

**VIRGINIA TOBACCO INDEMNIFICATION
AND COMMUNITY REVITALIZATION COMMISSION**

701 East Franklin Street, Suite 501
Richmond, Virginia 23219

TROF COMMITTEE MEETING

Thursday, July 11, 2013

9:30 o'clock a.m.

Hilton Garden Inn - Downtown
Richmond, Virginia

CRANE-SNEAD & ASSOCIATES, INC.
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1 APPEARANCES:

2 The Honorable Terry G. Kilgore, Chairman
3 The Honorable Frank M. Ruff, Vice Chairman
4 The Honorable Edward Owens
5 Mr. Neal Noyes, Executive Director

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7 COMMISSION STAFF:

8 Mr. Ned Stephenson, Deputy Executive Director
9 Mr. Timothy S. Pfohl, Grants Program Administration Director
10 Ms. Stephanie S. Kim, Director of Finance
11 Ms. Carolyn Bringman, Performance Data Analyst
12 Ms. Stacey Richardson, Executive Assistant

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14 COUNSEL:

15 Eric E. Ballou, Esquire
16 Megan Martz Gilliland, Esquire
17 CHRISTIAN & BARTON, L.L.P.
18 Mutual Building
19 909 East Main Street, Suite 1200
20 Richmond, Virginia 23219-3095
21 *Counsel for the Commission*

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1 July 11, 2013

2 DELEGATE KILGORE: Well, good morning, I'll call this
3 meeting to order. It's 9:30 a.m.

4 Neal, would you call the roll.

5 MR. NOYES: Delegate Kilgore.

6 DELEGATE KILGORE: Here.

7 MR. NOYES: Senator Ruff.

8 SENATOR RUFF: Here.

9 MR. NOYES: Mr. Owens.

10 MR. OWENS: Here.

11 MR. NOYES: I'm Neal Noyes, and I am here.

12 Everyone is here, Mr. Chairman.

13 DELEGATE KILGORE: Ned, tell us about the TROF
14 approval process you have come up with.

15 MR. STEPHENSON: Members of the Committee, we
16 are currently meeting about monthly to try to rule on TROF
17 requests as they appear. That is not as expedient as some of
18 you may want and as some of our Executive Directors need. So,
19 staff has, on advice of counsel, worked up a policy statement or
20 a draft to give you a method by which you can have TROF
21 contracts approved between meetings. I'll be quick to say that
22 that means that some of your approval authority will be
23 delegated to staff between meetings, and probably the topic
24 needs to be talked about.

25 You have before you a document called Policy

1 Resolution, and this is several pages, and I want to say to you
2 simply documents exactly what you have been doing the last
3 seven or eight years. It memorializes all of the elements of the
4 TROF Program. The essential difference is that it does delegate
5 authority to the Executive Director to a dollar limit, and then the
6 Committee up to a higher dollar limit, and the full Commission.
7 That is essentially the difference in this policy.

8 DELEGATE KILGORE: The amount that the staff would
9 be or the Executive Director authority three million, and the
10 Commission and all that would be still driven by the same
11 formula we've been working under, is that correct?

12 MR. STEPHENSON: Correct.

13 DELEGATE KILGORE: And the authority given to the
14 TROF Committee would still, the calculations remain the same?

15 MR. STEPHENSON: It would. Yes, if you want to
16 choose to recommend the Commission delegate authority to the
17 Director, this policy provides that his authority is only weakened
18 and narrowed of what the model supports. You can't go outside
19 of the recommended amounts, it has to stay within that limit.

20 DELEGATE KILGORE: Can't go above it?

21 MR. STEPHENSON: Yes. That is specifically cited in
22 the policy.

23 SENATOR RUFF: Mr. Chairman, would it be proper for
24 the Executive Director to inform the TROF Committee of actions
25 warranted?

1 MR. STEPHENSON: That is currently in the document.
2 It can be time for you to get this light on. I don't know if it's
3 necessary or not.

4 DELEGATE KILGORE: It's not a bad idea. It can be
5 done by email.

6 MR. NOYES: Very appropriate.

7 DELEGATE KILGORE: This is the request.

8 MR. NOYES: This will accommodate at least 80
9 percent of the requests that we see calling them to be acted
10 upon in a prompt fashion. I think the notification idea is a very
11 good one.

12 SENATOR RUFF: I mention this as a possibility. It
13 would encourage them to stay under the number rather than
14 shoot for a higher number.

15 MR. STEPHENSON: Would you anticipate a particular
16 notice immediately after approval occurs or prior to?

17 SENATOR RUFF: Prior.

18 MR. STEPHENSON: I'm kind of getting some details
19 here, ten minutes prior to or 24 hours? We have to hear from
20 you on the approval notice.

21 DELEGATE KILGORE: I would envision that or give us
22 a day before, just give us one day.

23 MR. STEPHENSON: Twenty-four hours ahead.

24 MR. OWENS: That sounds reasonable. What happens
25 if you've already made the decision or the Executive Director has

1 made the decision to approve it?

2 MR. NOYES: The Executive Director in his right mind
3 will not make that decision without other members, especially if
4 there's 24 hours.

5 MR. STEPHENSON: Let me make sure that works.
6 We fire off notice to the Committee, and then wait 24 hours.
7 During that period, one of those people hops up and says we've
8 got a problem with this, that shouldn't affect the veto of the
9 Director's authority and that would then kick to the Commission.

10 MR. BALLOU: Members of the Committee, that would
11 be my reaction. I think what would happen it's sort of taking it
12 up to the next level, whether that would be the full Committee or
13 full Commission subsequent action.

14 DELEGATE KILGORE: I think that would be fine what
15 we're trying to get at is the run-of-the-mill deal closings that we
16 do, and I'm not saying all of them are the run-of-the-mill. Where
17 they meet the formula and meet the job requirement and
18 investment. If they have questions about them, it should be the
19 Executive Director.

20 MR. NOYES: At least considered in public session. As
21 Ned points out, questioned by any of the members, effectively a
22 veto.

23 MR. BALLOU: As I would see it, perhaps phrase it
24 more of consultation where members of the Committee in terms
25 of the action and whether the Executive Director has concern

1 regarding a question raised by them, then you can resolve it with
2 action by the full Commission.

3 I was concerned a little bit about how it was phrased.

4 SENATOR RUFF: I don't envision it would be an issue
5 very often, if ever. If it's someone from Mecklenburg County, if
6 an applicant had been convicted of fraud and I knew that, went
7 through the process, could say wait a minute, then at that point
8 consult with the Executive Director.

9 MR. OWENS: The outside guidelines automatically go.

10 MR. BALLOU: There are three levels: the Director,
11 the Committee, and the Commission. The Director up to two
12 million; Committee up to three million, and the Commission
13 beyond.

14 DELEGATE KILGORE: That's outside the guidelines,
15 but could go to the full Commission.

16 MR. STEPHENSON: If it's outside the guidelines, the
17 Director would have no authority to approve anything outside the
18 guidelines, whether the Committee would have authority to
19 approve outside the guidelines.

20 DELEGATE KILGORE: I don't think we should.
21 Anything up three million, we could approve, but over that three
22 million and outside the guidelines, I think you should still go to
23 the full Commission.

24 SENATOR RUFF: You're saying or, would you agree,
25 counsel?

1 MR. BALLOU: Mr. Chairman, I think practice has been
2 with regard to prior actions of the full Commission and the
3 evolution of that practice over the years has been, as Mr. Noyes
4 said earlier, this is not really a big change about what's going on.
5 When you do have one of those outside the standard formula and
6 the way in which it works, it has gone to the full Commission.

7 MR. OWENS: Right now, what percentage are you
8 saying was below two million?

9 MR. NOYES: Five percent. I haven't actually looked
10 at it recently.

11 DELEGATE KILGORE: That's about right.

12 MR. OWENS: You're saying 85 percent from now on
13 would go to the Executive Director?

14 MR. NOYES: Yes, that delegation.

15 SENATOR RUFF: And if we're not happy with that, we
16 can change the rules.

17 MR. OWENS: Change the Executive Director.

18 MR. NOYES: You're going to do that anyway. This
19 will go into effect after the Board meeting and the full
20 Commission has to hear it as a recommendation from the panel.

21 DELEGATE KILGORE: I would ask then, Ned, is this
22 going to be part of the meeting in August, part of that specially
23 called meeting?

24 MR. NOYES: That's correct, Mr. Chairman.

25 MR. STEPHENSON: And the Performance Agreement,

1 that's part of it. The Performance Agreement is an attachment to
2 this policy, and it's primarily to focus and document all the
3 particulars we have used in the Performance Agreement, which is
4 very detailed to make sure that the performance and standards
5 part to companies and counties. It is the document that has to
6 be used for some time, although it does evolve a little bit over
7 time and as companies find loopholes, they try to get through,
8 and we want to close those loopholes.

9 MR. OWENS: Anything outside the guidelines close to
10 the full Commission or the TROF panel?

11 MR. NOYES: To the full Commission.

12 MR. BALLOU: To the full Commission, and as I
13 understand it, the director of the Committee can operate within
14 the limits of their authority and within the guidelines. If it's
15 outside of their dollar authority or outside the guidelines, it must
16 go to the Commission.

17 MR OWENS: The Executive Director, or if in the
18 Performance Agreement, and one of the parties doesn't want to
19 sign off on that, has that happened?

20 MR. STEPHENSON: That has not been true historically
21 and will not be true going forward. That would still go to the full
22 Commission.

23 So, Mr. Chairman, am I to understand that we have a
24 consensus of the Committee to bring this recommendation to the
25 full Commission at its next meeting?

1 DELEGATE KILGORE: All those in favor, say aye.
2 (Ayes). Opposed? (No response). The ayes have it.

3 MR. STEPHENSON: Mr. Chairman, we have today
4 before you five TROF requests that have accumulated since your
5 last meeting on June 11th, and they are on the page before you.
6 In particular, two of them are no longer confidential and we can
7 handle them here in open session without any problem. Three of
8 them we are suggesting that we go into executive session for
9 those three.

10 There are two that we can discuss, Patrick County and
11 Prince Edward County, 2720, 2721. The numerical particulars
12 are before you and I can address first Patrick County. They have
13 a TROF request, and they're requesting \$350,000. Your
14 guidelines support \$185,000. You can see the jobs and capital
15 investment that's been promised there before you. Patrick
16 County has requested more than the guidelines support.

17 MR. OWENS: From the Southside Committee
18 allocation process.

19 MR. STEPHENSON: They have signaled to me that
20 they want to do that again, and I have said that's up to the
21 Southside Economic Development Committee, and you need to
22 ask there.

23 The only thing before you today, staff
24 recommendation, is an approval of \$185,000 per the guidelines.

25 MR. OWENS: How time sensitive is that?

1 MR. STEPHENSON: It always seems to be urgent, but
2 there's not going to be a lot to do about that. This is all by offer,
3 I think, at this moment.

4 MR. OWENS: We're not going to have a meeting until
5 January for Southside.

6 DELEGATE KILGORE: What about the jobs?

7 MR. OWENS: The capital investment.

8 MR. PFOHL: I'm not familiar with that, Ned has been
9 handling that.

10 MR. STEPHENSON: The application provides that they
11 must quote the dollar amount of capital investment that they
12 intend to deliver, and the capital investment is defined as an
13 increase in taxable assets in the name of the company. When
14 the Commissioner of Revenue reports to us, it has to show.

15 DELEGATE KILGORE: We've done that before. What
16 about the other one?

17 MR. STEPHENSON: Prince Edward County has been
18 before you before, and they made an application in which they
19 did not fill out the requested amount and they left it blank, and
20 that happens sometimes. We ran the numbers, 495,000, we ran
21 the numbers, and the numbers are before you. I usually try to
22 urge them to ask for what they need, but there's a little bit of a
23 game play, they want to know how much they can get before
24 they say.

25 DELEGATE KILGORE: Twenty-five jobs? What's the

1 capital investment?

2 All right. I have a motion, 185 for Patrick County, and
3 95 for Prince Edward.

4 MR. NOYES: This is a motion to recommend to the
5 full Commission at the next meeting.

6 DELEGATE KILGORE: All right. All those in favor?

7 SENATOR RUFF: So moved.

8 MR. OWENS: Second.

9 DELEGATE KILGORE: All those in favor, say aye.
10 (Ayes) Opposed? (No response).

11 MR. STEPHENSON: Mr. Chairman, the remaining
12 three represent that they are unannounced and confidential and
13 suggesting we go into executive session before taking these up.

14 MR. BALLOU: I move that we go into executive
15 session, but I'll read this, the relevant portion, this resolution for
16 the Commission would be a motion for the TROF Committee to
17 go into a closed meeting with respect to three separate
18 allocations with regard to TROF funding in connection with
19 unannounced business expansion in the Commission's footprint.
20 These are requests 2729, 2722, and 2724 to discuss and
21 consider prospective businesses or industries or expansion of
22 existing businesses and industries, where no previous
23 announcement has been made for the businesses or industries in
24 locating or expanding in particular communities.

25 MR. OWENS: So moved.

1 DELEGATE KILGORE: We have a motion and a
2 second. All those in favor, say aye. (Ayes) All right.

3

4 NOTE: Whereupon at 9:45 a.m., the Committee goes
5 into executive session. Thereupon, at 9:55 a.m., the Committee
6 reconvenes in open session, viz:

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8 MR. BALLOU: The appropriate motion, this Committee
9 will entertain a motion pursuant to Virginia Code 2.23712D, that
10 to the best of each Commissioner's knowledge, only public
11 business matters lawfully exempted from open meeting
12 requirements and only such other business matters as were
13 identified in the motion by which the Committee went into a
14 closed meeting were heard, discussed, or considered are stated,
15 and a statement to this effect will appear in the minutes of the
16 meeting.

17 SENATOR RUFF: So moved.

18 MR. OWENS: Second.

19 MR. NOYES: Mr. Chairman, shall I call roll?

20 DELEGATE KILGORE: Yes.

21 MR. NOYES: Delegate Kilgore.

22 DELEGATE KILGORE: Aye.

23 MR. NOYES: Senator Ruff.

24 SENATOR RUFF: Aye.

25 MR. NOYES: Mr. Owens.

1 MR. OWENS: Aye.

2 MR. NOYES: I vote aye. Motion carries.

3 MR. BALLOU: Members of the Committee, an
4 appropriate motion for your consideration would be one
5 recommending that the Commission approve applications for
6 TROF funding Number 2719, 2722, 2724, the respective amounts
7 of \$45,000; \$100,000, and \$520,000, and authorize these grants
8 for TROF funding and in connection therewith enter grant
9 performance agreement, which is with the appropriate public
10 body in which the business or industries are located and such
11 matters be formally announced in connection with public
12 disclosure, the grant agreements and funding is conditioned upon
13 execution of standard agreements through customary claw-backs
14 provision.

15 MR. OWENS: So moved.

16 MR. NOYES: Second.

17 DELEGATE KILGORE: All those in favor of the motion,
18 say aye. (Ayes). Opposed? (No response).

19 Well, do we have any public comment, anyone here
20 that would like to make a comment? If not, I guess we'll need a
21 motion to adjourn.

22 SENATOR RUFF: So moved.

23 MR. OWENS: Second.

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PROCEEDINGS CONCLUDED.

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CERTIFICATE OF THE COURT REPORTER

I, Medford W. Howard, Registered Professional Reporter and Notary Public for the State of Virginia at Large, do hereby certify that I was the Court Reporter who took down and transcribed the proceedings of the **Virginia Tobacco Indemnification and Community Revitalization Commission, TROF Committee Meeting**, when held on Thursday, July 11, 2013, at 9:30 o'clock a.m., at the Hilton Garden Inn - Downtown, Richmond, Virginia.

I further certify this is a true and accurate transcript, to the best of my ability to hear and understand the proceedings.
Given under my hand this 22nd day of July, 2013.

Medford W. Howard
Registered Professional Reporter
Notary Public for the State of Virginia at Large

MY COMMISSION EXPIRES: October 31, 2014.