

MINUTES

OF THE

SPECIAL EMERGENCY TELEPHONIC MEETING OF THE

BOARD OF REGENTS

OF

THE TEXAS A&M UNIVERSITY SYSTEM

HELD IN

COLLEGE STATION, TEXAS

DECEMBER 13, 2001

(Approved July 25-26, 2002, Minute Order 175-2002)

TABLE OF CONTENTS

**MINUTES OF THE
SPECIAL EMERGENCY TELEPHONIC MEETING
OF THE BOARD OF REGENTS
DECEMBER 13, 2001**

MINUTE ORDER 280-2001 (AGENDA ITEM 1) APPROVAL OF CONTRACT WITH
TXU ENERGY SERVICES TO PROVIDE RETAIL ELECTRIC SERVICE TO CERTAIN
MEMBERS OF THE TEXAS A&M UNIVERSITY SYSTEM.....4

**MINUTES OF THE
SPECIAL EMERGENCY TELEPHONIC MEETING
OF THE BOARD OF REGENTS
DECEMBER 13, 2001**

A special emergency telephonic meeting of the Board of Regents of The Texas A&M University System was convened by Dr. Dionel Avilés, Vice Chairman of the Board of Regents, at 9:43 a.m., Thursday, December 13, 2001, in the Board of Regents Meeting Room, on the campus of Texas A&M University, College Station, Texas.

The following members of the Board were telephonically present:

Dr. Dionel E. Avilés, Vice Chairman
Mr. Phil Adams
Ms. Anne Armstrong
Mr. Lionel Sosa
Dr. Susan Rudd Wynn

The following members of the Board were not present:

Mr. Erle Nye, Chairman
Dr. Wendy Gramm
Mr. L. Lowry Mays
Mr. R.H. "Steve" Stevens

Dr. Avilés said the purpose of this special emergency meeting was to consider the approval of a contract to provide retail electric service to certain members of The Texas A&M University System (TAMUS). Ms. Armstrong, Mr. Adams, Dr. Wynn and Mr. Sosa all expressed concern that they had not received the information earlier. Mr. Adams asked if the proposed contract was fairly standard. Mr. Delmar Cain, General Counsel, said this was a new type of contract because this is the first time that we have been able, under deregulation, to enter into a contract for electricity. He said that Mr. Mark Smith, an attorney with the firm of Casey, Gentz and Sifuentes, was hired by the System and was on the conference call. Mr. Cain said Mr. Smith formerly worked with the Public Utilities Commission (PUC). He said he is competent to do this type of work. Mr. Cain said that Mr. Smith has been involved in negotiating with several of the providers of electricity and what we are trying to do is get the best price that we can. Mr. Cain explained the reason for this emergency meeting is that we need to have the product delivered by January 1, 2002. Mr. Cain explained that the reason that the Board was involved in voting on this contract, which it normally would not do, is that Mr. Erle Nye, Chairman of the Board of Regents, holds stock and is a director of TXU. Mr. Cain explained that System policy requires that under that

condition, the Board must approve the contract. He added that normally this type of contract would be approved by the president of the institution or by the business services person. Mr. Cain said the contract that they are looking at is one for several institutions. He said the contract has been negotiated and the price that they are looking at can only be determined today. Mr. Cain said the contract had been reviewed by his office, and by Mr. Smith, and they were comfortable with the contract.

Dr. Avilés said he wanted to be sure that everyone knew that Mr. Nye was a stockholder and director of TXU, and that is the reason this contract has to be approved by the Board. Mr. Cain said that Mr. Nye would be providing a letter noting that he is on the board of directors of TXU and that had he participated in the meeting, he would have recused himself. Mr. Cain said this has to be on the record because of Mr. Nye's interest with TXU and his service as a member of the Board of Regents.

Ms. Armstrong again expressed concern at the lateness of receiving the information. Mr. Cain suggested that perhaps the Board could recess its meeting until later in the day. He again explained the reason that this was an emergency meeting – needing to assure that the product could be delivered by January 1, 2002.

Mr. Sosa said the staff has done a thorough search, compared proposals, negotiated with various companies and determined that this is the very best price that we can get. He said he felt that this contract would have been signed already if it were not for the fact that Mr. Nye is a director of TXU. Mr. Cain replied in the affirmative. He said in the Board's materials, it shows that there were five energy services that responded.

Dr. Avilés asked Ms. Armstrong if she needed more time. Ms. Armstrong said it depended on the discussion.

Mr. Adams asked if the contract was highly acceptable and reasonable to the System. Mr. Smith replied in the affirmative and explained their negotiations with TXU.

Mr. Tom Kale, Vice Chancellor for Business Services, explained that the legislature enacted the electric deregulation law in 1999. He said at that time, they retained the services of Dr. Dan Turner, Director of the Texas A&M University Energy Systems Laboratory. Mr. Kale said Dr. Turner was asked to assess the impact on the System as a whole. Mr. Kale said what they found was that all of the System's institutions, with the exception of Texas A&M University, West Texas A&M University, Prairie View A&M University and Texas A&M University-Texarkana, are under the authority of the Electric Reliability Council of Texas (ERCOT). Mr. Kale

said everyone that served under ERCOT, has to enter into a contract for electrical service to be provided, starting January 1, 2002. He said they retained the services of the firm of Casey, Gentz and Sifuentes, who Mr. Smith is with, to begin to prepare an REP for electrical service and then evaluate those proposals. Mr. Kale said they determined very quickly that it was to our advantage to have a single contract for the six remaining entities. He said an REP was issued in mid-November and they thought they could consummate this and have it done without the involvement of the Board, but as of last Friday, it became apparent that TXU was most likely going to become the successful bidder. Mr. Kale added that this is what required the need for a special meeting. He said once this contract is entered into, they estimate a savings for these six institutions of about \$2 million a year. Mr. Kale then explained the pricing and that Texas A&M University-Corpus Christi would get a better break because of their thermal storage capacity.

(Secretary's Note: Dr. Wynn departed the meeting at 10:10 a.m. and rejoined the meeting at 10:15 a.m.)

Dr. Turner said they asked for the RFP to include all six campuses together and they asked for a flat rate of electricity to be provided. He said that simplifies the analysis. Dr. Turner said four of the RFPs that came back quoted all six campuses, one of the RFPs that responded only responded with a quote for the three universities in South Texas. He said AEP, formally known as Central Power and Light, would only quote for the three South Texas campuses. Dr. Turner said they went through the review process of all of the proposals that were received from the retail electric providers and they narrowed it down to two choices. Dr. Turner referred to a "pro and con" sheet comparing TXU Energy Services and AEP Retail Energy. He said they were either going to try to negotiate with TXU for all six campuses or with AEP for three campuses and TXU for three campuses and the three AEP campuses would be the Kingsville, Corpus and Laredo and three other campuses would be Commerce, Tarleton and Galveston. Dr. Turner said they went through the review process and then they entered into negotiations. He said TXU was extremely responsive. He added that AEP had yet to come back with a final contract. Dr. Turner said all of the six campuses involved met the day before by TTVN and made the recommendation that they go with a single contract involving all six campuses. He said Texas A&M University-Corpus Christi (TAMU-CC) does have a thermal storage system, which allows them some special provision under the utilities because they are able to use the thermal storage system to defer part of their peak loads during the summertime. Dr. Turner said AEP would not respond and give a "time of day" quote, which would enable Corpus Christi to utilize its thermal storage system. He added that they did have a "time of day" quote from TXU. He said there were essentially two different packages, one with a flat rate of so many cents per kilowatt hour for the five campuses and a "time of day" rate for TAMU-CC. Dr. Turner said by today's calculations, based on the numbers that they

have, this would save TAMU-CC an additional \$80,000 a year, being able to take advantage of the “time of day rates.” He said in analyzing the cost and everything else, it was their recommendation to go with the TXU contract for all six campuses.

(Secretary’s Note: Dr. Wynn rejoined the meeting at this time.)

In response to a question by Mr. Sosa, Dr. Turner said Mr. Smith and Mr. Cain were both happy with the terms and conditions of the TXU contract, there were no problems with the contract terms. Mr. Sosa said given the information that he now had, he was comfortable in making a motion to approve the item.

In response to a question by Mr. Adams, Mr. Smith explained the indemnification clause (13.1) of the contract.

Ms. Armstrong asked for more information regarding the reason for this being an emergency meeting. She said they knew TXU would a major bidder and they knew Mr. Nye’s association with TXU.

Mr. Cain said he understood there were two other regents that wanted to be part of the discussion but were having difficulty with the phone connection. Mr. Cain said the reason they were in the bind was that the negotiations have been on-going and were going on as late as the day before. He said they have to make sure that the electricity services were available by January 1, 2002. Mr. Cain said he did try to give the Board a bit of a “heads up” on this in a previous closed session of the Board.

Mr. Smith explained that everybody involved in the utility industry was running around like crazy trying to get ready for January 1. Ms. Armstrong said it seemed that the circumstances were extenuating.

Mr. Adams said they all wanted to do what was best for the System and the State of Texas. He said he wanted to know, without equivocation, that all pertinent facts had been reviewed and that TXU was, without question, the provider that the System needed to go with. Mr. Smith replied in the affirmative.

Mr. Cain said there were several regents who were trying to connect to the meeting. After discussion by the regents on the phone, Dr. Avilés called for the vote and the Board took action as set forth below:

~~~~~

**MINUTE ORDER 280-2001 (AGENDA ITEM 1)**

**APPROVAL OF CONTRACT WITH TXU ENERGY SERVICES TO  
PROVIDE RETAIL ELECTRIC SERVICE TO CERTAIN MEMBERS  
OF THE TEXAS A&M UNIVERSITY SYSTEM,  
THE TEXAS A&M UNIVERSITY SYSTEM**

On motion of Mr. Sosa, seconded by Ms. Armstrong and by a unanimous vote, the following minute order was adopted:

As directed by System Policy 25.07 (Contract Administration), the contract, attached to the official minutes as **Exhibit A**, is hereby approved and Chancellor Graves is authorized to execute the final documents. This approval will provide the contracting vendor with adequate time to post notification of this contract award to the Electric Reliability Council of Texas (ERCOT), and will also ensure a timely transition of retail electric service to the participating campuses. The contract approval would be based upon the transaction confirmation of providing electricity which is \$0.0447619/kwh for Texas A&M University-Corpus Christi and \$0.479623/kwh for all other campuses, or the price curve as of 10:00 a.m. on December 13, 2001 (whichever is lower).

*(Secretary's Note: Dr. Avilés called the roll to take the vote on this item.)*

~~~~~

Dr. Avilés adjourned the special emergency telephonic meeting of the Board at 10:37 a.m., the same day.

Vickie Burt Spillers
Executive Secretary to the Board of Regents
The Texas A&M University System

(Secretary's Note: After the meeting, Mr. Cain gave Dr. Avilés a number to call so that he could brief the other regents who were unable to join the meeting.)

VBS