

# **Board Decision**

## **Amendments to Bylaws Establishing Grounds for Board Executive Sessions**

September 8, 2004

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### **Purpose**

Propose amendments to Energy Trust bylaws to specify the circumstances in which the board may meet in executive session, and act on the proposal at the next board meeting.

### **Budget impact**

None.

### **Background**

The Energy Trust bylaws recognize that the board may hold executive sessions but do not describe the circumstances for which executive sessions are appropriate. Mr. Schell suggested that grounds for executive sessions be developed. The attached proposal was reviewed by the Policy Committee on May 24. In July, the Oregon PUC supported the proposed amendments except for a provision in an earlier draft that would permit board retreats to be in executive session. Oregon public meetings law does not apply to the Energy Trust and any restriction on executive sessions is purely a matter of policy.

### **Analysis**

The proposal would create four general categories for executive sessions to: (1) discuss internal personnel matters; (2) consider litigation, mediation or negotiations to settle a dispute; (3) discuss trade secrets, proprietary or other confidential information; or (4) discuss negotiations whose disclosure would likely frustrate corporate purposes. The proposal would not adopt Oregon law applicable to public agencies, although the proposal requires almost as much openness.

### **Alternatives**

- I. Follow provisions of Oregon law exactly. Oregon law allows executive sessions to consider employment issues, disciplinary matters, labor negotiations, real property negotiations, records exempt by law from public disclosure, trade negotiations where the governing body is in competition with governing bodies in other states or nations, existing or likely litigation, employee performance evaluations, and negotiations with private businesses regarding acquisition, exchange or liquidation of public investments. Staff did not take this specific approach because several of the Oregon provisions do not fit Energy Trust, and we have generally taken the position that Energy Trust is not bound by the laws that restrict public agencies.

2. Allow media to attend executive sessions. The proposed amendments do not provide for media to be present at executive sessions. Oregon law requires public agencies to allow media to attend executive sessions except those involving labor negotiations.
3. Allow executive sessions for board retreats. Some organizations allow retreats to be held as executive sessions. The PUC opposes this practice and in Oregon law there is no exception for retreats.

## Recommendation

Adopt the following resolution:

## Resolution

### RESOLUTION AMENDING BYLAWS TO ESTABLISH GROUNDS FOR BOARD EXECUTIVE SESSIONS

#### WHEREAS:

- I. The Board of the Energy Trust of Oregon, Inc. finds that specifying grounds for executive sessions would further the efficient operation of the Energy Trust.

#### It is therefore RESOLVED:

- I. The board adopts the following amendments to the Energy Trust bylaws:
  - 3.19 **Executive Sessions:** Executive sessions of the board of directors may be held only for the consideration but not decision of the following matters:
    - a. internal personnel matters;
    - b. participation in litigation, mediation or negotiations to settle a dispute; or discussions with counsel regarding potential litigation affecting a corporate choice of action;
    - c. trade secrets, proprietary or other confidential commercial or financial information; or
    - d. information regarding negotiations whose disclosure would likely frustrate corporate purposes.
  - 3.20 **Notification by chair:** Whenever a matter is proposed for consideration in an executive session of the board, the meeting notice shall state the grounds for the executive session.
  - 3.21 **Movement of executive session matters to open meeting:** During an executive session, any director may request that the matter under discussion be moved into an open meeting. Upon receiving such

**request, the chair will poll the directors present in the executive session. If a majority agree to move the matter into an open meeting, the chair will conclude the discussion and schedule the matter for consideration at the next open meeting of the board.**

Moved by: \_\_\_\_\_ Seconded by: \_\_\_\_\_

Vote: \_\_\_\_\_ in favor \_\_\_\_\_ opposed \_\_\_\_\_ abstained

Adopted on (date) \_\_\_\_\_ by Energy Trust of Oregon, Inc., Board of Directors.