

Sustainable Energy Utility Oversight Board Meeting

Friday, October 22, 2010
DNREC Lukens Facility
391 Lukens Drive
New Castle DE

Executive Session Minutes

II. Executive Session

a. Contract Administration 2nd Year Scope of Work

The Contract Administrator is in its second year of the contract (as of June 1). The Year Two Scope of Work was approved by DNREC but is likely in need of revision. It also needs to be reviewed by the Board. Secretary O'Mara would like to discuss the contract terms and Scope of Work and asked whether it should be reviewed by the whole Board or Executive Committee. Frank Murphy and Senator McDowell requested to have a board meeting scheduled between Election Day and Thanksgiving to discuss the SOW and contract. DNREC will distribute the revised draft of contract and any questions to the Board.

b. Preliminary discussion of strategic planning for SEU

Secretary O'Mara suggested the Board have a discussion on the state of the SEU with ARRA funding and in a post-ARRA world. The Secretary is very concerned about after 2012 (post-ARRA) resources, since RGGI funding is in decline and federal funding for State Energy Offices is likely to shrink after the ARRA grant ends. The Board needs to address the opportunity for new funding streams. While the funding question is related to the SOW and contract issues, Secretary O'Mara suggested the Board schedule a separate meeting in December to discuss the funding issues.

Randy Day advocated for a full-day strategic planning session to get everyone up to speed on the changes that have come about in light of the ARRA grant and to better define the SEU mission and what the board would like to accomplish. Frank Murphy suggested using the resources from the CEEP studies posted on the SEU Board website. The SEU staff/DNREC will put together a package of materials.

c. Strategy session re: SEU bond program, financial advisor, bond council

Frank Murphy briefed the board on new items that will need further discussion at the next meeting. Ballard Spahr is serving as bond counsel with a \$40,000 cap, and has already spent sufficient time to eat up more than half of its \$40k contract cap. Ballard Spahr is willing to complete the bond counsel work within the \$40,000 cap. Baird Brown, formerly with the Ballard Spahr firm is now with the Drinker Biddle law firm. If Drinker is prepared to work within the \$40,000 cap, that firm could be used to assume Ballard Spahr's role on the bond counsel work. If so, from a financial standpoint, the two firms would be equal. The SEU Board needs to select one of the two firms to be new bond and tax council. The firms will charge at hourly rate for tax counsel work. No cost estimate is available yet since structure of bond is not set.

The other matter to be addressed is the need for an independent financial adviser. Citi suggested this is needed to strengthen the bond program. In discussion with Frank, Stephanie Scola from the Delaware Division of Revenue also recommended that the Board consider retaining an independent financial advisor, but it will come with additional cost. Citi Group has compiled a list of potential firms. Additionally, the Board may need to circulate an RFP. Stephanie Scola informed Frank that the State had just issued an RFP for bond counsel. They have five responses and three interviews set up. She offered for the SEU to piggy back on the State's RFP in November in order to avoid another RFP process. However, even if the SEU did not want to piggy back on the State's RFP, the SEU could also choose to participate in the interviews just to gain more knowledge about the process. Interviews are expected to take place mid to late November. The Secretary suggested that it would be good to leverage the process. Frank noted that the Board could use the State's RFP as a template. The Executive Committee will have a conference call to discuss the idea and will provide an update to the Board.

Dr. Byrne informed the Board that he had already worked on drafting an RFQ and suggested that, since the SEU bonding process is not typical, there is a need to seek a financial advisor that has this unique experience and expertise to handle the energy, tax and accounting implication the bonding process. Dr. Byrne will query firms on the list CitiGroup provided.

Chuck Wagner joined the meeting via conference call at 10:49.

Frank suggested that Dr. Byrne circulate the RFQ to the Board for review prior to sending it out. Secretary O'Mara expressed concern about the need for a financial advisor, given the role that Catalyst now has with the SEU. He questioned how the model is going to be cheaper than the rest. Dr. Byrne noted that Catalyst cannot serve the role of bond underwriter nor as a financial advisor, as it does not have experience in bond financing. Dr. Bryne also noted that the financial advisor will be paid only on the success of a bond float and that fees would be rolled into the actual bond issue and not paid until the bond floats. The financial advisor is also tasked with

ensuring adequate participation in the bond market. Frank said that Catalyst is interested in this role and plans to respond to the RFQ on bond financing.

Senator McDowell inquired if the SEU would be able to piggy back on the State's bond rating. Dr Byrne affirmed this and noted that the bond raters will look at the State because of the SEU legislation. The Secretary said that it won't necessarily determine the rating because it is not fully backed by the State. Sean Finnigan responded, noting that this is all the more reason to get good financial advisor.

Senator McDowell asked for the timeframe. Dr. Byrne replied, stating that Citi will help get the bond rating; the financial advisor will help to make it attractive. When written, the guaranteed savings agreements will act as a guarantee that will help secure the bond rating. The bonds will be securitized with RGGI funds and state law makes it all stronger.

Secretary O'Mara expressed concern over the speed of the process. He believes it is important to get good independent advisor, but also wants to get state expertise to help facilitate this effort and quickly. Secretary O'Mara affirmed his belief that there is an advantage to piggy backing and suggested it needs to happen by the middle of next month. The Executive Committee will need to be flexible to meet on short notice to assist this process. Dr. Byrne agreed with the timing concerns, and pointed out that they need all five shared savings agreements signed by the state agencies before January. It would be unlikely to be sell bonds during the holidays.

Energy audits for DOC, Carvel and the R&R building are completed and others are on the way. OMB facilities will likely be part of the second tranche. Bob Furman is aware of the timing concerns with these projects. Frank will contact Ralph to try to expedite this by closing the loop on audits. It was noted that Department of Corrections will drive down cost because of large scale.

Senator McDowell requested greater coordination on the bonding efforts. He said it is important to know what the steps are and who is accountable. Secretary O'Mara requested a one page work plan. The Senator suggested developing a "critical path" calendar. Dr. Byrne said Citi can provide this. He also noted that Citi had already provided several of these calendars, but that we had missed all the dates. Dr. Byrne will send these documents to the Executive Committee so that they can better address the impediments and concerns.

Frank Murphy submitted a report to the Board addressing legal issues. The Board discussed the Dover Sun Park Report on SRECs.

Secretary O'Mara brought up the issue of Board expenses and expressed interest in having a discussion on funding sources and payments. Carolyn Snyder mentioned that all invoices are

currently coming through the Energy Office and she would like clearer direction and assignment of responsibility for this process. Senator McDowell also noted this structural problem and the need to better identify and handle the operating costs. Carolyn suggested the need for a contract with limited scope and that maybe DNREC can staff up to help fix this issue.

Senator McDowell motioned to end the executive session at 12:04pm.