion was made to have the Board enter into executive session to address personnel matters, namely, the evaluation of the Executive Director Tony DePrima and the Office Manager Lisa Gardner. SEU General Counsel Frank Murphy explained the reason for the executive session and the fact that it is permitted under the Freedom of Information Act, pursuant to Title 29, Section 10004(b)(9), as reflected on the agenda for today's Board meeting. The motion to enter into executive session was seconded and approved unanimously; the Tony DePrima and Lisa Gardner left the meeting so that the Board could discuss their job performances confidentially.

In executive session, the Board discussed the performance of the Executive Director Tony DePrima, and the Office Manager Lisa Gardner. It was agreed that both had done a very good job in their positions and should receive pay increases. The Board discussed a 2% increase for Tony DePrima. The Board discussed a 4% increase for Lisa Gardner, in light of the fact that her starting salary was considered relatively low, particularly given her job responsibilities and prior experience.

The Board discussed using private industry job performance review materials in connection with future evaluations of the Executive Director. The Board noted that future evaluations would be based in large measure on the Executive Director's ability to achieve the long term goals of the SEU and the challenges created by future SEU bond issues.

A motion was made to leave executive session, which was seconded, and passed unanimously. In public session, the Board congratulated Tony DePrima and Lisa Gardner on their very fine job performances. The Board indicated its intent to consider using private industry job performance review materials in connection with future evaluations of the Executive Director. The Board noted that future evaluations of the Executive Director would be based in large measure on his ability to enable the SEU to in achieve its the long term goals, including future SEU bond issues.

A motion was made and seconded to approve a 2% pay increase for Executive Director Tony DePrima and a 4% pay increase for Office Manager Lisa Gardner, and the motion was approved unanimously.

## **8. Adjourn**

A motion to adjourn was passed unanimously at 10:54 AM.