

Minutes of the Meeting of the SEU Board on March 5, 2011; Held at Buena Vista Conference Center, New Castle County, Delaware

Board Members in attendance at meeting: Roger Jones, Collin O'Mara, Dr. Charles Wagner, John Byrne, Senator McDowell, Representative Dennis Williams, Sean Finnigan

Also in attendance: Ralph Nigro, Matt Lillard, Becky Fleischauer, Sean Walsh (Navigator), Jim Black, Ken Becker of Becker Capital, Carolyn Snyder, John A. Nichols, SEU counsel Frank Murphy

Meeting called to order by Sen. McDowell

Initial remarks by Sen. McDowell and John Byrne. SEU is engaged in bringing private investment in green energy field to Delaware.

Frank Murphy provides background on motion to go into executive session. The Board will receive a presentation by Ken Becker, the co-financial advisor for the SEU. Mr. Becker will be reviewing confidential and proprietary information provided by Delaware State University to the SEU which contains information about lease financing bids, which DSU has not made public and which are still under consideration by DSU. In addition, Mr. Becker will discuss SEU information on bond financing which contain confidential and proprietary financial information and projections on bond financing. The purpose is to provide the Board with an analysis of bond versus lease financing. Motion made to go into executive session under 29 Delaware Code Section 10004(b)(6).

Motion made and approved unanimously.

Executive session. Mr. Becker made a presentation to the Board based on confidential memo about lease versus bonds. He then went into a specific discussion of DSU financing options and lease costs versus bond costs. Mr. Becker explained the financial projection documents to the Board and the possible advantages of bonds versus lease, including serialization, call provisions which allow a refund of bonds after 10 years, and the ability to call bonds without a penalty. Leases can require a prepayment penalty throughout the term of the lease. In addition, there can be other advantages to bonds over leases. Dr. Byrne and Mr. Becker had a discussion with Del Tech about 10 year bonds, which would reduce rate to below 20 year bond.

Mr. Becker answered questions from Board about bond financing. Rep Williams asked about bond carrying costs. Mr. Becker made the point that the SEU cannot issue bonds until energy audits are in place. In addition, the SEU needs to know what construction costs of projects are so we will be able to size bonds properly to size of projects. We will be capitalizing interest while construction is underway. For a time, we will have negative arbitrage of about 1 ½ percent or so.

Dr. Wagner asked about how the SEU will generate a return on the project. Dr. Byrne indicated that the Board will need to make a decision about fee. Mr. Becker indicated that, in the next

three weeks, he will be coming back to the Board and explain what other jurisdictions do and Board will have to decide what type of fee etc. will have to do.

Mr. Becker explained that the financial analysis provided to the Board is conservative and the spread on bond versus lease will be greater in his view.

Dr. Byrne indicated that the SEU will have to recoup cost of doing transactions, whether it is lease or bond transaction. .

Secretary O'Mara indicated that the cost of issuance is something we need to know. Mr. Becker explained that the underwriter's compensation will be looked at, legal costs, and the financial advisory team will come up with true interest cost. Dr. Byrne indicated that the additional costs to be considered include the cost of the financial advisors and other costs to SEU. Mr. Becker indicated that the underwriter's discount has not been decided.

Frank Murphy said that the SEU will look to its co-financial advisors to negotiate the best possible deal with the bond underwriter.

Question by Sen. McDowell about who checks savings contracts and Ralph Nigro explained transactions. Sen. McDowell raised additional questions. There was discussion about the need for the Board needs to take mandate as board members seriously. Sean Finnigan asked about different projects and aggregating for bond financing purposes. Mr. Becker explained that the SEU wants to do as many projects as possible. There are a variety of ways to aggregate and Mr. Becker explained some of those ways to aggregate various projects.

Frank Murphy explained that there are risks which must be considered in addressing a bond versus lease financing arrangement. In the case of the bonds, the financial advisors have indicated that they anticipate that the SEU, which receive a favorable bond rating. Mr. Becker explained that DSU acknowledged that it understood the risks that the bond rating might be higher/lower than anticipated and interest rates might change for the lease proposal while DSU awaits word about the bond financing.

Motion made to end executive session passed unanimously.

Return to public meeting

No motions were made or actions taken during the executive session. Board reviewed confidential information and had the discussion reflected above.

SEU Board Overview. Ralph Nigro of AEG gave brief power point presentation on past activities and future goals of SEU. The power point presentation is incorporated into the minutes. There was a discussion of SEU programs: residential, commercial, appliance, financing, and education/awareness. See attached power point presentation.

Several points were raised for discussion about whether the SEU's current organizational structure supports its strategic priorities. There was an overview of SEU structure.

The Board discussed the accounting for SEU. Carolyn Snyder pointed out issues related to whether SEU is under the State audit. Mike Wollaston also added comments. According to Mr. Wollaston, the issue is decided by others and not by SEU as to whether SEU falls under state audit. Mr. Wollaston said that whether the SEU is a component unit of the State depends on appointment of Board members by Governor. It also depends on IRS status of SEU.

Sen. McDowell: We are functioning well and Ralph and AEG are doing a good job. There is a need for SEU independence. We are trying to bring \$70 million of private financing into the economy. Secretary O'Mara said that the State should be viewed as the client, not a partner.

Rep. Dennis Williams: What is the structure that can do the job. I'm getting agendas from DNREC. Presumably the SEU needs to do these jobs.

Sen. McDowell: We don't want to be entangled with a bureaucracy to weigh us down.

Rep. Williams: Discussion of SEU finances. Discussion of having two flow throughs. DNREC can come back with a tweaking of accounting.

Sen. McDowell: It is important for the Board, at a future meeting to go into evaluating how we coordinate with Delaware companies doing energy efficiency projects.

After the discussion, it was agreed that DNREC will come back with recommendations to the Board to address the accounting and finance issues discussed by Carolyn Snyder, Secretary O'Mara and others.

Overview and discussion of program results of SEU led by Ralph Nigro. Job creation discussion. Discussion of program costs. Questions and comments about program savings and how to allocate one-time costs. Board needs to take into account costs such as marketing and website costs in determining program costs.

Sen. McDowell: Looking at big picture of costs and energy savings, SEU is doing well.

Discussion of demand reduction and the promise of demand reduction. There is a prospect of a future revenue stream to the SEU through demand reduction if it can be quantified.

Further discussion about the need for an executive director for the SEU. A Committee was established to make recommendation to Board about possibly retaining an executive director, and the pro and cons of such a change. Sean Finnigan, Roger Jones, and Dennis Williams were appointed to serve as the Committee and are to report back in a month to Board.

Contract administrator contract. The question was raised as to who the contract administrator should contract with, and who the fiscal agent should contract with. Shouldn't the contracts be more directly with the Board.

Preparation of Scope of Work by AEG is due, and signing of contract extension.

Motion passed unanimously to authorize Secretary of DNREC to extend the scope of work with AEG for 30 days after April 1, 2011.

Fiscal agent will submit to the Executive Committee a revised scope of work for the fiscal agent for consideration. Executive Committee will then make a recommendation to the Board.

The Contract Administrator will submit a written report to the Board monthly on SEU programs and the CA's activities.

The Fiscal Agent will submit a written report to the Board on SEU finances monthly.

Board asked AEG about performance based contracting. AEG agreed to review the matter and get back to the Board.

There was discussion of the need for annual report by the SEU

SEU Website issues: Dr. Wagner agreed to work with AEG and Lado at the U of D to move materials on the website maintained by CEEP volunteers to the Energize Delaware website.

Public Comment: Jim Black said he is energized by the discussion at the Board level today.

John Nichols asked a number of questions about the bond issue and the bond contract arrangement and transactions, which were answered by Dr. Byrne, Sen. McDowell, Ralph Nigro, and Matt Lillard.

A motion was made to adjourn the meeting which passed unanimously.