

Delaware Sustainable Energy Utility Oversight Board Meeting
DNREC Lukens Drive Office
391 Lukens Drive New Castle DE
December 22, 2010

Executive Session Minutes

I. Executive Session

The Executive Session was called at 1:07pm.

Frank Murphy noted that a disclosure statement is needed from every Board member. Frank Murphy previously circulated the form to the Board by email, but many Board members have not completed and returned the disclosure form. Frank Murphy distributed copies to the board members who were present at the meeting.

a. SEU Bond and Tax Counsel

Frank Murphy made the recommendation that the bond and tax counsel should be from the same law firm. Baird Brown is now at the Drinker Biddle law firm. Drinker Biddle submitted a proposal today to serve as tax and bond counsel and it was circulated to the Board today. Ballard Spahr held a conference call with Frank and will also submit a proposal likely before end of year, which Frank will also circulate to the Board. Frank thinks that the Board will be in a position to make a decision at the next board meeting.

Both law firms agreed to complete bond counsel work within the \$40k cap. Frank reports that \$28,500 of the cap has been exhausted leaving \$11,500 remaining.

Frank is setting up conference calls with the law firms and AEG to go over timeline for bonding and the scope of the anticipated projects. The greater the number of projects, the more likely there will be a discount on tax counsel. Pursuant to the Board resolution adopted earlier this year, contracts for legal services for tax counsel will have to be in writing and comply with the policy stated in the Board's resolution.

Collin O'Mara proposed a resolution that the existing Board resolution governing contracts for legal services be expanded to cover all professional services firms, including the financial advisory firms that are retained in connection with the bond issue. Senator McDowell asked that the existing resolution for legal services contracts be expanded to cover all professional services contracts. Frank Murphy will revise the resolution accordingly and circulate it to the Board.

The Board voted unanimously to approve the resolution made by Secretary O'Mara.

b. SEU Fiscal Agent Contract

Frank Murphy brought to the Board's attention that an issue exists about the scope of the contract of the fiscal agent and the fact that the fiscal agent exceeded its capped fees about 5 months into its annual contract period. Senator McDowell requested a meeting or memo from the Fiscal Agent to explain the situation.

Secretary O'Mara explained the budget and invoicing problem in more detail. He also asked if the Board was unclear on the role of the Fiscal Agent and its duties on a daily basis. Senator McDowell agreed the Board did not have a clear enough sense of their responsibilities other than the Fiscal Agent is required by law to give an annual audit report.

Senator McDowell proposed that the Fiscal Agent come to next board meeting. Dr. Byrne requested details on scope of work and how they are exceeding their current scope.

DNREC and Frank Murphy will work together to provide the board with summary materials which explain the issue. Frank Murphy noted that the current fiscal agent was the only firm that responded to the RFP and therefore it may create problems for the SEU to attempt to engage a new fiscal agent at this juncture. In addition, Frank Murphy noted that the board is in a critical phase related to the bond financing program and needs to be able to produce financial reports.

Secretary O'Mara and DNREC will work with Frank Murphy to try to resolve fiscal agent issues and will keep the board informed. Materials related to this issue will be circulated prior to the next board meeting, and the matter can be placed on the agenda for the next board meeting.

c. Performance Contracting and Preliminary Schedule for Bond Issue

Ralph Nigro gave an update on the Performance Contracting Program.

The SEU issued a recommendation to Delaware State University to continue contract negotiations with Johnson Controls.

Department of Corrections and Kids are having their energy audits conducted by NORESKO. Audit findings will be delivered around the end of March. There is about \$40 million of work for DOC and \$8-10 million with Kids. Ralph Nigro noted that the audit had to be restarted due to a complication with the Smyrna facility.

NCC VoTech received proposals from three ESCOs and will make a selection the first or second week in January. All selections are made from the list of pre-qualified ESCOs.

DelTech is working with PEPCO Energy Services. Their audit is scheduled to begin in January.

OMB is working with Honeywell on the audit of Legislative Hall.

Ralph Nigro reported that the SEU is working with several other agencies, including the Army National Guard and DelDOT.

Ralph Nigro explained that the typical timeframe of an investment grade audit takes about 2-3 months from start to the completion of the report.

Senator McDowell expressed concern over the DOC audit delay and the potential effect on the bonding process.

d. SEU Financial Advisor

Senator McDowell updated the board on the Financial Advisor interviews. The Executive Committee interviewed all five respondents, a process which took about two days. All brought unique issues to the table.

The Executive Committee agreed to begin negotiations with NW Financial and Becker Capital to jointly serve as the Financial Advisor for the first bond issue.

Senator McDowell noted that NW Financial is good at putting pools together and that they have had lots of bonding work in New Jersey. They are also up to speed on Delaware. Becker Capital has a solid understanding of the type of work the SEU would like to do. They are a smaller firm and bring a unique perspective.

Dr. Byrne reported that each firm said they would be willing to work together as a team and have worked on teams in the past. The parties need to be clear about the division of tasks. The Executive Committee has set up meetings with the two firms on December 28th to go over the details.

Frank Murphy indicated that this is the SEU's first bond issue, which makes the process more challenging, and that it is vital that the SEU obtain an investment grade rating for the bonds. Additional expenses associated with having two firms, if any, would be justified for that reason as it is good to have strong team approach for first bond issue.

Becker Capital provided a supplemental submission to the Executive Committee indicating that the SEU could go to the bond market on a 96 day schedule. This timeframe works with the Board's goal of March or April 2011. The timeframe may also work with the DOC project timeline as long as investment grade audit reports are submitted by March. They would still need time for negotiations, but the bonding process could be started. Dr Byrne noted that of the firms interviewed, only one firm did not give a schedule, however, the four that did had a similar schedule of 3 to 4 months.

Roger Jones noted that there may be a timing issue if the state agencies' guaranteed energy savings agreements are not prepared before bond issuance. It would be necessary for the Financial Advisor to interact early on with the ESCOs to set up meetings for preliminary estimates based on the audit. He suggested that the Executive Committee be briefed regularly on the audit progress.

Dr. Byrne reported that the two financial advisory firms under consideration have already approached the only Bond Insurer presently in the market about providing insurance for the SEU bond issue.

It was generally agreed that the contract for the financial advisor should require the advisors to provide regular reports to the Board on the process and guidance.

Senator McDowell proposed that the Board approve a motion after the executive session to authorize the Executive Committee to move forward with the selection of the financial advisory firms.

Ralph Nigro reported that DSU was going to use tax exempt financing to finance its entire project. Ralph indicated that the SEU continues to work with DSU on the financing and other aspects of the project.

Senator McDowell described some of the drawbacks of tax exempt leasing and explained that no revolving funds are used with tax exempt leasing. ESCOs don't need to worry about bringing their own financing, but tax exempt leasing offers financing rates that are higher than bonds. This can create a higher investment hurdle that may limit the scope of projects to high return only.

Secretary O'Mara voiced his apprehension with the conversation. He does not want the SEU to make the decision to eliminate tax exempt leasing as a financing option. He wants to make sure we are the "one stop shop" originally envisioned and the objective is to have the projects completed with the financing that is most appropriate for the project. He requested that the financial advisor be asked to provide the Board with information about various financing options including tax exempt leasing and other alternatives.

Senator McDowell stated that he wanted to reaffirm that the priority is to get the bonding started. Dr. Byrne indicated that bonding requires a certain volume and that if there is not sufficient volume, the bonding option is off the table. Senator McDowell said there will be a motion at next board meeting, but wanted the Board to be aware of this concern. He will bring the issue up with financial advisors and will discuss it further at the next meeting.

The motion to end the Executive Session was approved and the session ended at 2:10pm.

II. Approval of Minutes

The October meeting minutes will be approved at next meeting.

The Contract Administrator update was sent out over email. Matt Lillard is available to answer any further questions on the program updates.

Dr Byrne requested to see information about the SEU funds, their amounts and sources. Ralph indicated that ARRA funding is being used for all the programs except Green for Green which is being funded with RGGI dollars. Program implementation costs are being funded by RGGI

only, but will be transitioning to ARRA to cover administration expenses. However, there may be limitations on what can be recoded. Currently, the programs are being funded with ARRA funds as approved by the Board.

DNREC has hired a new fiscal officer to focus on Energy and Climate Programs and will be able to provide that information. DNREC has not been able to get that information from the Fiscal Agent. The SEU Contract Administrator and the DNREC fiscal office have been working together to reconstruct the information. Carolyn Snyder also mentioned that the Fiscal Agent has not been able to produce reports that satisfy ARRA requirements.

III. Old/ New Business

The Board strategic planning session can't happen before February 15th. The Board should expect emails/Doodle poll to schedule the date. It was agreed that the weekends would probably work best.

The next Oversight Board meeting will be scheduled for 8 o'clock the morning of Tuesday, January 11th. Dr Byrne will be on travel in mid January.

Based on work accomplished today and previously, the Board approved the motion for the Executive Committee to make the decision on financial advisor selection. It was noted that a template contract needs to be developed.

The Executive Committee will report to the Board on the Financial Advisor selection.

IV. Adjourn

The motion to adjourn was approved at 2:24pm.