

Delaware Sustainable Energy Utility Oversight Board Public Meeting, June 7, 2011

Senate Hearing Room, 2nd Floor, Legislative Hall, Dover, DE 19901

Board minutes for June 7, 2011 meeting open to the public.

Board members in attendance: Randall Day, Roger Jones, Sean Finnigan, De. Charles Wagner, Michael Sheehy, John Byrne, Sen. Harris McDowell, Nnamdi Chukwuocha (by phone), Dennis Williams (by phone)

Also in attendance: Ken Becker, SEU Co-Financial Advisor (by phone); Ralph Nigro – AEG, SEU Contract Administrator; Michael Wollaston for the SEU Fiscal Agent (by phone)

I. Welcome

The Board welcomed members of the public in attendance and the meeting was called to order by Sen. McDowell

II. Consideration of Minutes

Minutes for the May 10, 2011 meeting were not prepared as yet and circulated.

III. Update on Performance Contracting Program and SEU Bond Issue

A motion was made to have the Board enter into an executive session. SEU General Counsel Frank Murphy explained the reasons for the executive session. Under 29 Delaware Code, Section 10004(b)(4) and (6), the Board was to discuss the content of documents excluded from the definition of “public record” including records containing commercial or financial information of a confidential nature and records exempted from disclosure by statute or common law. The documents and information include financial projections, strategies and analyses related to the SEU’s anticipated bond issue. The motion to enter into executive session passed unanimously.

An Executive Session of the Board took place.

A motion was made to end the executive session, which was passed unanimously.

In public session, the Board adopted a resolution, with amendments discussed during the executive session about the handling of the SEU bond financing.

The Board then discussed proposed amendments to SEU Certificate of Incorporation. A motion was made and passed unanimously to amend the Certificate of Incorporation.

IV. Discussion regarding the SEU Executive Director position.

Roger Jones reported for the ad hoc Board Committee (Roger Jones, Dennis Williams, Sean Finnigan), provided a job description for the Executive Director of the SEU, and indicated that the position would be posted with a three week window. A discussion ensued about the Executive Director position, the anticipated responsibilities, and so forth, including whether the Executive Director could handle the responsibilities of the fiscal agent. The Board noted that SEU statute calls for a fiscal agent. The Executive Director will be paid by RGGI funds. Roger Jones indicated that the Committee estimated an operating budget, inclusive of salary, benefits, office space rental, etc. of approximately \$175,000. Dr. Byrne said that the Executive Committee should review the candidates, as the Executive Committee would be dealing most regularly with the Executive Director. It was agreed that all Board members can contribute names and participate in the interview process. The Executive Committee will design a search process for the Executive Director, which will be brought back for Board approval at the next meeting.

V. The SEU Fiscal Agent

The SEU Fiscal Agent is still awaiting a signed scope of work and a signed engagement letter; Scope of work anticipated 100 Transactions a year; There were 200 in six months. The SEU has no audited financial statements. It has only unaudited year-end statements.

The Board Co-Chairs indicated that the Executive Committee would address the subject of the Fiscal Agent, including a replacement for the current Fiscal Agent and report back to the Board.

VI. Next Board meeting

The Board should expect a doodle poll to set a date for the July Board meeting.

VII. The Board unanimously approved a motion to adjourn.

Resolutions Regarding Proposed Financing of Energy Efficiency Projects; Dated June 7, 2011

Background: The Corporation is authorized to issue bonds and notes for its corporate purposes in accordance with Section 8059 of Title 29 of the Delaware Code (the "Corporation Law"). The Corporation is currently contemplating the issuance of tax-exempt revenue bonds (the "Bonds") to finance energy efficiency projects (the "Projects") on behalf of the following Agencies (as defined in the Corporation Law): Delaware Department of Corrections, Delaware Department of Services for Children, Youth and Their Families, Delaware Department of Transportation, Delaware Office of Management and Budget, Delaware State University, and Delaware Technical and Community College. The Bonds are currently expected to be issued in the approximate principal amount of \$70,000,000 to provide funding for: (i) the costs of the Projects, including reimbursement of Project costs paid on behalf of Delaware State University under the Interim Funding Agreement dated April 11, 2011; (ii) the payment of capitalized interest on the Bonds during the period of construction and installation of the Projects; and (iii) the costs of issuing the Bonds. In anticipation of the issuance of the Bonds with respect to the Projects, the Board desires to authorize the taking of certain actions and to delegate authority to the Executive Committee to approve certain matters with respect to the issuance of the Bonds.

In light of the foregoing, IT IS HEREBY RESOLVED AS FOLLOWS:

1. The Board hereby declares the intention of the Corporation to finance the projects and, if required, to reimburse the expenditure of costs, up to the principal amount of the Bonds, of the Projects (or any of them) paid prior to the issuance of the Bonds in accordance with Treas. Reg. Section 1.150-2E or, with respect to any qualified energy conservation bonds, under Section 54A of the Internal Revenue Code.
2. In light of the need to take advantage of favorable market conditions, the Board hereby authorizes the Executive Committee to provide final authorization and approval of the issuance of the Bonds for the purpose of financing the Projects (including similar projects on behalf of other Agencies), subject to parameters set by the Corporation's Finance Team and the Delaware Secretary of Finance by June 18, 2011, including without limitation, approval of: (i) the principal amount and other terms of the Bonds, including interest rate, maturity or maturities, and redemption provisions; (ii) the project components with respect to each Agency to be financed with the proceeds of the Bonds and the terms of all agreements with each such Agency, including each agreement for the payment by such Agency of installment payments in respect of its applicable energy savings project or projects; (iii) the sale of the Bonds to an underwriter or underwriters; (iv) the prices at which the Bonds are to be offered and sold and the terms of any purchase contract therefor; (v) the execution and delivery by the appropriate officers of the Corporation of all bonds, notes, agreements, certificates and other documents as necessary for the issuance of the Bonds and the payment of the costs of the Projects; (vi) the payment of all costs of issuing the Bonds from the bond proceeds; (vii) any official statement or other

- offering materials with respect to the offering and sale of the Bonds; and (viii) all other matters with respect to the offering and sale of the Bonds.
3. The Co-Chairs, or either of them, are hereby authorized to conduct on behalf of the Corporation any public hearing with respect to the issuance of the Bonds and the Projects to be funded therewith, to hear all comments of members of the public, and to report thereon to the Governor for the purpose of obtaining any approval by the Governor, as the chief elected official of the State of Delaware, if and to the extent any such hearing is required in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended.

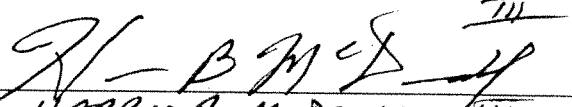
IN WITNESS WHEREOF, the Corporation has caused these Resolutions to be executed on this 7th day of June, 2011.

SUSTAINABLE ENERGY UTILITY, INC.

By:

Name:

Title:


HARRIS B. McDowell, III
Co-CHAIR, SOU oversight Board

Delaware

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The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "SUSTAINABLE ENERGY UTILITY, INC.", FILED IN THIS OFFICE ON THE SEVENTH DAY OF JUNE, A.D. 2011, AT 3:40 O'CLOCK P.M.

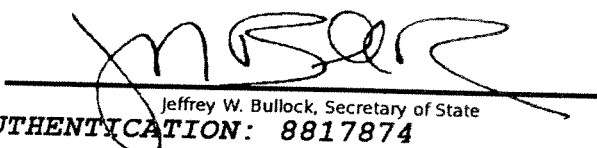
A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

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You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 8817874

DATE: 06-08-11

CERTIFICATE OF AMENDMENT
TO
CERTIFICATE OF INCORPORATION
OF
SUSTAINABLE ENERGY UTILITY, INC.

Sustainable Energy Utility, Inc., (the "Corporation"), a nonstock corporation duly organized and existing under the laws of the State of Delaware,

DOES HERBY CERTIFY THAT:

FIRST: The governing body of the Corporation, at a meeting held on June 7, 2011, duly adopted resolutions setting forth said amendments to the Certificate of Incorporation of the Corporation, and said amendments are as follows:

(a) Article THIRD is amended to read in its entirety as follows:

"THIRD: This corporation constitutes the Sustainable Energy Utility or SEU as set forth in Title 29 De. Code Ann. § 8059, as amended (the "SEU Law") and is formed for the benefit of, and to carry out the governmental and public purposes of, the State of Delaware (the "State") in developing, coordinating, and promoting the sustainable use of energy in Delaware in accordance with the SEU Law and thereby "lessening of the burdens of Government" within the meaning of § 1.501(c)(3)-1(d)(2) of the Treasury Regulations. This corporation is organized and shall be operated exclusively for charitable, educational, and scientific purposes, including, for such purposes, the making of distributions to any state or local government or to organizations that qualify as exempt organizations under § 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code")."

(b) The initial paragraph of Article FOURTH is amended to read in its entirety as follows:

"FOURTH: The corporation shall have all powers necessary to carry out its purposes set forth under THIRD above as set forth in the SEU Law and otherwise permitted under Delaware law as now in effect or as may hereafter be amended, except that:"

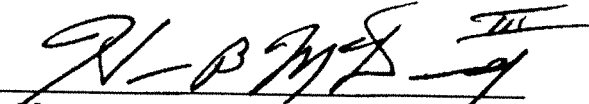
(c) Article NINTH is amended to read in its entirety as follows:

"NINTH: Upon dissolution of the corporation, its assets, if any, shall be distributed to or at the direction of the State."

SECOND: That the foregoing amendments to the Certificate of Incorporation were duly adopted in accordance with the provisions of Section 242 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed on this 7th day of June, 2011.

SUSTAINABLE ENERGY UTILITY, INC.

By: 
Name: HARRIS B. McDOWELL, III
Title: Board Co-Chair/President
OFFICER