



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



MINUTES

AUDIT AND FINANCE COMMITTEE MEETING NO. 13

April 9, 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 and Buffalo Division Office. The meeting began at 1:05 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
Frederick Howard, Audit and Finance Committee Member
Donna J. Luh, Audit and Finance Committee Member, via video conference (arrived late)
E. Virgil Conway, Chair, Audit and Finance Committee, via video conference

In addition, there were present the following staff personnel:

Michael Fleischer, Executive Director
Kevin Allen, Acting Director, Audit and Management Services, via video conference
John Bryan, Chief Financial Officer
Jill Warner, Board Administrator
Sharon O'Connor, General Counsel
Tracie Sandell, Assistant Counsel
Dorraine Steele, Director, Office of Fiscal Audit and Budget, via video conference
Michael Sikule, Director, Office of Investments and Asset Management
Betsy Graham, Acting Director of Public Affairs
David Malone, Director, Office of Accounting & Disbursements

Also in Attendance:

Karl Diehl, Production Coordinator, New York Network
Angela Rodell, Senior Vice President, First Southwest via video conference
William M. Kahn, CPA, Partner, UHY Advisors NY, Inc.

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. 12

After full discussion, on the motion of Mr. Howard, seconded by Chairman Buono, without any objections, the Audit and Finance Committee approved the Minutes of Audit and Finance Committee Meeting No. 12, held January 20, 2009.

Items 2 & 3

Review Any Significant Accounting and Reporting Policies and Issues, Risks and/or Other Material Communications Between Staff and UHY, LLP

Review and Accept the 2008 Financial Statements and Related Audit Reports Prepared by UHY, LLP

Mr. Kahn stated that when he last met with the Committee they reviewed the Audit Plan for the December 31, 2008 audit. The audit objectives and audit strategy were discussed. He reported that in connection with the audit and the completion of the audit UHY made no changes to those original objectives and that strategy. UHY has completed the audit of the financial statements of the Authority for 2008. The report has been distributed to the members of the Committee and UHY has issued an unqualified audit report for 2008, that is consistent with past years and that is a good report. UHY conducted the audit in accordance with auditing standards generally

accepted in the United States and in accordance with the American Institute of CPA's government auditing standards. UHY also considered the Authority's internal control structure in order to determine their auditing procedures for the purpose of expressing their opinion, and in connection with that they noted no material weaknesses or reportable conditions in the Authority's system of internal controls.

Mr. Kahn then highlighted portions of the Authority's financial statements that were significant and worthy of noting. On page 28 of the report, under note 9, this is the second year of the Authority's implementation of what the accountants call GASB Statement No. 45 which relates to post-employment benefit costs. In connection with that, certain extrapolated actuarial information is disclosed. This impacts the Authority on an annual basis because there is a cost included, while that cost may not relate to dollars today, it is a significant cost that is added to the Authority's financial statements over a period of years.

On page 32 of the report, GASB Statement No. 49 has to do with pollution remediation obligations. Beginning with the current year the Authority was required to disclose the current value and the liability relating to environmental remediation costs. Those costs are included in a table at the bottom of page 32. UHY reviewed the assumptions used by both the Authority and the Authority's consultants and engineers and they are comfortable with the disclosure. Mr. Howard inquired if this disclosure involves petroleum tanks on Authority property that are the responsibility of the concessionaires to remediate. Mr. Kahn concurred. Mr. Howard also asked if the numbers are adjusted for this recovery. Mr. Kahn responded that they are net numbers or estimated numbers reflected net of an estimated recovery.

Mr. Kahn then spoke briefly about required communications. These communications are important to the Audit Committee in their understanding of both how the audit is conducted and what the conclusions of the audit are. Several weeks ago UHY met with management and reviewed in detail many of these communications, as well as the financial statements and certain other issues. The first issue relates to UHY'S responsibility under generally accepted auditing standards and the responsibility of the reporting and the accuracy of the accounting rests with the Authority. UHY's responsibility is to conduct an audit and issue an opinion. Mr. Conway stated

that that has not changed, that has always been the case. Mr. Kahn concurred. Mr. Kahn stated that the second issue has to do with significant accounting policies. Significant accounting policies are important to the extent that there are new policies and the Audit Committee should understand what those policies are. GASB Statement Nos. 45 and 49, as previously discussed are the issues that needed to be communicated. The concept of management judgments in accounting estimates is important because those are the estimates that impact the numbers the Committee sees in the financial statements. There are many estimates that enter into all financial statements such as the valuation of inventories, the calculation of depreciation, perhaps most significantly are the actuarial numbers used in the post-retirement benefit calculations. UHY reviews all of those estimates and in their opinion they are reasonable in the context of the financial statements taken as a whole.

Mr. Kahn discussed the concept of audit adjustments. To the extent that UHY proposes audit adjustments that are either significant, or if there are a number of adjustments, it should cause the Committee and members of management to be concerned about the numbers the other 11 months out of the year. UHY did not propose any audit adjustments and the audit adjustments that were considered audit differences in the context of the audit were insignificant and did not elevate themselves to discussion with the Committee. UHY did, however, discuss certain issues with management related to the audit adjustments and certain other issues and in that regard corrective action has begun on a couple of those items. Those items related to the calculation of certain allowances, which were relatively insignificant in connection with the financial statements taken as a whole, and also certain reconciliation issues which UHY continues to monitor. UHY did discuss reconciliation issues with the Committee several years ago and those issues are substantially resolved at this point.

Chairman Buono inquired if UHY expects any changes from GASB going forward as it relates to the Authority in 2009. Mr. Kahn responded that changes are part of the accounting world but the most significant change occurred last year with the post-retirement and that had a significant impact on the Authority's financial statements, not in cash but in the recording of the liability. It is doubtful that there will be any kind of standards that would impact the Authority in that kind of way going forward. Mr. Conway added that was a GASB change. The liability was always

there, just the way the Authority reports it has changed. Mr. Kahn concurred. Mr. Bryan stated that it's part of the post Enron world. Mr. Conway agreed, adding that he was associated with that organization for three years back in the 90's and they were talking about it then. It takes 10 to 15 years to complete a major change. He thought they were wrong, but he was a voice in the wilderness. Mr. Kahn agreed, adding that in the private sector those changes/standards were implemented a number of years ago.

Mr. Conway inquired about the federal single audit and where UHY stands on that. Mr. Kahn responded that the single audit is substantially completed and will be presented to the Committee at a future meeting. There are no issues that have been identified in connection with that audit.

Mr. Kahn added that the last two pages of the report include a required opinion on what is called internal controls over financial reporting and compliance and other matters including compliance with the investment guidelines of the Office of the State Comptroller. UHY did not identify any deficiencies in internal control over financial reporting that they consider to be material weaknesses. The results of UHY's tests disclosed no instances of noncompliance or other matters that are required to be reported under Government Auditing Standards.

After full discussion, on the motion of Mr. Howard, seconded by Chairman Buono, with no objections, the Audit and Finance Committee authorized submission of the 2008 Financial Statements and related material prepared by UHY, LLP to the Authority Board for consideration.

Item 4

Review and Approve the Solicitation of Professional Accounting and Auditing Services

Mr. Bryan requested the Committee's permission to solicit professional accounting and auditing services through a public Request for Proposals (RFP) or through the Office of General Services Statewide Contract. Chairman Buono inquired as to what would be the difference in the two processes. Mr. Bryan responded that the RFP would be put together by staff, have it issued and then interested firms would respond. The State contract is similar except the Authority would issue an RFP type document to the accounting firms on the State contract that have already been

pre-approved to do business with the State. There are subtle differences but he believes that the end result would be the same. Mr. Howard stated that it's like starting with a pre-qualified list. Mr. Bryan added that the main difference is that the time frame is significantly collapsed with the State contract. Mr. Howard stated that Ms. Luh had some issues regarding opportunities for M/WBE's and he questioned whether one method would be better than the other. Mr. Bryan stated that at this time it is hard to determine what those opportunities might be. It's difficult to have an independent auditor that has a subconsultant because of the need for an unqualified opinion from the CPA firm. The Authority isn't getting Bill Kahn's opinion it's getting an opinion from UHY. Staff is working on analyzing the M/WBE issue now with a subcommittee formed by the Governors Task Force to Increase Participation of M/WBE Firms in Debt Issuances. He believes the Task Force will have completed its report before the Authority goes to the street with this RFP. Mr. Howard stated that perhaps that would be a factor in which process is pursued.

Mr. Conway inquired if UHY is forbidden from bidding on the contract. Mr. Bryan responded that they can rebid but they cannot put the same partner on the job, which was part of the Public Authorities Accountability Act. Mr. Allen added that the firm is qualified to rebid if either the lead partner or the partner in charge of reviewing the audit changes every 5 year according to information put out by the Authority Budget Office.

Chairman Buono stated that his sense is that staff should go the most expeditious route but whichever process is chosen should get the best services. Mr. Bryan stated that using an RFP the Authority could get a greater number of responses, while the State contract provides contractors who have already been through the pre-approval process. He added that his staff believes the pricing is cheaper on the State contract than the Authority has received through RFP's. Mr. Malone added that the Authority has always done an RFP so this is the first time staff is considering using the State contract for auditing services. At this time staff is not fully aware of the pros and cons. Mr. Bryan stated this issue can be researched further and then sent back to the Committee with a recommendation.

Ms. Luh arrived at the Meeting and participated via video conference from Buffalo Division.

After full discussion, on the motion of Mr. Howard, seconded by Chairman Buono, with no objections, the Audit and Finance Committee approved the Solicitation of Professional Accounting and Auditing Services, subject to further discussion concerning the methodology.

Item 5

Review and Approve the Authority's Fourth Quarter Investment Report for Board Action

Mr. Bryan reported that OSC guidelines require the Authority 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 total, in the fourth quarter of 2008, the Authority invested a total of \$750 million, earning an average yield of approximately 1.7 percent.

After full discussion, on the motion of Chairman Buono, seconded by Mr. Howard, with no objections, the Audit and Finance Committee authorized submission of the Report of Investments for the Quarter Ending December 31, 2008 to the Authority Board for consideration.

Item 6

Review and Approve the Authority's Annual Investment Report for Board Action

Mr. Bryan stated that the Public Authorities Law requires the Authority prepare, approve and submit this report to the Division of the Budget each year. The report includes the Authority's policies for making investments, the results of the annual independent audit, investments and investment income information and all fees charged by firms rendering investment services to the Authority.

In total, the Authority made a total of \$7.9 billion in investments in 2008, with \$33.1 million in earnings.

Within this item, staff s recommending changes to the investment policy that change dollar limitations for certain types of investments to percentages and several minor clarifications dealing with the type of banks the Authority can place time and demand deposits with and

allowing banks to substitute a security under a repurchase agreement without forming a new agreement. These changes are based on a recommendation by the Authority's financial advisor, First Southwest.

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

Item 7

Review and Accept Reports Submitted to and Received from the Office of the State Inspector General

- a. Periodic Summary of Investigative Actions**
- b. OSIG Investigation into an Anonymous Complaint Alleging a Violation of the Public Officers Law**

Mr. Allen presented the above Item for review and discussion only.

Mr. Conway clarified that the second case under Item 7a reads as if a violation was found and the case was closed, he stated for the record that the investigation was closed but disciplinary action continues.

After full discussion, on the motion of Mr. Howard, seconded by Ms. Luh, the Audit and Finance Committee noted the above reports as received.

Item 8

Review and Discuss, as Necessary, the Following Items:

- a. Audit and Finance Committee's Functions and Performance**
- b. Office of the State Comptroller Audits**
- c. Audit and Finance Committee 2009 Draft Work Plan**

Mr. Allen presented the above Item for review and discussion only.

Mr. Conway stated that the Committee is still feeling its way around the tasks assigned to it by the Thruway Authority which accounts for some of the blanks in the Charter Compliance

Checklist (8a) which will be filled in as the year progresses. Mr. Conway thanked staff for the work that they've done in establishing the Committee and providing support.

Mr. Allen reported that the blanks in the table on pages 4 and 5 are mainly because it hasn't been applicable to date but all the other requirements have been fulfilled and this will be an annual evaluation from here forward.

Mr. Allen stated that 8b contains two audits by the Office of the State Comptroller. One, issued April 3, 2009, deals with gas prices charged at Thruway Travel Plazas. Also included is the Authority's 90-day reply to the Capital Program audit. Mr. Conway added that he thought the audit of the travel plazas showed that this is somewhat of a problem but that the Authority is on top of it and that at this point it's confined to one operator in the Sloastsburg area. Ms. Luh responded that in Buffalo the message they are hearing is that it's more than one operator. Mr. Fleischer stated that it was in more than one location but primarily one operator. Mr. Bryan clarified that 80 percent of the problem was one operator in one location but that Ms. Luh is right; there were a few other days where other operators were off as well. Chairman Buono stated that had the Comptroller sent the Authority a letter detailing the complaint everyone could have saved a lot of money and staff could have take corrective action sooner. Mr. Howard added that the amount of discrepancy was a very minor amount compared to the cost of preparing this report. That's not to excuse the fact that the operator was not in compliance, but it was a minor discrepancy and he believes disciplinary or punitive action will be taken. Chairman Buono agreed, and added that communication could have saved folks a lot of money. Ms. Luh stated that in Upstate NY it was in every paper and on every television station. She thanked Mr. Fleischer for quickly providing her with up-to-date information.

With regard to 8c Mr. Allen stated that it is redundant of the information provided under 8a but that at each meeting staff will continue to provide a revised work plan.

Item 9

Other Business:

- a. Status on Legislative Actions Related to Unpaid Tolls**
- b. Status on Legislative Action Related to the Canal Corporation**

Ms. O'Connor reported that two of the Authority's departmental bills have been approved for introduction. One is related to toll evasion and improving our efforts to collect from those who evade tolls. The bills have not been introduced yet in either house of the legislature; however, they have been referred to the codes committees in both houses. Staff has offered to provide briefings to the Chairman and staff of each of the committees in an effort to walk them through that bill and hopefully get it introduced. The Legislature is in recess right now so it will most likely be the end of April before staff are able to schedule that briefing.

Regarding the Canal Corporation bill to raise the bond cap, that bill has been introduced in the Senate by Senator Dilan. Authority staff has met with the Transportation Committee and provided a briefing on the bill. In the Assembly it was referred to the Corporations Committee and staff met with Assemblyman Brodsky and provided information on the bill. He requested more information on how increasing the bonding capacity on the Canal side will impact Thruway tolls. Mr. Fleischer stated that Mr. Brodsky's question was related to the long term debt implications on Thruway tolls, the impact of having the cap lifted and the financial impact of not having the cap lifted.

Mr. Conway inquired if staff thinks this legislation will pass or not. Ms. O'Connor responded that it's too soon to tell. Mr. Fleischer added that there's a sincere interest in getting the information necessary before they render a decision.

Chairman Buono thanked Mr. Allen and his staff for providing the materials and explanations to the Committee. Mr. Conway concurred.

Adjournment

There being no further business to come before the Audit and Finance Committee, on the motion of Ms. Luh, seconded by Mr. Howard, without any objections, the meeting was adjourned at 1:41 p.m.