

## **FINAL Minutes of the Interagency Review Panel's December 20, 2010 Meeting**

The meeting was called to order at 3:08 p.m.

The following members of the Panel and State Agency staff were present:

### Panel Members

Barbara Alexander  
Tim Agnew  
Fen Fowler  
Harrison Horning  
John Kerry, OEIS  
Bruce VanNote, DOT  
Chip Gavin, BGS  
Conrad Welzel, MTA

### State Agency Staff

Nina Fisher, DOT  
Toni Kemmerle, DOT  
Jennifer Puser, OEIS  
Jonathon Arey, MTA  
Brian Burne, DOT

Minutes were approved with two changes; listing attendance and the time the meeting started.

The agenda was approved with one change; removing the proposal for soliciting energy infrastructure projects from Agenda item #6 as it is covered in Agenda item #4.

1) Toni Kemmerle, DOT: discussed establishing procedures for the Panel to move forward with solicitations of energy infrastructure. She said procedures do not need to be in a rule format and is not required. She said that the statute is clear that the Panel "may adopt rules", but that a rulemaking is a complex process and doesn't have a lot of flexibility. She said it is the Panel's decision, but DOT advises against it because it takes away flexibility, particularly if the Panel wants to adopt something quickly. She offered that she had drafted an outline of a solicitation process based on a number of models and is something for the Panel to consider.

Discussion followed. Barbara Alexander responded that the primary duty of the Panel should be the rules it will operate under such as the solicitation and consideration of Letters of Intent (LOI). She said the rule should make clear what information is to remain confidential and what information should be public, how to deal with executive sessions of the Panel, decision-making processes, and that the overall operating process should be transparent. She said the statute is not clear, and there should be protections in place. She

felt that the Panel should have a rule of law of how to proceed including a list of minimums for an LOI and what action should be taken once an LOI is received.

Fen Fowler asked what is the process for a rulemaking. Toni Kemmerle responded that a minor technical rule process includes an approval process thru the Attorney General's (AG) office including public comments that would be published and codified, usually within 30-60 days. Tim Agnew agreed that the Panel needs flexibility, but needs the right process from the start. He suspected people will want to be involved in the process. He said the Panel could do without a formal rulemaking process but agrees that the Panel would be better off to put guidelines in the rule. There is a possibility there should be negative feedback and he would feel better having a framework that is bulletproof.

Fen Fowler commented that other entities like the Panel have gone through a rulemaking process such as the Efficiency Maine Trust (EMT) which the Panel could look to for guidance. Harrison Horning commented that the Panel needs flexibility, and the group should brainstorm to create a process that is business friendly and create a new rule as a result. Jennifer Puser asked how long a rulemaking process takes and volunteered to get a process summary from the AG's office for the next meeting.

As a result of the discussion, it was the consensus of the Panel to move ahead with a formal rulemaking focused on process only, not content, including the concept of an LOI in the rule, (but not a lot of detail on the LOI because it would be too cumbersome). In addition, issues concerning confidential information, decision-making processes according to the statute and executive sessions would be addressed in the rule as well.

More discussion continued with Toni Kemmerle saying that the Panel needs to establish a process, then can decide on a formal rulemaking. A preliminary draft for future discussions of how an LOI might look like should take place. She went through the draft LOI proposal and pointed out that it doesn't include a RFQ and that the Panel should set out the type of information it might solicit in the LOI and guidance for reviewing the LOI. She said the LOI may be confidential so businesses can explore different things. In the PPP legislation, the process worked in DOT's environment and she was not sure if it will be adequate for energy infrastructure projects. She said they need balance and should focus on interveners and what rights they would have as well as an appeal process and where it would go, as well as defining aggrieved parties. She suggested the Panel review the Public Utilities Commission (PUC) rules, a process that is expedited, but fair. She said the enabling statute doesn't mention appeals although there are many criteria in the statute and responses will have to be put in writing. She said the Panel needs to hold public meetings and making findings.

It was discussed that Barbara Alexander as the chair of the sub-group, along with DOT should make a connection with the PUC and EMT's lawyers to follow up on their rules.

It was discussed that a letter should be sent to interested parties to get on the Panel's mailing list. Jennifer Puser said that she has a partial email list already from the

Commission to Study Energy Infrastructure and will send out the next meeting agenda to the list and ask folks if they want to continue to receive emails.

Discussion continued with Tim Agnew asking where people go for information on using the interstate. DOT said they have some information and started a process last year from Bangor South. Brian said that they take digitized plans that are scanned, but they won't all be completed for another three months or so to complete the Bangor-North area. He said they need to start collecting information to refer people to on their website for potential projects, collocation, etc. and asked what kind of guidance needs to be developed. DOT needs to know what areas people are interested in knowing about.

Further discussion ensued about needing a two-stage process in which a general LOI would be developed and then a more-detailed RFP tailored to a request. It was pointed out that some proposals could tie up the rights-of-way impacting other kinds of future projects. Again it was emphasized that building flexibility into the rule was important. It was asked if the Panel could lay out the capacity of energy infrastructure. A prospectus on the property is needed to inform potential developers what is possible. It was acknowledged that it is difficult to get experts to work on something like this because expertise is localized. It was mentioned that funding is needed to hire consultants that are not tied to local utilities and recommendations should be made to the Legislature in order for the Panel to hire an expert, and develop potential uses via marketing etc.

2) Jennifer Puser gave an update on the Panel's webpage which is located on the Governor's Office of Energy Independence and Security (OEIS) page at [www.maine.gov/oeis](http://www.maine.gov/oeis). She also said that the Panel's meeting dates will be on the OEIS website as well as the state calendar website.

In addition, Jennifer reported that she had spoken with Carl Flora at the Loring Development Authority and that he would like to participate in one of the Panel's upcoming meetings to discuss how the Searsport-Loring corridor fits into the discussion. He would also like to be included in the email list.

She also reported that she had contacted the DEP and PUC about the potential rulemakings for these departments included in the enabling legislation. Both agencies responded that they are not moving forward on any rulemakings related to energy infrastructure. The DEP said the consolidated environmental permit is already possible and that this should not have been included in the legislation. The PUC said no one has petitioned for a corridor and they see no duplicative procedures that need to be refined.

3) There was no discussion of the documents included in the agenda item #6. DOT passed out hard copies of their model right of way occupancy agreement.

Fen Fowler said that it would be helpful at future meetings for people to share information if there is anything happening that would affect the energy corridors. John Kerry gave a short summary of the Eastern Interconnection State's Planning

Prepared by the Governor's Office of Energy Independence and Security

Collaborative (EISPC) and that they are looking at different transmission scenarios as well as potential Canadian energy projects that could go through Maine.

It was also mentioned that the folks on the Interested Parties list should be told that for now on at Panel meetings, time will be added to the agenda at the end of the meeting for public comment.

Meeting was adjourned at 4:43 p.m.