

**Delaware Sustainable Energy Utility Oversight Board Meeting  
Gallery Room, Perkins Student Center  
University of Delaware, Newark  
9:00 am, February 3, 2009**

**ATTENDANCE**

**Board Members:**

Senator Harris B. McDowell, III  
Representative Pamela Thornburg (called in)  
Arthur Padmore, Public Advocate (called in)  
David Small, Interim Secretary, DNREC  
John Byrne, Director, Center for Energy and Environmental Policy  
Sharron Cirillo, Public Accountant  
Nnamdi Chukwuocha, Associate Executive Director, Kingswood Community Center  
Randall Day, Perdue Agribusiness (called in)  
Roger Jones, State Director, The Nature Conservancy, Delaware Branch  
Joe Loper, Alliance to Save Energy (called in)  
Chuck Wagner, Manufacturer of Energy Devices

Charles Smisson, State Energy Coordinator (serving *ex officio*) (called in)

**Board Staff:**

Frank Murphy, Attorney to the Board  
Sean Finnigan, Delaware Senate Staff  
Trenton Allen, Citi (bond underwriter)

**Members of the Public:**

Jim Black, Clean Air Council  
Sally Buttner, Energy Transition Consulting LLC  
Phil Cherry, DNREC  
Maryanne Edwards, League of Women Voters, New Castle County  
John Flaherty  
Lorraine Fleming, Delaware Nature Society  
Branch Hellen  
John Kowalko, Delaware State Representative  
Brian Kramer, League of Women Voters, New Castle County  
Coralie Pryde, DNS/DELCOG  
Candis Robinson, Center for Energy and Environmental Policy  
Pat Todd, League of Women Voters  
Chad Tolman, Energy Committee, Sierra Club  
Dave Woodside

**Scribes**

Anne Smart, Center for Energy and Environmental Policy  
Cara Lampton, Center for Energy and Environmental Policy

## **MINUTES**

### **I. Welcome**

Meeting began at 9:18 am.

Motion to adopt minutes of the January 14 meeting of the Board passed unanimously. Minutes adopted without change.

Interim Secretary Small from DNREC suggested that continuity in leadership of the SEU Board is important at this time. Motion was made by Secretary Small to identify co-chairs, rather than one chair.

Public Advocate Arthur Padmore noted a possible conflict if the SEU sought rate recovery or other attention before the Delaware Public Service Commission. This could create the possibility of service on the Board being in conflict with the Public Advocate's responsibility of representing ratepayers before the Commission. After discussion, the Public Advocate indicated he will recuse himself from discussions related to ratemaking and other areas where conflict or an appearance of conflict might exist. The Board unanimously noted this need.

Attorney Frank Murphy stated that members can abstain from votes if they feel conflicted in any way.

Representative Thornburg made a motion that the co-chairs of the SEU Board be Dr. Byrne and Senator McDowell. The motion was seconded by the Public Advocate. Motion passed unanimously.

Motion to go into executive session was made by Senator McDowell in order to discuss possible bid negotiations for bond counsel.

A member of the public asked for clarification on which part of the law supported the executive session. Attorney Frank Murphy stated that Section 10002 G2 provides the relevant reason in this instance to call an executive session.

Motion to go into executive session passed unanimously.

### **II. Executive Session**

The Board discussed the bids received for bond counsel and approved a negotiation strategy with a firm recommended by the Board-approved ad hoc committee (see the minutes for the January 14, 2008 meeting regarding the formation and membership of the ad hoc committee). As soon as negotiations are completed, the result will be posted on the SEU website (<http://www.seu-de.org/>). [NOTE: The redacted bid, letter of engagement from the selected firm and the letter of agreement on behalf of the Board were posted on the SEU website on February 6.]

### **III. SEU Board Member Orientation**

A presentation on the SEU was made by Dr. John Byrne. The presentation titled “SEU 101” will be posted in its entirety on the SEU website.

Dr. Byrne explained that it is the responsibility of the SEU Oversight Board to approve program targets and designs in consultation with the Contract Administrator. These targets and designs will be made broadly within the theme areas of ‘less energy’, ‘onsite renewable energy’, ‘clean vehicles/green transport’, ‘green buildings’, and ‘affordable energy services’. He noted the Board does not select the Contract Administrator or implementation contractors, and does not handle financial transactions related to individual contracts.

In order to prudently fulfill its responsibilities, Dr. Byrne discussed in detail with the Board the key tools for fulfilling program targets, alternative finance models that can be employed, and the need for program designs to be flexible and responsive to market, technology and policy realities.

Dr. Byrne then asked Trenton Allen to explain basic tax-exempt bond finance options for the SEU. Dr. Byrne noted that finance options not involving bonds are available to the SEU. But before discussing these, he asked Mr. Allen to review with Board members and answer questions on tax-exempt bond financing.

Mr. Allen discussed the difference between tax-exempt bond financing for potential SEU participants in the MUSH category (municipalities, schools, and hospitals) and bond financing for private residents, businesses, and industries. MUSH includes public and non-profit entities that are already eligible to seek investment through tax-exempt bonds, whereas private residents, businesses, and industries are not typically tax-exempt bond-eligible (an exception is noted below). Mr. Allen explained that MUSH participants in the SEU can pledge their future bill savings as a method of bond repayment and their creditworthiness would be a key factor from a bond investor’s point of view to assess the attractiveness of projects. For residents, businesses and farms, current IRS regulations require securitization by means of a ‘tax of general applicability’, meaning that an obligation shared by all members of the public generally is needed to offer tax-exempt bond financing to private parties. Mr. Allen noted that one method of securing a tax-exempt bond for the SEU might be to use RGGI proceeds as security. Under Delaware law, the SEU receives 65% of RGGI auction proceeds. Because the RGGI auction costs are passed on to consumers, it is possible that it might meet IRS guidelines for a ‘tax of general applicability’.

Board member Sharron Cirillo requested clarification on the Energy Efficiency Revenue Bonds presented by Mr. Allen to serve possible needs of MUSH entities. Mr. Allen explained that MUSH entities could benefit by joining a financing pool of tax-exempt bonding organized by the SEU, since this would lower the overall administrative costs to them and could be a more efficient vehicle for the acquisition of tax-exempt bond finance. He also explained the CA is responsible for performing the essential staff functions that makes it possible for MUSH entities to participate. As well, the CA would provide energy expertise and advice to MUSH participants.

Dr. Byrne brought to the Board's attention possible funding from the federal economic stimulus package. (At the time of the Board meeting, the U.S Congress had not completed voting on a stimulus package). Dr. Byrne reviewed the version of the package passed by the U.S. House of Representatives, which included \$22.5 billion for energy efficiency and conservation investments and \$11.6 billion for renewable energy and alternative transportation projects. These figures do not include the value of tax incentives. (A three-year extension of the so called Production Tax Credits, especially popular for wind developers, was indicated as being in the U.S. House bill.)

Dr. Byrne noted that in the original TARP legislation and in the federal stimulus package, the Congress for the first time created a tax-credit bond that could support private sector projects without a requirement of the presence of a tax of general applicability. These are called Qualified Energy Conservation Bonds. The particulars of this tax-credit bond are still under government discussion and rulemaking would be needed at the federal level. The amount is also capped. But the new bond anticipates in many ways the SEU Green Bond pioneered in Delaware. He noted that he had previously been contacted by individuals in Washington, DC about the SEU Green Bond idea and he has encouraged its consideration.

Representative Kowalko informed the Board of his desire to include renewable energy technology in public buildings and asked if the Board would help him on technology, economic and policy questions. Senator McDowell complimented Representative Kowalko for his idea and asked Dr. Byrne to help the Representative. Dr. Byrne agreed he would be happy to do so.

Finally, Dr. Byrne reviewed estimates of the permanent green jobs the SEU will create. Using modest investment levels, the SEU programs can create over 400 new jobs in the State in 6 months to one year. Senator McDowell noted that these are especially valuable jobs because they cannot be outsourced. A document with more detailed figures, including the tax revenue generated by new jobs associated with modest SEU investments, was provided at the meeting and will be posted on the SEU website.

#### **IV. Old Business/New Business**

An ad hoc committee was formed to review and revise the by-laws. Board attorney Frank Murphy and members Roger Jones and Nnamdi Chukwuocha volunteered service on this ad hoc committee. The Board voted to approve the composition of the ad hoc committee.

John Byrne and Sharron Cirillo were nominated to serve as Board liaison to Citi and the bond preparation team (which includes special tax counsel, local bond counsel, Citi underwriter staff, and counsel to Citi). Their nominations were seconded and passed.

#### **V. Public Comment**

Pat Todd from the New Castle County League of Women Voters commented that she believes the bylaws need to be updated and should include: an explanation of circumstances for calling executive sessions, references to the Freedom of Information Act, details on how to elect officers, and a number for how many meetings could be missed by a board member.

A request to update the website was made. All meeting minutes are now on the website, as well as important documents and information. (<http://www.seu-de.org/>)

John Flaherty asked whether the SEU is a public or private entity. Attorney Frank Murphy explained that the SEU is a nonprofit corporation. He further stated the Board is covered by the FOIA.

Meeting adjourned at 11:48 am.

**The next meeting of the SEU Oversight Board will be either Thursday, March 16 at 9:00am or Thursday, March 19 at 9:00am. Location TBA.**