

Minutes of the Interagency Review Panel's August 1, 2011 Meeting

The meeting was called to order at 3:05 p.m.

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

Panel Members

Tim Agnew
Fenwick Fowler
Harrison Horning
Kenneth Fletcher
Bruce Van Note
David Emery
Barbara Alexander (phone)

Staff

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

Members of the Public

Jerry Reid, Office of the Attorney General
Carol Purington, CMP
Kathy Billings, Bangor Hydro
Steve Ward
Jean Guzzetti, OPLA
Sharon Sudbay, Maritimes & Northeast Pipeline
Andrew Landry, Preti Flaherty
Hayes Gahagan, Loring Companies
Joe Rossignoli, National Grid

1) Welcome and Introductions

Meeting called to order by Chairman Ken Fletcher. Introductions were made.

2) Review of Draft meeting agenda and action items from meeting held on June 6, 2011 – Ken Fletcher

The minutes from the June 6, 2011 meetings were unanimously adopted.

3) Rulemaking Procedures for IRP DRAFT rule –Office of the Attorney General

Jerry Reid assisted the IRP in its section-by-section review of the latest draft rule. Generally, J. Reid commended the IRP members on their work on the draft and commented that some of the language would need to be more specific and “tightened” regarding the hearing procedure and freedom of access sections. The draft would be reviewed with attention to its interface with the statute. Overall, the draft was typical of those prepared by other boards and commissions.

4) Update on Northeast Energy Link – Joe Rossignoli, Bangor Hydro/National Grid (Invited)

This portion of the meeting was moved to after the review of the draft rule.

Joe Rossignoli gave an update on the Northeast Energy Link and the recent National Grid/Bangor Hydro filing with FERC for approval of its funding approach for advancing the project. Key points:

- NEL is a proposed 1100 MW underground transmission line from Orrington, ME to Tewksbury, MA (230 miles) delivering northern New England wind and other resources into the NEMA/Boston Load center.
- First Wind and the NEL Parties executed a March 2011 MOU under which they express the intention to enter into a long-term transmission service agreement.
- NEL proposes to employ a participant-funded approach that assigns the costs of transmission investment to First Wind, which would receive priority access rights – costs will not be recovered in regional transmission rates.
- The FERC filing seeks confirmation that the companies’ process is consistent with open access policies.
- NEL Parties are seeking to work with the IRP in its evaluation of the NEL in the Maine interstate corridors.
- The estimated costs of the project is \$2 billion.
- FERC response could take 3 months (or not at all).
- Interventions by ISO, First Wind and others may occur in August (deadline of Aug. 15).
- Siting of up to 1500 MW of wind would be economically beneficial in various ways: lease payments, tax base, jobs, low energy prices.

K. Fletcher asked when the IRP should be ready with its rulemaking in order to consider the potential NEL proposal. J. Rossignoli responded that they may be ready in the February/March 2012 timeframe. Confidentiality factors will be of primary importance in the IRP process.

A study has been conducted on the extent of the drop in energy prices, but confidential at this time.

F. Fowler asked about the strength of the interdependency of First Wind generation the building of the NEL. J. Rossignoli responded that each relies on the other.

F. Fowler asked how rates could be reduced as result of the NEL energy corridor. J. Rossignoli responded that, regionally, all rates would be affected because more energy would be supplied to New England. The regional savings would have a beneficial impact on Maine.

5) Review of DRAFT “Bylaws, Administration, and the Energy Infrastructure Proposal and Review Process”

Interagency Review Panel – Section-by-Section review, discussion and revisions to be conducted by full IRP

B. Alexander and T. Agnew had submitted redline versions of the rule for panel consideration – these changes were not incorporated in the version of the rules being reviewed.

Section I: Bylaws and Administration

A. Administrative Functions.

The IRP affirms B. Alexander revision on approving compensation.

B. Bylaws of the Members of the Panel.

T. Agnew passed out a revision to “Members of the Panel” deleting all but “the members of the Panel shall be appointed and compensated and shall serve such terms as the Act may specify.”

T. Agnew revision to “Quorum of and action by the members” clarifies voting responsibilities. D. Emery states that the IRP should go back to the Legislature to get clarification on voting designations of the DOT, MTA and Loring members/designees.

B. Alexander written comment asks about notice to the public that have asked to be notified of meetings. T. Agnew states that notice to the public is a courtesy, not a requirement. S. Ward points out that there is no problem with having regularly scheduled meetings on the Web site and that this should be sufficient notice of meetings and compliant with any “freedom of notice” requirements.

K. Fletcher shares his interpretation of “special” v. “emergency” meetings. Special meetings are called because of changes based on scheduling conflicts or other reasons. Emergency meetings are immediate in nature and the IRP does not have the luxury of planning ahead.

“Subcommittees” can be called and open to the public, but not formal vote or decision can be made. Subcommittees can be made up of up to 3 members; otherwise, 4 members are a quorum for purposes of an IRP meeting.

If meetings are recorded, recordings must be available to the public (B. Alexander).

C. Hearing Procedures.

B. Alexander written comments that both applicants (or their representatives) and opponents to the proposed use of statutory corridors should be given opportunities to state their positions.

J. Reid believes that this language needs to be fully reviewed and revised based on what kinds of hearings are necessary in the context of the IRP proceedings. The Office of the AG will assist with this revision. The language can be as simple as the law permits, but specificity will benefit the IRP and the participants in the long run. Once something is “at stake” in the proceedings, procedural rights are of paramount importance. This should be a streamlined process, but should not be vague.

K. Fletcher asks how to structure the hearing language to make it a formal process without becoming an adjudicatory proceeding. J. Reid states that the simplest model would be to create a “paper record” which allows applicants to submit documents in support, opponents to submit documents in opposition, and for all parties to bring everything to the public meeting to be considered. S. Ward expresses support for the “paper record” and “oral testimony” model at a public hearing and asks for the Office of the AG to have suggestions for improvements in the hearing language.

D. Emery points out that the hearing subject must have a narrow scope as to not run far afield of the point and goals of the hearing. H. Horning wants to ensure that public participation occurs and that the public can make comments in the hearing process. T. Agnew suggests a new section to allow the public to comment at the hearing, but the Chair has discretion as to the scope of the public comment to make sure that it focuses on the application and not tangential issues. B. Van Note states that the public should not automatically be labeled as “opponents” and supporters of the project, outside of the applicants, should be given opportunity to comment.

J. Reid states that the language should make explicit the right of the Panel to ask questions of applicants and the public.

B. Alexander makes the point that if only one application is being considered, it might not be a very big issue. However, if two or more applications are being considered, it might be beneficial to have clarification on the type and process of the hearing. The current language appears to only reflect a routine public hearing in which one application is being considered. The IRP, but the nature of its mission, could be asked to pick winners and losers and resolving a conflict that might warrant language dealing with this situation.

J. Reid believes that applicants would not have “property rights” that would entitle them to an adjudicatory process, which can be cumbersome, expensive and involve greater due process components, such as cross examination. B. Alexander counters that a “licence” is a property right. J. Reid answers that creating a record should be sufficient and protective of the IRP and the language needs clarity for sufficiency of record and due process without making the hearing too complicated. J. Guzzetti agrees that this language must be clear in what the purpose of the hearing will be.

D. Code of Ethics

B. Van Note recommends changing “code of ethics” to “Conflict of Interest.”

T. Agnew recommends incorporating the conflict of interest language on p. 8 to the section on p. 6 and strike (b), (c) and (d) under this section. T. Agnew offers language based on that used by the Board of Environmental Protection. K. Fletcher suggests using T. Agnew’s language but keeping (b), (c) and (d) to keep the language strong, as the IRP members must be kept to a high code of ethics regarding conflict of interest in order to maintain credibility.

Section II: Energy Infrastructure Process.

Change “those guidelines” to “this rule” under 1.3 Definitions.

T. Agnew recommends eliminating the definition for “Short-Listed Proposers” as this I not referenced in the draft rule.

1.4 Project Selection

The IRP discussion focused on whether and how to assign weight or value to the criteria for project selection. B. Alexander points out that weigh or value of criteria would differ depending on projects, especially if there were conflicting projects. S. Ward warns the Panel against using any type of mathematical formula for these criteria. K. Fletcher reiterates the three threshold criteria in the enabling legislation and suggests adding these to the rule. B. Van Note sees two of the three criteria as “pass/fail” and the third as “graded” or weighed. K. Fletcher agrees that the first two are more definite while the third is more subjective. J. Reid urges the panel to distinguish between the three threshold critiera and the eight others rather than combining them. T. Agnew argues against language on weighting the critiera.

B.Alexander suggests language that requires the Panel to discuss how a particular proposal met or did not meet each criteria in the statute and K. Fletcher agreed that a statement or finding of fact on each of the eight could be part of the Panel decision. H.

Horning suggests deleting “weight or value assigned” and instead require that the Panel decision only address the criteria. The Panel agrees that they need to consider all 8 at a minimum, but not necessarily be required to make a statement to each. K. Fletcher recommends that any language in the statute on the criteria should be incorporated into the rule to ensure the Panel considers the criteria.

B. Van Note suggests changing “Project Selection” heading to “Project Evaluation Criteria.”

T. Agnew offers language on “Suspension of Unsolicited Proposals.”

2. Freedom of Information, Protection of Proprietary Information

B. Alexander suggests eliminating “free” from 2.1.1 Purpose.

B. Alexander suggests in 2.3.1 General Principles that applicants or others that seek to protect certain information should be required to provide both a public version and a confidential or redacted version. The confidential version would be kept in a separate location away from public access.

The language in 2.4 Process for Protecting Confidential Information is based on Public Utilities Commission language. The Panel may consider/recognize/designate data that would meet the definition of “proprietary/confidential” (which should be added to the “definitions” section of the draft rule). K. Fletcher will reach out to PUC and T. Kemmerle (DOT) on language.

3. Proposals.

The Panel discussed the interaction of the LOI, RFQ and RFP and expressed confusion as to the purpose and pathway of each. B. Alexander suggests that an agenda item of the next meeting should be to outline the methodologies and pathways and discuss the need of each.

H. Horning volunteers to help structure the map/flow diagram for the Proposal process.

K. Fletcher suggest leaving this topic until the proposal process can be mapped.

B. Alexander recommends that proposals collected in the RFP solicitation and unsolicited application proposals should be handled similarly.

The Panel should review the written comments provided by B. Alexander on the Proposals section.

S. Ward reminded the Panel that “valuation” language is need to take care that the Panel will/should have its own independent expert to assess the value of the energy infrastructure projects. This language is not currently reflected in the draft rule.

B. Alexander reminds the Panel that language is needed regarding funding to State energy efficiency programs as required by the statute.

K. Fletcher suggests that DAFS would need a separate fund for applicant fees.

J. Reid suggests speaking with Purchases regarding a model RFP process that fits the needs and requirements of the Panel.

S. Ward outlines that a parallel process may be occurring with the 1) DEP consolidated environmental process; 2) PUC consideration and 3) the Panel consideration. How are these processed coordinated and consolidated?

6) Review of DRAFT Schedule for IRP Work, Rulemaking Process and Action Items – Interagency Review Panel

The draft will continue to be revised with the points/revisions made in this meeting and results of the mapping of the proposals process.

J. Marks will revise the draft schedule for IRP work to reflect the meeting agenda for the remainder of 2011 and up to March 2012.

7) New Business

None.

8) Public comments

None.

9) Closing and Action Items – Ken Fletcher