



# **UNION COUNTY UTILITIES AUTHORITY**

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## **SPECIAL MEETING - FEBRUARY 24, 2011 JOINT MEETING WITH UNION COUNTY UTILITIES AUTHORITY AND UNION COUNTY BOARD OF CHOSEN FREEHOLDERS**

The February 24, 2011 meeting of the Union County Board of Chosen Freeholders was called to order at 7:02 pm. The Freeholders conducted various items of business.

Freeholder Chairwoman Scanlon announced that this is the date for the final reading of Ordinance Number 717-2011. She had the Freeholder clerk read Ordinance Number 717-2011, an amendment to the Union County District Solid Waste Management Plan.

Freeholder Chairwoman Scanlon then announced that this portion of the meeting will be held jointly with the Union County Utilities Authority and will include a McEnroe Hearing. Chairwoman Scanlon turned the meeting over to UCUA Chairman Kulish.

Chairman Kulish called the meeting of the Authority, to order at 7:37 pm, in the meeting room of the Union County Board of Chosen Freeholders, One Elizabethtown Plaza, Elizabeth, NJ.

Notice of Compliance with Open Public Meetings Act was read by Joseph C. Bodek, Clerk of the Authority.

A roll call of the Commissioner showed the following present: Chairman Kulish, Vice-Chairman Jackus, Treasurer People, Secretary Kennedy, Commissioners Badri and Erdos. Also present was alternate Commissioner Jorn.

Others Present: Thomas Brennan of the Authority's staff; Jonathan Williams, Kevin Conti, and Gina Bilangi of DeCotiis, Fitzpatrick and Cole; Kraig Dowd of Weber Dowd Law, Dennis Enright of NW Financial; Deputy Clerk Lisa Miskiewicz; and Clerk Joseph C. Bodek.

Freeholders Scanlon, Mirabella, Sullivan, Estrada, Jalloh, Hudak, Kowalski, Ward and Carter were present, as was County Manager George Devanney.

Also present was Steve Gabel of Gabel Associates, Inc.

Chairman Kulish designated Alternate Commissioner Jorn to act for Commissioner Kahn.

Mr. Bodek provided Proof of Notice of the meeting.

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Chairman Kulish then turned the meeting over to Mr. Williams, Mr. Enright and Mr. Gabel for the purpose of making presentations.

Mr. Williams explained the purpose of the meeting. He also explained how the law allowed for the term of the proposed amendment, and the process for approval. He next discussed why the Authority was present. Mr. Williams spoke about the need to respond to questions, raised by interested parties at this meeting. He then read a copy of the published notice for this meeting and for the McEnroe notice. He concluded by stating that questions asked, on McEnroe Hearing need to be answered tonight, and included in the transcript. (A court reporter was present to create the transcript).

Mr. Williams then turned the meeting over to the Authority's Financial Advisor, Dennis Enright to provide an explanation of the financing. Mr. Enright explained that the key elements of the 2011 re-structuring increase Covanta's lease payment to the Authority, by about \$4,000,000.00 per year and they would also pay \$125,000.00, per year, for a waste flow enforcement program. He then provided other details of the new agreement, speaking about the additional host community benefit that Rahway would receive (\$300,000.00); and a decrease in the tip fees, for the rate payers from the contract towns of \$12.00 per ton. He noted other benefits of the agreement, including that the tip fees would now increase by the CPI instead of the previous formula that allowed for larger increases. Mr. Enright informed all as to the benefits that the fourteen towns (those that collect and dispose of their own garbage) and the County would receive.

Mr. Williams next introduced Steve Gabel of Gabel Associates Inc., who was hired to do an independent analysis of the restructuring and to review the benefits of the proposed amendments. He then provided Mr. Gabel's qualification for conducting this review.

Mr. Gabel explained that he had been retained to evaluate the agreement that had been renegotiated by the Authority. He then explained what was evaluated when he looked at the amendments to the agreements, and that there were two elements that drive the evaluation. The first was the extension to 2045 and the second was the refinancing of the debt. He looked at the benefits and risk. His concern in the analysis was the risk that the renegotiated agreement would place on Union County and its residents. He had prepared a sensitivity analysis of the benefits and risk. He had evaluated the risks in nominal terms as well as in present value terms. He then detailed the benefits. The nominal value of the savings amounted to \$302,000,000.00 over the life of the agreement. The present value of those benefits was \$121,000,000.00. Mr. Gabel spoke about the risk involved in increasing the guaranteed tonnage deliveries to Covanta or if the Authority could not deliver, the making of Covanta whole. He then spoke about the offsets to this guarantee, including Covanta's obligation to mitigate any short fall. He then noted the incentives that Covanta had to mitigate any short fall and what they are. Mr. Gabel then explained that he did a "Perfect Storm" analysis. What if anything that could go wrong did go wrong? In that situation the County residents should not be hurt. With this agreement they are not, the agreement holds water.

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Chairman Kulish then opened the meeting for public comment.

Paul Cascias, City of Summit. Mr. Cascias noted that he is the Chairman of the Solid Waste Advisory Committee (SWAC) for the County of Union. He then read a statement of the Council on the agreement. It detailed the special meeting that SWAC held on the proposed amendments. It detailed what the agreement does and that there was an effective and open dialog held. After discussion SWAC had stated that there was no action required by SWAC to the proposed amendments.

Bruce Paterson, Garwood. Mr. Paterson said the Garwood borough council had discussed this matter at one of their meetings. He noted the following questions: 1) Is everyone on board; 2) He noted the drop in the amounts of waste in the system over the last twenty years (possibly due to the increase in recycling efforts); 3) There is no escape clause, in the agreement, for the County; 4) The \$3.00 per ton recycling fee, imposed by state law, would reduce the savings; 5) The host community fees being paid to Rahway, and that anyone able to vote on this agreement, from Rahway, should abstain; 6) The bankruptcy of Covanta projects in England, and have the reasons why been looked at; 7) Why are these changes being negotiated now and not when the current contract is up; and 8) He questioned the number and meaning of the present value numbers. Mr. Paterson stated that he had major concerns and that it doesn't make any sense as to why we are sitting hear this evening. He urged the Freeholders to vote no and revisit the matter in ten years.

Mr. Williams explained that it is the position of the Authority that it is exempt from the recycling tax and why. He was confident that position would prevail, however if it did not then the amount of the proposed savings would be reduced. Next Mr. Williams noted that there is no escape clause. The County of Union was forced to build the facility by the State of New Jersey. The County has incurred \$100,000,000.00 in debt in building the facility and it has to be retired. He addressed an issue, raised by Mr. Paterson, regarding any new technology that may come along. He noted that would be a cost to any new technology that may come along that would have to be paid for. Mr. Williams stated that the risks and benefits of the renegotiated agreement have been weighted and the benefits far outweigh the risk. Regarding the question as to why now, Mr. Williams spoke about the current fiscal situation that faces many of the municipalities in Union County and the need for relief now, and this agreement will provide them some of that relief.

John Burry, Kenilworth. Mr. Burry stated that he has three questions and would like to address them one at a time. The first was why is Rahway getting paid and is it new. Mr. Williams explained that, by law, Rahway is required to receive a host community fee. He then explained the difference from what the current host fee is and what the new fee would be, and how it was being paid. Next Mr. Burry asked about the \$150,000,000.00 in debt and if it is new debt. Mr. Enright explained that new debt, of about \$5,000,000.00 to \$10,000,000.00 is being created by the refinancing of the existing debt. The reason for the term of the debt payments is that the law allows for the debt to pay off during the useful life of the facility. Mr. Williams added that the debt is the obligation of Covanta. He explained the stranded debt that the Authority had, and how it was being paid. He noted that there is no new stranded debt being created. Next Mr. Burry stated that he had

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looked at Covanta's financial papers and that the agreement will result in \$65,000,000.00 in revenue and \$17,000,000.00 in profit, minus Federal taxes. He thought that to be a large profit and also asked if the restructuring of the debt was a way for Covanta to dodge Federal taxes. Mr. Enright stated that the numbers are accurate. He also spoke about what would affect the rates. Mr. Burry, the \$17,000,000.00, \$7,000,000.00 goes to Federal taxes and \$10,000,000.00 goes to stockholders. He asked questions about why Covanta would want this. Mr. Williams explained that the Authority had started the discussion with Covanta to shift some of the profits from Covanta to the ratepayers in the County. The savings would be available to all of the towns in Union County, if they took control of their waste and had municipal pickup, in some form. Mr. Burry then asked about the fees that are typically paid to DeCotiis and N.W. Financial, by the Authority. Mr. Williams spoke about the different fees associated with doing this type of transaction, that they are a matter of public record and can be gotten from the Authority offices. Mr. Burry then asked what the fees were paid to DeCotiis and NW in the year 2009. Mr. Williams stated that he believed that they were under \$100,000.00. He explained, to Mr. Burry, that there is a fifteen day comment period, and if he supplied his questions, in writing, a response would be provided in writing. Mr. Burry then spoke about the \$17,000,000.00 profit to Covanta, and that perhaps those negotiating the agreement could have bargained harder for Union County residents. Mr. Burry then returned to his seat.

Mr. Paterson, Garwood, returned to the microphone. Mr. Paterson noted that one of his previous questions was not addressed, the one about the drop in tonnage due to recycling efforts that have been put in place. The agreement requires the delivery of minimum amounts of waste. How is a drop in the amount of waste, being delivered, going to be addressed. Mr. Williams spoke about the reduction in the waste stream, due to the economic downturn, and gave an explanation. He noted that the down turn has leveled off and is trending in another direction. He then informed Mr. Paterson of the mitigation obligations of Covanta, noting that it was a trade off of a minimal risk for the immediate economic benefits that would be received. Mr. Paterson asked for an explanation of the nominal and present value terms and amounts spoken about by Mr. Gabel. Mr. Enright provided the explanation. Mr. Paterson then asked if the payments to NW a DeCotiis are made with taxpayer dollars, and if the waste industry was a regulated one. Mr. Williams stated that they are not taxpayer dollars, financing cost are paid from the bonds, and the funds paid by fees associated with the disposal of solid waste. Mr. Gabel spoke about the solid waste being a regulated industry and said that there was not a simple answer. He noted that it was not regulated in the same fashion as electric, gas, water and cable rates are regulated but there is regulation. He explained the regulation, by who and how.

Mr. Burry, Kenilworth. Mr. Burry asked about the time frame for moving the process forward. Mr. Williams stated that there is a fifteen day comment period, then a review period. He spoke about the other review, such as DEP, the Local Finance Board, and the McEnroe process, that were required. Mr. Burry then asked if the profits, that Covanta was receiving, have existed over the years. Mr. Enright explained that the profit number would have affected by the waste disposal fee and electric rates in any given year. Profits were lower and grew over time.

Mr. Williams state that he may have stated that the recycling tax, during an earlier discussion, was \$3.50 per ton. That is not correct, it is \$3.00 per ton.

Chairman Kulish asked if there was anyone else who wanted to speak. There was no one else, and Chairman Kulish stated that he was closing this portion of the meeting.

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Chairman Kulish asked for a motion to adjourn the meeting as there was no further business to come before the Authority. Commissioner Erdos moved to adjourn the meeting. The motion was seconded by Commissioner Badri and was unanimously approved by a roll call vote. The meeting was adjourned at 8:38 p.m. Freeholder Chairwoman Scanlon resumed control of the meeting.

Respectfully submitted,

Joseph C. Bodek  
Clerk

John Kulish  
Chairman

James Kennedy  
Secretary