

Sustainable Energy Utility Oversight Board, Minutes of the Special Public Meeting of the Executive Committee of the Board; DNREC Lukens Drive Office, 391 Lukens Drive, New Castle, DE 19720; October 27, 2011 at 10:00 AM

Present: Sen. Harris B. McDowell III, John M. Byrne, Ph.D., Roger Jones, Carolyn Snyder, Tony DePrima, Ken Becker, Tom Shopa, Radley Reist, Frank Murphy

I. Welcome

Sen. McDowell called the meeting to order, and explained the reasons for conducting the meeting. The meeting and the agenda for the meeting had been properly posted as required by the State Freedom of Information Act. As a quorum was present, the Committee proceeded to conduct business.

II. Consideration of Report of Sustainable Energy Utility (“SEU”) consultants regarding the Renewable Energy Task Force and a Solar Renewable Energy Credit market proposal involving the SEU.

Board General Counsel Frank Murphy explained for the record the reasons for the executive session and also indicated that the publicly posted agenda for the meeting cited the reasons and the applicable provisions of the Freedom of Information Act. The Executive Committee discussed the matter and agreed that there was a need to go into executive session. A motion was made and approved unanimously to enter into executive session.

Ken Becker is the leader of the SEU’s Auction Review Team and he led a discussion about the confidential report of his Team, which was circulated to the Committee in advance of the meeting. The Auction Review Team consisted of Ken Becker of Becker Capital, Baird Brown of the Drinker Biddle law firm, and Tom Shopa of the BDO Seidman accounting firm. By way of background, on August 22, 2011, the Renewable Energy Task Force published a report recommending that a pilot program for the procurement of Solar Renewable Energy Credits (“SREC”) be created on a statewide basis. In addition, the Task Force proposed that the SEU administer the SREC procurement program. The Team was asked by the SEU Board to make recommendations to the Executive Committee about the Task Force’s proposal and determine whether there were any potential adverse effects upon the SEU.

Mr. Becker reviewed the Team’s recommendations and its reasons for the recommendations, which are stated in the report. The Team recommended that the SEU agree to have the SEU administer the SREC auction program and that it approve the documents which were drafted to have the SEU operate the auction program. The documents are appended to the Team’s report and include A) an auction Program Agreement, B) a Solar Renewable Energy Credit Transfer Agreement, and C) a Request for Proposals to serve as the Procurement Agent for the SEU for the Procurement of SRECs and other Environmental Attributes.

Mr. Becker advised the Committee that the SREC procurement program is a one-year pilot program, and it must be submitted by Delmarva Power & Light (“DPL”) to the Delaware Public Service Commission (“PSC”) for consideration. The PSC is only prepared to consider a one-year pilot program. The SEU may hope that it will develop into a long term program, but for now the PSC will consider a one-year pilot program.

The Team’s recommendations include the creation of a Delaware limited liability company to be called SEU One, LLC (“LLC”) with the SEU as its sole member. It was agreed that the LLC will maintain separate bank accounts for its activities.

Dr. Byrne led a discussion about the fee that the SEU would contemplate charging for managing the procurement program, and the components that would go into the fee. A final decision as to the amount of the fee has not been made, and it would be premature at this time.

The SEU is going to have to retain an auctioneer to conduct the SREC auctions. Under the proposal by the Task Force, the SEU is the entity that will issue the RFP for a program auctioneer. Executive Director Tony DePrima will have to post the RFP. It could take weeks to get bids back, review them, and conduct a selection process, so the matter is time-sensitive. It was noted that the Executive Committee was granted the authority by the Board to review, approve, and issue the RFP.

Ken Becker then answered a substantial number of questions from the Committee members about the report and recommendations. Tom Shopa responded to questions by Sen. McDowell about auditing requirements.

Sen. McDowell pointed out that having an SREC auction program set up through the SEU will help avoid spikes and crashes in the SREC market in Delaware. Ken Becker agreed that the program under consideration will help avoid such problems, which have been experienced in other states. Dr. Byrne pointed out that one of the benefits of having the SEU involved is that it makes the program a statewide program.

Ken Becker advised that the Team did not perceive any significant risks to SEU in operating the SREC procurement program.

III. Consideration of SEU Resolutions related to the State Energy Program American Recovery and Reinvestment Act and i) a memorandum of understanding with the Delaware State Housing Authority, ii) loans to John Diamond Enterprises, LLC, dba Pat’s Pizzeria, and iii) various agreements between AFC First Financial Corporation and the SEU.

After Carolyn Snyder recused herself as the DNREC representative at the meeting, the Executive Committee discussed the SEU’s position on the draft resolutions and agreements submitted by

DNREC, which will affect the SEP ARRA program. Following the discussion, Carolyn Snyder rejoined the meeting.

A motion was made and unanimously approved to leave executive session.

After returning to the public session, the Executive Committee conducted the following business.

A motion was made to approve the recommendations of the Auction Review Team and to propose to the SEU Board at the November 3 meeting that the Board adopt the Team's recommendations. The motion passed unanimously.

A motion was made to accept the draft RFP submitted by the Auction Review Team for the SREC Procurement Agent, who will serve the SEU, and to have Executive Director Tony DePrima take appropriate steps to issue the RFP in order to commence the selection process. The motion passed unanimously.

A motion was made to authorize the establishment of the LLC recommended by the Auction Review Team to be called SEU One, LLC. The motion passed unanimously.

After discussion of comments made by Committee members and Frank Murphy, a motion was made to approve the draft Resolutions and Agreements submitted to the SEU by DNREC with appropriate changes to be made to the documents as described by Frank Murphy during the meeting, and additional documentation created, as Mr. Murphy deemed appropriate, in order to address the comments of the Committee members.

Following a discussion among the Committee members, a motion was made to accept DNREC's recommendation to expend \$150,000 of RGGI funds to pay an invoice for LED lighting as part of a pilot program for using LED technology in poultry houses. This recommendation by DNREC followed extensive work by DNREC with the Delaware Department of Agriculture and others, as reported by Carolyn Snyder. The motion passed unanimously.

IV. Adjourn

A motion to adjourn was approved unanimously.