

NEW RIVER SOLID WASTE ASSOCIATION
SPECIAL CALLED BOARD MEETING MINUTES
October 3, 2013

The New River Solid Waste Association Board of Directors met for a Special Called Meeting on October 3, 2013 with the following members present:

Commissioner Mark Hartley, Chairman
Commissioner Eddie Lewis, Vice-Chairman
Commissioner Wayne Smith, Secretary/Treasurer
Commissioner Morris Dobbs
Commissioner Doyle Thomas

Others present were: Darrell O'Neal, Executive Director
Perry Kent, Assistant Director
Melissa Waters, Chief Finance Officer
Lydia Greene, Office Manager/Admin. Assistant
Will Sexton, Attorney (Bradford County)

Commissioner Hartley called the special called meeting to order which was followed by the Pledge of Allegiance.

Commissioner Hartley called for discussion of agenda item #1, Approval of Expenditures for September 2013. Commissioner Lewis made a motion to approve the Expenditures for September 2013. Commissioner Thomas seconded the motion. The motion carried unanimously.

Chairman Hartley asked for discussion of agenda item #2, Presentations by Attorneys for RFQ 13-01. Mr. O'Neal said that the board had selected 3 attorneys, Paul Sanders, Russell Wade and Jim Taylor, at the last board meeting to come today to give their presentations. Since that time, Paul Sanders has been selected by the City of Starke to be their attorney and wishes to withdraw from consideration. Also, yesterday around 5:00 p.m. we got a call from Jim Taylor who said that he had been scheduled to attend an emergency court hearing which is at the same time as this meeting and had no choice about attending the court hearing. Mr. O'Neal said that of the three attorneys selected, Russell Wade was here today.

Commissioner Smith asked if the attorney presentations needed to be deferred since only one of the three attorneys selected is here today. Mr.

O'Neal said he felt that would be the board's decision. Commissioner Lewis asked Mr. Sexton if the board could go ahead and select someone today. Mr. Sexton stated that the board could select an attorney today.

Commissioner Smith stated he would recommend Mr. Wade for New River attorney. The board was in agreement. Mr. Wade said that he was familiar with New River as he had been the interim attorney here several years ago. Commissioner Smith said he would like to ask Mr. Wade to reduce his hourly rate from \$200.00 per hour to \$180.00 per hour. Mr. Wade was in agreement. Mr. O'Neal asked Mr. Wade if he had a different rate for litigation. Mr. Wade said that there wasn't a different rate for litigation. Mr. O'Neal asked Mr. Wade whether he needed a contract. Mr. Wade said that a basic contract would be fine and he would come up with something simple.

Chairman Hartley asked for a motion for approval of Mr. Wade as New River's attorney with the rate changes as discussed and with a contract to follow afterwards. Commissioner Smith made a motion to approve Mr. Wade as New River's attorney. Commissioner Lewis seconded the motion. The motion carried unanimously.

Chairman Hartley asked for discussion of agenda item #3, Discuss LES – LGTE Final Offer. Mr. O'Neal asked Mr. Woolsey, Jones Edmunds, to lead the discussion. Mr. Woolsey said that he had a conversation with LES just this morning and to summarize, the ball is in LES' court. Mr. Woolsey said that as previously discussed with the board LES has deviated from their original proposal and now they are pushing for a percent of the revenue, which basically puts New River in business with LES. Mr. Woolsey said because of this there is a lot of additional information that needs to be reviewed by New River and our attorney. This information has been requested from LES but not all of it has been received. Mr. Woolsey said a counter offer has been made to LES for a guaranteed revenue agreement which would lower the risk to New River. Mr. O'Neal said that the proposal submitted by LES was based on gross revenue, but they couldn't guarantee it and we also don't know what the wheeling charges are and we also know that there will be times when they are down. Mr. O'Neal said this makes the dollar amount unknown and could result in New River receiving less payment than our current expenses for providing LES with our gas. As an alternative to that, we have requested known amounts from LES on an annual or monthly basis and are waiting to hear back from them. Commissioner Lewis said that in his opinion, New River should not be in business with LES especially when we don't know how much revenue we

can anticipate. Mr. O'Neal said they have offered a percentage of whatever revenue they generate less wheeling charges. We just don't know what those charges are and neither does LES at this point. LES has recently signed an agreement with Sarasota County for a much better deal to Sarasota than they are offering to New River. Mr. O'Neal said he agrees that there is an economy of scale factor but to what degree he isn't certain. LES is offering New River 8% of the gross but we don't know what the net is since we don't know what the wheeling charges are. Mr. O'Neal said that we have asked LES for information for months now which hasn't been received yet. Mr. O'Neal said that it would probably be better for New River to get a flat rate. LES' original proposal was to buy our gas and now they are saying that they no longer like that business model and also want a longer contract term and to change our payment to a percentage. Mr. O'Neal said that LES' agreement with Sarasota County provides for upfront money, which isn't part of the offer to New River, along with a higher percentage starting at 10% which goes up after a certain number of years and also goes up based on volume and the market. All of this provides a lot more protection for Sarasota County.

Mr. Woolsey said that the original proposal from LES was very simple. They would pay New River for the amount of gas that we delivered and this is what we want as it is less risk to New River. Mr. Kent added this is why LES was chosen during the selection process. Mr. Woolsey said that percent revenue deals are common also, but when this is the agreement, you are going into business together so to speak and this is why additional business information is needed from LES as some of the risk is being taken on by New River in this scenario.

Commissioner Smith said that he understood the original contract included a guaranteed \$159,000.00 per year for New River. Mr. O'Neal said that was actually an average based on anticipated revenue and not guaranteed. Commissioner Smith asked if anyone has taken a look at what percent this would be. Mr. O'Neal said that it would work out to be about 8%. Mr. Kent added that this didn't include the wheeling charge expenses, therefore, it couldn't be an accurate amount and they won't give us that amount. Commissioner Smith said that if they don't give us the information, we shouldn't sign a contract and that we should also install a meter that tells us what the true gas volume is. Chairman Hartley said he would like to see us get more money if LES starts making more on our gas like they are doing for Sarasota County.

Commissioner Smith said he would hate to give up money for something we put in the contract now and to also not have the ability to buy

LES out. Mr. O'Neal said that the LES agreement with Sarasota County provides for them to purchase the LES plant after the initial contract period of 15 years, however, LES does not want to give the same provision to New River. Mr. Kent said he agreed with Commissioner Smith and we are still asking for the same deal with LES. Mr. Woolsey said that there are some important elements that we are unclear on such as renewable attributes with which New River can share in the profits. Until this has been hashed out no one is comfortable with signing the agreement and this has been expressed to LES in very clear terms. Mr. Woolsey said that LES isn't happy about it but does understand that until all the questions have been answered to the board's satisfaction, it is in their court to respond. Commissioner Lewis stated that this board has to answer to the citizens. Commissioner Thomas said we may agree to a short-term agreement under their conditions, because we are burning up gas right now with no revenue, so it might be better to take less. Commissioner Smith agreed.

Mr. O'Neal said that LES has installed these gas plants before in multiple sites in Florida and claim that all of their plants look the same. LES also has signed PPAs, so this company does have a proven track record. Anything else we do with another company is a maybe. The proposal that was ranked number 2 would require New River to invest in the gas system. Mr. O'Neal stated that if we can't work out something with LES, he would recommend looking at the proposal we ranked #2, before re-issuing another RFP, knowing that we would have to make some adjustments and be ready to risk our money to make money with another type of proposal.

Mr. Kent said he would like to advise the board that we could continue to burn our gas at a much lower level and still be in compliance with Title V requirements. LES is asking us to aggressively collect our gas which is going to cost New River more than we are spending now for not much revenue in return. He said he also feels we need to be careful of agreeing to do that for LES since it may not be a good deal for us. If we aren't careful, we'll be working harder and spending much more for not much income. Mr. Woolsey said that he would be ready to recommend signing an agreement if we are getting paid fairly for it. Chairman Hartley agreed that it doesn't make sense as they are an established company and have other plants and agreements already in place. Commissioner Lewis asked if there was a way to meter the gas and know the volume of gas they are actually getting. Mr. Woolsey said that is included in the agreement and we will be able to see the meters and know exactly the volume of gas they are getting. Mr. Kent stated that with a percentage deal, and LES not providing all of the information, knowing the volume won't matter. We

need to know all of their expenses. Mr. Woolsey said if we agree to the percentage deal, our attorney has wording for the contract that provides an out clause in the event LES isn't achieving the percentage as stated in the agreement. Mr. Kent said he still feels we will get a contract with LES it is just slow going and that we are well represented with our engineering and attorney consultants.

Commissioner Smith asked if it would be better to wait and not push an agreement right now. Mr. Woolsey said the reason LES needs to move forward with an agreement soon is due to the December 31st deadline for tax credits. LES has to have an agreement in place by that date including purchasing equipment. Mr. Woolsey said because of this he feels we should be hearing something soon. Mr. O'Neal said that when we do get something from LES we will schedule a meeting so that it can be presented to the board.

Chairman Hartley called for discussion of agenda item #4, Discuss Additional Host Fees to Member Counties. Mr. O'Neal said that Commissioner Smith had asked for this agenda item to be on the next board meeting. Mr. O'Neal said that a handout has been distributed that shows our account information through the end of the fiscal year. Mr. O'Neal said that the reduced figure for Long Term Planning is as a result of our investment losses with our government bonds with TD Bank. Commissioner Smith asked if the additional host fees requested for the counties would come out of the Long Term Planning account, which would reduce the percent funded to 60%. Mr. O'Neal said that was correct however, if the money was needed now, it should be taken from Cell Construction, otherwise it would take a couple of weeks to get the money moved. Commissioner Smith said it looks like the withdrawal would reduce that account percent funded by less than 1%, which he feels shouldn't hurt New River.

Commissioner Smith said he would like to make a motion that each county receive an additional \$100,000.00 for host fees.

Commissioner Lewis said the Financial Report shows the amount underfunded as \$27,505,051, and asked if this means we are in the hole already. Mr. O'Neal said that Phase II is several years down the road and that Phase II is our biggest cost. Mr. O'Neal added we will have approximately 15 years before moving operations to Phase II.

Mr. O'Neal said he would like to talk about each account. Closure Account must be 100% funded and Long Term Planning is required by statute to have one year funded at the time of closure. Mr. Woolsey confirmed that is correct. Mr. O'Neal added that if we were a private

landfill we would have to be 100% funded for Long Term Care. Mr. O'Neal said that the account was opened as Long Term Planning, which isn't restricted, in the event we needed to borrow funds from that account, say for example Phase II Construction. Mr. O'Neal said that a portion of the proforma for disposal rates for our customer accounts with Alachua, Levy and Gilchrist includes long term care, so at the end of those contracts if we are not at 100% funded, then the member counties will still be responsible for the amount not funded. Mr. O'Neal said that we have a permit now for partial closure and plan to use some of the escrowed funds for that. The 30-year Long Term Care funding required by statute doesn't begin until the landfill has been completely filled, which for Phase I is approximately 15 years down the road.

Commissioner Smith asked Mr. Woolsey what the time frame is for Phase II. Mr. Woolsey said that it would be approximately 15-17 years from now. Commissioner Smith said that basically means we should have 15-17 years to recoup the majority of the money shown as underfunded, so why not take the money from that account. Mr. O'Neal said that if the money is needed right away, it should come from Cell Construction account as it is the most liquid account for a withdrawal today.

Commissioner Smith said this would only be about a 1% difference, so his motion still stands. Commissioner Dobbs seconded the motion.

Mr. O'Neal explained this is not unanticipated revenue, so the board is essentially borrowing from themselves. Commissioner Lewis said that at the last board meeting we discussed issues with interest rates and possible other incoming waste. Do we have any assurance that this money can be replaced. Mr. O'Neal said there are no guarantees of that but that our history has shown that we are able to save by doing our own management and construction of projects here at New River. Mr. O'Neal said that we have been able to save millions compared to using contractors and we plan to do the same for future construction projects. Mr. O'Neal added that it depends if we have the same staff that can do this work in the future.

Commissioner Smith said that he could not speak for Commissioner Dobbs, but that if the LES contract is signed and we start making money on our gas, then Union County would be willing to give back future LGTE revenue toward this \$100,000.00 disbursement and he feels the other counties should do the same. Commissioner Lewis asked what that meant. Commissioner Smith said that if New River was to get into a bind, he feels that the counties should agree to give this \$300,000.00 back and that any future unanticipated revenue should go back to New River instead of being split by the counties.

Mr. Sexton asked if the 15 year estimate for Phase II was based on the Alachua, Levy and Gilchrist contracts which New River does not have for 15 years, only for 4 ½ to 5 years based on current contracts. In view of that, part of the concern is that New River may not have 15 years of guaranteed waste stream revenue to fully fund Phase II. Mr. O'Neal added that this would also be the same scenario for fully funding Long Term Care, which will be the responsibility of the board if not 100% funded when it is needed. Chairman Hartley asked what the cost would be in order to be at 100% for Long Term Planning. Mr. O'Neal said that New River is \$3,758,117 short. Commissioner Lewis asked if the money had to be kept in the bank at all times. Mr. O'Neal said that it is required to have 100% of Closure Funds and one year of Long Term Care that's all. Chairman Hartley said it appears that we are funded way above what is required by statute for Long Term Care. Commissioner Thomas asked if money is taken from Cell Construction account, what will that do to our future Cell Construction project. Mr. O'Neal said that it would have to be replaced by future funding or by taking from Long Term Planning Escrow Account. Mr. O'Neal asked Mr. Woolsey for the estimated time frame to start construction of Cell 7. Mr. Woolsey stated that permitting would start in about 5–6 years which is when the money starts getting spent.

Commissioner Lewis said that according to Commissioner Smith, Union County would give their revenue from LGTE project back to New River. Mr. O'Neal said that the way he understood it was that revenue from the LES LGTE contract, or other unanticipated revenue, would stay at New River instead of being split up by the counties in order to pay back the additional host fees given to the counties. Mr. Kent said that right now gas collection is costing New River about \$130,000 yearly so if New River receives \$150,000 a year, the majority of that is already spent and it will take many years to repay the \$300,000.

Mr. Woolsey said that he had taken a look at current tonnage projections it appears that Cell 7 completion will be about 6 years away, with permitting beginning in 3 ½ to 4 years.

Chairman Hartley asked Mr. O'Neal about looking at our financial policy so that we can start earning more interest on our accounts. Mr. O'Neal said that now that we have an attorney he hoped we would have an investment policy soon.

Commissioner Thomas said he would not want to put New River in any kind of threat by disbursing this money to the counties. Commissioner Thomas asked for clarification of when Cell 7 would begin. Mr. O'Neal said that we would start permitting in about 3 ½ to 4 years with construction

to begin in about 6 years. Commissioner Thomas asked if we had any CDs to cash in for this distribution. Mr. O'Neal said that instead of the funds coming from CDs, he would suggest taking the funds from the Cell 7 Construction funds that are currently in a money market account.

Mr. O'Neal added that our goal is to definitely earn more interest with the new investment policy. Mr. O'Neal asked Mrs. Waters about the income from interest earned this year. Mrs. Waters said that including all of our investments, we were in the hole about \$160,000.00. Mr. O'Neal said that some years we have made \$600,000.00 in interest, so this is a change based on the current market and our restricted investment opportunities.

Commissioner Smith asked if this is a negative or just less than what we were earning. Mrs. Waters explained that in looking at all of our balances and factors for each account, we are showing a negative. Commissioner Smith asked what was budgeted. Mrs. Waters said that \$150,000.00 was budgeted so we are down approximately \$300,000.00 in last year's budget.

Commissioner Lewis asked Mr. O'Neal if he saw this disbursement of additional funds to the counties to be a financial threat to New River in any way. Mr. O'Neal said that is the decision of the Board. Mr. Kent added that this it also depends on whether everything stays the way it is now and we don't lose any waste or our contract with Alachua County. If so, we should be able to recoup these funds. Mr. O'Neal said he feels that over time we should be able to at least get caught up, provided we keep the staff we have today.

Mr. O'Neal asked Mrs. Waters to share the report that he had done on host fees to the counties. Mr. O'Neal said that we started out at \$100,000.00 in host fees to Union County and are currently paying annual host fees of \$230,000.00 to Baker and Bradford County, with Union County getting \$330,000.00 annually. An additional \$300,000.00 was paid to each county February 2013. The total distribution to member counties from 2000 to 2013 was \$8,694,474.29.

Commissioner Thomas asked about the current Alachua County contract and the amount of the additional surcharge collected for a year. Mr. O'Neal said that it amounted to about \$364,000.00 last year and depends on tonnage received. Commissioner Smith added that the additional money may go away when a new contract is signed with Alachua. Commissioner Smith asked where the \$2.35 surcharge per ton collected from Alachua County is going. Mrs. Waters said all of the \$2.35 surcharge is going to the Phase II escrow account and that the total collected to date is \$585,326.00. Commissioner Lewis asked for clarification of the \$2.35 surcharge, is this

being collected because Alachua County doesn't have a contract. Mr. O'Neal explained the \$2.35 surcharge per ton is in the current contract with Alachua County and if they were willing to renegotiate the contract for a longer period of time, we had indicated that we would be willing to discuss dropping the \$2.35 per ton surcharge from their tipping fee rate.

Commissioner Smith asked about cutting the timber off the property. Mr. O'Neal said he hoped that would happen soon. Commissioner Lewis said he heard that the forestry department said they would charge New River a fee to cruise the property and that he has never know them to charge anyone a fee for that. Mr. Kent said he didn't want to pay for that and he had been told it would be a 10% fee. Mr. Kent said that we haven't gotten a proposal for cutting the timber yet. Commissioner Lewis said that Mr. Wade should be able to prepare the contract and hire someone to cruise the timber. Mr. Kent said that we have the list and plan to bid this out.

Chairman Hartley said he had a motion on the floor from Commissioner Smith and a second from Commissioner Dobbs to disburse an additional \$100,000.00 to each member county from the Cell Construction account and asked for a vote on the motion. The motion carried unanimously.

Chairman Hartley asked for discussion of agenda item #5, Engineering Work Orders. Mr. O'Neal said that we have a couple of engineering work orders already budgeted for the new fiscal year that needs to be approved for work that needs to be done beginning October 1st. One is for Miscellaneous Services and the other is for Title V Compliance. Mr. Woolsey said that Work Order #52 is for annual DEP reporting in the amount of \$125,000.00 which is the same amount as last year. Mr. Woolsey added that last year only \$105,000.00 was spent on this engineering work.

Chairman Hartley called for a motion to approve Engineering Work Order #52 for Miscellaneous Services in an amount not to exceed \$125,000.00. Commissioner Smith made a motion to approve Work Order #52 as presented. Commissioner Dobbs seconded the motion. The motion carried unanimously.

Mr. Woolsey said that Work Order #53 is for annual Title V Compliance in the amount of \$130,000.00, which has been reduced from last year's amount of \$150,000.00, and covers all engineering services in connection with keeping New River in compliance with Title V

requirements. Mr. Woolsey said that of last year's approved amount just under \$100,000.00 was spent.

Chairman Hartley called for a motion to approve Engineering Work Order #53 for Title V Compliance in an amount not to exceed \$130,000.00. Commissioner Smith made a motion to approve Work Order #53 as presented. Commissioner Thomas seconded the motion. The motion carried unanimously.

Chairman Hartley called for any additional discussion. Mr. O'Neal said that we need to talk about the regular board meeting scheduled for next week. If we don't get a contract from LES by then, we would not have any new business to discuss. When we do get the contract from LES, we could schedule a meeting then if the board agrees. The board was in agreement to cancel the regular board meeting for October 10, 2013.

Chairman Hartley asked for a motion to adjourn. Commissioner Thomas made a motion to adjourn which was seconded by Commissioner Smith. The meeting was adjourned.