DISTRIBUTION OF THE MASSACHUSETTS RENEWABLE ENERGY TRUST FUND IN THE REALM OF MUNICIPAL POLITICS

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ABSTRACT
As part of the state’s restructuring and deregulation of the electric power industry, Massachusetts established the Renewable Energy Trust Fund (RETF) which earmarked approximately $50 million, collected as a surcharge on consumer electric utility bills, for distribution to municipalities that faced significant increased costs of MSW disposal because of required clean air retrofits to their Waste-to-Energy (WTE) facilities. The focus of this discussion will be upon the process, logistics and issues that evolved as that statutory benefit was implemented, including conflicts that led to the need for using a dispute resolution mechanism. Also included will be summary of issues that other states may want to address if considering similar provisions, in order to avoid some of the conflicts that arose during the Massachusetts process. For details on the Massachusetts program, see my paper presented last year at NAWTEC VIII, titled: Case Study – Electric Utility Restructuring – Massachusetts Renewable Energy Trust Fund.

INTRODUCTION
In spring of 2000, the process of implementing the MA RETF began, with the goal of distributing approximately $50 million to eligible municipalities, in accordance with the provisions of the new statute. The process involved the Massachusetts Technology Collaborative, (MTC) the responsible state agency, charged with administering the RETF, state legislators and over 125 municipalities, their organizations and representatives. After more than six months and an elaborate dispute resolution process, a distribution formula was finally agreed upon. Grant funds will begin flowing to eligible communities during 2001.

BRIEF HISTORY
The Massachusetts utility restructuring bill included Section 68 which stated: “There is hereby established and set up ...a separate trust fund to be known as the Massachusetts renewable energy trust fund...for the public purpose of generating the maximum economic and environmental benefits over time from renewable energy to the ratepayers of the commonwealth...” And, thus the RETF was established. The revenue to fund the trust is derived from a “renewables charge” currently itemized on every consumer’s electric bill. RETF. The key language, upon which grant fund eligibility is based, is:

The board shall make available from monies in the fund in accordance with subsection (a) grants to municipalities and other governmental bodies to provide debt service assistance in conjunction with alleviating payment obligations incurred by said municipalities and other governmental bodies through an existing contractual agreement pursuant to the installation of pollution control technology and the implementation of other operational improvements to existing renewable energy projects and facilities in the commonwealth utilizing waste-to-energy technology as a component of municipal solid waste plant technology in commercial use, or the closure of any such existing facilities;

This language includes two key phrases that resulted in a complex process of determining exactly what formula for fund distribution would be both consistent with this language and fair to all communities impacted by APC retrofit expenses. Those phrases are “debt service assistance” and “an existing contractual agreement pursuant to the installation of pollution control technology and the implementation of other operational improvements.”
INITIAL STAKEHOLDER MEETINGS

In an effort to start the process of identifying an appropriate grant fund eligibility process began with certain stakeholders. Stakeholder representatives of facilities that initially sought this legislative relief, invited representatives of some, but not all, municipalities with contractual relationships with WTE facilities in the state. This was independent of, but including consultation with the MTC, which has ultimate responsibility for establishing and implementing the RETF. The meetings were an attempt to provide a basis for proceeding and to assist MTC to identify an equitable basis for moving forward. However, early in that process, these meetings led to substantial disagreement among representatives of several facilities. This resulted in requests, on behalf of certain communities, unhappy with the direction these talks were taking, to legislators to intervene and ensure that a fair process evolved. Based upon the result of these meetings and the requests from legislators, MTC established a stakeholders process, employing the services of a dispute resolution firm, as well as legal, accounting and technical firms.

FINAL STAKEHOLDER PROCESS

Once this process was established, MTC made very substantial outreach efforts to ensure that every municipality that might be included in these discussions, would have a place at the table. By the end of the process, contract communities at all six currently existing WTEs, and one that closed, were represented and took part in the ultimate agreement allowing funds to finally be distributed, starting in 2001.

As mentioned above, the issues of what constitute “debt service” or “other operational improvements” as cited in the statute provided the basis for some of the most difficult discussions regarding “legislative intent” and how it should be translated into eligibility.

The initial petitioners that sought the legislation argued that their intention was to provide funds for retrofits that would be required by the latest clean air requirements. However, representatives of facilities that had already paid for pollution control equipment, at earlier points in their facility’s history, argued that it would be unfair for them not to receive some of the financial benefits promised by the RETF.

It is somewhat unclear why the term “debt service assistance” was included in the statutes language. However, its presence required a very interesting legal and financial analysis of all the projects, before an approach that was acceptable to all stakeholders was identified. In short, it was determined that any community, that had a contract at any time, to pay tip fees to any facility that used ANY debt to install pollution control equipment, could be eligible for grant funds.

Once that milestone was achieved and agreed to, the task remained to establish an equitable formula for division of the available grant funds, which are not sufficient to meet 100% of the aggregate pollution control equipment installation expenses identified at all facilities. The solution that was finally agreed upon totaled all such expenses and determined a pro-ration for each facility, based upon the funds actually available. A mechanism was also included to give credit for other steps taken at all facilities such as battery separation programs, mandated by the MA DEP. Finally, further distribution formulae were established should more funds become available through the program. Toward that end, the stakeholders are reviewing the possibility of asking the legislature for amendments to the program that might expand the amount of funds available to stakeholder communities.

CONCLUSIONS

The key conclusion to be drawn from the Massachusetts experience implementing the RETF is how important it is to carefully consider the language that will determine eligibility for pollution control expense relief. Efforts must be focused upon what method(s) might be employed to identify not only all eligible types of pollution control improvements, but also how to unambiguously identify which communities or stakeholders are eligible to receive reimbursement. One approach would be to include all potential stakeholders at the earliest possible point and include them in all discussions from the earliest efforts to draft and lobby for passage of relief language.