

Southeastern Public Service Authority of Virginia



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Overview and Status of Wheelabrator Waste-to-Energy Facilities Transaction

SPSA Board Meeting

January 27, 2010

Who we are

- **Williams Mullen** – Washington, DC
 - *National leader in waste-to-energy transactions, including public private partnerships*
- *SPSA Special Project Counsel:*
 - *Structured, drafted and negotiated definitive transaction documents relating to sale and operation of SPSA's WTE facilities*
 - *Coordinating and working with stakeholders (VRA, Navy, VDHCD, etc.) to satisfy conditions precedent to close WTE transaction*
- *Team Members:*
 - *Warren Nowlin, Stu Broom, Brad Nowak*

Overview of Sale of WTE Facilities

- **Transaction Overview**
 - *Sale of RDF, Power Plant and related assets (Purchase and Sale Agreement)*
 - SPSA retains and operates Suffolk landfill, all transfer stations, truck maintenance facility and certain hauling operations
 - *SPSA contracts for 8 years for waste disposal (Service Agreement)*
 - 10 year extension option
- **WTE Sale Procurement began in May 2008**

WTE Sale Background/History

| Date | Activity |
|-------------------|--|
| May 29, 2008 | SPSA receives unsolicited proposal from Covanta |
| June 5, 2008 | <ul style="list-style-type: none"> • SPSA accepts Covanta proposal • SPSA proceeds with conceptual phase review and requests competing proposals |
| Aug. 15, 2008 | SPSA receives competing proposals from Energy Answers, Fortistar and Wheelabrator |
| Aug. 21, 2008 | SPSA retains Municipal Financial & Services Group (MFSG) as independent consultant for WTE sale |
| Aug. 27, 2008 | <ul style="list-style-type: none"> • SPSA elects competitive negotiation procedure • SPSA accepts three other proposals, incl. Wheelabrator proposal |
| Sept. 24 2008 | With assistance of MFSG and other advisors, SPSA proceeds to detailed review phase with proposals submitted by Covanta and Wheelabrator and rejects others |
| Sept. 2008 | SPSA sets up online dataroom; Vendors begin due diligence |
| Feb. 2009 | First drafts of Purchase and Sale Agreement and Service Agreement circulated to Covanta and Wheelabrator |
| March - Aug. 2009 | <ul style="list-style-type: none"> • Extensive negotiations with Covanta and Wheelabrator, including five rounds of meetings with vendors • Meetings and discussions with U.S. Navy • SPSA consummates refinancing with VRA |
| July 17, 2009 | SPSA receives offers from Wheelabrator and Covanta |
| Aug./Sept. 2009 | SPSA conducts further negotiation with vendors |
| Sept. 10, 2009 | SPSA tentatively selects Wheelabrator Binding Offer (irrevocable through March 1, 2010) for continuing consideration and possible acceptance; Schedules public hearing on Sept. 23, 2009 |
| Sept. 14, 2009 | SPSA posts on its website complete Wheelabrator Offer and executive summary |
| Sept. 23, 2009 | SPSA holds public hearing on WTE Sale Proposals, incl. Wheelabrator Offer |

WTE Sale Background/History

- On **November 17, 2009**, SPSA Board approved Wheelabrator Comprehensive Agreement (comprised of Purchase and Sale Agreement and Service Agreement) by vote of 7-0
- On **November 20, 2009**, SPSA executed Comprehensive Agreement for sale and operation of WTE facilities

Sale of WTE Facilities

- **Terms of Wheelabrator Comprehensive Agreement:**
 - ***Purchase Price - \$150 million****
 - No financing contingency
 - Payable in full at closing
 - ***“Service Fee” - \$36/ton** (\$18 million/yr)***
 - Before all other SPSA operating costs and residual debt service
 - Assumes all proceeds are used for debt repayment and/or defeasance

* *Subject to purchase price adjustments*

** *Based on 500,000 tons Annual Delivery Guarantee and before other adjustments*

Service Agreement - Summary

- **Term** – Closing date through **January 24, 2018** (*expiration of Use and Support Agreements*)
 - *Unilateral extension by SPSA for up to 10 years*
 - *Requires notice by Dec. 31, 2014*
- SPSA Annual Delivery Guarantee of **500,000 tons** to RDF
 - *“Put or Pay” contract*
 - *Service Fee of \$18 million per year pro rated until 6/30/2010 (\$36/ton)*
 - *\$2/ton fixed annual escalation (commencing 7/1/2010)*
 - *Payable monthly*
 - *“Acceptable Waste” includes non-processible*
 - *Excess tonnage fee for SPSA waste in excess of Annual Delivery Guarantee (same rate as base rate per ton)*

Service Agreement - Summary

- **SPSA Landfill**

- *Wheelabrator to dispose of all non-processible waste and diverted waste to non-SPSA landfill*
 - SPSA receives loading fee for N/P and diverted waste loaded at SPSA Transfer Station into Wheelabrator trailers
- *Suffolk landfill and other SPSA-contracted landfills (e.g., Va. Beach) available to Wheelabrator for disposal of residue/ash from Power Plant*
 - Only up to capacity limits; no expansion req'd
 - Expected savings of \$52 million in expansion costs

Service Agreement - Summary

- **SPSA Transfer Stations**

- *SPSA to receive third party “authorized hauler” waste at SPSA transfer stations*
- *SPSA to transport third party waste from transfer stations to RDF (commingled with SPSA waste)*
- *Wheelabrator pays SPSA for:*
 - Hauling (avg. \$11/ton) of authorized hauler waste from transfer stations to RDF facility; and
 - Loading (\$2.50/ton) of non-processible waste at transfer stations to be disposed at non-SPSA landfill

Service Agreement - Summary

- **Outside-Area Waste/Out-of-State Waste**
 - *Wheelabrator must have sufficient fuel to generate electricity/steam*
 - *Wheelabrator may receive third party waste at RDF facility only if it reasonably expects (after consulting with SPSA) to receive less than 62,500 tons per month from all other sources*
 - **1st priority** - obtain waste from SPSA Service Area (8 member community area)
 - **2nd priority** – obtain Outside-Area Waste (Virginia and North Carolina)
 - **3rd priority/Last Resort** – Out-of-State Waste (outside of Virginia and North Carolina)
 - *Wheelabrator required to document efforts and keep records permitting SPSA to monitor compliance*

Service Agreement - Summary

- **Mutual Pass Through Costs**
 - *Pass through to SPSA for pro rata portion of cure for Change in Law affecting WTE facilities (debit to Service Fee)*
 - *Pass through to Wheelabrator for pro rata portion of cure for Change in Law affecting SPSA facilities (i.e., SPSA transfer stations and landfill; credit to Service Fee)*
- May be disputed prior to being passed through
- Subject to \$200k threshold (except for certain Portsmouth fees and expenses)

Service Agreement - Summary

- **Termination**
 - ***SPSA Termination Rights***
 - Company Event of Default
 - SPSA receives liquidated damages of:
 - » \$40 million if terminated in yr 1 – 2;
 - » \$35 million if terminated in yr 3 – 4;
 - » \$30 million if terminated in yr 5 – 6;
 - » \$25 million if terminated after yr 6
 - UCC – prevents performance for 180 days
 - Change in Law – if cumulative cure costs increase SPSA tipping fee by at least \$10
 - ***Wheelabrator Termination Rights***
 - SPSA Event of Default
 - Wheelabrator receives \$10 million liquidated damage from SPSA

Status of Conditions to Closing

- **Overview:** Either party may terminate transaction if Closing does not occur by May 1, 2010 (unless extended) – conditions to Closing must be satisfied before then.

- 1. **Approval of the U.S. Navy:**
 - ***Consent to 5-year extension of Navy Steam Agreement***
 - Tentative verbal approval received for 5-year extension
 - Finalizing modifications to Steam Agreement with Navy (incl. elimination of debt based termination fee)

 - ***Approval of Navy to Assignment of RDF and Power Plant Land Easements***
 - Agreement in principle has been reached
 - Awaiting revised draft easements from the Navy
 - Structured so that only local Navy approval in Hampton Roads is required

Status of Conditions to Closing

2. Approval of SPSA's Board of Directors:
 - Approved on November 17, 2009 (Complete)

3. Private activity bond volume cap allocation from Virginia:
 - On **January 6, 2010**, SPSA submitted its request for \$100 million of private activity bond allocation from the Governor's 2010 Discretionary Fund.
 - Active discussions are underway with Governor McDonnell's staff and the Virginia Department of Housing and Community Development.

Status of Conditions to Closing

4. IRS Closing Agreement:

- Sidley Austin (SPSA's bond counsel) submitted a request and provided information to the IRS for consideration of a closing agreement in late December 2009.
- A closing agreement cannot be finalized and entered into until PAB volume cap allocation is obtained -- SPSA will proffer volume cap as substitute consideration in lieu of cash payment of penalties.
- Active discussions are underway between SPSA's bond counsel and the IRS.
- VRA will be required to join in the agreement.

Status of Conditions to Closing

5. Consent/Approval of SPSA Creditors:

– **Virginia Resources Authority**

- *Active discussions underway by Williams Mullen and SCS Engineers and Mesior Financial (SPSA's financial advisors)*
- *SCS Engineers and Mesior finalizing debt retirement plan for submission to VRA*
- *VRA Board expected to consider SPSA's request at its March 2010 meeting*

– **Wachovia Bank**

- *Active discussions are underway by SPSA and Mesior Financial*

– **Ambac**

- *Active discussions are underway by Sidley Austin (SPSA's bond counsel)*

– **U.S. Bank (Trustee)**

Status of Conditions to Closing

6. Installation of Phase I CO Control Measures (at SPSA cost):
 - Carbon monoxide air emission control improvements intended to address Va. DEQ notice of violation
 - Installation on the boiler units is in process.
 - SPSA and Wheelabrator engineers and team members are actively working on the project and contractor work is underway.

7. Lease and Good Neighbor Agreement with Portsmouth:
 - Active discussions are underway between Wheelabrator and Portsmouth and revised draft is currently under consideration.
 - Separate discussions are underway between SPSA and Portsmouth for a separate voluntary good neighbor agreement.

Status of Conditions to Closing

8. Regulatory Consents:

- ***Transfer of Federal Operating Permit & Transfer of Discharge Permit***
 - SPSA and Wheelabrator team members met with representatives from Va. DEQ to discuss transfer in Dec. 2009.
 - No obstacles expected.
- ***Transfer of Hampton Roads Sanitation District Industrial Wastewater Discharge Permit***
 - In process.
 - No obstacles anticipated.
- ***Permit-by-Rule Permit***
 - Wheelabrator is responsible for filing its own application for Permit-by-Rule to operate the WTE facilities.
 - We understand Wheelabrator plans to file this application shortly and expects to receive timely approval to facilitate closing within contemplated transaction timeline.

Status of Conditions to Closing

9. Consent under Executory Contracts being assigned to Wheelabrator:
- **Consent from PJM Interconnection, LLC and VEPCO:** *In process. Consent has been formally requested and consideration is in process.*
 - **Consent from American PowerNet Mgt:** *Complete. Consent received.*
 - **Consent from Strategic Energy, LLC:** *In process. Consent has been formally requested and consideration in process.*
 - **Consent from Control Dynamics:** *Complete. Consent received.*
 - **Consents from Resource Recycling:** *Complete. Consents received.*
 - **Consent to assign software and other licenses:** *In process.*
 - **Consent to assign Solid Waste Delivery Agreements:** *In process.*

Questions