

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

**August 26, 2009**

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

**ROLL CALL**

Members:

Don Williams, Chair	(NO)
Bryan L. Collins <i>absent</i>	(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 staff Mr. Rowland (Bucky) Taylor, Executive Director, Ms. Liesl R. DeVary, Treasurer to the Board, Mrs. Lou Ann Ivory, Executive Assistant and Secretary to the Board and Anthony M. Thiel, SPSA General Counsel. Numerous legal and financial individuals from each of the member localities and several staff members from the Hampton Roads Planning District Commission were also 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 (during Public Comment)

\*\* Indicates Early Departure

The meeting began with the invocation by Mr. Johnson (SH) and was followed by Roll Call. A quorum was present.

## **PUBLIC COMMENT PERIOD**

Chairman Williams stated there was one speaker signed up for the Public Comment period, Mr. Mark Geduldig-Yatrofsky, who was then called to the podium.

Mr. Geduldig-Yatrofsky said: “Good morning; sorry, I’m still on Portsmouth City Council time. I come here today to address your panel deliberations on proposals from I believe three different private entities interested in owning all or a portion of SPSA’s holdings and taking over SPSA’s operations to one extent or another. Last night at Portsmouth City Council our Alternate to this body introduced two resolutions; I’m going to address the later of the two. My sense of it is that it dealt with fair consideration for the submission of ReEnergy which has proposed to take over all of what SPSA does. I know in Portsmouth we are going to miss you if you go out of business; we won’t have you to kick around anymore and with Nixon dead, you know, it’s kind of rough. But I am a little confused about the intent of that particular resolution considering your agenda according to the creation date of the document which was August 21st, four days prior to the city council meeting, you had already placed on the agenda ‘consideration of the ReEnergy proposal’. So I am not sure why City Council in Portsmouth felt it necessary to memorialize you to give them a fair hearing. Maybe it is the fairness of the hearing that is in question. I submit that as reasonable individuals which I assume you all to be and I know at least Mr. Barrett to be, that you would look at the business proposition based on its merits. So I assume that you all intend to examine all three proposals and see how they serve the interests of the citizens of this region. There have been innuendos in Portsmouth City Council regarding the ‘bisentine nature’ of your deliberations. I would ask you if you are going to revert to ‘ancient history’ and behave like a secret religious order that you not do that, but I assume that just my request of that is not going to stop you; however, I tend to think that as elected officials and business people you will try to give this your fairest and most objective review and keep in mind that the citizens of the eight localities that comprise SPSA are very much awaiting word about our future rates and about the vital, although often swept under the rug, function of collection of solid waste. I want to add one more thing that was not on the agenda per se but something to consider. If your rules, if your charter does not give host communities final say over disposition of SPSA assets in the event that SPSA dissolves, I think they should be amended so that Portsmouth, Suffolk, and Virginia Beach, all of which hold major SPSA assets today would have veto power over any disposition of assets within their municipal boundaries. I think the citizenry deserves to be protected if SPSA goes away. Thank you very much.”

## **ACTION AGENDA:**

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

Mr. Thiel requested a revised motion be made to approve the motion for Closed Session and the motion for Inclusion of Nonmembers as set for under Item I of the agenda package as distributed to the Board and shown as subparagraphs I and II. The revised Closed Meeting Motions are herein printed below and were included in the hard copy of the agenda package. Mr. Cheatham (FR) made such a motion and it was seconded by Mr. Johnson (SH). All present voting yes; opposed none; motion carried by a unanimous and recorded vote.

August 26, 2009 SPSA Board Meeting – Closed Meeting Motions - REVISED

The members of the Board will be asked to make, second and approve the following motions required for this closed meeting:

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) a possible sale of all of SPSA's assets including a proposal from ReEnergy Holdings LLC, (iii) a PPEA proposal from Suffolk Energy Partners for the purchase of landfill gas and the development of gas facilities, and (iv) **the purchase or lease from the City of Portsmouth of land, air rights and easements needed for the waste-to-energy conveyor system**, 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.*

*(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.*

*(C) In connection with a personnel matter involving legal advice pursuant to (a) Va. Code §2.2-3711(A)(1) for discussions involving the assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific employees and (b) Va.*

*Code §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.*

Upon conclusion of the Closed Session, Mr. Clark (IW) made a motion to approve paragraph III as noted herein and in Item #2 of the agenda note, Request for Closed Meeting. The motion was seconded by Ms. Cuffee-Glenn (SU). All present voting yes; opposed none; motion carried by a unanimous and recorded 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.*

Chairman Williams called on Mr. Oksman (PO) who requested the opportunity to speak.

Mr. Oksman said, "Mr. Chairman, on the record, I move that SPSA immediately post and publish a notice of SPSA's acceptance of the ReEnergy proposal for conceptual phase consideration under the Public/Private Education Facilities and Infrastructure Act of 2002, also under the "Cosgrove Bill", and also under SPSA's "Combined Guidelines" inviting competitive proposals from other parties for a period of not less than 45 days. My motion also is that SPSA professional staff is requested to cooperate fully with ReEnergy in providing such information about SPSA's assets, obligations and operations as may be necessary to facilitate good faith negotiations arising from the ReEnergy proposal. I so move, Mr. Chairman."

Chairman Williams then called for a second to this motion. Motion dies for lack of a second."

Mr. Harrell (CH) said, "Mr. Chair, if I could just comment; while I feel strongly from Chesapeake's perspective that we really need to vet the ReEnergy proposal, I think the first step needs to be completed first which is for the communities to respond to that particular proposal and my hope would be at a future meeting we could take up this issue, but I just wanted the record to reflect that we do feel, as required by the legislation, that we review, conceptually review, and evaluate the proposal. But I think it is premature before the communities had an opportunity to respond."

Ms. Cuffee-Glenn said, "I concur with Mr. Harrell's recommendation, that we submit those comments to SPSA in that timely fashion as well."

Mr. Cheatham stated that Franklin agrees with that as well. Chairman Williams then asked if there was any other discussion on that and there being none called for the next item on the agenda.

## **ITEM NO. 2: ACTIONS ARISING FROM CLOSED SESSION**

There was no action arising from Closed Session.

## **ITEM NO. 3: FINANCIAL REPORTS**

Chairman Williams called Ms. DeVary to the podium to present the financial reports.

Ms. DeVary said, "Mr. Chairman and Members of the Board, for the month ending July 31, 2009, revenues exceeded expenditures by \$5.6 million. Although in comparison to the prior year, July 2008, the dollar per dollar comparison is relatively the same. I do want to point out to you that we did experience a decline in tonnage as compared to the previous year of about 8% decline in municipal, a 10% reduction in recycling and a 30% reduction in the contract commercial tonnages, so naturally we will be monitoring those tonnages very closely and certainly apprise you of any other potential reductions we may be seeing.

Expenditures are pretty much in line with the budget. You will see that we have opened up an Operating Reserve Account as required by VRA, and we have made our first month's transfer in the amount of \$559,750. That is also noted on the Treasurer's Report on all your cash balances. There is not a capital projects report attached to this. We really don't have anything to report yet; we should have one for August for you. We just didn't get any of those capital projects started in the month of July. And on the report, under the Budget column, there is a typo because at the bottom of the first column the \$17.9 million should be up under your cash- fund equipment."

Chairman Williams asked if there were any questions on the financial reports and there were none. Mr. Barrett (VB) made a motion to accept the financial reports. The motion was seconded by Mr. Cheatham (FR). All present voting yes; opposed none; motion carried by a unanimous and recorded vote.

## **CONSENT AGENDA:**

Chairman Williams asked if there were any questions on any of the items on the Consent Agenda (items listed below) and there being none called for a motion to approve the Consent Agenda. That motion was made by Mr. Barrett (VB) and seconded by Mr. Harrell (CH). All present voted yes; opposed none; motion carried by a unanimous and recorded vote.

## **ITEM NO. 4: CONTRACTS IN EXCESS OF \$30,000**

## **ITEM NO. 5: MINUTES OF THE BOARD MEETING**

## **INFORMATION ITEMS:**

The below-listed items were presented as Informational Items. There were no questions on any of these items.

## **ITEM NO. 6: PERFORMANCE INDICATORS**

## **ITEM NO. 7: PUBLIC INFORMATION ACTIVITIES**

## **ITEM NO. 8: MISCELLANEOUS ITEM(S)**

Prior to the next item, Chairman Williams said that the Friday meeting that was scheduled “tentatively” is not going to happen, adding that the next meeting will be September 10, 2009 at 9:30 a.m. in this room.

Chairman Williams also said, “Let me say before I adjourn that I concur as Chairman and I think most members of this Board concur with the motion that Tim [Oksman] from Portsmouth made; although we were advised by our attorneys that there is some benefit to SPSA to do it at another date, so on the advice of our attorneys we are going to delay that and at another meeting we will bring basically the same thing up that Tim said and vote on that.”

### **OLD/NEW BUSINESS**

There was no Old Business.

Chairman Williams then asked if there was any further discussion from the Board and Mr. Oksman (PO) asked if the Board was on “New Business” now. Chairman Williams said we could be and Mr. Oksman said “unless there was something else” and Chairman Williams indicated there was not and he could now speak under New Business.

Mr. Oksman said, “Yes, sir. Mr. Chairman, I am going to raise a subject that I know is a difficult subject and will probably not be well received by several SPSA members, but it is my obligation to raise it anyway. Portsmouth believes that perhaps the main cause of SPSA's problems, its financial problems, past and present, is the disparate rate structure by which two SPSA localities pay either no rate or a fraction of the rates paid by other SPSA localities. Under the current rate structure, the disparate rate that exists among the SPSA localities cause six SPSA localities to subsidize two SPSA localities to the tune of about \$40 million per year. Last night, Portsmouth City Council addressed a Resolution expressing concern about this problem in SPSA's rate structure and calling for a dialogue and negotiations about this subject.

Anticipating in advance what the outcome is going to be on this motion, nevertheless, I move, on the record, that SPSA open a public discussion of the merits of adopting fair and equitable rates among all SPSA members as required by the Virginia Water and Waste Authorities Act.

In addition, following public discussion, SPSA should enter into negotiations with Virginia Beach and Suffolk about adopting fair and equitable rates for all SPSA members. I so move, and I also have a copy of the City Council resolution that was adopted unanimously last night on the subject, and I will pass it around for the information of all SPSA members.”

Chairman Williams called for a second to the motion which was made by Mr. Clark (IW).

Mr. Barrett (VB) commented that “I guess we had to have this discussion at least once a year for the last 20 years. I am very surprised to hear an attorney suggest that the current rate structure is not fair and equitable because the current rate structure was determined by the legal negotiation and consent by the eight members when SPSA was created. I would agree that none of us, our counterparts at that time, could have anticipated some of the unintended

consequences that have occurred but whether it is a long-term contract or not, we are operating as our Ash and Residue agreements, and our Use and Service Support Agreements would indicate, all perfectly legal and appropriate. The use again of the term "subsidy" is again, disturbing to me, because we cannot revise history. The fact of the matter is that certain concessions were made when they were made in order to ensure that this entity was created and could operate. Those were, again, legal agreements, they were appropriate agreements, and there was a certain weighing at the time of the advantages and disadvantages of each locality. Let me suggest that some localities had not anticipated the actions of the EPA at the time to require that landfills be, in quote, "sanitary land fills", and they be appropriately designed and operated in accordance with new rules and regulations.

Our city happened to have anticipated that. We built a sanitary landfill that met both EPA and DEQ regulations, and we plan to build a second one. In fact, John can correct me if I'm wrong; we are in the process of doing that. So when we negotiated to join SPSA it was perhaps, you might suggest, from a position of strength. We had invested time, money, and resources in a system that met our needs. We didn't need to join SPSA.

And I won't speak for Suffolk, but they were asked to host a landfill, and as an incentive to do that they were provided what many localities have, which is basically a host benefit. So, for a political subdivision of the Commonwealth to pass a resolution that denies and ignores the very reason for law is very inappropriate to me. Now, I would suggest as well, that if Mr. Oksman, on behalf of the Council, had agreed to enter into long-term negotiations on new contracts, which frankly SPSA has attempted to do for the last five years, there is a way to do this. The way to do it is to work with people as partners, acknowledging the differences of why we join SPSA, and have those negotiations in a fair and equitable way. But to suggest in a resolution, first of all, that there is subsidies going on and, secondly, that they are not fair and equitable, I object to and I could not in any way indicate that anybody enter into negotiations when the whole basis for those negotiations is an inaccurate statement. Thank you."

Ms. Cuffee-Glenn (SU) commented, "Yes, I have to certainly agree with Mike [Barrett], and Tim [Oksman], I certainly understand your frustration, but to assume because Suffolk is the host community that we are not entitled to what we've gotten is something I can't comprehend. Certainly I encourage us to have future negotiations and discussions as to what happens after 2018, but certainly we don't apologize for what we have and we certainly appreciate those agreements that were put in place. Certainly we cannot turn back the pages and bad management or poor management is something we can continue and I think that's why we have put in months and months of discussion on how to move forward, so I don't think this resolution will solve where we are today but hopefully can move forward to do the right thing not only the region but our specific locality.

Mr. Harrell (CH) said, "I think a lot has been said. My hope is that as we work towards 2018, post-2018 negotiations that everybody can come to the table and we have been very supportive of that from the very beginning. I think we're really close to resolving some issues and I just think it is important that we as a region stay together. And my only concern with the resolution, because Chesapeake has been concerned about the disparate rates as well, but I think we are kind of in the '11th-hour' of several things and we need to begin thinking post-2018 and I think that is an obvious period of time where hopefully all the communities can

come together for what's best in the region. I don't want this, at this time, to be a distraction for us because I think it is important for us to stay together.”

Mr. Clark said that when 30,000-35,000 people in Isle of Wight County looked at the agreements, they understand we entered poorly constructed and bad agreements years ago, but when they look at windfalls the word I hear most is ‘unconscionable’. And the windfalls that Suffolk has and Virginia Beach has relative to these agreements are just that, windfalls at this particular time and the disparity is so great from the rest of the jurisdictions that casts frustration on our parts and I understand your position as well and I am uneducated about how we got here but it is a lot of public trust issues at this time with the disparity.”

Mr. Barrett said he had just one other comment “because it put some disparity in the resolution on this body, and I served on here, I think, as long as anybody, perhaps Mike’s [Johnson] served longer. The problem that we have and the reason that we have the disparity is that the members 15, 20 years ago failed to establish the proper methodology to pay back debt; and, frankly, if we had done that, which would have meant the tip fee would have had to have been a little higher, we would not be close to where we are today. There might have been a tiny disparity. For many years we never reached a Virginia Beach cap. So, and I understand that people that have come to your county now, you know, this all happened 25 years ago, how did they know about that, but we know about it. And, if anything, we perhaps can be a beacon to talk about how important it is to pay a little bit more as you are going along and not just keep borrowing without paying the debt back, because that’s what is caused the disparity and that’s what caused our problems. And I don’t mean to say this, but the Beach 10, 11, 12, 15 years ago was talking about that issue and losing the votes without getting a second. I mean, I hope we all remember that fact. And I give tremendous credit to this Board because for the first time we have established a Board that ‘gets it’, that’s taken responsible action, that understands the importance for frugal discipline and we have implemented that here, and I commend all of you for coming to that point, because I am proud to serve on this Board at this point in time because we have adopted those policies.”

Ms. Cuffee-Glenn said, “Also, I don't think you can talk about disparity and not consider the fact that you have hundreds of acres of land in Suffolk that we cannot use because of the landfill and we agreed to be the host city based upon this discussion. So once again, if looking at dollar value, et cetera, you have got to put it on the table and while I agree with Mr. Harrell and I have certainly been an advocate that we have to look beyond 2018 because nothing is going to change what we currently have other than us trying to restructure our debt and doing those things that we committed ourselves to doing.”

Mr. Harrell said, “Mr. Chair, I think one other point so important, I think Mike [Barrett] is right about that, and Selena [Cuffee-Glenn], a lot of progress has been made. When you look at the CAO agreement which this body approved, and all the communities, if it were not for the Virginia Beach deferral we would be in a huge problem right now even beyond where we are now, and also Suffolk standing behind general obligation debt as has the other communities, so I do think a lot of progress has been made; more needs to occur. But I just don't want to this action to divide us because I think there is so much ahead of us that we need to resolve as a team.”

Mr. Oksman said, "Mr. Chairman, I know how to count and I am pretty confident how the vote is going to be on this, but nevertheless, I would like to say first, I agree with a lot of things that Mike and Selena and William have said. I think it is very helpful to have this dialogue right now, and even if this motion fails, which I expect it to fail, I hope that we will find a way to continue that public dialogue and Portsmouth will be seeking to find a way to continue the public dialogue. \$40 million a year under the current rate structure is an awful lot to say to say six communities 'suck it up, just keep paying'. So I just want everyone to understand the Portsmouth believes this is important public policy issue for the region and even if this motion fails today, you can anticipate we will be trying to continue public dialogue on this issue. Thank you, sir."

Chairman Williams asked if there was further discussion; there being none called for a roll call vote. The results of which were: Q. Mr. Harrell? A. Yes; Q. Mr. Cheatham? A. No; Q. Mr. Clark? A. Yes; Q. Mr. Williams? A. No; Q. Mr. Oksman? A. Yes; Q. Mr. Johnson? A. No; Q. Ms. Cuffee-Glenn? A. No; Q. Mr. Barrett? A. No. Total; 5 'no's; 3 'yes's; motion failed.

### **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