

**MINUTES OF THE BOARD OF DIRECTORS  
PUBLIC HEARING and REGULAR MEETING  
SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA**

**September 23, 2009  
9:30 a.m.**

A Public Hearing was held on proposals received for the purchase of SPSA's waste to energy facilities including a binding offer from Wheelabrator Technologies, Inc. tentatively selected by the SPSA Board for continuing consideration and possible acceptance.

To begin the public hearing, Mr. Thiel, SPSA General Counsel, stated we would have a summary of the proposal by Special Counsel and then we would receive public comments after that.

Mr. Warren Nowlin with Williams Mullen in Washington, DC, who has been Special Counsel to the Board and SPSA throughout the process of the procurement and proposed sale of the waste to energy facilities, came forward. He began by saying, "I'm here to give you an overview of the proposed procurement or past procurement of the proposed transaction we have. It is a sale of the refuse derived fuel facility, the power plant, and the related assets that service those assets. SPSA will retain and operate its Suffolk landfill, all of its transfer stations and certain of its hauling operations. SPSA will contract for eight years for waste disposal. There will also be a ten-year extension option at the end of the initial eight-year contract that would allow, if exercised, SPSA and its communities to continue to provide waste through the RDF facility.

This process began in May 2008 with an unsolicited proposal from Covanta Energy. The Board resolved to accept that proposal and start conceptual case review. We proceeded, received a total of four proposals including that of Covanta and proposals from Energy Answers, Four Star, and Wheelabrator.

Mr. Nowlin then took the Board through a PowerPoint presentation, providing a handout which is attached as Appendix A. He highlighted points from the Wheelabrator offer stating it is an irrevocable offer which allows SPSA to accept and enter into the contract at any time up to March 1, 2010. That is the final deadline for closing. If we don't close by then, the contract will expire unless extended by both parties. The purchase price is \$150 million. Furthermore, it has no financing contingency; it is payable in full at closing. There is an annual service fee, the equivalent of which is \$36 a ton, the annual fee is \$18 million. The offer assumes 500,000 tons of acceptable waste to be delivered and that the proceeds of \$150 million will be used for debt repayment and or fees.

Mr. Nowlin also pointed out that the contract does allow that in the event there is insufficient waste, there is a process for them to acquire additional waste. It is only if Wheelabrator reasonably expects after consulting with SPSA to receive less than 62,500 tons per month from all other sources. In the event that they make determination that

they don't have enough waste that they won't receive 62,500 tons a month, first they must try to obtain waste within the SPSA service area, within the eight member communities. If unable do that they must so certify to the Board and they have then a second priority, which is to obtain outside area waste. That is just other Virginia waste and other NC waste. If they then cannot satisfy their fuel requirements, at that point, as a last resort, they may then seek out of state waste, which is waste outside of Virginia and North Carolina. He emphasized that Wheelabrator is required to document the efforts and this is only on a monthly basis so the only time that one would ever expect this to happen would be in a very low waste volume month where they don't have enough fuel to power the plant.

Following Mr. Nowlin's presentation, Mr. Gardy (SU) asked, "On the option period up to 14 [2014], each member jurisdiction would have the option to ante up for another ten years or not, is that correct?" Mr. Nowlin said it would be a SPSA election, stating that SPSA, or the Use and Support agreement only continues through 2018. So the practical reality is you would only elect to extend the contract if the member communities had re-uped with SPSA on the Use and Support Agreement. It is possible that one or more member communities might not re-up. SPSA would still then exist and if SPSA had enough waste, it could then extend the contract. But they would need to know that or this Board would need to know that prior to 2014 in order to exercise that option. Mr. Gardy then stated, "So it's double. Eight have to approve with SPSA and then SPSA approves if they want to?" Mr. Nowlin said the Board would need to make a determination to extend and it would only do so if sufficient member communities were on board to provide that waste.

Mr. Gardy said, "On your transfer stations. Apparently Wheelabrator is going to use Cell VI for its ash and what have you as opposed to just general trash. Does that eliminate the general public going to the transfer stations and delivering their waste?" Mr. Nowlin responded, "It does not. You have noncontract waste going through the transfer station and you have noncontract waste showing up at the landfill. The landfills operation remain SPSA's and so for example, C & D Debris, demolition debris that shows up at the landfill will continue to be deposited at the landfill to the extent that SPSA accepts it. SPSA can change its guidelines and its requirements at the landfills at any time. But for so as long as you want to continue the operations at the landfill and receive those noncontract waste deposits, you may do so. As for the transfer stations, once again you will continue, subject to this Board establishing guidelines, to receive noncontract waste at your transfer stations. However, that noncontract waste revenue will be assigned to Wheelabrator because Wheelabrator is agreeing to accept that waste. It will accept and take the non-processable to a non-SPSA landfill so that non- contract waste will no longer fill up your landfill and cost you the money for the expansion of your landfill. If it's processable waste, it will be delivered to the RDF and they will receive the revenue. If it's non-processable, they will take it to the non-SPSA landfills. But either way, under current posted rates, that would be \$60 waste and the revenue would be assigned to Wheelabrator

Mr. Gardy asked for clarification on whether a citizen who had tree limbs and a little bag of trash, and the landfill is open; can they still carry it to Suffolk and dump? Mr. Thiel, General Counsel, spoke up and said the right under the [Use and] Support agreement to accept waste from everyday citizens are unchanged.

Mr. Clark (IW) said, "Under the outside area waste, what are the controls -- I assume there are more profitable waste agreements and less profitable waste agreements, but what controls are there that I guess eliminate jumping priority one and two, going to perhaps more profitable waste agreements outside of Virginia, North Carolina?"

Mr. Nowlin said, "Thank you. Let me respond first by saying under no circumstances, can Wheelabrator under its contract reject or decline to accept SPSA area waste, SPSA municipal waste in favor of out of area or out of state waste, under no circumstances. That said, we have established what I'll call a three-step paradigm if you will. And your question goes to how do we police their activities to make sure they're not rejecting in-area waste or out of area waste in favor of more profitable out of state waste. Mr. Nowlin said there is a process where they have to consult with SPSA and operators in determining whether or not we can satisfy their waste requirements. And they have certification requirements at each step. You have the ability to audit them; this Board does, at each step. If they're not complying with it, there are penalties. So what we have is reporting requirements. Is it possible that in a month they conduct themselves outside the parameters? It's possible but you'd catch it the next month. You do have the ability to monitor as you go so it is up to SPSA how close a string you keep on them."

Mr. Oksman said, "How do you enforce and if there is a dispute resolution process or is that yet to be determined once we sign an agreement?" Mr. Nowlin replied, "How do you enforce the agreements?" Mr. Oksman said, "Such as restrictions, the sequence of waste." Mr. Nowlin then said, "Are we speaking specifically to Mr. Clark's question about area waste?"

Mr. Nowlin said there are liquidated damage provisions for a variety of the undertakings and requirements of the operator. I believe we have liquidated damages that apply to this provision but as to enforcement if they were doing this we can either -- do we have arbitration records or just litigation?" Mr. Nowack replied, "It would go to dispute resolution first." Mr. Nowlin continued, "So first it goes to mediation, I believe it is and then it would go to litigation. So we do have a provision for mediation not for arbitration. Mr. Nowlin then asked Mr. Nowack if we had liquidated damages and Mr. Nowack responded that it would be in the event of default.

Chairman Williams said SPSA will maintain a contract manager, a person whose job it is going to be to make sure that Wheelabrator is abiding by the contract. It's a partnership; our people will be working with Wheelabrator on a daily basis to make sure that the contract is upheld.

Mr. Collins (CH) said he had a bit of a follow-up to that question and just wanted to make sure that we are clear - that any challenges or concern as it relates to the source of

the waste, if it has to be litigated it's going to be at the expense of SPSA? Mr. Nowlin said he supposed that was correct. Mr. Nowlin also said, "But remember, we have waste that will be taken as incoming waste. And so we will know unless there is fraud and there is no reason to believe that a highly reputable firm would ever try to manipulate its waste. So the short answer is we will know where the waste is coming from. If the waste is not satisfying the three levels in our paradigm, we would have to litigate. I don't know that we have the right to recover their - our legal costs if in fact we prevail on the merits. Let's us get back to you on that."

Mr. Collins also asked Mr. Nowlin to touch again on the issue of the transfer stations as far as the ownership and the construction of additional transfer stations or any other -- the major capital improvements that SPSA had discussed in the last couple of years like roadway improvements, things of that nature. Mr. Nowlin said his understanding was that all those improvements such as the transportation improvements are related to the Cell VII expansion, so it's a package deal. Either you do Cell VII, in which case you have to do the transportation improvements which are part of the \$52 million or you don't do Cell VII and you don't have to do the transportation improvements. Mr. Collins continued by asking if this would be the time to discuss the difference in the tip fee, as far as the service fee and the final tip fee and Chairman Williams stated that it would. Mr. Collins then asked Mr. Nowlin to explain the difference and how we go from the service fee amount, which he had discussed, to the final tip fee that member localities would pay. Mr. Nowlin responded that he would rely on his knowledge that he had gained in these meetings and in particular from SPSA's financial advisors, both Municipal & Financial Services Group and SCS Engineering. He said the base service fee is \$36 a ton. The projected final tipping fee is somewhere between \$170 something and \$198 for the initial couple of years. The difference is the cost of all of SPSA's other operations and some residual debt service. The residual debt service is to tune of about \$56 a ton until payment in full is levelized. And don't quote me on that; quote your financial advisors on that component. And the rest is operating costs for operating your landfill, operating your hauling operations, your contract administration, etc.

There were no further comments or questions from the Board and Chairman Williams then opened the meeting to the Public Comments and called the first speaker to the podium. A total of seven speakers were signed up to address the Board and their comments follow.

Ms. Elyse Kalfas (representing the Norfolk Federation of Civic Leagues), 301 Suburban Parkway, Norfolk, VA 23505

"Thank you, Mr. Chairman. Mr. Chairman and Board, my name is Elyse Kalfas. I'm from Norfolk, Virginia and I'd like to read a statement on behalf of the Norfolk Federation of Civic Leagues.

'SPSA wants to sell a portion of its operation to Wheelabrator Technologies of New Hampshire. Of the \$240 million debt that SPSA has on its books, this move will only eliminate a portion of the debt leaving SPSA and us, the taxpayers, still owing about

\$90 million. In addition, our fees will be going up with this deal even though we are already paying the highest tipping fee in the country. Before this deal was announced we were led to believe that this deal would be bringing us lower fees. We understand that Virginia law requires SPSA to give full consideration to all plans offered, yet you have not done so. SPSA continues to meet behind closed doors. Today you are meeting behind closed doors to discuss ReEnergy's Holdings plan. How can we, the taxpayers, know you are giving full consideration to ReEnergy's plan without keeping this meeting open. Based on the presentation that ReEnergy made to our Federation, they want to buy the entire operation and retire all of SPSA's debt while reducing our fees. Unfortunately, all of SPSA's review of this or lack of it is being done behind closed doors. Since SPSA has been sadly lacking in making good economic decisions in the past and since we, the taxpayers, will be footing the bill, we should at least be privy to your discussions. The savings to us under the ReEnergy plan look dramatic. So SPSA needs to formally and seriously review ReEnergy's plan to purchase all the SPSA assets. By doing so, you open the door for competitive bids from other companies. Let's see who can bring the taxpayers the best offer for all of your assets. It may be ReEnergy. It may be another company. Either way, we are given the opportunity of looking at the best plan. Right now it seems you want to proceed in only one direction, selling only a portion of SPSA's assets to Wheelabrator. If SPSA is willing to openly and formally explore the option of selling all of SPSA's assets before any decision is made, all the citizens of the region will win. Thank you.”

Dan Montague (representing self), 4605 Krick Street, Norfolk, VA 23513

“Good morning. My name is Dan Monahue. I live in Norfolk, Virginia. I can't believe what is going on here, for the simple reason is, selling off the power plant is like selling the engine out of your car to your neighbor who can tell you how many days a week you can drive it and how far you can drive it. This is absolutely stupid. If you want to get out of the trash business, get out of it. But if you don't, then make everybody that's in it pay a fair share; that's what I mean, everybody pays the same fees. All these suburb communities have been allowed to do this and do that. Virginia Beach doesn't even take part in the recyclables. Tidewater farmers are going broke aren't they; yeah. They're making a ton of money off the recyclables and what I say is everybody in this room, especially you guys, are putting the trash business into the ditch. Just like the economy was. And we need to either pull together or sell the whole thing off at one time and each one of you guys turn around and go home. Thank you.”

William Wrenn (representing self), 2556 Woodshire Circle, Chesapeake, VA 23323

“I'm William Wrenn from Chesapeake, Virginia. Mr. Chairmen, members of the Board, I come to you today to reject the offer from ReEnergy Corporation on the grounds of lack of real-world experience in managing a large MSW [municipal solid waste] system as vast and complex as SPSA. I offer the following summary of the company. ReEnergy Holdings, LLC, a wholly-owned subsidiary of Riverstone Holdings, a private equity firm based in New York was formed in 2008. The four top executives all coming from a company called EAC Operations, Incorporated, and one from American ReFuel. EAC

was a developer of the Seemask waste to energy plant in Massachusetts, which was later sold to Covanta Incorporated and American ReFuel which has been involved in proposed trash port idea to bring New York trash to Hampton Roads, a proposal that was opposed by many in the community. EAC became a subsidiary of Covanta Holding Corporation as of December 2007, and the little information I can find about American ReFuel seems to me that they may have been purchased in whole or in part by Covanta Holding sometime in 2005. It seems to be a pattern forming here. The parent company of ReEnergy is Riverstone Holdings, LLC, a private equity firm specializing in the buy out middle market mature turn around and growth capital investments. The firm invests in specific sectors that are under exploited and highly fragmented. The top executives are former partners of managing directors of Goldman Sachs Investment firm of New York. With \$17 billion in assets, the firm has investments in 49 energy-type companies from oil exploration to solar energy. Of these 49 companies, 11 have realized some return on investment, two have a partial return and 36 have not released a return at all, including ReEnergy Holdings. What we see here is a private investment firm with associations and investments in firms that want to acquire our public solid waste company. And I can only ask why. With falling prices and electric sales and declining MSW tonnage collection, the tipping fee becomes a critical to return on investment. ReEnergy has stated they will pay off all of SPSA's debt, invest millions of new equipment and technologies all while reducing the tipping fee by 50%. And all they want is a simple 20-year contract from each of you. With so much of our current economic trouble blamed on Wall Street and its actions to have a private firm that reports to no one running this company is a great risk. While you were having this public hearing on ReEnergy because they didn't want to play by the rules. When SPSA offered waste to energy division for sale they didn't bid on it. EAC bid on it. But they didn't bid on it. But they pledged an unsolicited bit from the whole company. Wait a minute; you weren't selling the whole company. So when you rejected their offer, what was their reaction? They hired a top Norfolk law firm to canvass you and your fellow City Council members out of the public forum and behind the scenes. Basically to wrap up, sir, why is this company going to such great lengths? It's profits, return on investments; that's their bottom line. They have no sense of community here. In fact, they haven't come up -- if we hadn't come up on the radar screen, they wouldn't have know we were even here. Wheelabrator Technologies and its parent Waste Management was the proper choice. They have a long history of waste management handling, and I want a company that knows the day-to-day requirements of running a true solid waste company, not just what they see on the balance sheets. Thank you.”

Mark Geduldig-Yatrofsky (representing Portsmouth City Watch), 2713 Sterling Point Drive, Portsmouth, VA 23703

“The advantage of not being the first speaker you get to piggyback on good ideas that come ahead of you, and a gentleman who just spoke certainly touched on a number of concerns I have about ReEnergy. Let me talk about the Wheelabrator deal. As a resident of Portsmouth, I would be happy to see a power plant and RDF turn into taxable entities. The City of Portsmouth is chronically short funds from real estate taxes. We have a large percentage of our land that is in a nontaxable status. So I believe this would be a great

help to our bottom line. I think the \$150 million purchase price sets a fairly good reference point in terms of valuation by the City assessor and the business model that is being proposed is promising in terms of bringing additional tax revenues to my city. I was impressed with the overview presented today in terms of how tightly woven this contractual agreement seems to have been, and I think that there is promise in terms of the service to the cities, municipalities, that make up the SPSA organization and the potential for revenue for my city. So I encourage you to pursue this avenue. Thank you.”

Charles Dickens (representing Master Enterprises (?), 2224 S. Battlefield Boulevard, Chesapeake, VA 23322

“Mr. Chairman. My name is Charles Dickens. I'm with Master Enterprises. I have a residence in the City of Chesapeake and I work nationally with a group of companies that are involved in the refuse collection industry. We manufacture a product called the ‘RDCS’ that would enable the services to generate about \$96 to a \$192 million a year in revenue. The RDCS would also enable the member municipalities to build a quality recycle program where 90% of all the recyclable material generated by residential households could be reclaimed. This would all be accomplished with a minimum equipment investment by the member cities of the SPSA and since SPSA refuses to give us an audience for the proper presentation of our product, I can only assume that they have another agenda that effectively would lock out a vendor that would address all their needs. Because of the position of the leadership of SPSA on the RDCS, none of the city managers other SPSA Board members or the general public know that the RDCS even exists and that there are economical options for their situation. Each member city is so eager to wash their hands and distance themselves from this financial situation that they have not even sat down and looked at what they're allowing SPSA to get them into as evidenced by the editorial in the Virginian-Pilot, there will be multiple more surprises in store for Hampton Roads that were not publically addressed prior to any contractual agreements made by SPSA. Please appreciate that the public private partnerships in other metropolitan area that this MSA is trying to use as a model were put together because municipalities felt that they had to and at the time they felt that there were very few options available to them. Now there are other options that are available to these situations that are far superior to these models and the city managers and the public are still not aware of it. To continue to promote alliances with professional businessmen who recommend these alliances to begin with is not the best idea. These guys put these partnerships together for a living. They have done this over and over, and they are very, very good at what they do, which primarily, is talking municipalities out of money. There is not one example of a financial benefit to a municipality from a public private partnership once that municipality has entered into one of these contractual agreements. There is not one example that has any form of neutral or third party validation. If for whatever reason a public private partnership is going to be continually pursued by the SPSA, could they at least look at the books of these service authorities in neighboring cities that they have these agreements in place with in the past and answer a few questions. What the transfer of these debt loans into other long term financial obligation to any of the municipal bond ratings once the Authority convinced the member cities to be responsible for recycling so that they could artificially remove that responsibility from

the books. What did that do for the general fund requirements for member cities and how did it affect the resident's tax responsibility for that city? What was paid for for the Authority's capital equipment and other assets versus what they were sold for and how this affects your tipping fee. Then, again, I will still look forward to the opportunity to give the Board of SPSA and the city managers of Hampton Roads a presentation of the RCDS. Thank you for your time."

John Holland (representing self), 4810 Nansemond Parkway, Suffolk, VA 23435

"You got a thing here on capital- it's just amazing as it can be. It really says we got to do something quick and at the end of it is about \$20 million bucks. If you all knew what you were doing, it would be different. You got in here -- let's see, front-end loader, two front-end loaders. One of them is \$350,000, I believe it is. Well you got three of them sitting at the RDF plant coming from the mulch pile and the other the shine is gone off the paint, they're damn near brand new. I'd love to have them; sitting on the grass at the RDF plant. You have some scales here; replace inbound scales, \$75,000. You got replace outbound scales, \$30,000. Well, the only thing that goes in different direction is the truck. Well, this all depends on what you're doing. This is to scare you all. This is bogus. The only thing goes bad on these things is load cells, about \$1500 bucks a piece. I've had the same set of scales for 30 years. You all better look at this. Go around to these places. You can't run this place from a boardroom. \$150,000 for pavement because you got potholes. There ain't a city here that don't send out to fix potholes in the street. You better pay attention to this, as far as who you going to sell to or what you're going to do, you all ain't got the slightest damn idea of what the hell to do or who to sell to. You're going to get took any way it goes. Your transfer stations better be bought in by the cities. That will lower your debt. Thank you."

Mark Schwartz (representing Wheelabrator Technologies), 4 Liberty Lane West, Hampton, NH 03842

"Mr. Chairman, Mr. Director, members of the Board, and members of the Authority, I want to reiterate what we said last week, that Wheelabrator Technology is delighted to be tentatively selected to move forward towards the final contract for the purchase and sale of waste to energy facilities. This process started over a year and a half ago following the PPEA guidelines, and it has been noted a couple of times here, it started with four companies. It was narrowed down to two, and the last six months have seen simultaneous negotiations between the two finalists that were very intense and very deep, as far as due diligence of both parties go. A little bit about the due diligence and what goes into these deals and running these facilities. Ongoing in the last year and a half, we have had members from our operational services group, our engineering services group, our environmental safety and health group, our human resources group, our financing and market analysis group all involved with the folks at your waste to energy facilities and building a relationship and understanding the intricacies that this deal encompass. We have 16 waste to energy facilities and five independent power plants within the Wheelabrator organization. I want to note that every one of these facilities is an OSHA-VPP Star site. That's the highest recognition for health and safety that can be awarded by

the Occupational Safety and Health Administration and we look forward to bringing that culture forward to what hopefully will be a new Wheelabrator business unit known as 'Wheelabrator Portsmouth'. We also look forward to our community relation efforts moving forward towards a final contract with our host community, the City of Portsmouth and some of the civic organizations that have been involved over the years with the Authority and the City of Portsmouth, the Craddock Civic League, whose meetings we have attended. The effort has been intense to date. There is more work to do and we stand here today ready to answer any questions and be able available to the Authority or any other citizens that wish to talk further and we thank you very much for the opportunity to continue on this long process."

Chairman Williams stated that this concluded the public hearing and we would stand adjourned until 10:30 a.m. at which time we would start our regular Board meeting for this month.