



**Contact: Kim Adkins  
Mayor  
276/252-2679**

## **For Immediate Release:**

### **City of Martinsville self reports FOIA violation**

**MARTINSVILLE, Va. (Thursday, Sept. 2, 2010)**—Martinsville administration and Council members have concluded that the city violated the Virginia Freedom of Information Act (FOIA) as a result of a conference call conducted Friday, July 30, 2010.

The conference call was scheduled and organized by a member of City Council, who notified via email, on July 28, 2010, the other members of council, the City Manager and the *Martinsville Bulletin* of the access number and code. No public announcements and postings of the call were made, and no other media outlets were notified, although at the *Danville Register and Bee* also had become aware of the conference. City staff was not asked to assist in facilitating the call; and no inquiries to staff were made as to compliance with the FOIA. As required by the Code of Virginia, each member of a public body is given a copy of the FOIA and to familiarize themselves with its requirements.

As reported in the *Martinsville Bulletin* on Sunday, August 1, 2010, which is attached, the purpose of the call was for Anthony Sanzillo, a financial consultant employed by Ohio Citizens Action, to speak with Council members about the American Municipal Power projects. No official minutes of the call were taken. The Code of Virginia requires minutes to be taken in any meeting.

Participants in the call were: Mayor Kim Adkins, Vice Mayor Kimble Reynolds, Councilman Danny Turner, Councilman Gene Teague, Electric Department Director Dennis Bowles, Anthony Sanzillo, and Executive Director of Ohio Citizens Action Sandy Buchanan,

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Larry Shapiro and Lisa Hamilton, Esq., both of the Rockefeller Family Fund, Mickey Powell of the *Martinsville Bulletin* and a reporter from the *Danville Register and Bee*.

The Code of Virginia defines a meeting as any gathering of three or more members of the public body, including meeting by telephonic means. The Code, however, expressly prohibits local bodies from conducting a meeting by telephonic means. It does permit individual members unable to personally attend an actual physical meeting to attend electronically, and also allows electronic meetings during state of emergency. Neither such situation applied to the conference call.

Mayor Adkins has agreed to compile the minutes of the call; and city officials apologize to the public for the violation.

###

Attachments:

1. Minutes of the call
2. Copy of Martinsville Bulletin article covering the call

**City of Martinsville  
Conference Call Conference  
July 30, 2010**

**MINUTES**

**PRESENT ON CALL:** Mayor Kim Adkins, Vice Mayor Kimble Reynolds, Councilman Danny Turner, Councilman Gene Teague, Electric Department Director Dennis Bowles, Financial Consultant Anthony Sanzillo; Ohio Citizens Action Executive Director Sandy Buchanan, Rockefeller Family Fund attorneys Larry Shapiro and Lisa Hamilton; Martinsville Bulletin reporter Mickey Powell and a Danville Register & Bee reporter

**PRESIDING:** Anthony Sanzillo

The conference call commenced at 11:30 a.m.

The purpose of the meeting was to develop questions to ask American Municipal Power (AMP) on the city's participation in power plant projects, specifically the project at Prairie State. Mr. Sanzillo discussed the attached questions in detail.

This conference call was in preparation for an upcoming City Council Meeting on August 24, 2010, where AMP officials would be in attendance to address Council.

With no other business, the conference call ended around 12:30 p.m.

## QUESTIONS FOR LOCAL GOVERNMENTS

### BASIC QUESTIONS

1. What will be the postage stamp charge to communities for electricity from the Prairie State Plant?
2. How does this compare to what we were originally told when we signed on to the deal?
3. How does this compare to the price of electricity we could buy off the market?
4. How does this compare to the price of electricity promised to other communities or Electric Authorities?

### PRICE<sup>1</sup>

1. In October 2006 Prairie State Generating Company (PSGC) signed a contract with Bechtel, a Target Price Engineering, Procurement and Construction Agreement (TPEPC Contract) for \$2.9 billion. In September 2009, PSEC disclosed in bond documents the price had risen on this contract to \$3.3 billion. When we read in the papers that the total cost of the project is now \$4 billion, does that mean that this TPEPC contract is \$4 billion? What is the current bottom line, fixed price of this agreement?
2. Are there project costs related to the construction of the mine, transmission upgrades, development and owners costs, land, sales, property taxes, fees and contingency allowances that are not part of the TPEPC contract? What are these costs? Are they capped by any agreements? If they go up, who pays?
3. Are there financing costs that AMP faces by reason of going into the bond markets – AMP's administrative costs, plant operating costs, contingency costs, interest during construction, debt service reserves, debt issuance expenses and other financing expenses that are not included in the \$4 billion? How much are these expenses? Are these costs capped? What is the full cost of AMP's participation in this project – the Bechtel contract, plus all other expenses?
4. In September 2009, the 2013 price of electricity for AMP according to RW Beck, AMP's engineering consultant, appeared to be \$53 MW. Can you provide for us a history of the price of electricity that AMP has said it will be charging project participants since they signed on to this project, including the most recent round?
5. Does this price of electricity include all of the above expenses?

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<sup>1</sup> All references made to bond documents refer to: American Municipal Power, Inc., *Prairie State Energy Campus Project Revenue Bonds \$469,580,000*, October 1, 2009, RW Beck Consulting Engineer's Report, pps. 149-192. (which one?)

6. How much will the Postage Stamp price of electricity be for electricity from Prairie State according to the most recent estimates, and on what dates can we expect those dates to be charged?
7. Is the \$63 MW figure cited in the recent Chicago Tribune article an accurate presentation of how much the cost of electricity will be to communities that participate with AMP Ohio in the Prairie State Plant?
8. During the first full year of operation, which from a financial perspective appears to be 2013, what does AMP Ohio estimate it will be charging participants for power from its hydroelectric plants, other generation sources, purchase power agreements and any other "replacement power" agreements?
9. Between now and the date that the plant becomes commercially operational who bears the risk for increased costs if the following changes that have been identified in public documents occur:
  - a. Additional costs are incurred for costs related to construction of the plant? Under what, if any, conditions are the Participants liable for new costs beyond those now identified in newly signed "fixed cost" contract?
  - b. Bond documents discuss a dispute with federal mine safety oversight inspectors that could require additional capital outlays and limit long term coal recoverability. Who is responsible for any additional capital costs? Who pays if PSEC needs to buy a new mine?
  - c. There are discussions in bond documents about the short term life span of Peabody's ashfill. Will decisions about ash disposal have an impact on final construction costs? Are currently pending combustion waste disposal regulations altering any development assumptions of the project sponsor?
  - d. There are a host of Clean Air Act regulatory changes under consideration. Bond documents state that the PS coal plant complies with all Clean Air Act laws. Are there financial reserves set aside or other plans to address any investments required for Clean Air Act upgrades within the first five years?
  - e. While unlikely, what happens if Congress or the EPA enacts a new set of carbon rules and additional costs are imposed on the operations. One estimate in the bond documents stated the costs could go higher by \$11 MW?

### SOME LARGER QUESTIONS

1. According to Bond documents Peabody Energy, which is a mining company, has multiple involvements in the plant. It is also a partner in the PSEC family. What is Peabody's current ownership interest in the PSC plant?
2. What was Peabody's ownership interest at the time that the deal was signed?
3. How does this change if any impact the price of electricity?

- a. Peabody Energy is, or was, the lead developer of the project and PSGC is or was a wholly owned subsidiary of Peabody Energy.
- b. After a reorganization of PSEC (at what date), Peabody still owns considerable interest [in what] in the form of Marigold Energy. In order for AMP to perfect its interest it needed to enter into several agreements with Marigold and Peabody Energy. Those relationships have never been fully disclosed.
- c. PSEC owners purchased the mine that will serve the power plant from Peabody Energy. Although the site was originally to serve the plant for 30 years, it appears upon further evaluation by regulators that economically recoverable reserves may not be sufficient. Adjacent sites, also owned by Peabody Energy, are available to PSEC for the project. If the anticipated economically recoverable reserves at the mine or no longer as easily available, will AMP have comparably priced options? If not will these costs become the responsibility of rate payers?
- d. Peabody is under contract for technical services for Mine construction and management for construction of the mine.
- e. The combustion waste disposal site selected to receive the ash from the plant is owned by Peabody energy. There is a purchase option on the site which has a 9/10 year useful life. What are the cost provisions for this waste disposal site? Are these costs fixed? If not, will these costs be passed onto ratepayers?

Are there other roles that Peabody Energy will play in this plant or mine for which the company can be expected to receive remuneration during either the construction or operation? (Management of the mine?) Has the board of PSEC conducted any kind of review to ensure that these multiple roles do not pose conflicts and that good value is being received at every turn?

4. It looks as if AMP will have to go back into the Bond markets to complete the financing for Prairie State. If they do that will they still receive the rather large subsidy for project financing that they received recently? Will the other projects?
5. In October 2009, AMP was apparently told by Bechtel that the costs of the Meigs County plant were going up and AMP decided to cancel the plant. Again, AMP is being told by Bechtel that the costs are going up. Why are we not just canceling our participation in this plant?
6. The press statements all say that now is the time for a fixed cost contract because prices have stabilized. Actually that is wrong. The time for a fixed cost contract is during a time of price instability.

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**Advertisers give council questions for AMP**  
 On power plant projects, costs

Sunday, August 1, 2010  
 By MICKEY POWELL - Bulletin Staff Writer

Martinsville City Council needs to ask American Municipal Power (AMP) staff a lot of questions about the city's participation in power plant projects which have seen significant cost increases, consultants said Friday.

Those questions include how rising costs will impact the city and how costs for electricity generated by the projects will compare to cost projections for power bought on the open market, said financial adviser Thomas Sanzillo.

Also, the council should ask questions about financing, whether new costs have arisen since the city agreed to participate in one of the projects and if future prices the city pays for electricity will reflect any new costs, he said.

The city should treat discussions with AMP as "a negotiating process" that results in paying as little as possible toward the development of power plant projects, especially any that are discontinued, Sanzillo said.

"Don't accept anything at face value," he said, and when AMP staff is asked a question, "don't take their first answer."

Sanzillo is senior associate for TR Rose Associates in New York City. He was New York state's acting comptroller in late 2006 and early 2007 and served two stints as the state's first deputy comptroller.

He and officials with the Rockefeller Family Fund, a philanthropy involved in environmental issues, participated in a conference call Friday morning with council members, city electric department Superintendent Dennis Bowles and Sandy Buchanan, executive director of Ohio Citizens Action, a consumer advocacy organization that opposes coal-fired power plants.

They discussed issues related to the projects and suggested questions for the council to ask AMP executives. Sanzillo and the other consultants said they did not have the information needed to answer the questions.

Councilman Danny Turner arranged the call, which he said should cost the city nothing. Council members called into the conferencing system on their own phones.

Martinsville, which operates an electric department that provides power to city homes and businesses, buys 95 percent of its electricity from AMP, an Ohio-based organization owned by its 128 member localities.

The council will hear a report on Aug. 9 from city staff on the status of the power plant projects. Due to previous commitments, AMP officials cannot be at that meeting, so they will attend the council's Aug. 24 session to answer council members' questions, city officials said.

Turner said the city staff had provided "bare bones information to us" on the projects. He said he is concerned that rising project costs will mean higher electricity costs in the future for city electric customers.

Council members must know what questions to ask so AMP "can't come in, give us as little information as possible and then get out of town," he said.

One project discussed was a coal-fired plant in Meigs County, Ohio, that AMP recently discontinued after contractors' cost estimates increased 47 percent.

The plant became too costly for AMP to ask its members to continue investing in it, Sanzillo said.

Martinsville's share of the development costs for the plant has been estimated at \$2.08 million. Officials have said it could be months, however, before the city finds out the exact cost.

- The city now has two options, officials have said:
- Withdraw from its commitment to buy electricity that the project would have generated. In that case, the \$2.08 million — or what is left to pay of the development costs — would be paid to AMP over a 10- to 15-year period via Martinsville's cost for power bought through the organization, or
  - Participate in power projects that AMP develops in the future

Turner said he thinks AMP has put Martinsville in a tough position in that if the city does not invest in another AMP project, it could lose money that it invested in the Meigs County project.

"We ought to be able to get out (of that contract) and get a refund" on any money the city has paid AMP that has been used toward developing the plant, he said. He asked Sanzillo if that is possible.

"That I don't know," Sanzillo responded.

Larry Shapiro, an associate director of the Rockefeller fund, speculated that AMP probably drafts

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contracts in ways that make it hard for member localities to get out of them. But he said the contracts probably are "not 100 percent iron clad."

City Attorney Eric Monday has said Martinsville legally could withdraw from its AMP contracts but would be liable for its share of capital expenditures so far to develop the projects.

The main topic of discussion during the call was the Prairie State Energy Campus (PSEC) under construction in Washington County, Ill. Its cost has more than doubled to \$4.4 billion but developers recently agreed to cap construction costs at about \$4 billion. But that does not include project elements such as coal reserves, mine development and transmission lines, according to reports in a Chicago newspaper.

"We (the consultants) don't know if it's still a good deal or not," Sanzillo said.

In the past six or seven years, he said, about 150 coal-fired power plants were proposed in the United States and all but about 25 were shelved.

Coal-fired plants have come under scrutiny in recent years due to concerns about pollution and new environmental regulations designed to curb it. As a result, many electric utilities have backed off such projects and are planning to eventually shut down existing coal-fired plants, Sanzillo said.

Martinsville Mayor Kim Adkins asked whether city officials can expect PSEC to be shelved as well. Sanzillo said he did not know.

Among questions he said the city should ask AMP about that project are:

- How much localities participating in PSEC will have to pay for electricity produced at the plant and how that compares to figures supplied when the city agreed to participate;
- How the cost compares to the price of electricity that Martinsville could buy on the wholesale market;
- How it compares to the cost of power promised to other localities and electric utilities participating in PSEC that are not AMP members;
- Are there now any taxes, fees or other costs, such as for construction of coal mines and power transmission and improvements, that were not part of the original contract?
- Are there expenses AMP now faces by going into bond markets to help finance construction?
- Will the future price of electricity generated at the plant reflect any new expenses?

Lisa Hamilton, a regulatory consultant for the Rockefeller fund, said the city should make sure "participants have not been manipulated" by AMP. But she gave no indication that she thinks that might be the case.



*Office of the City Manager*  
Clarence C. Monday

September 2, 2010

Maria J.K. Everett, Executive Director  
Virginia Freedom of Information Advisory Council  
e-mail: [foiacouncil@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov)  
General Assembly Building, 2nd Floor  
910 Capitol Street  
Richmond, VA 23219

Dear Ms. Everett:

Martinsville City Administration and City Council Members feel that “the City” violated the Virginia Freedom of Information Act (FOIA) as a result of a conference call conducted on July 30, 2010 and wishes to direct this to the attention of you and the public.

A member of the Martinsville City Council coordinated the conference call without going through the City’s normal process of giving proper notice of a public meeting as required by the FOIA. The purpose of the conference call was for a financial consultant employed by the Ohio Citizens Action Group to speak with council members about electric projects that would be discussed at a future city council meeting.

Four members of the City Council participated in the call. A reporter from the *Martinsville Bulletin* and another reporter with the *Danville Register & Bee* gathered for the call although there was no public meeting notice, and there is no evidence of a notice distributed to other media outlets.

No action was taken by the city council during the call, and minutes of the conference call are attached to this letter and will be included in the official minutes of the city council. You will also find attached a City news release and a newspaper article regarding this matter.

The City Administration takes its responsibility seriously to ensure that the FOIA policies are uniformly followed, and the members of City Council have been reminded of the requirements set forth specifically for public meetings.

Sincerely,

Clarence C. Monday  
City Manager

Cc: Members of City Council  
Eric Monday, City Attorney