

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
DECEMBER 16, 2010

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:30 p.m. by Darnell Brown.

I. Roll Call

PRESENT: D. Brown
R. Sulik
D. DePiero
J. Bacci
S. Kelly
W. O'Malley

Mayor Starr was absent.

The Secretary informed the President that a quorum was in attendance.

II. Approval of Minutes

MOTION – Ms. Kelly moved and Mr. Sulik seconded that the minutes of the December 2, 2010 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that no members from the public registered to speak at Public Session.

IV. Executive Director's Report

Executive Director Ciaccia moved to the first report item and advised that yesterday he signed the consent decree which was authorized by the Board on December 2nd. The consent decree was sent to the state and federal governments for their signatures after which it will be lodged in federal court following with a 30-day comment period.

Executive Director Ciaccia moved to the next report item and advised that he received notice from U.S. Senator Voinovich's office yesterday and it was also reported in today's newspaper that there is a Senate Bill being considered which includes an \$800,000.00

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earmark for the District's Renewable Energy Facility (hereinafter "REF"). Executive Director Ciaccia speculated that there will be much debate as it pertains to earmarks since the republicans in the House have united and indicated that they will vote against any legislation that includes earmarks. We will see over the next couple of weeks whether this Senate Bill moves forward.

Executive Director Ciaccia advised that there are a couple of additional opportunities for the District, but it is not likely that these will move forward in 2010. Furthermore, a new Congress will be taking over in 2011.

Executive Director Ciaccia moved to the next report item and he advised the Board collective bargaining negotiations will commence in 2011 for the contract years beginning in 2012. We are trying to achieve a multi-year contract and are canvassing attorneys to represent us through the negotiations process.

Executive Director Ciaccia moved to the next report item regarding the District's finances. Revenues projected at the beginning of 2010 were \$171 million; however, by the end of this year revenues are estimated to be \$165 million. The \$171 million budgeted amount allowed for 3% of doubtful accounts on uncollectible amounts. This percentage was increased to 5% per the mid-year recommendation made by our auditors. Executive Director Ciaccia explained that revenues are actually about \$3 million less at \$168 million, which is a \$3 million shortfall from the budgeted amount. The Mittal Steel Plant, Ford Plant and some direct customers account for \$600,000 aside from the \$3 million and the remainder is due to the decline in the economy and other reasons. We will take this into consideration during our future revenue projections.

Executive Director Ciaccia advised that on a positive note the District's operations and maintenance (hereinafter "O&M") costs are projected to be below budget.

Executive Director Ciaccia noted that the District began 2010 with \$143 million in its capital account, which is now at \$91 million due to the increase in ongoing construction projects. Executive Director Ciaccia referred to the bond project account and he advised that the amount increased from \$2.4 million to \$325 million which reflects the recent bond issue. These accounts will provide the District the money it needs over the next couple of years to continue to carry out an aggressive Capital Improvement Program (hereinafter "CIP").

V. Action Items

Authorization to Advertise

Resolution No. 354-10

Two (2) year requirement contract for the janitorial product class for use at all District facilities. Anticipated value: \$137,500.00.

Resolution No. 355-10

Combined Sewer Overflow Relining and Replacement Contract (CSORARC). Engineer's opinion of probable construction cost: \$17,500,000.00.

MOTION – Mr. O'Malley moved and Mr. Sulik seconded to adopt Resolution Nos. 354-10 and 355-10. Without objection, the motion carried unanimously.

Authorization to Enter Into Contract

Resolution No. 356-10

Contract with J.W. Didado Electric, Inc. for construction services for the 138kV Substation for the Easterly Tunnel Dewatering Pump Station (NMES) Project. Contract Amount: \$4,986,850.00.

Resolution No. 357-10

Contract with Kenmore Construction Company, Inc. for the Flats East Sewer Separation Project 3 (FED-3). Contract amount: \$884,610.00.

Resolution No. 358-10

One (1) year contract with Altura Communications, LLC for Avaya Phone System Maintenance Services. Cost not to exceed \$45,124.00.

Resolution No. 359-10

One (1) year contract with Mythics, Inc. for the annual maintenance and support of Oracle e-Procurement Application & Business Process Execution Language Software. Cost: \$60,489.53.

Resolution No. 360-10

Three (3) year contract with PNC Institutional Investments for investment custodian services. Cost not to exceed \$60,000.00.

MOTION – Mr. Sulik moved and Mayor Bacci seconded to adopt Resolution Nos. 356-10 through 360-10. After discussion, a roll call vote was taken on Resolution No. 356-10. The motion carried with one abstention by Mr. O’Malley on Resolution No. 356-10. The motion to adopt Resolution Nos. 357-10 through 360-10 carried unanimously.

Mr. Brown referred to Resolution No. 356-10 and he commented that a significant portion of Small Business Enterprise (hereinafter “SBE”) participation will go to a business located in Uniontown, Ohio. Mr. Brown questioned as to what type of services this company will be providing the District.

Director of Engineering and Construction, Kellie Rotunno, explained that Pepco Supply will be providing the equipment on this project and that it is a direct purchase of the transformers.

Mr. Brown questioned if Pepco is a manufacturer or a supplier. Ms. Rotunno replied that Pepco is a supplier.

Authorization to Pay Fees

Resolution No. 361-10

Pay Ohio EPA annual discharge fees for all Wastewater Treatment Plants. Cost: \$108,700.00.

MOTION – Mayor DePiero moved and Mr. Sulik seconded to adopt Resolution No. 361-10. Without objection, the motion carried unanimously.

Authorization of Contract Modification

Resolution No. 362-10

Modify Contract No. 10000773 with the Cleveland Clinic Foundation Executive Physical Program by increasing the contract amount due to the high volume of utilization. A cost increase in the amount of \$12,000.00, bringing the total contract price to \$52,000.00.

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Mr. Brown inquired if Resolution No. 366-10 was to authorize the adjustment of the pay bands to help continue to facilitate non-compression of pay bands between the collective bargaining employees and non-union employees. Executive Director Ciaccia affirmed and he explained that the unions through the collective bargaining process including fact-finding received 2% wage increases for 2009, 2010 and 2011. Therefore, collective bargaining employees' wage bands are automatically adjusted. Resolution No. 366-10 adjusts the non-union pay bands to avoid the compression situation.

VI. Information Items

1. Annual Audit Results as of December 31, 2009.

Director of Finance, Jennifer Demmerle, advised that included in the Board members' packets was a copy of the 2009 audit results and the District's Comprehensive Annual Financial Report (hereinafter "CAFR"). This was released by the State Auditor's office at the end of October 2010. According to Ms. Demmerle, this delay was not within the District's control since our auditors were waiting for the SAS-70 audit report from the City of Cleveland Division of Water on their billing system. CWD's report was not released until August 2010 causing the delay in the releasing of the District's audit.

Ms. Demmerle advised that the auditors held an exit conference with the Audit Committee in October wherein the results were discussed and questions were addressed.

2. Series 2010 Wastewater Improvement Revenue Bonds.

Ms. Demmerle stated that this is a summary of the District's bond issuance completed in November. The District sold Build America Bonds of approximately \$337 million on November 4th and those funds were received on November 16th. The District presented before the rating agencies in October wherein it received a rating upgrade and those reports from the rating agencies were included in the Board members' packets.

Ms. Demmerle advised that the bonds were structured as a 30-year Build America Bond with capitalizing interest for two years and deferring principal for 10 years. The bonds were structured in this manner for the reason that it provided the best financing structure having the least impact on our rates for the upcoming rate period as well as smoothing out future rate increases.

Ms. Demmerle advised that the bonds were sold at a net interest cost of 3.84% and will primarily be applied to funding of the Euclid Creek Tunnel (hereinafter "ECT"), Tunnel Dewatering Pump Station (hereinafter "TDPS") and the REF projects.

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Mr. Sulik inquired about the District's past ratings wherein Ms. Demmerle replied that our previous ratings were AA and AA-2. The District's ratings are now AA+ and AA-1.

Mr. Brown commented that the Board members received correspondence as to whether there are requirements for Build America Bonds as it relates to construction under Section 106 of the Historic Preservation Act and he requested clarification on that issue.

Director of Law, Marlene Sundheimer, stated that on a project-by-project basis, the District is obligated to conduct an assessment to determine whether Section 106 impacts apply to that particular project.

Ms. Sundheimer inquired whether Mr. Brown was referring to a specific project wherein Mr. Brown replied that he was not. He explained that at times depending on the source of funding there are different stipulations that differ from our normal protocols. Mr. Brown clarified that he was questioning whether the District would be required to follow a different protocol.

Ms. Sundheimer replied that the District has been following the established protocol and that nothing has changed. Executive Director Ciaccia explained that the protocol is no different than the SRF funding (State Revolving Fund) that we obtain through the state, which is also federal subsidized money like the Build America Bonds. The District will therefore be required to address that issue on a project-by-project basis.

3. Outside Counsel Report as of December, 2010.

There were no questions on the Outside Counsel Report.

4. Program Management Status Report and Update – November 2010.

Ms. Rotunno advised that included in the Board members' packets were the executive summaries which contain the data and backup for this presentation.

Ms. Rotunno reported that the structural steel for the REF is being constructed and the three incinerators are in place. Ms. Rotunno witnessed installation of some of the heat exchangers. The REF is beginning to resemble a facility.

Ms. Rotunno moved discussion to the Nine Mile Creek (hereinafter "NMC") wetlands site which will house the ECT shaft and beginning of the ECT. The District continues to work with the U.S. Army Corps of Engineers and the Ohio Environmental Protection Agency (hereinafter "OEPA") regarding the 401 and 404 permits for the wetland impacts at the NMC site location. Ms. Rotunno advised that the District received the sign-off from the Ohio Historic Preservation Act on the Section 106 issues on this particular

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project. The District is negotiating with the OEPA regarding the stormwater controls at this site. The contractor on the ECT project is expected to receive its Notice to Proceed (hereinafter "NTP") on March 1, 2011.

Ms. Rotunno moved discussion to the Key Performance Indicators (hereinafter "KPIs"). She noted that as of the end of November the District had not yet awarded the ECT project and therefore said project is not factored into this report's KPIs. Ms. Rotunno explained that the District is on target to reach the KPI of awarding 33 projects by year end; however, at the end of November the District awarded 28 projects, which is 76% of the District's goal.

Ms. Rotunno advised that with respect to the dollar value of the contracts awarded the District's target was \$269 million. As of November 30th, the District had not yet awarded the ECT project, which comprises the largest portion our annual contract awards of 2010. Therefore, the District was at 22% of this KPI at the end of November. Ms. Rotunno assured that the District will meet this KPI by the end of December.

Ms. Rotunno referred to a graphic which showed that the District initially planned to award the ECT project at the end of October 2010; however, the project was awarded December 2010. This change skewed our cash flow on the CIP awards. Ms. Rotunno advised that the District will be on target at the year end.

Ms. Rotunno moved discussion to the professional services contracts of which there are two currently under evaluation and negotiation. The District will make recommendation to the Board.

Ms. Rotunno advised that with respect to the planned constructions, there were a few contracts that were rebid and we will be deferring the award of those projects until 2011.

Ms. Rotunno moved discussion to the engineer's estimate of probable construction cost. The average of the bidders' proposals is coming in at 3.2% the engineer's estimate. Given the band of plus or minus 10%, Ms. Rotunno advised that the District is doing well with respect to its bidders and engineers' estimates being within that KPI target.

Ms. Rotunno moved discussion to the management of construction projects. She referred to a slide depicting the work orders and change orders which were categorized. The pie chart on the right indicated that the District's CSO program comprises 65% of the changes orders or \$157,000.00; the treatment plant program comprises 35% or \$84,000.00. The left-side depicted that the largest portion of the pie is in the form of design improvements which are items identified during construction that can be improved. The unforeseen site conditions were represented as the red portion of the pie chart.

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Ms. Rotunno moved discussion to contract close outs. She advised that no projects were closed in November. Ninety-One point seven percent (91.7%) of District projects have closed within 105% of the base contract amount. On average, District projects have been closing at 6.9% below the base contract amount, which according to Ms. Rotunno is better than what we anticipated.

There has not been any new activity to report regarding MBE, WBE or SBE participation since the District did not close out any projects in November.

VII. Open Session

Mr. Brown commented that in light of the recent signing of the consent decree and as we move forward with wrapping up the rate study and factoring in our current O&M needs and impacts of the Combined Sewer Overflow Long Term Control Plan (hereinafter "CSO LTCP") that we continue to discuss our concerns regarding affordability. Mr. Brown requested that Executive Director Ciaccia and staff be prepared by the next Board meeting to discuss an affordability program that can be developed to provide some relief to our senior citizen or indigent customers for the Board's consideration. Mr. Brown would like for the staff to distribute information to the Board for discussion at the next Board meeting.

Executive Director Ciaccia replied "that would be great and timely" and that the staff is prepared to discuss the affordability issue. The rate study is not yet finalized but is close to completion. We recently had a meeting and there are still some decisions that need to be made. Executive Director Ciaccia advised that we are prepared to discuss our proposed affordability programs and that Mr. Bucci has compiled some information. Executive Director Ciaccia added that other issues for discussion that may provide relief to needy customers include moving to a fixed rate charge and then bill based on consumption similar to the CWD's new billing format.

VIII. Public Session (any subject matter)

No members from the public registered to speak at Public Session.

IX. Executive Session

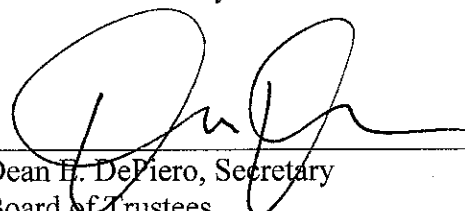
Mr. Brown stated that there was a matter for discussion in Executive Session.

MOTION – Mayor Bacci moved to enter into Executive Session to discuss pending litigation matters relative to the MCT-3 contract and to specifically designate all matters discussed in Executive Session to be protected from public disclosure in accordance with Ohio Revised Code §121.22(g)(3) and attorney-client privilege. A roll call vote was taken and without objection, the motion carried unanimously.

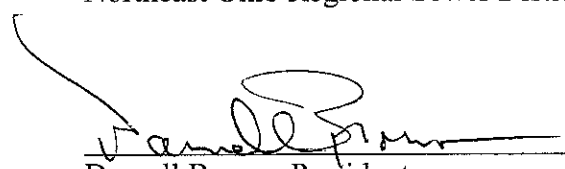
The Board met in Executive Session from 12:56 p.m. to 1:54 p.m.

X. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mr. O'Malley moved and Ms. Kelly seconded the motion to adjourn at 1:54 p.m. Without objection, the motion carried unanimously.



Dean H. DePiero, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District



Darnell Brown, President
Board of Trustees
Northeast Ohio Regional Sewer District