

MINUTES, FOR THE MEETING OF THE ENERGY EFFICIENCY ADVISORY COUNCIL

A meeting of the Energy Efficiency Advisory Council (“EEAC”) was held in Boston, Massachusetts on February 10, 2009.

The following voting members were present:

Heather Clark, Jed Nosal, designee for Martha Coakley, Paul Deare, Lucy Edmondson, Philip Giudice, Debra Hall, Charles Harak, Elliott Jacobson, Samuel Krasnow, Richard Mattila, Robert Rio.

The following non-voting members were present:

Derek Buchler representing Bay State Gas; Penni Conner, NSTAR Gas & Electric; Kevin Galligan, Cape Light Compact, a municipal aggregator; George Gantz, Unitil; Paul Gromer, Energy Efficiency Businesses; Richard Oswald, WMECO; Michael Sommer, Berkshire Gas and Timothy Stout, National Grid Electric & Gas Divisions.

Frank Gorke, Director of the Division of Energy Efficiency for the Department of Energy Resources (DOER) called the meeting to order at 3:03 p.m. He distributed written copies of the agenda to Council members as Steven Venezia, Deputy General Counsel for the DOER, distributed copies of the Meeting Minutes for January 30 and the attendance sheet for members to initial. Mr. Gorke then turned the meeting over to Council Chairperson, Philip Giudice, DOER Commissioner. Mr. Giudice made opening remarks to the Council describing his recent business in Washington to advance the Commonwealth’s interests particularly with regard to energy provisions in the Obama Administration’s Stimulus Package legislation. Mr. Giudice stated that Massachusetts was “far ahead of most states” when it came to planning and adoption of aggressive energy efficiency, renewable energy and climate change initiatives at the state level. He asserted that Massachusetts was well poised to extend its advantage by quickly employing the stimulus funds allocated to the states. Giudice then went into some specifics regarding the legislation and the expectations Massachusetts officials could reasonably entertain with respect to the size and scope of federal assistance to state energy programs. At the conclusion of the Chair’s remarks, Mr. Giudice excused himself to attend another meeting. Mr. Gorke then gave a brief overview of recent efforts by the by-laws committee to fashion a draft of by-laws to govern procedures of the Council. Gorke recognized Samuel Krasnow of the by-laws committee to present its work to the full Council.

Mr. Krasnow then took several minutes to preside over a section by section discussion of the By-Laws draft produced by the committee. The presentation was interspersed with numerous comments and questions by members. Mr. Gorke took note that the DOER found some shortcomings to certain language in the draft and that its flaws were such that the committee would need to reconvene quickly to correct the perceived deficiencies. Elliott Jacobson expressed concern about language governing voting majorities and quorums as well as uncertainty as to when an emergency might exist that could trigger a voting member to name a designee to vote by proxy. Charles Harak shared this concern

about ambiguities in the draft pertaining to designee voting. Mr. Krasnow responded generally to these comments by recognizing a likely need to schedule another meeting among lawyers on the committee and support staff to iron out these differences and to bring back a revised draft for adoption by the Voting Members of the Council by the meeting on February 24. There was general agreement to this course of action.

Mr. Gorke then guided the discussion to the next agenda item regarding the work of the RFR Consultant Committee and asked Michael Sherman of the DOER to report the committee's progress to the full Council. Mr. Sherman then distributed his memorandum regarding the process and findings of the committee in its review of responses to the RFR. Sherman spoke in detail about the review process of the committee, giving a summary evaluation of the strengths and weaknesses of the individual bids and the committee's collective assessment. He stated that the committee had a unanimous view that the Optimal response was superior to all the others. Jed Nosal, a member of the committee, affirmed that Optimal's response was superior and demonstrated a clear advantage in its evident familiarity with the Massachusetts situation. Mr. Nosal further observed that the committee was recommending a one year contract with a right to extend as a check on any potential difficulties dealing with a confederation of previously independent contractors. Paul Deare inquired whether there would be discreet negotiation of the bid, should the Council endorse the RFR committee recommendation to award the contract to Optimal. There was a collective affirmative response. Charles Harak asked whether an eleven member Council and a state agency should be concerned about its ability to oversee the contractors. Mr. Krasnow expressed confidence that sufficient oversight was achievable if there was clear direction from the Council and regular periodic reporting to it. Mr. Gorke concurred with this view. Mr. Sherman then resumed briefly making additional comments about the work plan. Timothy Stout seconded Mr. Harak's concern and reinforced the need for significant control and clear direction with respect to Optimal, though acknowledging Optimal's expertise.

Mr. Gorke then made a motion to award the contract to Optimal based on the recommendation of the RFR committee. Mr. Nosal seconded the motion. There was no additional discussion. There was a voice vote in which all affirmed the award and the commencement of contract negotiations. Nobody opposed the motion.

Mr. Gorke moved to the next agenda item concerning the discussion of priorities resolution. Gorke invited Heather Clark to lead the discussion and Council review of her draft. Ms. Clark led a detailed examination of the draft. Several questions and comments were made during the course of her presentation. Clark's draft led to a lengthy and vigorous debate about the primary audience, purpose, structure, detail and tone of the document. At different times, Elliott Jacobson wondered who was the primary audience and expressed concern that the document needed to sound more positive in tone than the current draft. The Council was of two minds concerning various aspects of the document. Some saw the PAs as the primary audience while others perceived the outside as the intended audience. Some members thought the draft ought to remain a resolution, perhaps with a few less "whereas" clauses while others embraced the draft as a list of priorities. The Council further debated the degree of specificity in listing priorities and

whether the Council should adopt a more elevated, less prescriptive view or a lower level, granular itemization of programmatic initiatives. Jed Nosal, Penni Conner, Lucy Edmondson, and George Gantz articulated reasons why a higher level thematic approach would better serve the Council. In addition, Mr. Nosal and Ms. Conner noted that too much specificity presented other statutory or policy-making complications. Messrs. Deare, Krasnow, Gorke, Debra Hall and Ms. Clark each identified particular advantages of cataloging a more specific list of priorities. There continued a series of comments about the laudable degree of effort exerted by Ms. Clark and others in composing the draft and additional comments trying to identify the tension between overarching goals and more earthbound specifics. Gorke brought the discussion to a close expressing sympathy for the original conception of a high priority list with enumeration of other priorities to be done. He noted that the discussion underscored the need for the assistance of consultants and the necessity of finalizing a contract. In a moment of levity, Mr. Nosal made a frown for the record with regard to the need to set up another committee meeting to put the resolution in final form. The Council and audience responded with laughter. Gorke concluded that the PAs should share their comments to the Voting Members of the Council and provide feedback to Ms. Clark or Ms. Edmondson.

Mr. Gorke then invited Emmett Lyne, the attorney representing GasNetworks, to address the Council concerning the collective effort of the Program Administrators to agree on a common procedural schedule for the submittal of the statewide and individual company three-year energy efficiency plans. Mr. Lyne made a brief presentation of the draft schedule. Gorke mentioned a DOER concern about a perceived temporal gap between July 31 and October 30 and an apparent absence of inclusion of the PA individual plans on the schedule. He further noted the apparently arbitrary selection of the November 10 date and wondered about its origin. Mr. Lyne responded that the selection of November 10 was merely a practical decision and not a statutory deadline. Lyne continued to state that the PAs want individual plans that closely track the statewide plan and that this schedule reflected the assumption that the Program Administrators would need to build in time to go back and make sure that the individual plans did reflect elements of the statewide plan as well as reflect unresolved issues between the Council and the PAs and also take into account differences between the plans of the various PAs. Mr. Sherman commented further on the “blank spot” during the July to October trimester and cited the need for a formal meeting in mid-September to fill-in the empty spot. Several non-voting Council members responded that this process was an iterative one and that they left some “wiggle room” in the schedule to perform these necessary reviews. Mr. Krasnow offered a friendly amendment to the schedule to which NSTAR exhibited a favorable response.

Mr. Gorke then asked Mr. Sherman to give an update on the progress made in the DPU 08-50 Working Group to create an acceptable template to be used by all PAs in filing their three-year plans both statewide and individual. Mr. Sherman then debriefed the Council with some assistance from Jeffrey Leupold of the DPU with respect to the fifth version of the template getting closer to acceptance. They also informed the Council of overlapping and competing needs for filing the Plans between Council and Green Communities Act requirements versus those regulatory requirements of the DPU. Discussion ended with Gorke raising the issue relating to the prominence of the

placement of energy savings in the litany of the Plan template. Ben Davis of the DPU responded that historically the DPU has always focused first on the funding sources in the plans, not energy savings, but that there was no conflict or disagreement on the part of the DPU with the emphasis now on the inclusion of energy savings.

Mr. Gorke then opened up the meeting to comments by the general public in attendance. Mary Jo Connelly of Community Labor United asked whether the Council intended to have public hearings to comment on the three-year plans. Representing the Grinspoon Foundation, David Maynard stated that he personally liked the standards enunciated in the draft resolution of Council priorities while Stephanie Pollack of Bluewave Strategies noted the tension that existed between a prescriptive list of immediate Council priorities versus a broader, longer-term view of Council goals. Paul Johnson inquired whether the Council envisioned use of focus or market groups to target program development.

Mr. Gorke ended the Council meeting with a proposal to have twice monthly meetings from the present until April 30. There was no opposition. He said the DOER would try to set an accelerated schedule in the next two weeks. Gorke then called the meeting to a close at approximately 5:09 p.m.