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Southeastern Public
Service Authority
of Virginia

**Sale and Operation of
Waste-to-Energy Facilities**

Presented by:
Warren E. Nowlin
Bradley J. Nowak

SPSA Public Hearing
September 23, 2009

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Sale of WTE Facilities

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

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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 (which cannot be accepted by SPSA until 30 days following public hearing)

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Sale of WTE Facilities

- **SPSA has received and considered detailed analysis and advice from numerous consultants and advisors, including:**
 - *Municipal and Financial Services Group*
 - *SCS Engineers*
 - *Public Financial Management*
 - *Davenport & Company*
 - *BB&T Capital Markets*
 - *Williams Mullen*
 - *Willcox & Savage*
 - *Sidley Austin*
- **Based on evaluation, financial and legal analysis and advice of its consultants and advisors, including application of established evaluation criteria, on September 10, 2009 SPSA's Board tentatively selected the Wheelabrator Offer for continuing consideration and possible acceptance.**

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Sale of WTE Facilities

- **Wheelabrator Binding and Irrevocable Offer:**
 - **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

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Wheelabrator Offer

- **Key Transaction Documents:**
 1. **Irrevocable Offer** – allows SPSA to accept and enter into below agreements at any time until March 1, 2010, which is final deadline for closing
 2. **Purchase and Sale Agreement** – governing sale and transfer of WTE Facilities to Wheelabrator
 3. **Service Agreement** – relating to Wheelabrator’s management, operation and maintenance of WTE Facilities and duties to process SPSA solid waste after closing

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Irrevocable Offer

- Wheelabrator may not revoke, modify or rescind its offer prior to March 1, 2010 (final deadline for closing; all conditions precedent must be satisfied by that date)
- Wheelabrator has posted \$5 million letter of credit as security – may be forfeited to SPSA for Wheelabrator's breach of Irrevocable Offer or Purchase and Sale Agreement

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Purchase and Sale Agreement – Summary

- **“As is, where is” transaction**
 - Purchase price subject to reduction if condition of WTE Facilities declines during closing period (normal wear and tear excluded)
- **SPSA Indemnification**
 - Article 3 representations and warranties and excluded liabilities (retained by SPSA)
 - Survive for 18 months after closing
 - Subject to threshold of \$1 million (deductible) and cap of \$5 million
 - Liability for fines arising from CO emission violations prior to certain Phase II Control Measures or 120 days after closing

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Purchase and Sale Agreement - Summary

- **Conditions to closing:**
 1. *Approval of the U.S. Navy required:*
 - Consent to 5-year extension of Navy steam agreement
 - Assignment of Navy land easements
 2. *Consent or approval of certain SPSA creditors (e.g., VRA, bond insurers and trustees, Wachovia)*
 3. *Installation of CO Control Measures (at SPSA cost)*
 4. *Lease and Good Neighbor Agreement with Portsmouth*
 5. *Private activity bond volume cap allocation from Va.*
 6. *Consents from counterparties to assigned contracts*

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Service Agreement - Summary

- **Term** – Closing date through **January 24, 2018**
 - *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 facility**
 - *“Put or Pay” contract*
 - *Service Fee of \$18 million in year 1 (\$36/ton)*
 - *\$2/ton fixed annual escalation*
 - *Payable monthly*
 - *“Acceptable Waste” includes non-processible*
 - *Excess tonnage fee for SPSA waste in excess of Annual Delivery Guarantee (\$36/ton in year 1)*

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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

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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

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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*

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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)

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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