

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
GOVERNANCE COMMITTEE
OCTOBER 15, 2015

The meeting of the Governance Committee of the Northeast Ohio Regional Sewer District began at 11:08 a.m.

I. Roll Call

PRESENT: D. Brown
J. Bacci
R. Stefanik
S. Dumas
W. O'Malley

The Secretary informed the Chairman that a quorum was present.

II. Public Purpose Policy

Marlene Sundheimer, Chief Legal Officer & General Counsel, explained that the Ohio Auditor of State issued a draft technical bulletin earlier in 2015 that would place limitations on public purpose expenditures and urged governing bodies to adopt a policy for such types of expenditures. The policy should stipulate how certain expenditures are part of the core purpose of the organization and to document how auditors could determine whether the public purpose was met. The purpose of the policy is to help state auditors determine whether public agencies are expending public funds for a legitimate public purpose related to the agency's legal mandates.

The District drafted its public purpose policy and identified various categories of expenditures to determine whether the expenditures are in the public interest. Ms. Sundheimer explained that when preparing budgets staff will consider these categories and determine on a line-item basis which amounts will be spent and for what purpose.

Staff will then make recommendations to the Finance Committee during the budget review process and the Finance Committee will recommend the adoption of line items and expenditures to the Board as part of the review and approval of the District's budget.

Mr. Brown stated that Section 2.0 in the Public Purpose Doctrine in Ohio reads in part, "The test is whether the expenditure is directly related to the purpose for which the governmental agency

was created, and is in furtherance of the duties and responsibilities of its governing body, executive officers, directors, employees, and representatives."

Mr. Brown stated that more importantly from his perspective is Section 3, Programs and Activities Covered by Public Purpose Expenditures Policy," which says, "The Board, by the adoption of this Policy for Public Purpose Expenditures, has determined that the specific categories of expenditures for the programs and activities set forth in this Policy are allowable expenditures under the Public Purpose Policy Doctrine for the following reasons."

Mr. Brown stated that there are four specific reasons set out in the policy for why a particular expenditure meets the public purpose test as it relates to the District. He further stated that it is important from the Board's perspective to understand its level of accountability and that expenditures must meet the four reasons set out in the Section 3.0 in order to meet the public purpose doctrine.¹

Ms. Sundheimer advised that the four reasons for allowable expenditures set forth in the policy are based on guidance from the Ohio State Auditor and Ohio Attorney General's offices, which have issued opinions on what serves a public purpose under the doctrine. This policy and the legal memorandum that supported it are based on her research of Ohio law, the Ohio Attorney General's opinions about these types of policies and expenditures and the guidance the State Auditor has put out on the subject.

Ms. Sundheimer explained that staff first identified the District's legal mandates which are to enforce the Clean Water Act and all regulations that support it. In addition, the District was created to be a regional wastewater utility that serves its member communities and those mandates are set out in the court order and statutes that established the District. Lastly, the District's core business functions were determined, and from those core functions staff further identified specific programs that are necessary to support the legal mandates and core functions identified in the policy.

CEO Ciaccia advised that there are many supporting functions of the District's core functions. Staff has always considered the public purpose for its programs; however, the specific programs had not been formalized and the process for identifying the public purpose of the program expenditures for budgeting purposes had not been established. The only difference now is in the formalization of the programs and in documentation of how they meet the public purpose.

¹ Section 3.0 Programs and Activities Covered by Public Purpose Expenditures Policy

1. They are necessary and proper for the purpose of carrying out the core functions of the Sewer District;
2. The primary purpose of these expenditures will benefit the Sewer District's customers, ratepayers, member communities, and the general public;
3. These expenditures are directly related to the governmental functions and objectives for which the Sewer District was established; and
4. These expenditures will not benefit solely private interests.

Mr. Brown questioned whether these eight or nine categories listed were all-inclusive. CEO Ciaccia advised that there could be other activities within some of the programs. He cited the example of travel for advocacy or educational purposes.

Mr. Brown stated that the public purpose policy is a good thing and the District should share aspects of it and explain that it is part of the organization's core values based on things it is required to do under regulatory mandates. He then summarized the program descriptions and the public purpose for the Business Opportunity Program, the Good Neighbor Ambassador Program, the Community Outreach Sponsorship Program and the Public Education Program. Mr. Brown added that from his perspective, the Policy is important not just for understanding the basis for certain programs, but also to understand how certain expenditures for public outreach, for example, tie back to the core values and functions of the organization.

Mr. Brown stated that the State Auditor is not just saying you need a public purpose policy. He is also saying that he will publicly challenge an organization if it goes outside of its public purpose, which has happened to a number of entities. He stated that this is not a routine issue.

CEO Ciaccia stated that the District often gets questioned on its expenditures for public education and community outreach. Some people view public outreach as advertising, which it is not. He cannot imagine running a utility of this size and nature without communicating, educating and interacting with its customers. The topic of public outreach expenditures was recently raised by a local TV station. He emphasized that the District has always considered the public purpose of and the reason for these expenditures, as well as how it fits with our core functions. Now we are documenting those factors in a formal way.

Constance Haqq, Director of Administration & External Affairs, explained that all public outreach expenditures go through a review process during which staff discusses District goals and values with media and sponsorship partners. Proposals are reviewed and taken to an internal committee for feedback on the result of the dollars spent. This year staff is developing an application form that each applicant will complete in requesting funds. There will also be a form that documents the results of expenditure to determine that the purpose has been met.

Ms. Haqq explained that as a result of the Channel 5 media coverage, staff contacted the National Association of Clean Water Agencies (NACWA) to survey its members to find out how they spend on public education and outreach. That survey will be concluded by the end of the year.

CEO Ciaccia stated that the reporter's story relative to what other communities spend on outreach was wrong from a comparative standpoint and did not have complete information from some of the communities he surveyed.

Mr. Brown stated that there was already a Combined Sewer Overflow (CSO) policy with nine minimum controls; one of the controls is public outreach and education. A number of member

communities have submitted information to the District regarding things they do that helps them comply with that requirement. He assumed the District has a record of things specific to that policy requirement.

Frank Greenland, Director of Watershed Programs, advised that the stormwater phase II regulations get more into the requirements of public outreach and education. There are two minimum controls in that regulation, and the combined sewer regulations require heavy public involvement and education to maintain compliance with NPDS permits. The District gets a tremendous return on investment from communities through its Code of Regulations, Titles III and IV, but also agreements with watershed organizations.

Mr. Greenland advised that since the watershed partners program began the return on investment has been about \$1.5 million in watershed agreements with watershed organizations to provide public education and outreach. There has been \$32 million invested in local projects to address watershed-related issues along Doan Brook, Mill Creek, West Creek and other streams across the service area. It has been a huge benefit to the District and water quality in the region.

Mr. Brown inquired whether there is documentation of the expenditures and benefits so it is easily articulated as the result of the requirements and that it makes sense from an audit perspective. Mr. Greenland advised that the watershed service agreements require recipients to track information throughout the year, such as the number of events scheduled, what types of services that will be undertaken to further the District's mission, and services provided. That information is submitted to the District.

CEO Ciaccia stated that aside from this policy, John Wasko, Internal Audit Manager, and his team is conducting a process audit and creating audit processes around these activities for these program expenditures.

Mr. Brown stated that the Student and Intern Program needs more clarification as to the extent that it is used as an attraction for recruitment. This is an important industry and the ability to educate and create ambassadors is to bring people into the organization, let them see who we are and what we do, and then when they return to their disciplines they are able to support the things that most of the public does not understand about the District. The ability to impact people and to create advocates other than lobbyists is important. He stated that being proactive in terms of the District's expenditures in this program and its value will help because it is an accountability issue.

CEO Ciaccia advised that employee-related programs are extremely important since the District has a \$3 billion program to carry out. Operations and capital expenditures combined are over \$400 million per year and will continue for quite some time. Having quality personnel to manage the program is critical.

The District also has tuition assistance and wellness programs, which are critical for attracting good younger generation individuals. Such programs are geared towards having the highest quality individuals in this organization to carry out a very important program. The financial results are that the CSO program is \$300 million under budget, bringing in a \$198 million tunnel project \$3.6 million under budget and added scope to the project.

Ms. Dumas stated that the District is seeking to adopt a public purpose policy for two reasons: first because of public inquiries and secondly, the State Auditor's public statement regarding how he would evaluate what he believes to be abuses of power by governmental entities around certain expenditures, even though they are not illegal or would not result in an audit finding. Ms. Dumas stated that she could see how most of the programs were tied to the District's core functions and the strategic plan; however, she needed clarification on how the outreach programs and sponsorships were tied to core functions as set out in Section 2.2.²

Ms. Dumas questioned whether such programs would fit in those mandates or would draw on consent decrees or agreements that speak to outreach. CEO Ciaccia stated that when drafting this policy staff did not initially identify these core functions and subsequently thought there needed to be context as it relates to these activities identified in the policy. He felt that clearly the outreach programs and sponsorships deliver effective customer services. Customer service refers to more than repairing sewer lines or answering billing questions, but also deals with the customer from an educational opportunity to interact with the District directly.

Ms. Sundheimer advised that another aspect of customer service is the support, education and outreach the District does with its member communities with helping them meet Clean Water Act obligations and establishing programs like the community grant and infrastructure programs. That requires a great deal of communication and laying the foundation of why it is being done in a cost-effective way to meet obligations. She stated that she looks to the legal mandates to effectively improve water quality in the region as part of the public outreach and communication strategy.

Mayor Stefanik inquired whether staff had the finished document reviewed by the State Auditor's office. CEO Ciaccia advised that it may be advantageous to get a policy in place rather than be in limbo. After adoption of the policy may be a good time to show it to the State Auditor.

Ms. Sundheimer advised that she would not recommend submitting the policy to the State Auditor for approval. The State Auditor in his guidance document only stated that when and if

² Core Functions of the Northeast Ohio Regional Sewer District

1. Operating and maintaining Sewer District facilities and conveyance systems, including system monitoring and testing.
2. Adopting rules and regulations and exercising regulatory authority over all local sewer collection facilities and systems in the Sewer District, including both storm and sanitary sewer systems.
3. Maintaining and managing of sustainable financial practices and rate schedules.
4. Managing planning, engineering design, construction, and technology activities.
5. Providing assistance and support to member communities in meeting regional sanitary and stormwater management needs.
6. Managing human resources activities to ensure long-term institutional capacity.
7. Delivering effective customer services activities.

they receive a complaint challenging a particular expenditure would the Auditor approach the organization's governing body and ask for a policy for such expenditures. They are not going to second-guess a governing body's decision or determination of public purpose.

The State Auditor's guidance says that unless a governing body abuses its discretion and is unreasonable about determining the public purpose, they are not going to challenge their determination.

Mayor Stefanik stated that it would be prudent to let the State Auditor review it once it has been adopted. CEO Ciaccia advised that being proactive could be a good idea in this case.

Ms. Dumas stated that a written, adopted public purpose policy would provide appropriate cover should the State Auditor or someone else question certain expenditures. The courts tend to not second-guess the legislative authority as long as they are following their mandates and the appropriate judgment was exercised. She stated that the State Auditor's statement seems to say that some expenditures might be not be a violation, but he may not like them and wants the public to know that, which she feels is inappropriate.

Ms. Sundheimer stated that the State Auditor has not yet issued that technical bulletin regarding abuse of discretion, but may be making these statements to publicly shame governmental bodies that abuse their discretion making expenditures he finds questionable. Having a written public policy statement will help the District defend itself should it be called out.

Ms. Dumas suggested submitting the policy to the State Auditor as cursory compliance.

Moving to another subject, Mr. Brown requested clarification of the sentence that states, "No use of District funds, employee time, or property may be expended unless the Board approves such expenditure, by resolution, in accordance with this Policy." Ms. Sundheimer explained that staff is directed to follow the guidance of the policy, and if the Board adopts the policy, and the Board approves expenditures in the categories set out in the policy, the Board has made a determination that it meets the public purpose and public purpose doctrine. The District cannot create new categories unless the Board makes a determination that a new program or category of expenditures meets the public purpose.

Mr. Brown inquired whether the categories are all-encompassing and whether anything outside of it must come to the Board for amended to the policy. Ms. Sundheimer affirmed that if the District creates new programs, the policy is amendable. Should something occur that had not been considered, it would be brought to the Board to either create a new category or to make a determination based on a separate resolution that the expenditure is allowable.

The Board is provided with flexibility and it gives the guidance that certain categories of expenditures have been considered and determined to meet public purpose policy guidelines.

Mr. Brown stated that if he takes the text literally that the Board should not approve any activity outside these parameters as it relates to public purpose. Ms. Sundheimer stated that she did not read it that way, however if the Committee recommended clarification, that provision would be modified to make it clearer. Mr. Brown affirmed.


Mayor Bacci noted the sentence that stated, "This Policy shall be reviewed and updated periodically" and questioned whether the Committee can do so on an annual basis. He stated that "periodically" is too vague.

Mr. Brown stated that the Committee would recommend adoption of the public purpose policy with the understanding that staff will clarify the item he raised and make the amendment to the review process so it says annually.

MOTION – Mayor Bacci moved and Mayor Stefanik seconded to recommend the adoption of the Public Purpose Policy. Without objection, the motion passed.

III. Adjournment

MOTION – There being no further business to come before the Committee, Mr. Brown adjourned the Committee at 12:05 p.m.



Darnell Brown, Chairman
Governance Committee
Northeast Ohio Regional Sewer District