

Sustainable Energy Utility Oversight Board Meeting
DNREC Lukens Office - 391 Lukens Drive
New Castle, DE
January 11, 2011

Minutes

Dr. John Byrne
Senator Harris McDowell
Chuck Wagner
Sean Finnigan
Collin O'Mara
Randy Day
Roger Jones
Representative Dennis E. Williams

Carolyn Snyder
Frank Murphy
Cara Lampton

Members of Public
Finn McCabe
Jim Black

I. Welcome

Sen. McDowell call the meeting to order around 8 AM.

II. Executive Session

A motion was made to enter into executive session. Board attorney Frank Murphy explained the reasons why an executive session was needed and the grounds under FOIA, as reflected on the agenda for the meeting. The motion to go into Executive Session was approved unanimously.

a. Report on Performance Contracting Program

Ralph Nigro provided an update on the performance contracting program. Ralph met with Bob Furman and Ken Becker to outline expectations and outline projects happening in the state. The investment grade audits for Kids, OMB and DOC should converge around March of this year. DelTech is beginning the investment grade audit process and will possibly deliver report with others in March, but not certain about scheduling. Pepco is on 60 day schedule to deliver the audit report, and Ralph Nigro is uncertain there is any way to accelerate the schedule. Ralph will see if this is possible. Ralph said there will be a meeting between DelTech. Senator McDowell encouraged Ralph Nigro to fold DelTech into the first bond issue if feasible.

AEG has contacted banks to discuss lease financing and is working with Delaware State University on lease financing for its project.

b. Timetable for Bond Issue; Selection of Financial Advisor For SEU

Senator McDowell asked about the schedule proposed by the prospective financial advisor(s). The schedule is contained in the submission from Ken Becker of Becker Capital and is approximately a 96 day schedule for bond closing. Frank Murphy will resend proposed schedule to the Board.

Senator McDowell expressed his concern about the timetable. Frank Murphy asked if we are on schedule for a bond issue in April. The question was raised as to how long will it take once GESAs are negotiated. Becker Capital estimated that a bond closing could take place around 30 days after the negotiation of the GESAs. Therefore, it is feasible that the bond closing could occur in April 2011.

Senator McDowell noted that the interviews with the financial advisory firms which bid for the SEU project went well. Senator McDowell asked each candidate about potential “derailers.” It was noted that the main derailer would be a lack of leadership.

Senator McDowell said, for example, that the SEU would not take its full proposal for a bond issue to the bond rating agencies as the initial step for the bond issue. Rather, the rating agencies will be approached informally to obtain feedback about the merits of the transaction and how the SEU might improve its bond rating.

Senator McDowell stressed the need to use the Executive Committee to move this forward with speed and strong leadership. Therefore, the Board is committed to having the SEU Executive Committee work as a group with the financial advisory firms and to answer questions and make decisions as a committee quickly. Board member Sean Finnigan confirmed that the financial advisory firms would be reporting to and working with the Executive Committee as a group, with the understanding that if the structure was unwieldy, Senator McDowell could come back to the Board to reconsider the arrangement.

Frank Murphy provided an update to the Board on the selection process for the financial advisors for the bond issue. The SEU engaged in an extensive bidding process. A list of financial advisory firm candidates was obtained from the State of Delaware. In addition, public sources were consulted about potential candidates. State personnel that work with financial advisory firms for state bond issues were consulted. In addition to publication of the RFP, a number of firms were contacted in writing, including the eight firms on the list provided by the state. Follow up calls were made to firms that the state has used for bond issues and that the state recommended.

Five firms submitted written bids: Public Financial Management, NW Financial, Becker Capital and Finance, Public Advisory Consultants, and Fairmount Capital. All five firms were interviewed by the SEU Executive Committee. The bids were reviewed. The low bidder was Becker Capital, which submitted a capped fee of \$40,000 for all work, which was substantially below the other capped fee bids. The second low bidder that offered a capped fee proposal in its bid was Fairmount Capital which proposed \$65,000 for all work. Public Financial Management’s capped fee bid was \$120,000. At the interviews, two firms, Public Financial Management and Public Advisory Consultants, expressed reservations about the bond rating that the SEU would receive and whether the SEU could go to the bond market successfully. Becker Capital had expressed confidence in the SEU’s ability to go to market and obtain a favorable bond rating. It was noted that NW Financial has significant experience in bond issues for governmental agencies of the kind that would be

included in the SEU bond issue. In addition, NW Financial has served as the financial advisor for several renewable energy projects, including bond financing. NW Financial made an excellent presentation during the interview, and had apparently read all relevant materials about the SEU and its bond financing model. NW Financial has indicated that it will consider a capped fee arrangement for its work for the SEU. There have been discussions with Becker Capital and NW Financial about sharing the work with each firm subject to a capped fee for its portion of the work.

For a variety of reasons, the Executive Committee recommended to the Board that the SEU retain two firms to serve as co-financial advisors on the bond issue: Becker Capital and NW Financial. Among the reasons cited were the fact that the SEU bond issue is the first of its kind in the US, and the fact that this is the SEU's first bond issue, and therefore SEU does not have a prior rating. If the Board agrees to accept the recommendation, Ken Becker will be taking the lead for Becker Capital and Doug Bacher will be taking the lead at NW Financial. As between the two firms, Ken Becker/Becker Capital will take the lead role, including interfacing with the state agencies, ESCOs, and AEG.

Ken Becker and Becker Capital have experience in the energy field and energy related financial transactions. NW Financial has strength and experience in bond pools. NW Financial will be responsible for financial analysis including analyzing Citi's bond financing proposal. The Executive Committee recommended that the SEU retain both firms based on the particular strengths that they demonstrated.

Becker Capital provided two draft contracts to the Executive Committee which described the proposed scope of work and the fee arrangement with the financial advisory firms. The contracts contain capped fee proposals. Frank Murphy explained that there will be two contracts, one for each financial advisory firm. Frank obtained a form of contract that the State of Delaware uses to retain financial advisory firms for a bond issue. Frank circulated that contract to the Executive Committee. Both financial advisory firms will have professional liability insurance for their work for the SEU.

Further discussion about the Executive Committee's recommendation ensued. Frank Murphy stated that, if the Board agrees to adopt the recommendation of the Executive Committee, the Committee will have to vote on whether to approve the final form of the contracts for the financial advisory firms, Becker Capital and NW Financial. The SEU's contract will use the State's form along with the draft contract sent by Becker Capital with the cost and scope of services as an appendix. The appendix to the contract will also include the board policy on retention of financial services firms.

Frank needed clarification on whether the financial advisory firms are going to rating agency meetings with the SEU. Sec. O'Mara wanted clarification that they lead the presentation. Dr. Byrne indicated that the bond underwriter is the principal presenter to rating agency. Citigroup is responsible for the bond sale and they are entity with money on the line and will be asked about details on the financing. Dr. Byrne then described the rating agency process in detail

The rating agency gives rating based upon credit quality of the bond. The higher the rating, the lower the interest cost. Rating agencies key on how the bond market will view our bond value. The question was asked what happens if the SEU doesn't get a high rating. The GESA can help because they are tied to state ratings, which means the rating agencies should give the SEU a high rating. The SEU would not go to market if it is not

going to achieve an investment grade rating. Cost of borrowing would not be comparable to other options that may be available. There was discussion about insurance for the bond issue and the role that insurance can play.

c. Selection of bond and tax counsel

Following an earlier RFP process for the selection of bond and tax counsel, Frank Murphy reported the two proposals have been circulated to the Board: Drinker Biddle and Ballard Spahr. Both law firms have agreed to do the remaining bond counsel work for what is remaining under the original \$40,000 cap, which is \$11,500. Work outside that scope would be billed at an hourly rate. Frank reiterated the Board's prior decision that bond and tax counsel should be from the same law firm. He also noted that, while rates quoted in the proposals are very substantial, they are standard rates in the legal market for this type of bond and tax work. Frank noted that Ballard Spahr estimated that the tax counsel fees would be around \$20,000 and suggested the need to make sure these costs don't go beyond what was anticipated.

There was discussion about the bond counsel candidates. Baird Brown was formerly with Ballard Spahr and is now with the Drinker Biddle law firm. He has past experience with the SEU and has experience in the energy field. Frank Murphy noted that Dr. Byrne has worked with Baird Brown in preparing the template contracts for the bond financing transaction, and Mr. Brown is therefore familiar with their content and the form of the transaction.

Frank Murphy reiterated that both firms would be limited by the cap on bond counsel work and, regardless of the selection; Ballard Spahr is owed \$28,500, which the firm will be paid at the bond closing.

Sean Finnigan expressed concern about the legal fees and caps and the need for timely reporting on any new or excess costs or fees. Frank noted that this is included in the Board's policy on legal services. Frank Murphy has provided both law firms with a copy of the board policy on the retention of law firms and other professional services firms, and Baird Brown has sent an email expressing his understanding of the importance of the Board's policy.

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

In public session, the Board unanimously approved a motion to retain Becker Capital and NW Financial as the co-financial advisors for the SEU, with Becker Capital taking the lead role. The Executive Committee was authorized to complete the contract negotiations under capped fee arrangements with both firms.

In addition, a motion was made to retain the Drinker Biddle law firm as bond and tax counsel for the SEU for the proposed bond issue, and the motion passed unanimously.