

**Delaware Sustainable Energy Utility Oversight Board
Executive Committee Meeting (Executive Session)
Senate Majority Caucus Room, Legislative Hall, Dover, DE
9:30am, March 3, 2010**

***The following are minutes of the Executive Session held during the Executive Committee Meeting on March 3, 2010.*

ATTENDANCE

Executive Committee Members

Sharron Cirillo, Public Accountant
Collin O'Mara, Secretary, Department of Natural Resources and Environmental Control
Senator Harris B. McDowell, III, Co-Chair
John Byrne, Director, Center for Energy and Environmental Policy, Co-Chair
Charlie Smission, ex officio
Board Member in attendance Roger Jones, Nature Conservancy

Board Staff

Sean Finnigan, Delaware State Senate
Frank Murphy, SEU Attorney

Scribe

Peter Olmsted, Center for Energy and Environmental Policy

SEU Contract Administrator

Ralph Nigro

III. Executive Session: Dover Sun Park Agreement

Senator McDowell entertained a motion to enter into a special executive session for the purpose of discussing the proprietary nature of the Dover Sun Park project. Dr. Byrne made a motion to enter into Executive Session; Secretary O'Mara seconded the motion. The motion was approved unanimously.

*** Due to the proprietary nature of the Dover Sun Park negotiations, members of the public were asked to excuse themselves.

Dr. Byrne updated the EC on the negotiations regarding the Dover Sun Park agreement. Dr. Byrne indicated that all the other parties involved including DMEC, the City of Dover, Delmarva L&P and White Oak (subsidiary of LS Power) has reached agreements and that the SEU is the last party to reach an agreement on the contract negotiations. Dr. Byrne expressed the time sensitive nature of these negotiations citing the expiration of the federal tax incentives at the end of the year, and that without expediting this process to determine the suitability of SEU participation the project may fail to move forward.

The two pending contracts for the SEU involvement in the Dover Sun Park project include the following:

1. Contract between the SEU and White Oak for the purchase of SRECs
2. Contract between the SEU and Delmarva L&P for the forward sale of SRECs.

The SEU would purchase a fixed amount of SRECs from White Oak, subsidiary of LS Power and the owner and operator of the Sun Park, from 2011 through 2014. During RPS compliance years 2015 and 2016, the SEU would then sell these SRECs to Delmarva Power and Light who would use them for complying with DE's RPS solar carve-out. Due to the fact that DE's RPS solar carve-out schedule grows gradually over the initial years, the arrangement under which the SEU will forward sell SRECs to Delmarva will help to stabilize the SREC market and create market opportunity for a variety of participants.

To ensure that the SEU is in a proper financial standing for entering into these agreements, Dr. Byrne updated the EC on his efforts and negotiations to secure appropriate financing. Dr. Byrne has worked directly with Citi and Ballard Spahr for this purpose. Due to the current tenuous economic conditions and in the absence of the SEU being rated, Citi and Ballard Spahr were initially unable to locate a lending agency willing to finance the SEU's participation. Citi and Ballard Spahr were, however, able to locate a lender in New York that was willing to offer a product to finance the SEU for the purpose of this project.

The lender has offered a CD-secured loan at a fixed rate of 4% and a loan fee capped at 1% of the total amount borrowed. \$25,000 would be required for a letter of commitment from the lending agency, and total fees including the letter of commitment would not exceed \$55,000.

The loan and CD-deposit would be active on a quarterly basis, and it was indicated that there will be no more than a 1% spread between the bond and the interest rate of the loan product.

Dr. Byrne indicated that the contract with Delmarva based upon a fixed price per SREC will first need to pass PSC muster and approval. Dr. Byrne also indicated that with appropriate levels of financing, the SEU would be in a position to either purchase 20% or 40% of the SRECs generated by the Dover Sun Park.

Some EC members expressed concern about the carrying costs associated with the loan offer, and were concerned about whether the spread between the interest rate and bond would be sufficient to cover the legal and financial commitments of the project and loan. Some members were also concerned with the impact of the fees on the financing agreements. Concern was also

expressed regarding the rating of the lending institution and whether lending institutions within the State of Delaware had been adequately pursued.

EC members also discussed liability issues in regards to default on the loan by the SEU and default on the contract by White Oak. The impact of RGGI funds on this project was also expressed as an important point of consideration.

EC members agreed to move the discussion to the Oversight Board upon an adequate financial review of the loan project and projections of SEU cash flows. EC members also expressed an interest in pursuing lending options through in-state institutions before fully committing to a loan product as offered by the New York institution. Upon closing the Executive Session, the public rejoined the EC meeting and an official motion was made in this regard. The motion is reflected in the public EC meeting minutes and is as follows:

Executive Committee has reviewed many potential options of policies to help stabilize Delaware's REC markets, and to assure the continuance of clean energy jobs within the State. The Executive Committee therefore recommends to the Oversight Board approval of the SEU's participation in the Dover Sun Park project subject to final financial review. The motion was approved unanimously.