



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



MINUTES

AUDIT AND FINANCE COMMITTEE MEETING NO. 18

January 20, 2010

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. The meeting began at 9:30 a.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
E. Virgil Conway, Chair, Audit and Finance Committee, via video conference
Donna J. Luh, Audit and Finance Committee Member
Richard N. Simberg, Audit and Finance Committee Member

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
Doraine Steele, Director, Office of Fiscal Audit and Budget
Daniel Gilbert, Chief of Staff
Wendy Allen, Deputy Chief of Staff
Michael Sikule, Director, Office of Investments and Asset Management

Also in Attendance:

John Armstrong, New York Network
Stanley Kramer, Bond Counsel, Hawkins Delafield & Wood, LLP
John Puig, Managing Director, RBC Capital Markets
Angela Rodell, Senior Vice President, First Southwest Company
Steven Kantor, Managing Director, First Southwest Company
J. Marc Hannibal, public

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. 17

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. 17, held November 16, 2009.

Item 2

Review and Approve the Fourteenth Supplemental Bond Resolution Authorizing the Issuance of Second General Highway and Bridge Trust Fund Bonds, Series 2010A for up to \$600 Million for New Purposes and \$400 Million in Refunding Authorization, Authorizing an Amendment to the Bond Resolution and the Preparation, Execution and Delivery of Related Statements, Documents, Agreements, Consents or Certificates for Board Action

John Bryan reported that this item seeks the Committee's approval to advance to the full Board a resolution that will allow the Authority to issue a new series of Dedicated Highway and Bridge Trust Fund Bonds. Trust Fund Bonds are issued on behalf of the State at the request of the Division of the Budget and are secured by payments made to the Authority from funds that are

deposited into the State's Dedicated Highway and Bridge Trust Fund. The Trust Fund is funded by a wide variety of state taxes and fees. There is no pledge of Authority revenues or assets as security for these bonds and the Authority is not liable in the event that the State fails to appropriate the necessary resources for debt service. Bond funds generated from this proposed transaction will be used to help finance the State's highway and bridge program.

The Governor proposed a \$7 billion two-year capital program for the Department of Transportation on January 19, 2010. In a previous 5-year capital program, the State spent \$18 billion on state highway and bridge infrastructure improvements averaging about \$3.5 billion a year, which is essentially what they are proposing to do over the next two years.

The resolution will authorize the Authority to issue up to \$600 million in new money bonds and an additional \$400 million in refunding.

All or a portion of these bonds could be issued as Build America Bonds (BAB) that were authorized under the American Recovery and Reinvestment Act ("ARRA") of 2009 a/k/a the stimulus. Chairman Buono inquired as to why using BABs would be beneficial at this time. Mr. Bryan responded that the Authority is issuing these BAB taxable bonds that will make up a large portion of the deal. And under the ARRA, the Federal government will reimburse the issuer 35 percent of the interest cost associated with those taxable BAB bonds. It just happens to be that the way the yield curve is shaped now, that when you take the 35 percent off the taxable yield it's below the tax exempt yield. So by issuing BABs, you're actually issuing them cheaper than you would have otherwise issued them tax exempt. It's just the way it works and that's why you're seeing an awful lot of issuers doing them. Chairman Buono inquired as to why the Authority isn't doing them. Mr. Bryan responded that when the Authority issued BABs this past summer, it issued them for two years. The way that the yield curves work right now is it's not economical to issue BAB's earlier than five years because the tax exempt rate would be lower than the BAB subsidized rate. When you get farther out, issuing long term, that's when it becomes economical and BABs make sense. Otherwise, the Authority would have probably issued a BAB transaction this summer. Mr. Simberg asked if staff is assuming that most of the bonds that come out will be five years or less. Mr. Bryan responded that the BABs would be five years or more.

Mr. Bryan stated that Steven Kantor, John Puig, Angie Rodell and Stan Kramer were available to answer any questions the Committee may have but that staff has not actually finalized the structure of this. There could be a tax exempt refunding piece, a tax exempt new money piece, on the short end, and then maybe a BAB piece for some of the longer term bonds. Mr. Kantor stated that staff can only do BAB for new money bonds if the Authority pursues a refunding they have to be tax exempt. Mr. Bryan added that staff could do some new money tax exempt early on, if that made more economical sense.

After full discussion, on the motion of Mr. Simberg, seconded by Mr. Conway, without any objections, the Audit and Finance Committee authorized the submission of the Fourteenth Supplemental Bond Resolution Authorizing the Issuance of Second General Highway and Bridge Trust Fund Bonds, Series 2010A for up to \$600 Million for New Purposes and \$400 Million in Refunding Authorization, Authorizing an Amendment to the Bond Resolution and the Preparation, Execution and Delivery of Related Statements, Documents, Agreements, Consents or Certificates to the Board for consideration.

Item 3

Review and Accept the Following Items:

- a. Concession Audit Performed by UHY LLP**
- b. Reports submitted to the Office of the State Inspector General**

Mr. Bryan reported that Item 3a requests the Committee's acceptance of an audit that was performed by UHY that evaluated concession rents that are payable from the McDonald's Corporation to the Authority during 2007 through 2008. The Authority's restaurant concessionaires pay rent based on a percentage of their overall sales, and this audit was performed to determine if the proper amounts have been paid to the Authority during that period.

In November, the Committee accepted two other audits for the other restaurant concessionaires HMS Host and Delaware North Corporation. In this audit, testing done by UHY verified that the calculation of the rents owed to the Authority, by McDonald's, were correct based on the

information that they had in front of them. However, UHY did find several minor instances where the McDonald's franchise operators may have actually over paid a small amount to the Authority and in the process of trying to verify those over payment amounts, UHY learned that the franchisees did not retain a complete set of sales records for that period of time, and we're talking about \$1,000 here out of the millions that the Authority gets paid. So staff communicated with McDonald's Corporation about how unhappy the Authority was about that situation and staff has recently received a commitment back from them that they are going to do whatever they can to get staff these records so staff can continue on with this audit to ensure that in fact everything is up to Authority standards. Mr. Conway stated that they were modest amounts.

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

Mr. Allen reported that Item 3b requests acceptance of two reports that have been issued to the Inspector General, one in December and one in January, which are standard reports that the Authority issues periodically to the Inspector General about cases that have been open and closed in the Department of Audit and Management Services.

Mr. Simberg inquired about the first case that was sent to labor relations, asking if that is an organization outside the Thruway or is it the Thruway Labor Relations office? Mr. Allen responded that the Bureau of Labor Relations is within the Thruway. Mr. Simberg asked why that case was closed when there appears there was no ultimate follow up to what labor relations did with it. All of the other cases are closed after they either go outside the Thruway to another agency or, as in the next to the last case where it says it was forwarded to the Division Administrator Office and it says what happened to it and then it was closed. He asked why that did not happen with the first case. Mr. Allen responded that the Bureau of Labor Relations will, in that particular case, open its own case and proceed. He offered to get the Committee a follow up and disposition of what happened in that case, but basically what is being closed here are the investigative efforts of the Department of Audit and Management Services.

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

Item 4

Review and Discuss, as Necessary, the Following Items:

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

Mr. Allen reported that Item 4a (*Travel Plaza Revenues and Capital Improvements Report*) was in the member's packages at the last meeting of the Audit and Finance Committee. It was a draft audit at that point in time and when the material was put together for today's meeting, it had yet to be issued, but what was included was the December 4, 2009 response to the draft audit. Since that time, on January 15, 2010 it was released by the Comptroller's Office and it includes the Authority's draft responses as an appendix to the final audit from the comptroller. The Authority has 90 days now to respond to the Governor and legislative leaders, which is normal operating procedure for a Comptroller's audit.

Mr. Conway inquired if there has been any public response to the audit. Mr. Allen stated that he had not seen any press releases or activity as far as this audit was concerned and asked Mr. Fleischer if he knew of any. Mr. Fleischer responded that the audit itself essentially said the Authority does a pretty good job in this area. There's some room for improvement but the Comptroller's office had officially transmitted the audit to the Executive Director, the Chairman and the Board, but he has not seen that it was on the Comptroller's website yet. Mr. Allen stated that it is up on the website.

Mr. Simberg asked about Recommendation 3 regarding ensuring that all future concessionaire contracts include a provision for interest on late rent payments and inquired as to what percent interest that usually incurs. Mr. Bryan stated that he was unsure as to what it would be, likely prime plus a certain amount, adding that staff would look to the Authority's financial advisors or the experiences of others. Mr. Simberg requested follow-up on this issue once staff has a chance to look into it further.

Mr. Simberg then inquired as to Recommendation 7 regarding monitoring the accuracy and completeness of the food concessionaires' monthly rent payments by independently verifying the sales reported by each food concessionaire. He asked how staff verifies the sales reported by each food concessionaire. Mr. Allen stated that the Comptroller's office recommended something that staff already does, and that is the report that the Committee just saw from the Authority's independent auditor on McDonald's. At the time of the auditor's review, a couple of those reports were outstanding that the auditors hadn't seen, so they are recommending that the Authority continue the process that staff is already doing. Since the Comptroller's audit, staff has released three concessionaire audits performed by UHY, in this instance, and in the future they'll be performed by Toski as the independent auditor. The process of verifying involves the auditors going out and getting a sample of the actual sales receipts to verify that, based on a sample, all sales are being accurately reported and as a result, rents derived from sales are being accurately calculated. Mr. Bryan stated that the Comptroller's suggestion here is that staff does it for all concessionaires. When the Authority does its audits, staff does a sampling rather than actually going in and looking at every single sales receipt. Staff explained to the auditors that the Authority does have independent verification and the sampling methods used by these accounting firms have high standards associated with them. So staff tends to rely on them rather than look at every sales receipt. Mr. Conway stated that staff certainly can't look at every receipt and should let UHY or the new accountant do the audit, and that process is adequate.

Mr. Simberg inquired about Item 4b, specifically the work plan for January to April where it says review and assess Committee performance. Mr. Allen explained that it's a process that's in the charter that requires the Committee itself to evaluate its performance as far as accomplishing everything required by the charter over the course of a year. It will be done in this period and the Committee will take a look at the requirements in the charter and see how the Committee has done. Mr. Estes added that under the new Public Authority Reform Act the Board will also need to evaluate itself. How that's done will have to be discussed, but that is a new requirement under the law.

Other Business

Chairman Buono requested that as a formality Mr. Conway formalize the approval of the minutes by vote. Mr. Conway concurred and requested a motion.

On the motion of Ms. Luh, seconded by Mr. Simberg, without any objections, the Audit and Finance Committee approved the Minutes of Audit and Finance Committee Meeting No. 17, held November 16, 2009.

Adjournment

There being no further business to come before the Audit and Finance Committee, on the motion of Ms. Luh, seconded by Mr. Simberg, the meeting was adjourned at 9:49.