

SEU Advisory Board

Meeting Minutes

Monday, July 23, 2012

I. Call to order

Keith Anderson, Chair called to order the meeting of the SEU Advisory Board at 9:00 am Monday, July 23, 2012 at the DC SEU Offices, 80 M Street, S.E., Washington, D.C.

Roll call

SEU Advisory Board: Keith Anderson, Betty Ann Kane, Sandra Mattavous-Frye, Dr. Donna Cooper, Jermaine Brown, Daniel Wedderburn, Bernice McIntyre, John Mizroch, Joseph Andronaco, Chris VanArsdale, Larry Martin

Absent Board Members: Evan Tyroler, Allison Archambault

Other Attendees: Taresa Lawrence, Hussain Karim, Samiah Bahhur, Ted Trabue, David Cawley, Veronique Marier, Steve Seuser, Mohamed Ali, Daniel White, Rishi Garg, Loretta Caldwell, Herb Jones, Marcus Walker, Kim Henderson, Dave Good, Matt Orlins,

Approval of agenda and minutes from the last meeting.

The agenda was approved.

II. Official Business

Hussain Karim gave a PowerPoint Presentation on the Roles and Responsibilities of the Sustainable Energy Utility Advisory Board (SEUAB).

The following sections of the Clean and Affordable Energy Act of 2008 (CAEA) were covered:

- **Section 101 Definition** – The Board advises DDOE on procurement of the contract with the SEU and monitors the progress of the SEU under the contract.
- **Section 203 Establishment and Purpose** – The Board is comprised of thirteen members and each member of the Board is required to have demonstrable expertise in energy efficiency or renewable energy. The Board advises and monitors the performance of the SEU under the SEU contract.
- **Section 204 Operation** – During the term of the SEU contract, the Board should meet quarterly with representatives from the SEU; the Board should present an annual report to the Council thirty days after the conclusion of the contract year. DDOE will be asking the Council to change the thirty days to forty-five days to submit their annual report; and all Board meetings must be open to the general public.

- **Sections 201(e) and 202 (j)** – The SEU contract shall be funded by the SETF. The SEU contract may also be funded by any other source of funding available to the Mayor, including: Federal funds, private funds, subject to DDOE approval and other District funds. Section 202 (j): subsections (h) and (i) shall not apply to funds from another source other than an assessment on the gas company or the electric company.

Joe Andronaco asked if the funds were subject to the Anti-Deficiency Act. Mr. Karim stated that it depends, if it is District money the answer is yes. Per a request from the Board, a copy of the SEUAB FY 2011 Annual Report will be forwarded to Board members. Board-related documents can be viewed on the SEU Advisory Board website: www.green.dc.gov/service/sustainable-energy-utility-seu-advisory-board.

Dr. Taresa Lawrence gave a PowerPoint Presentation on Key Sustainable Energy Utility (SEU) Contractual Requirements:

Oversight and monitoring of energy savings, job creation, and low income benchmark in every Ward across the city. Ten specific contract requirements were discussed:

- **Small, Local, and Disadvantaged Business Enterprise Development and Assistance** – Consideration given during RFP evaluation phase; bonus points given to the DC SEU for local CBE participation. In the first year, 35% of the contracting dollars had to be spent with CBEs, and the second year, that figure increased to 50%. Last year, the DC SEU exceeded the goal with 75% of contract dollars being spent on CBEs.
- **51% District Residents New Hires Requirements and First Source Employment Agreement** – Department of Employment Services (DOES) and the First Source Register must be consulted first for new hires.
- **Publicity** – Any statement that impacts DDOE or the District must first be approved by the District.
- **Freedom of Information Act (FOIA)** – A FOIA request may be received by the contractor or DDOE. If the request came to the contractor, it must alert the Contract Administrator; if a request is submitted to the agency, DDOE will contact the Contract Administrator as well. All parties are required to work together on providing the information to the FOIA Officer, who will determine what information is subject to FOIA.
- **Americans with Disability Act (ADA)** – The contractor must adhere to the ADA.
- **Section 504 of The Rehabilitation Act of 1973, as Amended** – The Contractor must adhere to this law.
- **Diversion, Reassignment and Replacement of Key Personnel** – The Contractor must alert DDOE of any key personnel changes. During the RFP process, when a company submitted a response to the RFP, in the response it was required to list the key personnel. If this company was awarded the contract, it would not have been permitted to put forward a different list of key personnel. Board members recognized the potential for a “bait and switch” situation; however, with this procurement being a seven year contract, the DC SEU should have the flexibility to meet their goals. The contract can be amended and DDOE would take into account feedback from the Board on this issue when exercising an option year.

- **Equal Employment Opportunity** – All employees must be paid a Living Wage. The contractor must follow all EEO provisions. The DC SEU contract is similar to any District government contract and these are standard contract provisions throughout the District government.
- **Audits & records** – All records and documentation are subject to audits and the information must be made available upon request.

Dr. Lawrence gave an overview of the Anti-Deficiency Limitations. The contract is subject to both the District and the Federal government's Anti-Deficiency Act.

- The DC SEU cannot enter into any financial commitment in any present or future year unless the necessary funds to pay that commitment have been appropriated by the Congress of the United States and are lawfully available for that purpose.
- Nothing in the DC SEU's contract creates an obligation of the District in anticipation of an appropriation by Congress to fund the contract. The District's legal liability for the payment of any contractual obligation and other charges under the contract does not and may not arise in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

Although the SEU contract is funded by ratepayer funds, because these funds are paid to the D.C. Treasurer by the local utility companies, they are considered as revenue collected. Through this mechanism, the funds become subject to all of the laws that apply to the District's appropriation. Board members asked if the funds are subject to permission to spend and not subject to whether they are appropriated by Congress. Mr. Anderson said that since Congress approves the District's budget, technically Congressional approval is required; ratepayer funds have to be appropriated, and in that respect, there is no distinction between a District agency and the DC SEU as a private entity that receives the funds. Mr. Martin suggested an alternative method may be to set-up an account with a third party independent auditor. Ms. Mattavous-Frye suggested that the group explore different models since these are ratepayer funds.

The problem for the contractor is to spend the funds by a deadline. Having to spend the money in one swoop and not knowing what will happen next fiscal year engenders uncertainty. Last contract year was a unique year and a partial year for the contractor. Last year involved the ramping up of the DC SEU and creating a market environment. The DC SEU contract has a large amount of money to spend on implementation. The question arises as to how the DC SEU can ensure stability of employment for people who are hired after those funds are depleted. Projects in the District, such as renovations to Cardozo and Dunbar High Schools are multi-year contracts. Those two projects are \$80 million over a three year period.

The DC SEU cannot commit to multi-year projects. Mr. Andronaco noted that to the Board and DDOE cannot authorize the DC SEU to do a project that continues beyond the contract year. Dr. Lawrence stated that DDOE has tried to time the renewal of the contract to minimize any delay. In particular, DDOE received the Purchase Order (PO) for FY 2012 on October 4, 2011.

Capital budget dollars can be used over multiple years but the operating budget dollars cannot. Capital projects can be approved and be multi-year projects but still require an overall appropriation. This fiscal year limitation was identified as a critical issue by the Board; the impact on the DC SEU are: 1) the ongoing relationship with customers must take into account this issue by inserting into any contract a provision that a project that continues into FY 2013 is contingent upon the availability of funding; and 2) the limitation on the ability of the DC SEU to build a pipeline of projects. The DC SEU's goal is to promote incentives that enable a project to move forward, and this limitation creates

an impediment to achieving that goal. The DC SEU also has to spend time explaining the clause, and the liability is associated with it, to the customer.

The need to spend all of the funds before the end of the fiscal year influences the type of programs, strategies and the overall effort. This requirement may decrease the yield of energy performance, i.e., the DC SEU will pay more for each unit of energy savings. Mr. Trabue stated that particularly for the larger commercial projects that potentially or often cannot be completed by the end of September, there has to be a discussion with the client about FY 2013. Board members expressed their desire to minimize or eliminate this issue. A related matter is the question of performance period, with the CAEA requiring an annual evaluation of the DC SEU. The Board should have a solid recommendation for DDOE. Ms. McIntyre stated that the budget constraint is one issue, and another issue is an annual accounting of the savings.

- Structure and Compensation – All reimbursements are for actual cost incurred and require documentation of services provided, installations, personnel, etc.
- DC SEU Budget – FY 2012: \$15M; FY 2013: \$17.5M; and FY 2014+: \$20M

Ms. McIntyre requested a breakdown of expenditures by utility type (gas and electric). The CAEA mandates that no less than 75% and no more than 125% of gas ratepayer funds must be spent on gas-related programs. The same is true for SETF funds from electric ratepayers. Ms. McIntyre stated that the DC SEU was legally obligated to meet this mandate. The statutory requirement on the use of SETF funds is also a provision in the SEU contract.

Last year, PEPCO contributed 79.9% of the SETF and the balance was from Washington Gas. This dictates the amount of money that can be spent on gas and electric programs, and DDOE monitors this process. On Table 2, the percent for gas is 23% and electric 77%. Ms. McIntyre asked for clarification on the types of programs offered to customer, and whether the customer was offered gas programs to reflect the spending figure. Dr. Lawrence answered yes. The accounting of expenditures on electric versus gas measures is based on what measure (electric or gas) the specific expense was allocated for. However, this distinction becomes less well-defined with measures such as a Combined Heating Power (CHP) program.

The DC SEU tracking system tracks all efficiency and renewable energy measures. Some measures affected both fuels, and in those situations, two measures were entered into the system, a portion that accounted for the gas measure and a portion that accounted for the electric measure. The categories of projects are: new construction, retrofit, and commercial. Based on the allocation ratios for each project the DC SEU established the overall spending ratio.

Ms. McIntyre asked how the DC SEU will meet the criterion that no less than 75% and no more than 125% of the gas ratepayer funds must be spent on gas programs. Mr. Cawley answered the DCSEU will achieve the criterion by promoting savings and technical expertise in gas programs. Jermaine Brown requested an accounting of the actual expenditures on gas programs. Mr. Cawley stated that achieving the mandate for gas programs had been a challenge; however, the DC SEU intended to meet that objective.

DDOE monitors on an ongoing basis the gas/electric split of SETF funds, and this data was included in the annual report submitted to the Council. This data will be provided to the Board to enable it to perform its oversight function. The database contained data for each electric and gas measure, along with associated energy savings. This data will be provided to the Evaluation, Measurement, and Verification (EM&V) contractor to verify the savings estimates, accuracy of the savings, and cost allocation. When booking expenses for gas or electric measures, the DC SEU follows standard

accounting principles. However, the DC SEU does not currently have a specific procedure or methodology in place for the measures that affect both fuels.

With regard to proper accounting of ratepayer funds and anti-deficiency, Sandra Mattavous-Frye asked how the Board could procedurally ensure ratepayer funds are protected. Mr. Martin said that he was going to make a motion for a meeting to discuss these related issues. The objective of the meeting would be to offer a good recommendation to the full Board. Mr. Anderson indicated that DDOE would search its archives for prior research and analysis on these issues and will forward any documents to the Structure and Finance Committee. Mr. VanArsdale stated that the one year restriction had some benefits, including benefits for DDOE in terms of oversight. Mr. Martin offered a motion that the Committee meet again to examine the issues, and then come back to the Board with a proposal. The motion by Mr. Martin was voted on and approved.

An amount of \$600,000 of the SEU contract was at-risk compensation for meeting the six performance benchmarks. If the SEU achieved 80% of a benchmark, it would receive 50% of the at-risk compensation, and for each additional 10%, it will receive another 25% of the at-risk compensation. Under the CAEA, the benchmarks can be changed with the approval of both the DC SEU and DDOE.

Ms. McIntyre asked if contractor had to meet the statutory requirements before the award of the incentive. Dr. Lawrence answered yes, DDOE will accrue the \$600,000 for ninety days after September 30 to allow for an evaluation of whether the metrics have been met; the funds will be paid once this has been demonstrated.

Although the establishment of the DC SEU could be an opportunity for the District to address security/reliability of the grid and power generation/distributed power, these issues are not in its mandate. However, DDOE will examine these issues in its Comprehensive Energy Plan as well as the Mayor's Sustainability Plan. Chairman Kane stated that the Energy Assurance is a citywide energy plan with Federal funding for which DDOE is the lead agency, in coordination with the PSC. The PSC is responsible for safety and reliability of the current distribution system. Mr. Brown stated that a Committee for the renewable needed to be created.

Ted Trabue welcomed the group to the DC SEU offices. He introduced the DC SEU Partners, including Dr. Lilia Abron, PEER Consultants; David Lipzinger, Institute for Market Transformation; Mark Wolf, PES Group; and Loretta S. Caldwell, L.S. Caldwell and Associates.

Mr. Trabue highlighted three topics for his presentation:

- The DC SEU Budget
- Forecast of where the DC SEU will be and what is in the pipeline
- The DC SEU Program Managers will give an overview of their programs.

Mr. Trabue's presentation discussed the actual numbers, how they translated to electric and gas savings as well as in terms of the number of green jobs. He also reviewed the budget, and the amount of spending on low-income, non-low-income spending, residential and commercial. Four programs covered in Mr. Trabue's presentation were on:

Progress Report on Key Metrics:

- Performance Benchmarks – at the end of the year what will be the significant changes
- Low-Income spending – 30% of the funding has to be spent on the low-income community (chart at presentation)
- CBE spending – number of implementation contracts with CBE firms.
- Green Jobs benchmark – FY 2011 – 33; FY 2012 – 66; and FY 2013 – 77

The programs are a blend of market-based programs and direct installation. The DC SEU paid 100% of the cost of efficiency measures in direct installations. The DC SEU has been working with six stores in the District and products went on sale the prior week. On the commercial side, there were some direct installations and some market-based strategy. One very large project involved a T-12 lighting measure.

Food banks will be used to distribute CFL light bulbs, and an agreement will be signed with Bread for the City shortly. A Board member gave a referral for a food bank to participate in the program. In the renewable area, the DC SEU had accomplished more than anticipated, with CBE contractors willing to work with the DC SEU. As a result, the DC SEU expected to exceed the renewables goal for FY 2012.

Information on gas and electric spending was forwarded to the Board on July 19, 2012 and some of that information has been transformed into graphics for the Board meeting. An area for analysis should be the sector level where there are at least three or four initiatives under each level. Not all of the initiatives have the same opportunities for electric and gas savings. Overall the total budget must meet the 80/20 cost share requirement of the CAEA and the contract. In the commercial and institutional sectors, the DC SEU was analyzing some very large gas projects, and hoped to proceed with them by the end of the year.

Renewables this year had moved forward with photovoltaic systems, but not gas saving systems such as thermal systems. The DC SEU will allocate resources for solar thermal and solar domestic hot water in FY 2013. On the low-income multi-family side, significant contract dollars had been spent on electric measures, although there were also hot water savings and some other efficiency measures. Each market had its own characteristics with respect to the split between electric and gas. The low income programs also installed low flow faucets and the low flow shower heads, which saved over twenty-six million gallons of water consumption last year.

The DC SEU was on target to do about five-thousand units this year. Property managers were excited about measures that result in water savings. The DC SEU intended to achieve the required spending on gas programs in a very short period of time by looking for large projects where there would be significant savings. Such projects may use large amounts of hot water or have gas fired hot water. With respect to the water savings, the DC SEU's tracking system did not account for the embodied energy savings of the water delivered, i.e., energy savings at the water plant. Chairman Kane stated that DC Water is the largest customer of electricity in the District. Therefore, savings on water represented a savings for electric. The DC SEU had not yet focused on solar hot water in this FY, though the DC SEU did three projects in FY 2011. Since there were opportunities for commercial users to use solar hot water, they will be some of the first projects in FY 2013.

Mr. Brown emphasized that renewables needed to focus on biomass boilers and woodchip boilers, which would create many jobs for District residents. For the FY 2013 plan, the DC SEU was seeking input for the Board for designing new programs.

Although the total budget for the SEU contract in FY 2012 was \$15 million, \$1.8 million was set aside for the performance incentive and the EM&V contract. Therefore, \$13.2 million was allocated for SEU programs. Allocations across the sectors were as follows: 1) \$5 million for low-income multi-family; 2) \$5.7 million for commercial and institutional; 3) a little less than \$1 million for renewable energy; and 4) \$1.7 for residential. In the commercial and institutional programs, 41% of the funds were for gas measures. As of July 20, 2012, the EM&V contract had been awarded.

Matt Orlins stated that, as a part of the Mayor's Sustainable DC Act, \$2 million would be allocated from the SETF to DDOE's renewable incentive program for FY 2013. This provision would not affect the DC SEU programs for FY 2013 but would be drawing from the same pool of money. That legislation has been proposed by the Mayor, but the Council has not acted on it yet. The legislation did not request a reduction in the DC SEU funds. Mr. Orlins told Mr. Brown that if he wanted to submit some testimony, the Council would gladly accept it. Mr. Brown said that instead of submitting testimony, he would pay the Mayor a visit because he needed to know that this money was dedicated for the SETF, and not used as the District government trust fund.

The money allocated for administration included expenditures for executive managers as well as IT components (equipment, telephones and servers). IT expenses also included labor to maintain the IT systems along with the tracking systems software. Other administrative costs were office space occupancy cost, insurance, and office supplies. Support services were separate from the administrative cost. About one-third of the administrative costs were IT-related. The executive managers were Mr. Trabue, Mr. Marcus Walker, Director of Operations, Mr. Cawley and executives from Vermont.

The DC SEU has been doing the direct services, direct assistance, customer services, account management, efficiency opportunities, business development, and reporting and tracking. Support services were still part of the DC SEU's overall program activities, and included collateral materials, new efficiency measures, and development of analysis tools, market studies, compliance procedures, workforce development, and finance development. Direct services incorporated program and technical services performed by the DC SEU staff and partners as well as on the job training. In direct installation services, the DC SEU hired contractors who billed for the total cost of installation, to include labor and materials. Customers in those situations do not pay any money. For incentive programs, the DC SEU issues a check to the consumer to install efficiency upgrades, so these are direct installation dollars. Mr. Andronaco asked for examples for the 40% of the budget allocated for technical and professional services, and if marketing was included in the 40%. Mr. Cawley confirmed marketing was included.

The 40% portion also paid for a staff of engineers who work with the businesses to identify cost-effective efficiency opportunities. These engineers are knowledgeable in things like building controls and newer technologies. Mr. Cawley stated that property managers have a one year time horizon, and do not look at things like their cash flow or rate of return. For small or medium size businesses, the DC SEU offers Energy Saving Rebates, a prescriptive program that pays part of the cost for a business to change its lights, lighting controls, high efficiency boilers, hot water heaters, or refrigeration equipment.

Several Board members were concerned to see so much money being spent on professional services, and not as much money being allocated for work done in the field, like compliance and workforce development. Mr. Cawley responded that the workforce development budget incorporated an on the job training program with a dozen people being trained in new job skills associated with green jobs. Mr. Brown asked for examples of the training.

Ms. McIntyre asked for the difference between the marketing and administration, specifically, the components of the administrative activity. Mr. Cawley answered that there is an important

distinction. The DC SEU is focused on influencing people to make energy efficient decisions, and a number of different marketing techniques are used to achieve this. With a performance contract, it is the DC SEU's decision as to how to use the contract dollars to generate the largest savings. Ms. McIntyre was concerned about the large share of expenditures for technical services. Mr. Cawley suggested that the Board review the cost structure of comparable programs being administered throughout the country; information on such programs will be provided to the Board.

The DC SEU will also make available more detail on line items in the budget that account for 10% or more of SEU expenditures. Most of the direct install expenses are geared to CBE contractors and the creation of green jobs. Other direct install programs such as custom C&I involve large customers. These customers hire their own contractors, so even though green jobs are created, the SEU cannot count these jobs. The DC SEU has been working with manufacturers to get products into stores. The jobs created by the additional dollars injected into the economy are also not counted in the green jobs figure. Ms. McIntyre recognized there can be high startup costs, but again expressed her concern over the large allocation of resources for administrative cost and technical services. Mr. Andronaco stated that, while he recognized the need for a ramp up period for IT and staff, he was concerned by the amount being spent in areas that do not directly benefit the customer. In response, Mr. Cawley highlighted non-price barriers to energy efficiency, to include risk and knowledge of the product.

Mr. Brown emphasized the need to focus on schools. For example, the installation of solar panels at Howard University. Mr. Brown also mentioned that River Terrace is a community that is situated between a river and a highway, a neighborhood well-suited to be taken off the distribution grid.

Regarding SEU contract renewal process, next month DDOE will receive the annual program plans from the DC SEU along with evaluations of what had been done to date. The EM&V will not occur until the next fiscal year. By the middle of September, DDOE will have made a decision on whether to exercise an option year of the contract. Ms. McIntyre stated that the incentive payment issue has to be looked at, and she was wary of 50+% of costs that could be interpreted as overhead.

Mr. Brown stated that the DC SEU's budget numbers look too optimistic. He also stated that he would be dismayed if DDOE decided to move forward with these numbers, and he would then probably be on Channel 5 and all over the news stations. DDOE agreed that the request for information and data was appropriate to enable the Board to acquire an in-depth understanding of the DC SEU budget.

Mr. Andronaco asked about the issue of D&O insurance for Board members. Mr. Karim replied that DDOE had been working on this issue, and in 2009, a memo on this topic was sent to OAG. This memo will be forwarded to the Board.

Ms. McIntyre asked for an explanation of why the incentive payment would be made if the DC SEU did not meet the spending mandate of the CAEA. Dr. Lawrence explained that under the SEU contract, the incentive would be paid if the DC SEU meets the six benchmarks. The incentive portion was not tied to the entire contract. The statutory and contractual requirements of the DC SEU and the FY 2013 programs will be discussed at the September 17, 2012 meeting.

Mr. Anderson noted the agenda items for the next meeting: the Board would like to see comparisons from around the country on energy efficiency contractors; more information on Table 5 presented today so that Board members can get a better understanding of the numbers; DDOE will make a decision regarding renewal of the contract and meet with the Board to give them information on their decision; DC SEU 2013 Report. We will meet again in thirty days.

Ms. McIntyre reiterated that in order for the Board to make a decision, the Board needed the requested information before the next meeting. The information would include a breakdown of DC SEU staff by position.

Mr. Trabue indicated the DC SEU exceeded the target on spending on CBEs. The green jobs creation was based a combination of several things, such as in-house staff, teaming partners, on the job training candidates, and temporary staff. One hundred percent of the DC SEU hires were District residents, and the DC SEU had not wavered in that commitment.

To promote hiring of District residents by DC SEU contractors, the DC SEU had been working with the contractors on programs referred to as “speed dating.” There were at least two such programs that married up a pool of eligible District residents with the implementation contractors. During August and September of this contract year, about fifteen full-time equivalents were created during the ramp up of the direct install program.

The “other” category on the chart of green jobs represents jobs the DC SEU anticipated creating before the end of the FY 2012. There will be a large number of jobs in the baseline for FY 2013. Ms. McIntyre mentioned that in the first quarter, the implementation contracts were a small number and the same was true in the fourth quarter. She asked if there was a reason for this. Mr. Trabue explained that this was because the quick start programs were ramped down and the market based program were introduced. The chart indicated that seventeen people were hired in the fourth quarter; however, this number represented seventeen FTEs equivalents at 2080 hours per FTE. With a continuation of the programs, there will not be a drop in the number of jobs, as was the case in the second quarter of FY 2012.

Mr. Anderson outlined additional agenda items: at the meeting scheduled for August 20, 2012, DC SEU program staff should be present. The Board wanted to hear from them to get specifics on their programs. This should be the first item on the agenda. The DC SEU should also discuss promotional strategies.

Other Issues:

New business

Upcoming meeting schedule:

SEU & SEUAB Meeting
Monday, August 20, 2012
9:00 am – 12:00 Noon
DDOE
1200 First Street, N,E, 5th Floor
Washington, D.C. 20002

III. Adjournment

Keith Anderson adjourned the meeting at 12:20 pm.

Minutes prepared by: Lynora Hall