

**Minutes of the  
Delaware Sustainable Energy Utility --- Special Meeting of the Executive Committee of the  
Oversight Board**

DNREC Lukens Drive Office  
391 Lukens Drive  
New Castle, DE 19720  
July 22, 2011 at 9:30 AM

**I. Welcome**

Senator Harris McDowell called the meeting to order. The other three members of the Executive Committee were also present, namely, Roger Jones, Sec. Collin O'Mara, and Dr. John Byrne. Senator McDowell indicated that a principal reason for the meeting was to establish parameters for the upcoming SEU bond issue. The SEU's bond and tax counsel at the Drinker Biddle law firm had prepared a resolution for approval by the Executive Committee. In addition, there is a need for the Executive Committee to address matters related to the Renewable Energy Task Force.

Ken Becker, the head of the SEU financial advisory team for the Bond issue, indicated that the team was looking for an approval on the resolution from the Executive Committee, and that the team was prepared to make a recommendation on the cap for the bond issue that provided a measure of safety for the SEU.

Frank Murphy, general counsel to the SEU, indicated that an executive session would be required to discuss the upcoming bond issue, as reflected on the agenda for the meeting. He stated the reasons for the executive session, including the fact that the Committee would be discussing documents containing confidential information, which may include: a) financial projections, strategies, and analyses related to the SEU's bond issue, and b) projections, strategies and analyses related to the work of the Renewable Energy Task Force, which would also be a subject of the meeting. Accordingly, an Executive session was appropriate pursuant to 29 Del. C., Section 10004(b)(6).

A motion was made and approved unanimously to enter into Executive session.

**II. SEU Bond Issue**

Ken Becker led a discussion of the upcoming SEU bond issue. He discussed the anticipated average maturity of the bonds and a not to exceed number on the bond yield of 4.5%. Ken Becker then discussed the resolution that required approval by the Executive Committee that was prepared by bond and tax counsel at the Drinker Biddle law firm. Ken Becker explained why the resolution was required and summarized the provisions of the resolution.

Ken Becker indicated that budget talks in the U.S. Congress were ongoing, and were creating potential problems for the bond market. Ken Becker's advice was to price the bonds the following Monday, July 25, 2011. Tax counsel Charles Congdon at Drinker Biddle agreed with this recommendation. The underwriter Citi Group also agreed with the recommendation. Mr.

Becker indicated that interest rates are at historic lows. He recommended that the Executive Committee adopt the resolution prepared by Drinker Biddle, and that the SEU close on the bond issue on Monday, August 1, 2011. Mr. Becker indicated that everything was in place to go the market.

Dr. John Byrne discussed the resolution prepared by the Drinker Biddle firm, as did Sec. O'Mara. Sec. O'Mara asked several questions which were answered by Ken Becker.

Mr. Becker further discussed the cap on the bond issue. He noted that Stephanie Scola, who handles bond issued for the State of Delaware, is coming to the pricing. Sen. McDowell noted that Department of Finance Secretary Tom Cook has been very helpful to the SEU and has been the State's quarterback in the bond process.

Sec. O'Mara asked whether there will be major changes to the bond documents and Charles Congdon, the SEU's tax counsel (who was participating by phone), indicated that the documents would not be finalized until around the time of closing, and that the trust indenture was still being drafted. He indicated that there was a need for flexibility.

At that point, a discussion ensued about the legal fees for the Drinker Biddle law firm. The fees would be paid at the time of the bond closing. Dr. Byrne indicated that Citi put a placeholder for these fees in its estimates for the cost of the bond issue. In addition, the legal fees for the bond issue are capped under Federal law, so there is an upper limit on the legal fees that can be charged for a bond transaction. In this case, the fees will be below the cap set by federal law. The SEU would not be paying any of the legal fees from ARRA or RGGI funds. Instead, the legal fees would be paid at closing out of the proceeds of the bonds.

### **III. Renewable Energy Task Force And SREC Market**

At this point in the meeting, the Executive Committee moved on to the subject of the Renewable Energy Task Force and SREC market. Dr. John Byrne discussed the proposed program designed by a Working Group on which he served and also recommended by the Task Force. Dr. Carolyn Snyder of DNREC is serving as the Chair of the Task Force.

Pursuant to the Task Force proposal that is under consideration and study, Delmarva will not initially buy the SRECs. Instead, the SEU will buy the SRECs pursuant to a contract with Delmarva under which Delmarva would be obligated to purchase the SRECs over time. The proposed structure for the SREC market raises the question of whether the SEU should become involved in a program whereby it owns SRECs. Having just received a rating of AA+ from the rating agencies in connection with the bond issue, the SEU would not want to harm its rating. There are several key questions that need to be addressed from the perspective of the SEU, for example whether the SEU should be carrying debt in connection with SREC purchases and whether the interests of the SEU are being protected. The Task Force proposal and the role of the SEU need to be evaluated. In order to do that evaluation, it was recommended that the SEU employ Becker Capital, the Drinker Biddle law firm and BDO (an accounting firm) to review and offer their opinions about the proposal of the Task Force and issue a report to the SEU Board

which answered the question about its effects on the SEU, and whether the SEU should enter into such an agreement with Delmarva.

Presently the solar market in Delaware is at a standstill. Therefore, reasons exist to move forward quickly with negotiations about any proposal by the Task Force and SEU's role.

Sec. O'Mara asked about the possible long term effects on the SEU. He indicated that the debt incurred by the SEU in connection with the SREC market could be as much as \$40 million. He also asked what the indirect implications are for the State of Delaware, if any.

Sec. O'Mara posed a question for Ken Becker as to whether the SEU would have the persons with the proper expertise reviewing the matter. He indicated that there are accounting questions involved which need to be addressed. Mr. Becker indicated that, while he is not an accountant, he did have related experience and he had been asked to serve on the FASBI Board. Mr. Becker explained that he has a solar development company that he has been involved with on the finance and development side. Accordingly, he is familiar with the concepts involved. He also indicated that he does not have a position where he is involved in trading or owning SRECs, so he does not foresee any conflicts of interest, if that became a concern. The company he is with may become involved in some Delaware projects. Mr. Becker indicated that he has dealt with every major accounting firm and has handled similar issues to those which would be expected to arise. He noted that BDO would provide accounting advice

Dr. Byrne indicated that the SEU needs to put in place a finance team to address the proposal by the Renewable Energy Task Force and the SEU's involvement in the SREC market. He indicated that the team would have an accounting firm to help analyze the issues from an accounting perspective. There was general agreement that an accounting firm should be added to the Finance Team.

Sec. O'Mara then returned to the question about possible indirect effects on the State of Delaware. He indicated that the team assembled by the SEU will have to work carefully. Sen. McDowell suggested that perhaps Department of Finance Secretary Cook could assist with this process.

Thereafter, a motion was made to leave Executive session and return to the public session which was approved unanimously.

After returning to public session a motion was made to have the Executive Committee adopt the resolution prepared by the Drinker Biddle law firm and place a cap on the bonds. There was discussion about the motion and the authority of the Board Chairs in the Executive Committee to act on behalf of the SEU on short notice. The Executive Committee voted unanimously to adopt the resolution subject to a grammatical change and a caveat that the financial advisory team seek an interest rate on the bonds as low as possible.

The Executive Committee then approved a resolution paying certain legal fees of the Drinker Biddle law firm that had been circulated prior to the Board meeting. Regarding the fees for bond counsel work, the Drinker Biddle law firm agreed to perform its work within the

remaining cap that had been negotiated with the SEU's prior bond counsel. Therefore, Drinker Biddle was discounting its fees as bond counsel significantly in order to remain within the cap. The Board approved the capped bond counsel fees, the fees submitted by tax counsel at Drinker Biddle, and the fees of Drinker Biddle for work on the Performance Contracting Program that did not fall within the parameters of the work of bond counsel. As part of the resolution it was agreed that all of the bond and tax counsel fees would be paid out of the bond proceeds at the time of the bond closing. There was also discussion about an additional fee that the Drinker Biddle law firm had posed in the amount of \$50,000 for a bankruptcy opinion related to the bond issue. Drinker Biddle agreed that the work fell within the scope of the bond counsel cap, but indicated that it was an unusual requirement that was not typical for bond issues. Nevertheless, the Executive Committee agreed that the SEU, as a public body, should not pay the fee for the bankruptcy opinion, as the SEU was not legally obligated to pay it given the cap on the bond counsel fees. A motion was made and carried unanimously to pay the other Drinker Biddle fees as indicated above.

A motion was then made to ask the finance and legal teams of Becker Capital and Drinker Biddle with BDO to come forward with a proposal to work on the Renewable Energy Task Force proposal regarding the SREC auction program. The SEU would explore having the utilities pay any fees incurred for the work of the team. The team would be led by Ken Becker of Becker Capital. The team would add an accounting firm, in order to address accounting issues raised by the SREC auction program. In addition, it was agreed that the SEU's involvement should be structured as to not to affect the State of Delaware directly or indirectly. Any such issue should be worked out with the Department of Finance, which would have to be satisfied that there were no direct or indirect effects on the State. The team for the SREC auction program should consider what documents are needed to put the program into effect, assuming there are no negative consequences for the SEU or the State of Delaware. Dr. Byrne reiterated that there will be a need to act quickly in order to get the solar market moving in Delaware. It was hoped that Becker Capital, Drinker Biddle, and BDO, acting as a team, would be in a position to present a written proposal to the Board for their scope of services and the cost as soon as the next Board meeting. It was proposed that the fees to be incurred for this work would be paid by the involved utilities. The motion to request a proposal from the team, as led by Becker Capital, passed unanimously.

#### Public Comment

There was a public comment thanking the SEU for its work on the SREC auction program, which would give a tremendous boost to getting solar programs in Delaware working.

#### **IV. Adjourn**

A motion to adjourn the meeting passed unanimously.