

**MINUTES OF THE BOARD OF DIRECTORS  
SPECIAL MEETING  
SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA**

**September 10, 2009**

At the Special Meeting of the Southeastern Public Service Authority of Virginia (SPSA) held at 9:30 a.m., in the Regional Board Room at the SPSA Regional Building, 723 Woodlake Drive, Chesapeake, Virginia, there were:

**ROLL CALL**

**Members:**

Don Williams, Chair	(NO)
Bryan L. Collins	(CH)
Barry W. Cheatham	(FR)
Stan D. Clark, Vice Chair **	(IW)
Jeffrey A. Gardy	(SU)
G. Timothy Oksman	(PO)
Dallas O. Jones <i>absent</i>	(SH)
Michael J. Barrett	(VB)

**Alternates:**

William E. Harrell	(CH)
June Fleming	(FR)
Thomas J. Wright	(IW)
Stanley A. Stein *	(NO)
Stephen E. Heretick *	(PO)
Mike Johnson	(SH)
Selena Cuffee-Glenn	(SU)
John Barnes	(VB)

Others present at the meeting included SPSA executives Mr. Rowland (Bucky) Taylor, Executive Director, Ms. Liesl R. DeVary, Treasurer to the Board, Ms. Lou Ann Ivory, Secretary to the Board and Anthony M. Thiel, SPSA General Counsel. Additionally, numerous legal and financial individuals from each of the member localities and several staff members from the Hampton Roads Planning District Commission were in attendance.

(CH) Chesapeake; (FR) Franklin; (IW) Isle of Wight; (NO) Norfolk; (PO) Portsmouth; (SH) Southampton County; (SU) Suffolk; (VB) Virginia Beach

\* Indicates Late Arrival (but prior to any voting)

\*\* Indicates Early Departure

The meeting began with the invocation by Mr. Collins (CH), the Pledge of Allegiance and was followed by Roll Call. A quorum was present.

### **PUBLIC COMMENT PERIOD**

Chairman Williams called the first speaker to the podium, Mr. Mark Geduldig-Yatrofsky.

Mr. Geduldig-Yatrofsky: “Thank you, sir. Mark Geduldig-Yatrofsky, 2713 Sterling Point Drive, Portsmouth. Some people may think I am here to give you more practice in phonetic skills but actually I have two other purposes for being here this morning. One is to state that this Portsmouth resident does not endorse the position taken by City Council relative to what they are calling ‘equitable rates’ within the region. As Mr. Barrett and the representative from Suffolk stated in response to Mr. Oksman’s presentation last time, the cities of Suffolk and Virginia Beach made certain investments and have made certain sacrifices so that this Authority could exist. And for my Council to call on the restructuring and disavowing of those agreements that were entered into at the foundation of SPSA is imprudent, unwise and does not have my support. I might mention that that particular item was an ‘add-on’ to the agenda; it was not on the published agenda of the City Council. They brought it up in the portion of ‘Items Submitted by City Council’ so there was no way for that to be vetted and commented on by the citizenry in June. I would say that this is probably a statement designed to distract the tension of those of us who live in Portsmouth from other issues of a more pressing nature.

The second comment I would like to make is that I do support the Council Resolution from Portsmouth calling on this body to place all proposals that you are going to visit in Executive Session shortly, all of those proposals should be placed on your website and there should be an opportunity for the public across the jurisdictions that comprise this particular body to review and an opportunity for formal public comment before any final action is taken by this body. Thank you very much.”

The next speaker, Mr. Henry Bechard, was called forward. Mr. Bechard stated that he had signed up to speak in rebuttal to someone his organization thought would be speaking today and since they did not, he was withdrawing his request to speak.

### **ACTION AGENDA:**

#### **ITEM NO. 1: REQUEST FOR CLOSED MEETING**

Chairman Williams asked General Counsel, Tony Thiel, to read the request for the Closed Meeting. Mr. Thiel said he would request that the Board make motions as set forth in paragraphs I and II under Item #1 of the Board’s agenda package; a motion for inclusion of non-members as set forth in Paragraph I and a motion to approve the request for a Closed Meeting as set forth in Paragraph II. Mr. Collins (CH) made such a motion and it was seconded by Mr. Cheatham (FR). All present voting yes; opposed none; motion carried by unanimous and recorded vote.

## I. Motion for Inclusion of Nonmembers in Closed Meeting.

*That the following be permitted to attend the closed meeting described below because they are deemed necessary and because their presence will reasonably aid the Board in its consideration of the topics that are the subject of this meeting: CAOs, city/county attorneys, staff and financial consultants of the member communities; SPSA staff present at this Board meeting and SPSA's consultants and lawyers; and Hampton Roads Planning District Commission representatives and their consultants, SCS Engineers.*

## II. Motion to Approve Request for Closed Meeting.

*A request is made for a closed meeting for the following purposes:*

*(A) To receive and review reports and advice regarding (i) the possible sale of the waste to energy system including proposals from Covanta Energy Corporation and Wheelabrator Technologies, Inc., (ii) the purchase or lease from the City of Portsmouth of land, air rights and easements needed for the waste-to-energy conveyor system, and (iii) a possible sale of all of SPSA's assets including a proposal from ReEnergy Holdings LLC, pursuant to the following: (a) Virginia Code Section 2.2-3711(A)(3) for discussion or consideration of the disposition of publicly held real property and the acquisition of real property for a public purpose, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, (b) Virginia Code Section 2.2-3711(A)(7) for the purpose of consulting with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel, and (c) Virginia Code Section 2.2-3711(A)(29) for the purpose of consulting with legal counsel and consultants regarding the negotiation of revisions to the terms of existing contracts and/or negotiation and award of new contracts where competition and bargaining are involved and where discussion in open session would adversely affect the bargaining position and negotiating strategy of the Authority; and*

*(B) In connection with advice and discussions related to SPSA's financing and contracts, pursuant to Virginia Code Sections 2.2-3711(A)(7) and 2.2-3711(A)(29) for the purpose of consulting with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel and possible negotiation of revisions to the terms of existing contracts and negotiation and award of new contracts where competition and bargaining are involved and where discussion in open session would adversely affect the bargaining position and negotiating strategy of the Authority.*

Upon conclusion of the Closed Session, Mr. Collins (CH) made a motion to approve paragraph III as noted herein and in Item #1 of the agenda, Request for Closed Meeting. The motion was seconded by Mr. Wright (IW), acting in place of Mr. Clark who left during closed session.

### III. Motion to Approve Certification after Closed Meeting.

*The Board of the Southeastern Public Service Authority of Virginia hereby certifies that, to the best of each member's knowledge: (a) only public business matters lawfully exempted from open meeting requirements by Virginia law under the Virginia Freedom of Information Act were discussed in the closed meeting to which this certification applies; and (b) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered in the closed meeting just concluded.*

All present voting yes; opposed none; motion carried by a unanimous and recorded vote.

### **ITEM NO. 2: POSSIBLE DISCUSSION OF SALE OF WASTE TO ENERGY ASSETS AND REENERGY PROPOSAL AND ACTIONS ARISING FROM CLOSED SESSION**

Chairman Williams stated that lunch was being deferred until the conclusion of the meeting. He then said we would be having a discussion on the sale of the waste to energy plant and called Mr. Warren Nowlin and Mr. Brad Nowak of Williams Mullen forward to give an overview of their analysis.

Mr. Nowlin stated this is a sale of the RDF, the power plant and the related assets. SPSA will retain and operate the Suffolk landfill, all of its transfer stations and certain hauling operations. SPSA will contract for eight years for waste disposal, and there will be a ten-year extension option that SPSA will have if it so chooses. Two offers have been considered; Covanta and Wheelabrator. We have finalized negotiations with the vendors. Mr. Nowlin then took the Board through a PowerPoint presentation, a copy of which is attached herein as Appendix A, of the process that has occurred to date and detailed the Wheelabrator offer.

Following Mr. Nowlin's presentation, Mr. Ed Donahue of Municipal and Financial Services Group, the principal financial advisors on the sale came forward to give a brief PowerPoint presentation. (A copy of the presentation is attached herein as Appendix B.)

Mr. Donahue said his firm was engaged by SPSA Board and management to evaluate the vendor proposals received by SPSA for the sale of the waste to energy facilities. He added that working in parallel to them but independent of them is SCS Engineers who were hired by the member communities and CAO's. Mr. Donahue stated that both firms used the same data but worked independently of one another, noting that the outcomes of both firms analysis are pretty similar. In conclusion, Mr. Donahue said the Wheelabrator offer is better financially for SPSA and its member communities.

Following the presentations the Board asked the following questions.

Mr. Harrell (CH) said that clearly from the data and all of the analysis the CAO's have undertaken and the evaluations, the Wheelabrator offer that has come forward clearly possessed the best economic deal for SPSA at this time relative to the waste end.

There being no further questions, Chairman Williams requested a motion and a second to vote on the tentative selection of Wheelabrator. Mr. Thiel, General Counsel, said the Board needed to adopt a motion pursuant to a Resolution which had previously been distributed to the Board and that we would entertain a motion to adopt the Resolution for the tentative selection of the Wheelabrator offer and the other items set forth in the Resolution. At this time the Resolution was read aloud and is herein printed into the record as follows:

## **RESOLUTION**

### **RESOLUTION MAKING PUBLIC PURPOSE DETERMINATION UNDER THE PPEA, SELECTING A SINGLE PRIVATE ENTITY PROPOSAL FOR THE PURCHASE AND OPERATION OF SPSA'S WASTE-TO-ENERGY FACILITIES, AND CALLING FOR A PUBLIC HEARING**

**WHEREAS**, the Southeastern Public Service Authority of Virginia ("SPSA") received an unsolicited proposal pursuant to the Virginia Public-Private Education Facilities and Infrastructure Act ("PPEA") from Covanta Energy Corporation ("Covanta") for the purchase of SPSA's waste-to-energy facilities in Portsmouth, Virginia (the "Facilities"); and

**WHEREAS**, by resolution adopted on June 5, 2008, SPSA's Board accepted the proposal from Covanta (the "Covanta Proposal") for conceptual phase consideration and authorized the Executive Director with the assistance of staff to review and accept for conceptual phase consideration additional PPEA proposals for the purchase of the Facilities; and

**WHEREAS**, SPSA received and reviewed additional PPEA proposals (the "Additional Proposals") from Fortistar LLC, Energy Answers International, Inc., and Wheelabrator Technologies Inc. ("Wheelabrator"); and

**WHEREAS**, by Resolution adopted on August 27, 2008, SPSA's Board confirmed the Executive Director's acceptance of the Additional Proposals for conceptual phase consideration; and

**WHEREAS**, by Resolution adopted on August 27, 2008, SPSA's Board determined that it would use the competitive negotiation method in reviewing and evaluating the Covanta Proposal and the Additional Proposals ("Proposals"); and

**WHEREAS**, SPSA's staff, with the advice and assistance of SPSA's consultant that was retained in accordance with the requirements of SPSA's PPEA Guidelines and the PPEA (the "Consultant"), conducted the conceptual phase review, analyzed the Proposals based upon the criteria set forth in SPSA's PPEA Guidelines ("the Guidelines") and recommended that SPSA proceed to the detailed review phase with proposals received from Covanta and Wheelabrator; and

**WHEREAS**, after reviewing the information provided by staff and the Consultant and receiving staff's recommendation, the Board by Resolution adopted September 24, 2008 selected the proposals submitted by Covanta and Wheelabrator for detailed review; and

**WHEREAS**, with the assistance and advice of legal counsel and the Consultant, SPSA conducted a detailed review of the proposals and engaged in competitive negotiation with Covanta and Wheelabrator to negotiate terms for inclusion in a comprehensive agreement consisting of a purchase and sale agreement and service agreement ("Comprehensive Agreement"); and

**WHEREAS**, both Covanta and Wheelabrator have submitted detailed proposals for consideration, but only Wheelabrator has submitted a binding offer set forth in a Comprehensive Agreement; and

**WHEREAS**, SPSA has received an updated binding and irrevocable offer from Wheelabrator (the “Wheelabrator Offer”) that was submitted on condition that its prior offers be rescinded and released; and

**WHEREAS**, the Board has determined that a sale and operation of the Facilities pursuant to the Wheelabrator Offer serves the public purpose of the PPEA; and

**WHEREAS**, the outsourcing of the Facilities pursuant to the Wheelabrator Offer will result in reduced costs to SPSA; and

**WHEREAS**, based upon a review of the proposals submitted by Covanta and Wheelabrator and the advice of the Consultant, SPSA’s staff and counsel, the Board has selected the Wheelabrator Offer as the only proposal for posting and for consideration after a public hearing;

**NOW THEREFORE BE IT RESOLVED**, by the Board of SPSA as follows:

1. Based upon SPSA’s review of proposals SPSA received from Covanta and Wheelabrator and information and advice provided by SPSA’s staff, the Consultant and legal counsel, the Board determines that the sale of the Facilities and entering into the service agreement for the disposal of solid waste that supports the operation of the Facilities for SPSA’s benefit pursuant to the Wheelabrator Offer serve the public purpose because (i) there is a public need and benefit to be derived from such sale and operation, (ii) the purchase price for the sale of the Facilities and the service fees that support the operation of the Facilities are reasonable in relation to similar facilities, and (iii) the proposals will result in a timely sale and operation of the Facilities.

2. Based upon information and advice provided by SPSA’s staff, SPSA’s legal counsel and the Consultant and the criteria set forth in the Guidelines, the PPEA and application of SPSA’s evaluation criteria with respect to the waste-to-energy sale, the Board tentatively selects the Wheelabrator Offer as the proposal for the sale and operation of the SPSA’s Facilities for continuing consideration and possible acceptance pending public comment including a public hearing.

3. SPSA hereby releases any and all other prior offers and proposals relating to the sale of the Facilities.

4. The Board hereby directs SPSA’s staff to make the Wheelabrator Offer available to the public by posting it on SPSA’s website and further directs staff to post and publish a notice of a public hearing on the proposals to be held during SPSA’s regular Board meeting on September 23, 2009 at 9:30 a.m.

Adopted this \_\_\_\_ day of September, 2009

Attest: \_\_\_\_\_  
Donald L. Williams, Chairman

At the conclusion of the reading of the Resolution, Mr. Cheatham (FR) made a motion for its adoption and the motion was seconded by Mr. Barrett (VB). There were no questions or further discussion and Chairman Williams then called for a roll call vote. The results were as follows: Q: Mr. Collins, A: Yes; Q: Mr. Cheatham, A: Yes; Q: Mr. Wright, A: Yes; Q: Mr. Williams, A: Yes; Q: Mr. Heretick, A: Yes; Q: Mr. Johnson, A: Yes; Q: Mr. Gardy, A: Yes; Q: Mr. Barrett, A: Yes. The motion was carried by a unanimous and recorded vote.

Chairman Williams stated that the Public Hearing was scheduled for 9:30 a.m. on September 23, 2009.

Chairman Williams also stated that we had received comments from all of the localities on the waste to energy proposal and were going to continue reviewing that proposal and all the comments and hold a Special Meeting on the 18th of September, 9:30 a.m. in this room to discuss the ReEnergy proposal.

### **OLD/NEW BUSINESS**

Mr. Taylor stated there was one item under New Business. He said this was an ash conveyor replacement that is being required to be done now and it is over \$30,000 budgeted item which is why it requires the Board's approval. It will be done by Suffolk Welding.

Mr. Gardy (SU) made a motion to approve the contract award and it was seconded by Mr. Cheatham (FR). All present voting yes; opposed none; motion was carried by a unanimous and recorded vote.

### **ADJOURNMENT**

There being no further business to come before this Board of Directors, Chairman Williams adjourned the meeting.

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Rowland L. Taylor  
Executive Director

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Submitted by: Lou Ann Ivory  
Secretary, SPSA Board of Director