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MEMO

Date: October 26, 2009
To: Board of Directors
From: Policy Committee
Subject: Investor-owned Utilities Representation on Board

Executive Director Margie Harris informed the Policy Committee at its April 14th, 2009, meeting that representatives from three investor-owned utilities (IOU) served by Energy Trust had approached her to express interest in having utility representation on the Board. The Committee set out a process to explore the issues related to IOU membership on the Board and to provide a response.

PROCESS

A. Overview

As Chair of the Policy Committee, Jason Eisdorfer contacted each of the three utility representatives to listen and understand their concerns and preferences. Then the Chair contacted each Public Utility Commission member to discuss the matter.

The Chair briefed the full Board during its public meeting held on July 29, 2009.

The Policy Committee subsequently discussed feedback from the utility and OPUC representatives and explored both the benefits and challenges associated with the utilities' preferences. The Committee decided it would be useful to meet separately with each individual utility representative. After these meetings, the Committee met to discuss the range of potential responses.

Finally, the Chair discussed the matter with individual stakeholder representatives – industrial customers, residential customers, renewable advocates – and, in particular, tested a range of potential responses.

The full Board was given a process update at this point during its public meeting held on September 2, 2009.

The Policy Committee considered all input and formed a recommendation for the full Board.

B. Initial IOU Discussions

Jason had telephone discussions with Pat Egan of PacifiCorp, Bill Nicholson of PGE [1], and Bill Edmonds of NW Natural in late April. The individual utility viewpoints were not identical or necessarily consistent. Nevertheless, the following points were made:

- The utilities see themselves in a new greenhouse-gas-constrained world.
- The utilities accept the Energy Trust as the primary energy efficiency deliverer and they want to be a seamless part of the process.
- The utilities want to defend the Energy Trust.
- Current access to the Energy Trust consists of the Renewable Advisory Council (RAC), the Conservation Advisory Council (CAC), regularly scheduled meetings with the Executive Director, meetings with staff, and comments to the Board. Utility input on larger policy points with the Board is needed. The utilities need to partner with the Energy Trust on longer-term policy matters.
- The utilities appreciated the thoughtful process the Energy Trust was using to consider the issue.
- If an electric utility is on the Board, a gas utility must be on the Board and vice versa.
- There was a range of reactions in response to the Chair's outline of options (various combinations of voting and non-voting seats) and concerns.
    - Utilities understood one difficulty was conflict of interest, but utilities generally thought this could be handled with Roberts Rules of Order.
    - Utilities thought that they represented a special stakeholder, different from other stakeholders: Utilities represent their customers, and they may also have primary obligations to reduce greenhouse-gas emissions through energy conservation and renewable energy stemming from anticipated national carbon regulation.

C. Discussions with OPUC Commissioners

Shortly after the discussions with the IOUs, Jason talked to the three OPUC commissioners individually. The discussions were open and helpful, but here there was also a range of opinions:

- All commissioners thought that some response to the utility concerns was appropriate.
- All the commissioners expressed strong concerns about voting board seats for the utilities.
- Two of the commissioners opposed voting seats based either on conflicts of interest and duty of loyalty issues or problems with other stakeholders who don't have voting seats.
- The commissioner who would consider a voting seat said that only one seat for the utilities was appropriate.

[1] During these discussions, Bill Nicholson was VP of Customers and Economic Development. He has since been moved to VP of Distribution operations. It is not clear who from PGE has picked up this issue for the company.

- All the commissioners were very concerned that voting or non-voting seats started down a "slippery slope" toward a stakeholder seat, which all of the commissioners thought was a "very bad idea."

D. Utility Discussions with the Policy Committee

The utilities raised the following points during direct, open discussions with the Policy Committee in which members of the Committee tested these concerns. Again, not all of the utilities expressed all of these thoughts.

- The advisory councils look at the nitty-gritty of operations, and utilities have appropriate input. However, the Board looks at larger policy implications, and the current process does not allow for easy utility input into these questions. A better synchronization of Board and utilities could optimize resource expenditures.
- Utility Board members would help explain to others how money is spent. The public interacts with the utilities. The public assumes that the utilities do energy efficiency.
- One utility thought that anything less than a voting seat did not achieve the desired result. This representative did not express much interest in a utility roundtable discussion. This point of view was not necessarily unanimous.
- One utility thought that utilities are working well with the Energy Trust but the strategic discussion is missing.
- The point of the utility board seat is not to bring the point of view of the utility to the Board, but to improve the organization.
- The utilities would not create a voting bloc.
- One utility covered what was going well: Energy Trust's mission is being accomplished, operations are well coordinated, and stakeholders are happy. What is not going well: carbon is changing everything and it is not clear how utility and Energy Trust are going to partner going forward, and the utility is not as involved as it could be in addressing this.
- Example of policy issues going forward: Will a biodigester be considered a renewable resource?
- Utilities argued that they have a broader perspective than stakeholders who may have a more narrow focus.
- One utility representative urged the committee not to elevate the mechanism (a voting board seat) above the goal of strengthening strategic communication.

E. Communications with Other Stakeholders.

After the discussions with the utilities, Jason talked to four "other" stakeholders. These stakeholders represented customer groups or technology advocates. All the stakeholders had a very strong reaction to the idea of utility representation on the Board.

- No. Utility Board membership is a "lousy idea."
- This is not necessary. Utilities have many avenues of communication with the Energy Trust.

- The Energy Trust is arguably the most effective deliverer of energy efficiency and renewable energy in the country, and one of the reasons why is that it is NOT conflicted, especially with utility interests.
- The Board looks after the Energy Trust, not utility interests.
- Yes, we are entering a greenhouse-gas-constrained world, but that doesn't mean that the utilities have to be on the Board; it means that we need a very good energy efficiency delivery system and that's what we have without utility board membership.
- These stakeholders disagreed unanimously with the idea that utility interests uniquely warrant Board seats, and the interests of others do not. "Does the utility work for the customers or the shareholders?" "If anybody has a justification to be on the Board, it's the customers – it's customer money." "The utility is not a "core constituent" of the Energy Trust."
- For several stakeholders, both voting and non-voting seats were flatly unacceptable, creating undue influence and fundamentally changing the nature of the Energy Trust.
- To a degree, all of the stakeholders felt that if utilities were offered a voting or non-voting seat, this necessarily opened the question of whether the Board should be a stakeholder Board. One stakeholder was interested in exploring that question; the others thought it would ruin an excellent organization and delivery mechanism.
- One stakeholder said the utilities' conflicts of interest were very deep and could not be dealt with through Roberts Rules of Order.
- One stakeholder said offering voting seats would result in lots of 10 to 3 votes, which would be unhelpful.

F. Policy Committee Discussions.

The Policy Committee discussed all of these reactions and reached the following conclusions.

- The main concern of the utilities seems to be how to participate in the Board's bigger and longer-range policy and strategic discussions. This is a legitimate issue and the Committee should look for a way to enhance such communications with the utilities.
- The Committee sees very strong concern about utility conflicts of interest:
    - Utility policy evolves over time and it may not be clear for some time when a utility representative has a direct conflict of interest; therefore, there may be some time when that representative is not acting in the best interest of the Energy Trust.
    - There was strong concern about conflicts between shareholder interests and the Energy Trust.
- There was a strong aversion to forming a large stakeholder board. Utility voting or non-voting seats opens up that slippery slope.
- Other stakeholders feel very strongly that the question of utility board representation is not a bi-lateral discussion between the Energy Trust and the utilities, but must reflect the interests of other stakeholders.
- The Committee agrees that utility interests are important, but has difficulty concluding that utility interests are more important than other stakeholders, or that utility Board seats are uniquely justified.

- Voting and non-voting seats would require a substantial amendment to Energy Trust by-laws.
- Stakeholder seats would raise other smaller but potentially important issues, e.g., would utility seats be filled by any employee selected by the utility, or a particular utility employee? Would the seat move with the person if they leave the utility?

The Policy Committee reviewed the options below with the principle that strategic communications with the utilities should be enhanced, but not at the expense of relationships with other stakeholders and not in a way that leads toward a fundamental reorientation of the organization. The intention is to improve the Energy Trust.

OPTIONS AND RECOMMENDATION

A. Options

The options the Policy Committee discussed were as follows:

- Four utility voting seats (under the assumption that the one utility we serve who has not expressed interest in Board membership – Cascade – will do so when it sees the others on the Board).
- Three utility voting seats (one for each utility who has expressed interest so far).
- Two voting seats, one for gas and one for electric, and let the utilities decide who will sit.
- One voting seat, and let the utilities decide who will sit.
- Non-voting seats with all of the variations above.
- No utility Board seats, and continue to improve relations in other ways.
- Explore a Utility Strategic Roundtable concept that would devote time several times a year to exploring strategic issues and how to integrate Energy Trust activities and utility objectives.

B. Recommendation

After much sifting of the input and based on the core principle that we need to improve strategic communications with the utilities, but not at the expense of relationships with other stakeholders, the Policy Committee proposes to the full Board that we reach out to the utilities with the following Utility Strategic Roundtable idea.

A Utility Strategic Roundtable would be a two-year experiment to see if we can address the utilities' expressed interest in communicating with the Board on a strategic level without heading down the path of a representative Board or raising the concerns of others who may also want to be on the Board if the utilities obtain seats.

1. The Utility Strategic Roundtable would be composed of the Energy Trust Board and representatives from the electric and gas utilities served by the Energy Trust. Members of the public, customers and other stakeholders would be invited to attend and participate in the discussions.

2. The Roundtable would meet quarterly or semi-annually. Meetings could be timed with regular Energy Trust Board meetings so all Board members can attend, and the assumption is that all members *would* attend.

3. The Roundtable would have an agenda determined by the Energy Trust Board Chair in consultation with the full Board, the utilities and interested parties. The agenda would include a specific opportunity for the utilities to engage in a dialogue on matters of interest to them. In general, the agenda would focus on strategic and longer-term ideas, opportunities and concerns, with the goal to ensure the entities are working well together, and pursuing energy efficiency and renewable energy in the most effective and coordinated way possible.

4. Materials would be prepared by appropriate Energy Trust or utility staff, and would be made available in advance.

5. Minutes would be kept and a roster of potential action items would be brought back for full Energy Trust Board discussion and staff consideration before commitments to pursue the actions were made.

6. The parties would try this approach for a two-year period to determine if it is an effective way to promote strategic communications before deciding whether to make it a permanent feature or pursue some other course.

The primary disadvantages of this option are:

- It may not be fully satisfactory to some of the utilities now seeking full Board membership
- It may not be welcomed by other stakeholder interests
- It will put an added burden and expense on the Board and staff

The advantages include:

- It establishes a clear, regular and open setting for all entities to strengthen communication at a policy and longer-term strategic level, enabling discussion of the future direction of the Energy Trust and utility priorities and plans.
- It could strengthen communication and provide feedback on strategic direction and initiatives, identifying joint opportunities to enhance collaboration, coordination and mutually desired outcomes.
- It could improve awareness and planning regarding any future utility roles related to carbon regulation and acquisition of energy efficiency and/or renewable energy
- It could provide a way to engage Energy Trust stakeholders in a variety of strategic level conversations about risks and opportunities and major electricity sector change without creating the perception that stakeholders have unequal input into Board deliberations and unequal access to information.

C. Next Steps

Given the timing of the Board packet production, this memo is finalized today for use at the November 4, 2009 Board Meeting.

The Committee decided that prior to the Board meeting the Chair should share the memo and the Committee's conclusions with the utility representatives, the other stakeholders and the OPUC commissioners. The Chair will report back to the full Board at the Board Meeting any responses that emerge from these discussions. Stakeholders will be invited to attend that Board Meeting.

D. Conclusion

After carefully examining the core basis of the utilities' interests and after balancing the various stakeholder positions, the Policy Committee formally recommends to the full Board that the Energy Trust develop and implement a Utility Strategic Roundtable process.