

## **Minutes of the Interagency Review Panel's April 4, 2011 Meeting**

The meeting was called to order at 3:15 p.m.

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

### Panel Members

Barbara Alexander  
Tim Agnew  
Fenwick Fowler  
Harrison Horning  
Bruce Van Note  
John Kerry

### Staff

Nina Fisher, DOT  
Brian Burne, DOT  
Todd Pelletier, DOT  
Toni Kemmerle, DOT  
Jeff Marks, OEIS

### Members of the Public

Steve Ward  
Hayes Gahagan, Loring Holdings  
Kathy Billings, Bangor Hydro  
Gil Paquette, TRC  
Sharon Sudbay, Maritimes & Northeast Pipeline  
Andrew Landry, Preti Flaherty

### **1) Welcome and Introductions**

Meeting called to order by Chairman John Kerry. Introductions were made.

### **2) Review of March 7, 2011, Draft Minutes**

The minutes from the March 7, 2011 meetings were unanimously adopted (moved by T. Agnew, second by F. Fowler).

### **3) Discussion of Sub-Group's Work: Summary of subcommittee meeting held April 4 and report back on assignments – Barbara Alexander & Tim Agnew**

B. Alexander led the discussion on the Sub-Group's April 4 meeting on the process to propose formal rulemaking to cover key procedural activities; the process for handling applications; the means of handling confidential information; and setting forth key processes for the Panel's operations and work.

B. Alexander prepared another proposed draft rule on the process of asserting and protecting “confidential” or “trade secret” information. The draft is based on regulations adopted by the Massachusetts Energy Facilities Siting Board which can be a useful model for Maine. The draft was provided to the IRP. There was very little input on the draft since the March 7 meeting.

Another proposed draft of the Freedom of Information; Protection of Proprietary Information was distributed to the IRP. There was very little input on the draft since the March 7 meeting.

J. Kerry noted that there are three basic work products being developed that need to be constantly brought back to the Panel, solicit input on the policy and other issues, continue drafting and eventually develop a proposed rule that can go through a formal rulemaking process.

1. Bylaws and Administration of the Interagency Review Panel
2. Freedom of Information; Protection of Proprietary Information Draft
3. Procedures for Proposed Energy Infrastructure Projects

The DOT will be seeking additional comment on the Procedures for Proposed Energy Infrastructure Projects document.

The IRP must proceed so that a rule can be proposed by late summer 2011.

### **Freedom of Information: Protection of Proprietary Information Draft.**

B. Alexander led the discussion of this draft document.

The purpose of this rule is to provide for public access to Panel records and to protect certain trade secrets. All records will be public unless applicants cite reasons to keep confidential and “why.”

T. Agnew mentioned that Sec. 1.05 – Executive Session needs to be clarified by the IRP. The section states that the IRP shall consider proprietary information protected pursuant to 1 MRSA 405, but flexibility is needed in interpretation. An example was discussed: “What if two parties apply to build in the same corridor space? Does each party need to have access to the other party’s information?” B. Alexander mentioned that some information may need to be made available only to the other party’s lawyers and not to the other party – this is based on the Maine Public Utilities Commission model. J. Kerry stated that the process must be transparent and clear so that the applicants know what to expect and can prepare based on clear rules. B. Alexander stated that the next draft will be more explicit to include IRP negotiations on evaluation of confidential information.

S. Ward stated that the need for confidentiality should be the burden of the applicant and then the IRP will decide whether to accept or deny. This should be clarified in this rulemaking.

## **Bylaws and Administration**

B. Alexander led discussion on DRAFT “Bylaws and Administration of the Interagency Review Panel.” The document should be reviewed by the Panel members and comments distributed to the group.

Discussion on 2M – Records. Delete because of redundancy.

Discussion on 4 – Hearing Procedures. The MTA & DOT will work with the applicant on feasibility of the project proposal. S. Ward noted the need to reconcile the DOT “Procedures” document with the hearing procedures. If a public hearing is called, this must be a formalized process.

Discussion on 2C – Members of the Panel. The bylaws should name all members of the IRP.

Discussion on 2D – Quorum of and action by the members. There are seven members, so “four (4)” members present at the start of the meeting should constitute a “quorum” and “4” should be present to vote and approve substantive issues. If an initial “quorum” is met and someone leaves, this does not disrupt the “quorum.”

Discussion on 2Q – Decision. Should there be a time limit on applications? A 30-day time limit was suggested, but no decision was made.

A discussion was held on staffing and fees. A suggestion was made that the rule dictates that the applicant must pay as part of the application for public notices, hearings, transcripts, appraisals from consultants, etc. The IRP is not paid. The DOT would provide people and technical advice but would not be reimbursed. The IRP needs to decide what each agency will do without cost. T. Agnew stated that if applicants will be charged a fee, the IRP must outline what the fees will be and what the proceeds from the fees will be used for.

## **Solicitation Process for Development in Designated Energy Infrastructure Corridors**

The DOT distributed the draft “Solicitation Process for Development in Designated Energy Infrastructure Corridors.”

The document outlines the ongoing solicitation of proposals, receipt of letters of interest (LOI), conceptual review, MOU/investigative phase, the process for requests for proposals, formal proposal submissions, formal comment periods, IRP consideration and right of way occupancy agreements.

The Panel was asked to carefully review the draft document. The document envisions that applicants can bring proposals at any time and ongoing solicitation of proposals will

be on the Web site. It is important to keep the web site current and communicate with potential applicants. The updated Website will signal that “we are open for business.”

DOT discussed LOI content and criteria that will be used by the IRP to pursue a proposal.

DOT discussed the “Investigative Phase” to decide whether the proposal meets technical requirements and other issues. Fees might come into play during the investigative phase. This is the timeframe that the DOT will look at the value of the project, technical aspects, obstacles and challenges, identify questions and potential answers and bring its input back to the IRP. Much work will be done in this phase. The IRP had a discussion of what happens if another competitor enters the scene during this phase. IRP discussed publishing a time limit “window” for other applicants to enter. If no one comes in during this phase, the wind closes. If someone comes in, they go through the review at the same time.

The “Formal RFP” follows the investigative phase.

S. Ward suggested defining “competing proposal” and “conflicting proposals.”

T. Agnew stressed the need to structure the rulemaking in a way that allows more than one project to use the same corridor and effectively keep different options available. Proposals for potential projects should not preclude other project proposals in the corridors.

DOT stressed that it needs feedback from the IRP on this document.

#### **4) Review of Bangor Hydro/National Grid Proposal**

The IRP was given a hard copy of the presentation given at the March 7, 2011 meeting.

#### **5) New Business**

No new business was discussed.

#### **6) Public Comment**

A. Landry discussed that it was a good idea to have an early stage evaluation of project proposals and gave an example of FERC preliminary permits for hydro licenses.

H. Gahagan stated that the Searsport Loring Corridor exemption applies, specifically Section 1-A. C (1) in legislation.

Bangor Hydro representatives made a suggestion for the IRP to meet with PUC Commissioners to coordinate on rulemaking and process. For example, if the PUC approves a project, should the IRP make a determination that a project complies with statute? Where in the IRP process should the PUC decision/process fall?

H. Horning stated that the IRP should be able to explain to the public how a project will lower electricity costs.

K. Billings spoke briefly about the Bangor Hydro project and expectations of timeframes to match IRP process.

#### **7) Closing and Action Items**

The next IRP meeting is scheduled for May 2, 2011.

The new director of the OEIS, Kenneth Fletcher, will chair future meetings.

The IRP thanked J. Kerry for his service.

The next drafts of the three documents will be circulated to the IRP once drafted.

J. Kerry adjourned the meeting at 4:40 pm.