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Questioning DCED's Role

By Colin McNickle

The recent Chapter 11 bankruptcy filing by a high-tech battery maker raises serious questions about the mission of the Pennsylvania Department of Community and Economic Development (DCED), a pair of Pittsburgh think tank scholars say.

Aquion Energy, which operated out of the former Sony and Volkswagen complex in Westmoreland County and heavily subsidized by state taxpayers, sought bankruptcy protection in March. CEO Scott Pearson cited an inability "to raise the growth capital needed to continue operating as a going concern."

And from various media accounts it's pretty clear that Aquion is using Chapter 11 not to reorganize in an attempt to continue operations but to give itself breathing room to sell its assets.

Aquion was working to perfect salt-water batteries to, among other things, store electricity generated by solar panels. Its batteries were billed as less dangerous and more environmentally friendly than their toxin-filled counterparts. Some critics, however, found Aquion batteries to have limited power, efficiency and efficacy (given their weight).

In return for more than $20 million in grants and loans awarded in 2012, Aquion not only promised to retain 70 jobs but to create 341 new ones. In bankruptcy, those promises obviously will not be kept.

Thus, DCED officials say they will pursue full recovery of the public subsidies in the bankruptcy proceeding and "is prepared to take whatever steps necessary and legal under the bankruptcy code to recover our loans."

"Sounds good," say Jake Haulk, president of the Allegheny Institute for Public Policy, and Eric Montarti, a senior policy analyst there. "But a 2014 audit of DCED's job-creation programs and its penalty efforts cast a shadow on how likely taxpayer dollars will be recovered when bankruptcy is involved."

That performance audit, done by the state Auditor General's Office, found the probability of DCED collecting such penalties -- higher interest rates on loans and recouping part or all of a grant (known as a "clawback") -- from bankrupt businesses "is low because DCED is an unsecured creditor and, by its own admission, it is unlikely that they will be able to recover a significant portion of their claim."

DCED says it is a secured creditor for the Aquion loans. And should the development agency recover some or all of the secured credit, that money no doubt will be returned to the pool of dollars for which other companies could compete anew, not to the taxpayers, Haulk and Montarti note.

The Allegheny Institute scholars say the Aquion bankruptcy raises two important questions:

"Would having to return funds to DCED not make it tougher for struggling companies to stay afloat and make it even harder to fulfill their promises?," Haulk and Montarti ask.

"This is a real dilemma created by having taxpayers underwrite business in the first place," they say.

Secondly, it raises questions about the government's criteria in attempting to pick economic winners.

"Should DCED be giving grants or loans to companies with untested technology in terms of reliability or marketability?," question Haulk and Montarti. "If a lot of research and development is still required, the projects should be funded by angel investors or venture capital."

The think tank researchers say there are better ways for the state to provide assistance -- in the form of loss carryforward and greater deductibility of research and development in company taxes.

"However, there is little merit in having a state agency borrow money to be put at risk as the Commonwealth Financing Authority does in funding untried technology," Haulk and Montarti conclude.

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