

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

Minutes of Executive Session of the Board

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

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

Discussion about the need for the SEU bond issue to be exempt from state taxes. The SEU law needs to be amended to expressly say that the bonds are exempt from State taxes. Secretary of Revenue Thomas Cook and Sen. McDowell are working on draft legislation.

Ken Becker explained that the finance team went to rating agencies on May 20: Moody's and Standard and Poor's

Sen. McDowell and the SEU finance team met with Governor Markell. The SEU finance team has been having regular meetings with the Secretary of the Department of Finance Thomas Cook, Stephanie Scola, who is the State employee who handles State of Delaware bond issues, and other State officials. Meetings with Secretary Cook and Stephanie Scola take place about every three days. There are also weekly teleconferences. In the discussions with the State of Delaware, Ken is SEU's front person. Secretary Cook is front person on the State end. The State does not want the SEU bond issue to adversely affect the State's triple A bond rating; Secretary Cook, Stephanie Scola, and the State financial team has provided the SEU with a very high level of cooperation, and has been fully supportive of the SEU's effort to issue bonds.

Fiscal Agent and AEG issues exist. The SEU Fiscal Agent is not under contract; AEG is not under contract and is no longer actively involved in the performance contracting program pursuant to a letter sent to AEG by Sen. McDowell.

Regarding the bond financing and bond pricing, the SEU needs to be able to act quickly. There is a need for flexibility;

The projects in the bond issue are under the procurement laws of State of Delaware, including prevailing wage; priority is given to Delaware contractors.

In terms of savings, Ken will be able to give a full savings analysis within a week. As an example of the size of savings, Del Tech Wilmington/Stanton campus project is predicted to save about 38% of total costs, or \$1.6 Million over top of energy savings. Del Tech should realize \$6 million saving over all projects.

Ken reported that the volume of the bond transaction is approximately \$70 million;

Ken Becker reported that there is a call with Stephanie Scola and rating agencies on Friday. Ken is hoping that we can get the tax exempt issue resolved. He anticipates getting ratings by June 20, and pre-close on July 11 or July 12.

No RGGI dollars are anticipated to be used. Secretary Cook wants to preserve the State prerogative to put in cash if need be.

Media strategy. Ken Becker circulated a memo on press releases, and reemphasized that everyone should be careful not to share any information without going through Citigroup, which has experience with what is considered insider trading and what is safe.

The Board considered a proposed Board resolution for the handling of the SEU bond issue. Ken Becker explained that bonds are issued in two ways. The first is a competitive bond issue. In a competitive issue, the date and time of the bond issue is set ahead of time, but you do not know what the market will be like on that day. The second is through negotiation, where the finance team watches the bond market while educating and preparing investors, then they set the bond issue date and time a few days ahead to time.

Ken Becker explained that it is normal procedure in the 25 years he's been working on bond financings, that there has always been a designation for a party or party to act on behalf of an entity like the SEU. Here are the timing factors: We go into the market in the morning; An auction is held; We come back immediately to the SEU to get a bond purchase agreement; We must have somebody prepared to sign for SEU; there is a determination of pricing by phone. This need to act quickly came up on call with Secretary Cook, State Bond Counsel Tim Frey, and Stephanie Scola and they agreed that this was normal procedure. All other state entities do this as a regular practice. They often designate the Executive Director to act for the State agency. This is very much a normal procedure; must be able to react to market place to get the best pricing.

The SEU Financial Advisors (Becker Capital and NW Financial) are in the process of putting together a report for the Executive Committee re recommendation for a fee policy. In the proxy we are using is ½ point up front. All agencies are aware that the SEU is seeking a fee. We've been running the numbers with a fee involved. The final fee schedule will be presented to and voted upon by the Board.

Ken reported that the other positive thing is that interest rates have been trending down. If interest rates continue to stay down, that is good --- they are at historic lows.

Ken Becker referred to a specific meeting with the Governor that occurred on May 31. What he wanted to share with the Board: People were appearing and asking questions. Sen. McDowell scheduled a meeting with the Governor to address questions that had been raised.

The rating agencies are looking at these bonds as being revenue neutral and therefore will not affect the State's bond rating.

Concerning competitive bond issues, only 20% are done that way. You are going to open bids and then you will take the lowest bid. On the other hand, 80% of bond issues are done by negotiation. It is completely different; you are going to hire an underwriter and a finance team; you can go into the market; You don't announce when you will do it well beforehand; only one or two-day's notice is given; You have your underwriter do the best job he can the day before. We are going to the market at 10 AM. Mr. Becker discussed giving the Board Co-Chairs the authority to act for the SEU in connection with the SEU bond issue.

Board member Randy Day expressed concerns about delegating to Board Co-Chairs the responsibility for handling the bond issue decision-making. He expressed reservations about delegating so much responsibility to two Board members, when all Board members shared responsibility. Frank Murphy expressed similar concerns. Secretary O'Mara expressed concerns about the broad language of the proposed Board resolution. It was agreed unanimously that the Board resolution will delegate responsibility to the Board Executive Committee. A discussion ensued about possible amendments to the draft Board resolution, and the Board agreed unanimously to amend the draft resolution to impose parameters on the Executive Committee. Pursuant to the Board's discussion, it was unanimously agreed that paragraph 2, would be amended so that the resolution provides, in part, that "the Board hereby authorizes the Executive Committee to take all action on behalf of the Board to authorize 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" The bold language in the quote above was added to paragraph 2.

In addition, the Board unanimously agreed to amend paragraph 2 (vi) of the resolution so that the words "from the bond proceeds" were added. That paragraph would then read: "(vi) the payment of all costs of issuing the Bonds from the bond proceeds."

The Board completed its discussion of the resolution, as amended, AND the Board agreed to hold a vote on the amended resolution during the ensuing public session of the meeting.

The Board then unanimously approved a motion to end the executive session.