

Delaware Sustainable Energy Utility  
Minutes of the Meeting of the Oversight Board  
122 William Penn Street, Haslet Armory, Dover, DE 19901  
June 20, 2012 at 9:00 A.M.

**1. Welcome**

Chairman Harris B. McDowell, III called the meeting to order at 9:15 A.M. Present were Randall Day, Kristopher Knight, Roger Jones (teleconference), Secretary Collin O'Mara (teleconference), Michael Sheehy, Dennis Williams (teleconference). Also present were Radley Reist, Kelley Huff - Legal Counsel, Tony DePrima – SEU Executive Director, and Lisa Gardner – SEU Office Manager.

**2. Approval of Minutes – May 18, 2012**

**Mr. Day moved to approve the May 18, 2012 minutes that were circulated to Board members prior to the meeting. The motion was seconded by Mr. Sheehy and unanimously carried.**

**3. SEU Business**

**a. Review and Recommendation of Ad-Hoc Committee – Legal Services RFP**

Prior to discussing this matter, Ms. Huff (Murphy & Landon) excused herself from the room. Mr. Sheehy informed members that four (4) RFP's were received for Legal Services, which were Ballard Spahr, Fox Rothschild, Murphy & Landon, and The Delaware Counsel Group. The Ad-Hoc Committee (consisting of Mr. Sheehy, Dr. Wagner, and Mr. DePrima) recommended interviewing the following (3) three companies: Ballard Spahr, Fox Rothschild, and Murphy & Landon. Mr. Sheehy stated that The Delaware Counsel Group were by far the most costly, additionally the group specialized in corporate/international law. Mr. Sheehy explained how the interviewing process was handled; each interview lasted between 1 to 1 ½ hours all were asked a set of pre-determined questions, each was graded individually. Based on price (\$300.00 per hour) and experience, the Ad-Hoc Committee recommended awarding the RFP to Murphy & Landon. **A motion was made by Mr. Sheehy to award the bid to Murphy and Landon and have Mr. DePrima, Executive Director finalize the contract (for the amount of \$300.00 an hour) for execution and present it to the board for approval at the next meeting. The motion was seconded by Mr. Knight and unanimously carried.** Addressing concerns from various board members, Senator McDowell indicated that, prior to hiring an Executive Director, the Board often relied on Mr. Murphy's services and anticipates legal fees to be reduced in the future.

**b. Procurement Policy Amendments**

Mr. DePrima reminded members that the Board passed the Procurement Policy during the May 18, 2012 board meeting; however, Mr. Knight presented three (3) amendments to the following sections: Section 7.3 Change Orders, Section 7.1 Sole Source Procurement, and Section 8 Contract and Contract Signing.

**Mr. Sheehy moved to approve the Procurement Policy amendments (Attachment A) seconded by Secretary O'Mara and unanimously carried.**

**c. Consideration of Statements**

It was the consensus of the Board to approve the below statements with one motion.

**c.1 BDO – Professional Services – Through May 25, 2012** - Mr. DePrima presented BDO's invoice to the Board, in the amount of \$15,030.04. Mr. DePrima indicated that BDO has a cap in their contract of \$39,500, including this invoice; BDO has approximately \$4,000 remaining on the contract.

**c.2 Becker Capital & Finance**

a. Mr. DePrima presented an invoice from Becker Capital & Finance for the month of March, in the amount of \$7,985.99.

b. A second and final invoice from Becker Capital & Finance was presented for the month of April 2012, in the amount of \$2,681.25.

**c.3 Murphy and Landon Legal Services – May 2012** - Lastly, Mr. DePrima presented Murphy and Landon's invoice for the month of May 2012, in the amount of \$15,930.12.

**Mr. Sheehy moved to approve payment for the above statements as presented, seconded by Mr. Knight, and unanimously carried.**

**d. Establishment of Board Committees**

Mr. DePrima presented the Board with documentation comparing the proposed committee structure to other organizations; the proposed committee structure was found to be similar in many organizations. Mr. DePrima presented the Committee Structure (Attachment B) to the members. It depicted proposed names of committee members as well as a description of the responsibilities for each of the committees. Since there were only two members on the Finance & Audit Committee, Mr. DePrima asked if there was anyone else wishing to serve. Mr. Williams indicated he would be willing to serve on the committee. Senator McDowell indicated that Dr. Snyder was a non-voting member of the SEU and should not be listed as member. Additionally, it was the consensus of the Board that only members of the Board should serve on the sub-committees; striking the last sentence referring to non-committee members serving on Governance & Nominating, Finance & Audit, and Energy Programs Committees. Mr. DePrima thanked board members for their willingness to serve.

**Mr. Jones moved to adopt the Committee Structure as amended (Attachment B). The motion was seconded by Mr. Sheehy and unanimously carried.**

**e. Reoccurring Meeting Times and Dates Survey**

The survey that was distributed to members of the Board reflected that the third Thursday of the month at 4:00 p.m. would be the time and date of choice to hold reoccurring SEU meetings; however it was noted that was not a good time for those board members that report to the Legislature. Senator McDowell suggested meeting every other month with Committee Meetings to be scheduled as needed. The second most popular meeting time, according to the survey, was the third Thursday of the month at 8:15 a.m.

**Mr. Jones moved that the regular meetings will be held every other month at 8:15 a.m. and that the sub committees meet as needed, the motion was seconded by Mr. Sheehy, and unanimously carried.**

**f. Discussion - July Meeting to be Held as a Retreat**

It was the consensus of members to move forward with conducting a Retreat in July. Mr. DePrima stated that the State of Delaware hired a company that evaluated and surveyed Delawareans regarding the effectiveness of the programs that were administered by Energize Delaware; it is anticipated that this information will be available to the Board towards the end of July. Once the information is received, it may be necessary to call a Board meeting in August to review the above mentioned findings. The Retreat, which is tentatively scheduled for July 19, 2012, will be used to discuss future programs.

#### **4. Reports**

##### **a. Treasure/Secretary's Report – Update – 403(B) Retirement Plan**

Mr. Knight reminded members that the Board adopted a 403(B) Retirement Plan for the staff at the SEU during the May 18, 2012 meeting. During that meeting, member requested Mr. Knight to review the plan and report back to board. Mr. Knight stated that he reviewed the proposed 403(B) plan and is recommending that it be administered by The Hartford Group. It was the consensus of members that contributions are made monthly.

**Mr. Knight moved to set the contribution rate to be paid on a monthly basis, seconded by Mr. Day and unanimously carried.**

##### **b. Executive Director's Report**

###### **i. Budget Report**

Mr. DePrima reminded members that the activity depicted in this budget only reflects the Administration Budget; he indicated that he is working on a more comprehensive budget that will be presented at a later date.

###### **ii. Activity Report**

Mr. DePrima informed members that the process of adding Mr. Knight's name to the various financial accounts has begun. Additionally, Mr. DePrima reported that the Citibank statements, which reflect bond activity, are now being delivered to the SEU's office; and offered to make them available for any interested members of the Board. Senator McDowell suggested that a summary of the report be distributed. Mr. DePrima reported to members that the SEU is now invoicing 1201 Market Street LLC for an energy efficiency loan, which was in the amount of \$250,000. The company that was previously servicing this loan is ending their agreement with DNREC. Money collected will be deposited into the RGGI account.

Mr. DePrima informed members that he was going to have a meeting with Delaware's energy service companies to discuss the possibility of forming a Delaware Chapter of the Energy Services Coalition (ESC) Both Senator McDowell and Secretary O'Mara expressed concern that there may be a conflict of interest and asked that Mr. DePrima get a legal opinion as to whether there is a conflict.

#### **VI. New Business/Old Business**

Senator McDowell informed the board that this would be Radley Reist's last board meeting as Energy Intern with the University of Delaware. Mr. Reist relayed that it was an honor and pleasure working with the members of the SEU. Mr. Reist also offered his services to assist in finishing any pending items. Senator McDowell thanked him for his dedicated service to the SEU.

#### **VII. Adjourn**

Prior to adjournment, the Board received public comments and questions raised by various members of the public.

**Mr. Jones moved for adjournment, seconded by Mr. Sheehy and unanimously carried.**

Meeting Adjourned at 10:30 a.m.

To: SEU Board of Directors

From: Kristopher Knight, Treasurer/Secretary  
Tony DePrima, Executive Director

Date: June 5, 2012

Subject: Procurement Policy Amendments

As requested at the last board meeting we met to further discuss the Procurement Policy. Based on our discussions we are recommending the following amendments to the Procurement Policy:

Lower the Executive Directors change order authority to 10% making it consistent with the Section 8's contract amendment language, and restricting change orders to ones that do not go above the approval threshold in which they were originally approved. Under this circumstance the authority required for the higher contract threshold would have to approve the change order. Recommend changing the paragraph as follows:

### 7.3 Change Orders:

If, after a purchase contract is awarded, it becomes necessary to add items/work because of unforeseen findings or a scheduled change, a change order can be issued without Board approval for purchases up to and including ~~15%~~**10%** of the original purchase amount when the item is still within the amount budgeted for that item. **When the change order causes the purchase or contract amount to exceed the threshold under which the original contract or purchase was approved, the approval authority required for the higher contract threshold is required to approve the change order.**

In Section 7.1 Sole Source Procurement require Sole Source Vendor contracts to be approved by the Board of Directors. Recommend changing the first sentence as follows:

### 7.1 Sole Source Procurement

A procurement may be awarded without competition **by the Board of Directors** if there is only one source for the required professional service.

In Section 8 Contract and Contract Signing place a five (5) year limit on contracts and correct numbering. Recommend changing the first paragraph as follows:

### Section 8 Contract and Contract Signing

**8.1** A contract is an agreement between two or more persons (this also encompasses businesses, organizations or government agencies) to do, or refrain from doing, certain things in return for something of legal value. The contract sets out the specific terms of the agreement (who, what, when, where and how) and can be written or verbal, or even implied by actions. A contract is needed if there is an obligation for SEU to do something or perform in some way, whether or not there is any exchange of money involved. All contracts binding SEU must be signed by an authorized person to be valid. Contract shall not be signed until approval by the SEU General Counsel. The SEU will not retain any firms or individuals to provide professional services without having a contract. **No contract shall be approved for a term greater than five (5) years unless it is for a contract that traditionally requires longer terms such as real estate leases or SREC Auction Transfer Agreements.**

## **ATTACHMENT B**

**EXECUTIVE COMMITTEE** - *Chaired by the Chairman of the Board, the Executive Committee performs the duties and exercises the powers of the Board of Directors between regularly scheduled Board meetings or when it is not practical or feasible for the Board to meet.*

1. Senator Harris B. McDowell, III – Chairperson
2. Randall M. Day – Vice-Chairperson
3. Kristopher E. Knight – Treasurer/Secretary
4. Colin O’Mara – Secretary – Depart. of Natural Resources
5. Anthony J. DePrima – Executive Director , Ex-Officio

**GOVERNANCE & NOMINATING COMMITTEE** – *Chaired by the Vice-Chairperson of the Board, the Governance & Nominating Committee assists in oversight of matters relating to the composition, organization and effectiveness of the Board and its committees, oversees compensation and benefits policies, performance and compensation of the Executive Director and senior staff, succession planning, and organization changes. This committee will recommend candidates to the Governor for consideration for Board vacancies. ~~The each committee shall include at least two (2) members of the Board of Directors who shall be in the majority, and may include persons who are not members of the Board of Directors who shall be in the minority.~~*

1. Randall M. Day – Vice-Chairperson
2. Roger Jones
3. Nnamdi Chukwuocha
4. Secretary Collin O’Mara

**FINANCE & AUDIT COMMITTEE** – *Chaired by the Treasurer/Secretary of the Board, the Finance & Audit Committee assist the Board in its oversight of the management of the organization’s financial assets, review and recommends approval of annual operating budget, regularly review financial results, and ensure the maintenance of an appropriate capital structure. The committee will also oversee all organizational lending and bond issuance, as well as recommend potential new revenue sources for consideration by the Board. In addition, the committee assist the Board in its oversight of the integrity of the financial statements, compliance with legal and regulatory requirements and ethical standards, and the independence and performance of the internal and independent auditors. ~~The each committee shall include at least two (2) members of the Board of Directors who shall be in the majority, and may include persons who are not members of the Board of Directors who shall be in the minority.~~*

1. Kristopher E. Knight – Chairperson
2. Michael Sheehy
3. Roger Jones
4. Dennis Williams

**ENERGY PROGRAMS COMMITTEE** – *The Energy Programs Committee assists the Board in its oversight of legislatively mandated programs, activities, and policies and procedures. The committee will work closely with the Board’s Finance & Audit Committee in developing and accessing the organization’s program effectiveness and efficiency in compliance with accepted industry standards. In addition, the committee reviews proposed programs, RFP’s and contract prior to submission to the Board for approval. This committee shall elect its own chairman. ~~and shall include at least two (2) members of the Board of Directors who shall be in the majority, and may include persons who are not members of the Board of Directors who shall be in the minority.~~*

1. Dr. Charles G. Wagner
2. Dennis Williams
3. Sean Finnigan
4. Carolyn Snyder