



**NEW YORK STATE THRUWAY AUTHORITY
NEW YORK STATE CANAL CORPORATION**



MINUTES

AUDIT AND FINANCE COMMITTEE MEETING NO. 17

November 16, 2009

Minutes of a meeting of the New York State Thruway Authority/Canal Corporation Audit and Finance Committee, held in the Board Room at Administrative Headquarters, 200 Southern Boulevard, Albany, New York and via video conference from the Authority's New York Division Office, Syracuse Division Office and Buffalo Division Office. The meeting began at 1:30 p.m.

The following members of the Audit and Finance Committee were present, constituting a quorum:

Present:

Chairman John L. Buono, ex officio Audit and Finance Committee Member, via teleconference

E. Virgil Conway, Chair, Audit and Finance Committee, via video conference

Donna J. Luh, Audit and Finance Committee Member, via video conference

Richard N. Simberg, Audit and Finance Committee Member, via video conference

In addition, there were present the following staff personnel:

Michael Fleischer, Executive Director

William Estes, General Counsel

Kevin Allen, Acting Director, Audit and Management Services, via video conference

John Bryan, Chief Financial Officer

Jill Warner, Board Administrator

Harry Lennon, Senior Investigator

Tracie Sandell, Assistant Counsel

Dorraine Steele, Director, Office of Fiscal Audit and Budget

David Malone, Director, Office of Accounting & Disbursements

Daniel Gilbert, Chief of Staff
Michael Sikule, Director, Office of Investments and Asset Management
Christopher Waite, Chief Engineer
Richard Garrabrant, Director, Syracuse Division, via video conference
Karen Osborn, Budget Manager, Office Fiscal Audit and Budget

Also in Attendance:

John Armstrong, New York Network
Gerry DeLuca, DeLuca Public Affairs

PUBLIC SESSION

Mr. Conway called the meeting of the Audit and Finance Committee to order.

Ms. Warner recorded the minutes as contained herein.

Item 1

Approval of Minutes of Audit and Finance Committee Meeting No. 16

After full discussion, on the motion of Mr. Conway, without any objections, the Audit and Finance Committee approved the Minutes of Audit and Finance Committee Meeting No. 16, held September 16, 2009.

Item 2 & 3

Review and Approve Revised 2009 Financial Plan and 2010 Thruway Budget for Board Action

Review and Approve 2010 Canal Budget for Board Action

Mr. Bryan stated that these items seek the full Committee's approval to advance to the full Board the Authority's Revised 2009 Financial Plan, the Proposed 2010 Budget and the Revised Multi-Year Financial Plan.

Compared to the 2009 Budget that was adopted by the Board in December of 2008, the Revised 2009 Budget includes revenue, expense and fund deposit adjustments that will result in a balanced budget for the year. Despite the effects of the ongoing national recession and the

impact it has had on passenger and commercial traffic behavior, the continuation of operating expense reductions, principally an extension of strict hiring controls and other actions that have been put in place over the past several years will allow the Authority to remain in good financial health through the end of 2009.

The Proposed 2010 Budget is based on the assumption that the economic recovery period will be protracted and slow and Federal aid allocated to the Authority will drop to historically low levels – representing only 0.4% of the sources that will fund our 2010 budget. To help meet the challenges these issues present, the Proposed 2010 Budget includes a continuation of ongoing strict hiring controls and other enhanced cost containment measures. It also includes, at the suggestion of several Board members, a reduction of an additional 28 full-time staff positions, adding to the 516 positions that have been eliminated over the last decade.

For 2010, staff anticipates the total operating budget for the Canal and Thruway will grow by 4.3 and 3.4 percent, respectively. However, if staff adjusts for mandated, non-discretionary costs, operating expenses for both the Canal and the Thruway are expected to actually decline by more than 1 percent. For the fourth year in a row, the Authority's discretionary budget has declined

The Proposed 2010 Budget includes funding for several important capital projects that Mr. Bryan mentioned:

- The completion of the new Woodbury Toll Plaza that will bring highway speed E-ZPass to our customers in that often congested area;
- initiation of additional deck replacement and other repairs on the Tappan Zee Bridge;
- continued deck replacement and other structural work on the Grand Island Bridges;
- pavement reconstruction from Exit 57 (Hamburg) to 57A (Angola); and

- the continuation of the total reconstruction of a 15 mile section of highway in the Syracuse Division

In the Multi-Year Financial Plan ongoing cost containment efforts and a more positive future traffic outlook will allow us to maintain balanced budgets in 2009 and 2010, all but eliminate the small deficit that was previously expected in 2011, and allow staff to rely less on debt to finance capital needs. Debt service coverage is expected to remain above the minimum levels established in the Authority's Fiscal Management Guidelines and Bond Resolution in 2009 and 2010 – offering a good opportunity for the Authority to preserve its current high, A grade credit rating. No reductions in the Multi-Year Capital Program are required to retain a balanced financial plan. The Authority will continue to provide safe and efficient transportation services by maintaining its pledge to invest \$2.1 billion into its Multi-Year Capital Program, with nearly \$950 million in lettings scheduled from now until then end of 2011. Sufficient cash resources will be available, allowing pay-as-you-go financing of the Multi-Year Capital Program to remain above 20 percent in 2009 and 2010.

Mr. Simberg requested clarification regarding the chart titled “Comparison of 2009 Budget to Revised Financial Plan” specifically the line titled “Retain for Capital Plan” for \$5.2 million. Ms. Steele responded that at the end of 2008 the Authority had revenues greater than what was needed for operating program needs, the deposit for other Authority projects and the debt service so staff retained those funds from 2008 so that it was available for early 2009 expenditures. Mr. Bryan added that when staff did the 2009 budget last year they weren't aware that the fiscal year would end with a small surplus, so this figure is just updating the financial plan to reflect that the Authority ended 2008 with more money than expected. Mr. Simberg inquired as to why it wasn't in the original 2009 budget. Mr. Bryan stated that staff hadn't yet closed out the year when the original budget was prepared; some payments don't occur in December, more revenue may have come in than was expected, expenses may have been lower than expected, etc.

Mr. Simberg inquired about the reduction in deposit to the reserve maintenance fund and whether the Authority made less of a deposit this year because that figure was all that needed to be put into the fund this year. Mr. Bryan responded affirmatively, adding that the original 2009

budget planned to deposit \$56 million but due to the downturn in the economy early in the year there were less revenues left over to put into the fund, but the Authority is still in excess of the \$30 million minimum the Authority is required to make under the bond resolution. Mr. Simberg asked if that's where the money came from to pay off the Authority's discrepancy. Mr. Bryan responded affirmatively.

Mr. Simberg asked how staff estimates the Authority's winter costs, whether it is based on an average winter or does staff use forecasts. He added that there is almost no change in maintenance costs from last year so if we have an easy winter there may be a surplus or if we have a bad winter there will be a deficiency. Mr. Bryan responded that there is a supply and demand effect. If it's a wintery season the crews are out more, overtime is higher, crews are spreading more salt and there is the effect of the price of salt too, which hit the Authority hard last year. Staff uses a rolling average for salt costs. Ms. Steele stated that it's a 5-year rolling average for usage, plus updating for the purchasing price of salt. Mr. Bryan stated that the Authority contracts in for salt, so that is a known cost.

After full discussion, on the motion of Ms. Luh, seconded by Mr. Simberg, without any objections, the Audit and Finance Committee authorized the submission of the Revised 2009 Financial Plan, the Revised Multi-Year Financial Plan, the 2010 Thruway Budget and the 2010 Canal Budget to the Board for consideration.

Item 4 & 5

Review and Approve 2010 Thruway Contracts Program for Board Action

Review and Approve 2010 Canal Contracts Program for Board Action

Mr. Waite stated that in conjunction with the budget that Mr. Bryan presented, staff have also prepared a 2010 Contracts Program for the rehabilitation and reconstruction of the highway and bridge facilities, the intelligent transportations systems and architectural components of the Authority's infrastructure, Cash flow for 2010 is estimated at \$412,048,378, which includes estimated costs of construction contracts, contingencies, engineering and design and/or construction inspection provided by staff, outside firms or DOT. A list of projects the Authority

has planned for 2010 was provided to the Committee. The program will be funded using toll revenue, bond proceeds, Federal aid, State and other funds.

Included in the Board Item are resolutions that affect the Executive Director, the Chief Engineer and the Chief Financial Officer, giving each one certain authorizations with respect to actions that need to be taken to put the program into effect. The authorizations in the resolutions are the same as they were in the 2009 Contracts Program.

The 2010 Contracts Program will address a total of 70.8 centerline miles, which is equivalent to 260 lane miles of highway. Staff will also replace four mainline bridges and rehabilitate 15 other mainline bridge and five overhead bridges. Thirteen additional bridges will get some work done on them such as painting, joint replacement, and steel repairs. Staff will also be replacing 6.3 centerline miles of the highway. There is a significant amount of work to be done in 2010 for a total of \$601 million in lettings to go along with a cash flow estimated at \$412,048,378.

Ms. Luh stated that it was good to hear that cash was being spent on bridge repairs because there is a lot of bad press in Buffalo regarding work not being done on Authority bridges and bridges in the State in general.

Mr. Waite provided a break down of letting percentages by Division: 47 percent in New York Division, 27 percent in Albany Division, 3 percent in Syracuse Division and 22 percent in Buffalo Division with an additional 0.4 percent spread out over the four Divisions for state-wide projects. Mr. Fleischer added that the Syracuse numbers are down because the projects in that area were let in 2009.

Chairman Buono stated that he noticed that the 2010 Contracts Program includes alleviating congestion at Interchanges 23 and 24 and wondered if that's going to be a significant project. Mr. Waite responded that it will be very significant. There are 6 miles of highway between those two exits that currently consist of two lanes in each direction. When the project is complete it will be totally reconstructed with new pavement and it will be three lanes in each direction, six total, to

allow for more capacity, which will match up with the highway between Interchanges 24 and 25 heading towards I-88.

Mr. Waite reported that the Canal Contracts Program is quite similar, though the numbers are a little different. A list of projects the Corporation has planned for 2010 was provided to the Committee. The cash flow generated in the 2010 Canal Contracts Program is \$20,655,521. Funding is similar to the Thruway Contracts Program with funds coming from toll revenue, bond proceeds, Federal aid, the Canal Development Fund and the 2005 Transportation Bond Act. The resolution authorizations are the same as for the Thruway Program.

After full discussion, on the motion of Mr. Simberg, seconded by Ms. Luh, with no objections, the Audit and Finance Committee authorized submission of the 2010 Thruway Contracts Program and the 2010 Canal Contracts Program to the Authority Board for consideration.

Item 6

Review and Approve Scope of Services for the 2009 Financial Statement Audit and Single Audit to be Performed by Toski, Schaefer & Co., PC

Mr. Bryan reported that this Item requests the Committee's acceptance of the General Audit Plan that has been submitted by the Authority's independent auditor: Toski, Shaefer and Company.

The document outlines the firm's objectives, approach and timetable for their performance of the annual audit for the 2009 fiscal year. Staff are seeking Committee approval today so they can ensure a timely start to the audit this year – which is particularly important considering the compressed time frame in which this audit needs to be performed and considering this will be Toski and Shaefer's first audit of the Authority's books.

Mr. Conway stated that the contract has not yet been approved. Mr. Bryan added that the contract is at the Comptroller's Office (OSC) awaiting approval and stated that he would check in with OSC and see if staff can get it moving a little more quickly. He stated that OSC

understands the situation the Authority is in and added that he doesn't expect it to be a difficult process.

After full discussion, on the motion of Ms. Luh, seconded by Mr. Conway, with no objections, the Audit and Finance Committee approved the 2009 Financial Statement Audit and Single Audit to be performed by Toski, Schaefer & Co., PC

Item 7

Review and Approve Report of Investments for the Quarter Ending September 30, 2009 for Submission to the Board

This item seeks approval of the Authority's investment report for the third quarter of 2009 for submission to the full Board. OSC guidelines require the Authority to provide a quarterly report on all investments made by the Authority. The report details, by fund, the investments made and yield obtained for each investment.

In the third quarter of 2009, the Authority invested a total of \$1.5 billion, earning an average yield of approximately 0.33 percent.

After full discussion, on the motion of Ms. Luh, seconded by Mr. Conway, without any objections, the Audit and Finance Committee authorized submission of the Third Quarter Investment Report to the Authority Board for consideration.

Item 8

Review and Accept the Following Items:

- a. Concession Audits Performed by UHY LLP**
- b. Actuary Report on Other Post Employment Benefits Liability (GASB 45) Prepared by USI Consulting Group**
- c. Report Submitted to the Office of the State Inspector General**

Concession Audits Performed by UHY LLP

Mr. Bryan reported that this Item requests the Committee's acceptance of two audits that were performed by UHY that evaluated concession rents payable from the HMS Corporation and Delaware North Corporation during 2006-2008. In both audits, testing done by UHY verified that the calculation of rents owed to the Authority were correct. For HMS Host there were two very minor record keeping discrepancies between various sales reports: one over reported on a cash sales report when compared to an end of night summary report and the second identified a deposit that was \$13 higher than the amount reported on the sales report. Neither of these minor discrepancies impacted the amount of rent due the Authority.

Actuary Report on Other Post Employment Benefits Liability (GASB 45) Prepared by USI Consulting Group

Mr. Bryan reported that this item requests the Committee's acceptance of a report, completed by USI Consulting, which provides an actuarial evaluation of "post employment benefits other than pensions" (more commonly referred to as OPEB). The valuation was necessary for the Authority to comply with GASB standards that require governments record the expense and liabilities of OPEB benefits.

Report Submitted to the Office of the State Inspector General

Mr. Allen reported that this item requests the Committee's acceptance of a report periodically sent to the Inspector General and includes a number of different investigations that were performed.

After full discussion, on the motion of Ms. Luh, seconded by Mr. Conway, the Audit and Finance Committee noted the above report as accepted.

Item 9

Annual Assessment of the Audit and Finance Committee Charter and Approval of Any Substantive Proposed Changes for Submission to the Board

Mr. Allen reported that there were no substantial changes made to the Charter other than those made to keep in compliance with the Committee's actual practices, such as the submission of the investment report annually and quarterly as well.

After full discussion, on the motion of Ms. Luh, seconded by Mr. Conway, the Audit and Finance Committee approved the Annual Assessment of the Audit and Finance Committee Charter.

Item 10

Review and Discuss, as Necessary, the Following Items:

- a. Office of the State Comptroller Audit**
- b. Office of the State Inspector General Investigations**
- c. Audit and Finance Committee 2010 Draft Work Plan**

Mr. Allen stated that Item 10a is the draft Comptroller's Audit of the Authority's Revenue and Capital Improvements at Travel Plazas. Staff is currently preparing the Authority's 30-day response to the audit, which will become an appendix to the audit when it is issued to the public. The report states that the Authority has adequate oversight over collecting full monthly rent payments and adequately ensures that required capital improvements are made by concessionaires. Areas for improvement were noted in the form of eight recommendations. A few of the recommendations are related to assessment and collection of late payment interest when concessionaires pay monthly rent late; several are related to enhanced monitoring and collection of sales; and one relates to an isolated fuel discrepancy. Steps have been taken to ensure that interest is assessed and collected when necessary. Since this audit all concessionaires are in fact paying their rent timely. Mr. Conway stated that if the rent is not paid on time, interest will be collected going forward.

Mr. Simberg requested an explanation of the portion of the Audit related to McDonald's completion of capital improvements at travel plazas they operate. At the time of the audit

McDonald's replacement expenditures did not match the amount projected in the contract. Mr. Allen concurred, adding that the contract requires the concessionaires to do a number of repairs and replacements to equipment at their facilities over the span of their contract. The Comptroller's Office found that McDonald's had not spent the amount of money they should have in that period of time at that point in time of the contract. However, McDonald's did have a plan to spend those monies on a number of projects including sprinkler systems. Ms. Steele stated that the contract goes through the end of this year so McDonald's has until the end of December to make all of the capital improvement investments. Mr. Simberg inquired as to what would happen if they failed to make all of the improvements. Ms. Steele responded that the Authority would receive payment for the unexpended balance. Mr. Conway asked if McDonald's really planned to start these improvements within the next few weeks. Mr. Allen explained that the audit was done in the months prior and that work had already begun. It is not the Authority's position that staff would want to collect the money at the end, staff would rather see the improvements made and the facilities kept in good shape.

Mr. Conway inquired about Item 10b (Investigation by the State Inspector General) regarding a welder on the Tappan Zee Bridge. Mr. Allen responded that when the question arose as to whether or not certification was properly submitted, the welder at that time was reassigned off of the bridge so no welding was performed without a certified welder being in place. It was a recertification period so there were some issues that arose. Staff is currently pursuing appropriate disciplinary action in that case.

Mr. Allen reported that there was an additional investigation performed by the Inspector General's office regarding inappropriate use of information technology assets and interfering with an investigation. The individual was found guilty and was dismissed.

Mr. Allen stated that Item 10c is the Committee's Work Plan for 2010 for review and discussion.

Other Business

Mr. Simberg stated that he was concerned that what the Authority is spending on the Tappan Zee Bridge gets lost within several categories throughout the 2010 budget, some appears in the Contracts Program budget (ie. planning work), more appears in the Capital Plan budget. He believes that it is important and a large enough expenditure in the near to long-term future that a Tappan Zee Bridge category should be created under capital projects and should include all costs to allow the Board to have a better handle on and easy access to what is possibly the largest draw on Authority funds. Mr. Bryan responded that a separate schedule for the Tappan Zee Bridge would be created and included in all future budget presentations and updates. Chairman Buono and Mr. Conway agreed that was a good idea, Mr. Conway added that staff should be sure to keep the current repair costs separate from any future bridge replacement costs.

Adjournment

There being no further business to come before the Audit and Finance Committee, on the motion of Mr. Conway, the meeting was adjourned at 2:03.