

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

May 14, 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)
William E. Moody, Jr. <i>absent</i>	(PO)
Dallas O. Jones <i>absent</i>	(SH)
Michael J. Barrett	(VB)

Alternates:

William E. Harrell	(CH)
June Fleming	(FR)
W. Douglas Caskey	(IW)
Stanley A. Stein	(NO)
G Timothy Oksman	(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, Mr. Clement Mikowski, Treasurer to the Board, Mrs. Blanche Christian, 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) and was followed by Roll Call. A quorum was present.

PUBLIC COMMENT PERIOD

There were no speakers signed up for the Public Comment period.

INFORMATIONAL AGENDA:

ITEM NO. 1: APPOINTMENT OF ACTING SECRETARY

One of the things we have to do, Lou Ann Ivory (Secretary) is out on medical leave. She should be back by the middle of next week, but we have to have a Secretary so Lou Ann resigned and I accepted her resignation as of Friday. Subsequent to that I appointed Blanche Christian as our Secretary. The Bylaws say I can appoint without having to vote on it.

Chairman Williams said he wanted to recognize in the audience today, Ms. Regina Williams.

ACTION AGENDA:

ITEM NO. 2: CONSIDERATION OF FINANCIAL DOCUMENTS RELATED TO RESTRUCTURING OF SPSA'S DEBT

Chairman Williams called Frank Robinson, Bond Counsel with Sidley Austin, forward to review the debt restructuring. Mr. Taylor had a few brief comments before Mr. Robinson began.

Mr. Taylor said that as the Board is aware, we began this process back in January. During that time we approached VRA, we approached Wachovia and we got Frank (Robinson) involved and anybody else we possibly could to begin to look at the particular situation. One of the avenues by which we felt like we would be able to accomplish parts of the goal would be to restructure some of the debt that SPSA currently has. That restructuring would be able to free up funds, especially over a two to three year period that would enable us to have considerable ability to continue to operate and provide services. After many meetings, many e-mails and many telephone calls, trips to Richmond, and all, we finally come down to today and I believe the comment was made we feel like about half of North America has had an opportunity to get every input, review every document and look at everything and make their suggestions. With that, I would like to turn it over to Frank (Robinson) to give you his brief report on what we have today before us.

Mr. Robinson said he would just refer to the agenda that we sent to you. The agenda basically tells the story. The end of the story, at least this first phase now, we are not dealing with the sale of the waste energy facility, just the restructuring, is a VRA pool

sale that will include up to \$72 million of refunded bonds issued by SPSA. The proceeds of those refunded bonds will payoff some of your bonds that mature in the years, this July 1st and in fiscal years 2010 and 2011, and shift that debt service back. Napoleon Nelson, who is your financial advisor, will show you slides in a minute that will present to you graphically what the impact of that is. The other integral part of this just to be clear as Bucky mentioned, the offer by Wachovia to consolidate the two lines of credit we have with them now and extend that until May 2010, coincidental with that Chesapeake and Norfolk pursuant to the CAO's plan will guarantee the payment of principal and interest on that. There is also the Virginia Beach deferral of up to \$26.6 million and I should have mentioned that the \$72 million bonds would be guaranteed by SPSA's other 5 members. Napoleon, why don't you come up if you will and show the board sort of what the impact of the restructuring - what it is we are trying to achieve.

Mr. Taylor introduced Napoleon saying, "For those of you who don't know, Napoleon Nelson is SPSA's financial advisor working through PFM who is the firm that is our financial advisor. PFM brought Napoleon on to make sure we had SPSA's viewpoints. Napoleon has many years of experience and I think he is going to go over a part of that and give you some background."

Mr. Nelson began, "Good morning; thank you for having me. As Bucky mentioned, I have been a financial advisor for 20 years actually and have served a number of communities in the Hampton Roads area as financial advisor, have significant solid waste experience as well over that period of time, worked in projects in Maine, New Jersey and Tennessee at a national firm, so I do have some combination of all of that. And what I would like to do then today is talk to you a little bit about the debt restructuring and where we are.

Start with this; this actually is a slide that may be familiar to you. Joanne Carter actually presented it back in January. This slide talks to the fact basically that the authority's debt service is very much front-loaded. You can see 2009, -10, -11, -12, very high and we had space in those out years and the big goal of the restructuring if you will, is to slice some of the debt service off the early years and tack it back in the back years. So this was in January, that's where we were. As the months progressed, the plan took more shape and it was determined that \$72 million was the amount of bonds that would be issued. We started to look for targets around the \$15-million savings in that period of time that the bonds would be secured by a GO pledge and the deal itself would be part of the Virginia VRA pool-bond program as Frank just mentioned. And now we are bringing you up to more or less last week. More recently this is what the financial team has looked at in terms of the specific maturities and bonds that we would look to restructure with the proceeds of this new issue. And as you can see, there are a number of candidates, and you actually will see \$77 million, before you get excited \$72 million is the maximum amount any bonds restructured would be. Part of that \$72 million allows us to actually grant a piece of debt service reserve fund that is associated with that so we can actually then use that to get more savings, if you will, by buying more securities so we sort of turbo-boosted, if you will, the amount of savings that we could garner. Interest rates are moving all the time, not only the interest rate on the new bonds that VRA will issue on

our behalf, but also in terms of what those proceeds, what securities you can invest those proceeds in also matters to the financing. So the specific numbers will change as we go forward over the next weeks, but as of last week this is where we were. I will probably refer you to the chart on the far right; this gives you the basic premise. The blue line there is, again, your existing debt service and by restructuring the bonds that we showed on that previous slide, we generate or carve out down to the red line that much in savings in those early years. So we are taking savings out of the early years, and putting them back in the back years. And you can see the differences, 2009 fiscal year we have goal of \$15 million. This would suggest that in 2009 which doesn't have a lot of time after the closing before 2009 ends but we are able to squeeze in \$13.6 million based on current rates in the year 2010. I think it is fair to say as I said at the start this is generally where we will end up, but interest rate movements over the next couple of weeks before this gets to market will simply impact those. So, Frank, that essentially gives a sense of what's at stake in terms of the restructure.”

Mr. Robinson resumed, saying, “Just so you have a picture of what obligations you have outstanding and what the cash flows are, something that the CAO’s and financial advisors have focused on let me take you briefly through this. Your financial report you get every month on a consolidated basis so you will not see the detail I am showing you here. When you see revenues you see the power plant revenues and the disposal system revenues combined. A bond holder has a different picture. All your bonds are secured by the disposal system, only Wachovia has any interest in what goes on on the power plant system side if they are revenues. So start with the power plant system side. Steam and electric revenues pay you monthly O & M; one item included in O & M for accounting purposes or consolidated accounting purposes is simply an intra-company transfer is the RDF payment that the power plant system makes over to the disposal system. Clement (Mikowski) confirms there was a little over \$8 million last year. Down at the very bottom when you see we come to the end of the disposal system flow of funds any excess there is available to make up any deficiency on the power plant side and taking into account that \$8 million transfer that goes on every year generally there is a deficiency and in effect it balances out, it zeros out. On the right-hand side then, this is the security failed bonds, we have first under the senior bond resolution all of the gross revenues goes to an account at your depository bank which happens to be Wachovia. From there you make monthly transfers to take care of your current operating expenses. Then you come to the trustee to pay your senior bonds or what you have seen in documents and in your agenda package referred to as first-tier of debt. The only senior bonds that will be outstanding after the VRA restructuring will be principally two maturities due in 2014 and 2015 that are insured by Amback and an obligation to Wachovia that is due in 2011 and a variable rate bond issue that is backed by a Wachovia letter of credit. VRA bonds, senior bonds will be refunded as part of the restructuring and two M.B.I.A. maturities will be restructured. So in the flow of funds then after we provide for senior debt service we make up any deficiency in the debt service reserve account called the Senior Reserve Account. As Napoleon (Nelson) mentioned, one of the consequences, one of the amendments we made and I’ll show you in a minute when we come to the first resolution that you will consider today, is being made to explain a balance of over \$14 million from that account to go into the escrow for the restructuring

and let us retire more bonds than we could if we only had bond proceeds available. After the Senior Reserve Account you go to a larger account called the Subordinate Obligations Account and it is under that that all the rest of your debt flows. Your second-tier subordinated debt is issued under something called the Senior Subordinated Bond Resolution. The only debt outstanding under that is payable either to VRA or you have one contingent obligation for \$25 million that's payable to Wachovia. I say contingent because the only time ever pay a principal interest is in the event that Wachovia's letter of credit posted with the Department of Environmental Quality to provide "financial insurance" that is required to operate your landfill. Primarily it would be only if that were drawn on that you would have then a 5-year term out obligation to Wachovia but the expectation is that will never happen. Your third tiered subordinated debt is this \$72 million that we talked about. That \$72 million will be sold basically triple-A debt by VRA and we expect to close it no later than June 17th because the taxable market prefers shorter closing periods than any market. There will be a conversation shortly with the senior manager who is Morgan Keegan to see about closing it a week early. But in any event, one of the requirements to the VRA Board resolution was from Franklin, Isle of Wight, Portsmouth, Southampton, and Suffolk as they have agreed to do will guarantee to the VRA the principal and interest on SPSA's up to \$72 million bonds that are at this third tier. The fourth tier will be the obligations to Wachovia, the \$17.2 million promissory note. Again, we'll talk about that in a minute. Again, one of the conditions from Wachovia and their term sheet that they have a representative here today who will explain that was the guaranteed 50/50 from Chesapeake and Norfolk that is in place. We will try and close on that today and tomorrow. Finally, in the last position at the moment in terms of debt is the fifth tier subordinated debt and on parity we have the Virginia Beach note that we will again issue and close on today and tomorrow that will evidence SPSA's obligation to repay Virginia Beach up to \$26.6 million for deferred fees called tipping fee rebate and ash landfill fees. On parity with that would be SPSA's obligation to reimburse the seven guarantors, that would be Norfolk and Chesapeake on the Wachovia note if they were ever drawn on they would be entitled to reimbursement but only in this position and on parity with Virginia Beach. Similarly, if there were ever default by SPSA on the guaranteed bonds, the reimbursement obligation to the other five members that have guaranteed that debt again would, in effect, come in this box and on parity with your obligation to repay Virginia Beach. VRA is requiring SPSA, beginning July 1 of 2009 or August, to begin to set aside half of three months' budget of operating expenses, that is a monthly deposit made over 24 months. Once it's full, which is to happen by July 1, 2011, if there is a withdrawal then you will obligated to make up that deficiency. One other thing I should mention, one of VRAs conditions was that the rates you adopt must include everything in that flow of funds including the mandatory deposits to this operating reserve. Then, finally, the balance here the general account is the account that I referred to that is sort of "surplus account or excess funds account" if you will, and that money is available for any lawful purposes of SPSA's including, as I mentioned at the beginning, curing any deficiency on the power plant system side.

Now there are six resolutions that were included in your package that Blanche has given you because as I mentioned to you at the end of the agenda item things were still in motion as much as we would like to shut off debate on it last May 7th and get your

agenda package out in final form on a timely basis. The first resolution on top, the Senior Supplemental Resolution there is really no significant changes in that. The primary purpose of this resolution in your agenda package indicates one, to accelerate the date on which we can as a result of the VRA refunding, determine that we got this \$14 million surplus in Senior Reserve Account and withdraw that and put it in the escrow for the fees related to the bonds. Without the consent of Ambeck and Wachovia and VRA, all of whom have an interest in the Senior account at the moment we couldn't have done that and we would have been delayed until after July and would have been able to refund fewer bonds. The other purpose was Virginia Beach in its document wanted assurance that we were in compliance with Section 501 (C) of the resolution, both Senior and Senior Sub that require us to be current in all our payments on the actual landfill agreement. The Senior Subordinated Bond Resolution which is the second one I will just point out two things. One thing was there is a new Section 208 in there. One of the additions to the Senior Subordinated Bond Resolution was the additional bonds test that the VRA required. That is that this resolution which never had A. B. T., never had a 'test' you had to issue bonds, only had a rate cut. They wanted an additional bonds test, and I did that but what I realized later after we sent this package out to you was we had not adequately addressed the circumstance of the DEQ situation. You have, for example, last year the letter that Wachovia posted to your account with DEQ to let you operate was in the amount of slightly over \$24 million. The DEQ ranks it automatically increased this year to a little over \$25 million. What this Section 208 does is take out the additional bonds test that increment that occurs every year so we don't have to go through the drill of showing revenues over debt service equal this or whatever and we can continue to do this automatically as SPSA and Wachovia have done year after year. I had to add consent at the end which was Wachovia's consent because they do have interest in that. That is Exhibit C, the last page.

The next resolution is the Guaranteed Subordinated Bond Resolution which had to do with the line of credit. I put one guarantee agreement in there because there is one important provision I want you to be aware of that affects SPSA and that is on Page 7 of the markup in 'D'. One of the things that in discussions with the financial advisors the guarantors from Virginia Beach that came through, was that they wanted a provision in the Guarantee agreements that they were party to and in the Forbearance Agreement the fact that SPSA could not issue any additional debt period, without the consent of each community, that's all eight of them. Obviously from wearing SPSA tee shirt as I do that's not unreasonable; suppose we have an explosion at the power plant we need money, whatever, so the compromise that was mentioned worked out is no additional debt without the approval of City Council or Board of Supervisors with the exceptions in here I want you to be aware of. One is it draws on the line of credit we have with Wachovia up to \$17.2 million. The second one is this 208 provision I talked to you about, that is the annual increment in the letter of credit and obligation contingent obligation reimburse Wachovia if that were drawn on. Roman number 3 was to permit equipment leases at least purchase agreements, if you will, but only to the extent of \$2 million outstanding at any time. Finally there is a provision here for an emergency in the amount at any time of up to \$1 million in any one fiscal year. One other change that's not in here. Nine o'clock last night I realized with the change in climate with the Wachovia

transaction and Virginia Beach transaction being required by VRA to close by tomorrow, this prohibition doesn't work as it is in the Virginia Beach Forbearance Agreement and in the Guarantee Agreement from Chesapeake and Norfolk that backs the Wachovia promissory note because it does not exclude, does not permit the \$72 million which is, after all, the key, so I sent e-mails to counsel last night and they both agreed with that one change this is the language that will be in here. So in the Guarantee Agreement for Chesapeake and Norfolk and in the Forbearance Agreement with Virginia Beach there will also be exception we will do this afternoon up to \$72 million in Guaranteed Subordinated Bonds to affect the restructure.

The resolution for the Forbearance Agreement is next; just minor changes. With that, Mr. Chairman, there are six resolutions that I would ask be consider and adopted. Chairman Williams asked if there were any questions for Mr. Robinson from any member of the Board and there being none he asked that each member turn to about the sixth page where it says 'Recommended Actions', top left-hand side "Recommended Actions and Separate Votes'. That's the six resolutions that we have to adopt. If you turn that page over, that language for the motions, six motions and I would like for the people making the motions if they would to read the motion and call for the second discussion and vote on them.

Mr. Barrett (VB) made a motion for adoption of the Supplemental Resolution amending the Senior Bond Resolution in the form presented to the Board at this meeting. The motion was seconded by Mr. Johnson (SH) (who was present and voting for member Mr. Dallas Jones who was absent). All present voting "yes" (Mr. Johnson, Southampton County Alternate Member present and voting instead of Mr. Dallas Jones and Mr. Oksman, Portsmouth Alternate Member present and voting instead of Mr. William Moody); opposed none; motion carried by unanimous vote.

Mr. Gardy (SU) made a motion for adoption of the Restated and Amended Senior Subordinated Bond Resolution in the form presented to the Board in this meeting. The motion was seconded by Mr. Cheatham (FR). All present voting "yes" (Mr. Johnson, Southampton County Alternate Member present and voting instead of Mr. Dallas Jones and Mr. Oksman, Portsmouth Alternate Member present and voting instead of Mr. William Moody); opposed none; motion carried by unanimous vote.

Mr. Clark (IW) made a motion to adopt the Guaranteed Subordinated Resolution in the form presented to the Board at this meeting which authorizes the issuance of up to \$72 million of Guaranteed Subordinated Refunding Revenue Bonds of SPSA and approves the forms of a Financing Agreement, a Local Bond Sale Agreement and an Escrow Agreement, all with VRA, and in the case of the Escrow Agreement, the U. S. Bank National Association and the form of Guaranty Agreement with Franklin, Isle of Wight, Portsmouth, Southampton County and Suffolk and the U. S. National Bank. The motion was seconded by Mr. Collins (CH) and all present voting "yes" (Mr. Johnson, Southampton County Alternate Member present and voting instead of Mr. Dallas Jones and Mr. Oksman, Portsmouth Alternate Member present and voting instead of Mr. William Moody); opposed none; motion carried by unanimous vote.

Mr. Collins made a motion for adoption of a resolution authorizing the issuance of a promissory note in the principal amount of \$17.2 million payable to Wachovia Bank National Association and also to approve and authorize the Executive Director to accept the Bank's term sheet relating to the note and the form of the Guaranty Agreement with Chesapeake and Norfolk. The motion was seconded by Mr. Oksman (PO). All present voting "yes" (Mr. Johnson, Southampton County Alternate Member present and voting instead of Mr. Dallas Jones and Mr. Oksman, Portsmouth Alternate Member present and voting instead of Mr. William Moody); opposed none; motion carried by unanimous vote.

Mr. Johnson (SH) made a motion for adoption of the resolution authorizing the Forbearance Agreement with Virginia Beach and the related promissory note in the principal amount of up to \$26.6 million. This motion was seconded by Mr. Cheatham (FR) and all present voting "yes" (Mr. Johnson, Southampton County Alternate Member present and voting instead of Mr. Dallas Jones and Mr. Oksman, Portsmouth Alternate Member present and voting instead of Mr. William Moody); opposed none; motion carried by unanimous vote.

Mr. Cheatham (FR) made a motion to authorize SPSA's officers and counsel to carry out the actions authorized. The motion was seconded by Mr. Gardy (SU). All present voting "yes" (Mr. Johnson, Southampton County Alternate Member present and voting instead of Mr. Dallas Jones and Mr. Oksman, Portsmouth Alternate Member present and voting instead of Mr. William Moody); opposed none; motion carried by unanimous vote.

ITEM NO. 3: REQUEST FOR CLOSED MEETING

Prior to the motion for a Closed Meeting, Chairman Williams invited any City Managers, any City Attorneys or financial advisors to remain in the room. Mr. Thiel requested the Board make the motions described in Paragraphs 1 and 2 as published in the agenda, one to admit the additional members and the other to go into closed session in accordance with the language that appears in Paragraph 2. Mr. Barrett (VB) made such a motion and it was seconded by Mr. Collins (CH). Before the vote, however; Mr. Gardy (SU) said he wanted to had one statement he wanted to make for the record. Mr. Gardy said he thought it was fair to say we wouldn't be here today if it had not been for the good work of the CAO's in meeting from eight cities to put this whole thing together and get something we can come here and vote on today. He also said he wanted the record to show that and I want press to know that that really the CAO's put this whole thing together. Chairman Williams said Mr. Gardy had stolen his thunder and agreed with his statement. Chairman Williams also said we do thank all the CEO's, the amount of time and cooperation with all the eight localities and some people say we have no regional cooperation but we have plenty of regional cooperation when it comes to this and we put together a package that will benefit the citizens of the Hampton Roads area.

Mr. Collins (CH) said, in difference to Jeff (Gardy), he didn't mind the press knowing. Mr. Gardy added that he wanted the press to know. Mr. Collins said, "Especially given the fact that the administrators have had to deal with difficult budgets in each of our

localities and most difficult probably in all of history of the localities, and that took a lot of time and resource and I just take my hat to each and every one. I really appreciate that.

Mr. Clark (SH) added that the County Attorneys and City Attorneys as well as the CAO's; those two bodies worked together very well

Chairman Williams added that it is "our organization". A vote was then taken on the motion to enter into a Closed Meeting. All present voting yes (Mr. Johnson, Southampton County Alternate Member present and voting in stead of Mr. Dallas Jones and Mr. Oksman, Portsmouth Alternate Member present and voting in stead of Mr. William Moody); opposed none; motion approved by unanimous vote.

The motions the members of the Board were asked to make, second and approve are as follows:

I. Motion for Inclusion of Nonmembers in Closed Meeting.

That the following be permitted to attend the closed meeting 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 Hampton Roads Planning District Commission representatives.

II. Motion to Approve Request for Closed Meeting.

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

(1) In connection with the possible sale of the waste to energy system, pursuant to (a) Virginia Code Section 2.2-3711(A)(3) for the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, and (b) 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/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.

(2) In connection with advice and discussions related to SPSA's debt restructuring, financing and related agreements, contracts with member communities, other contract proposals and tipping fees, 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 completion of the Closed Meeting, a motion was made by Mr. Collins (CH) and seconded by Mr. Barrett (VB) to approve the below shown certification and resume an open meeting status. All present voting yes (Mr. Johnson, Southampton County Alternate Member present and voting in stead of Mr. Dallas Jones and Mr. Oksman, Portsmouth Alternate Member present and voting in stead of Mr. William Moody); opposed none; motion approved by unanimous vote.

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.

OLD/NEW BUSINESS

There were no Old or New Business items at this meeting.

ADJOURNMENT

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

Rowland L. Taylor
Executive Director

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