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East Bay Energy Consortium Technical Committee Meeting Minutes, November 30, 2009

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East Bay Energy Consortium
Technical Committee
Warren Town Hall
November 30, 2009 Notes

Present: Mayor Napolitano, Joe Fraioli, Joe DePasquale, Garry Plunkett, Gary Gump, Andy Shapiro, Lee Arnold

Guest: Don Wineberg, Attorney at Law, from the firm of Chace Ruttenberg & Freedman, LLP based in Providence

Andy said the focus today is information gathering. He said members had expressed concern about continuing the relationship with Mr. Teitz, from an expense point of view. Andy said that this matter has been discussed by both the Legal Committee and the Budget Committee. Joe DePasquale noted that he would likely be making a motion regarding the East Bay Energy Consortium's relationship with Mr. Teitz at the December 7 Consortium meeting.

Andy's interest was to review what might be needed for Phase II of the project, with attention to possible needs for legal support. Don Wineberg, who had been present at the presentation by Applied Science Associates to the Consortium during the RFP process, had been invited to attend today's gathering on a pro-bono information sharing basis. Andy invited Don to comment on prospective legal support needs.

Don spoke briefly about his legal experience and his service to the Town of Jamestown as Chair of their wind study project. Don's Committee will be recommending a 2 megawatt wind turbine for the Town of Jamestown, to be located on the grounds of Fort Getty.

Don stressed the need for the group to pay attention to process. He said that it is his view that there is no immediate need for the East Bay Energy Consortium (EBEC) to form a tax-exempt non-profit entity; to set up such a vehicle for EBEC would likely cost about $10,000.

Don shared his sense that a governing structure and decision-making process is important for EBEC. He recommended a governance development process as part of the By-Laws. Andy expressed the concern that the draft By-Laws may be overly restrictive. Andy noted that a review of the draft By-Laws is on the agenda for the December 7 consortium meeting. Don said that these By-Laws would not actually have the weight of law since EBEC is not yet a formal, legal corporation. He did say, however, that the draft By-Laws could be used for operating purposes in terms of how EBEC conducts its business.

With respect to the draft By-Laws, Don said that EBEC's form is essentially a hub for wind power study for the East Bay area, in a manner that could help the participating cities and towns realize maximum power potential. He said that EBEC's capacity to do this would be better served if its development structure is sufficiently flexible. He used the saying that "form follows

function" wherein EBEC would describe and define the function, and attorneys would then craft the right form to serve that function.

Garry Plunkett felt it was important to stay focused on the feasibility study and not get sidetracked by discussions of legal support at this time. Garry also said that we should have some known process by which we conduct our business.

Don saw no reason why we should not continue to proceed in the manner that we have used from the outset – essentially a consensus approach with the members representing the participating cities and towns.

Don suggested we watch the Public Utilities Commission developments regarding net metering. An innovative power purchasing agreement between an entity such as EBEC and a power company such as National Grid can obviate the need for changes in net metering laws.

Returning his attention to the draft By-Laws, Don spoke about aspects that should be accommodated in the By-Laws:

1. Voting style (to include the nuances of "simple majority" and "super majority")
2. Development goals
3. Siting selection parameters
4. Conflict of interest (on this aspect, Don said that the Internal Revenue Service has recommendations, and that each vote would probably have a potential conflict of interest gate or set of concerns to be satisfied)

He said that in the absence of By-Laws we could adopt rules and procedures.

Don said that Directors and Officers of a non-profit corporation have virtual immunity regarding personal liability, and feels we do not need to adopt By-Laws in order to elect officers. He suggested that we work on structural thoughts while the feasibility study is in progress.

Andy asked Don to share thoughts on what legal support might be needed in the feasibility phase and the implementation, or "post-feasibility" phase. Don responded in this manner:

1. Governance *(feasibility phase)*
2. Tax-exempt status *(post-feasibility)*
3. Transactions
    - Real estate to include zoning, deed restrictions, and similar matters *(feasibility and post)*
    - Contracts *(post-feasibility)*
    - Financing, including grants and bond capacity *(post-feasibility)*
    - Developer contracts *(post-feasibility)*
4. Legal/regulatory
    - PUC monitoring

- Legislative interaction

Don estimated the cost for legal involvement in Phase I and Phase II as between $5,000. and $10,000., which would be additive to what has already been spent. His sense is that there is not a lot of legal work required for the balance of our current grant activity. He said that for the implementation phase, depending on the recommendations that are forwarded by EBEC to the participating cities and towns, legal work could cost in the range of $100,000.

Don was thanked for his time and his thoughts, and left.

At that point members discussed the matter of future legal expenses, and talked about approaches to the draft By-Laws in light of the morning's discussion.

The group saw a need to ask Lee and Bob from The Arnold Group, LLC to speak to our funding partners regarding the grant budget, especially since there may be a need for additional funds for legal services at some point.

The consensus was to regard the draft By-Laws as "rules and procedures" and using them as operating procedures. This would give the Consortium sufficient structure to facilitate the election of officers.