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Governor

STATE OF NEVADA

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GOVERNOR'S OFFICE OF ENERGY

**MINUTES
of the workshop of the
GOVERNOR'S OFFICE OF ENERGY**

LCB file number TBD

June 22, 2017

The Governor's Office of Energy held a public meeting on June 22, 2017, beginning at 2:00 PM. at the following locations:

Governor's Office of Energy, 755 N. Roop Street, Suite 202, Carson City, Nevada
and video cast to
The Grant Sawyer Building, 555 East Washington Street, Suite 5100, Las Vegas, Nevada.

In attendance:

Kevin Wilson, Sempra Energy
Josh Hicks, McDonald Carano Wilson
Tammy Hum, 174 Global Power
Dagny Stapleton, NACO
Jared Aranda, NACO
Roman Borisov, Lewis Roca Rothgerber Christie
Shannon Hogan
Tori Sundheim, NACO
John Seymour, IBEW 401

1. Call to order: The meeting was called to order at 2:00 PM by Director Angela Dykema.

2. Introductions of Those in Attendance: Those in attendance introduced themselves.

3. Public comment and discussion (1st period): Director Dykema asked for public comment in either Carson City or Las Vegas, there was none.

4. Discussion of Proposed Regulation: Director Dykema began with Section 1, approved uses for money in the account. She stated, the revenue from our Renewable Energy Tax Abatement Program goes into our Renewable Energy Account, 4869. Per statute we are able to use the income towards energy efficiency programs and it specifically states that no less than 75% of the money in the account must be used to offset the cost of electricity to or the use of electricity by retail customers of a public utility that is subject to the portfolio standard established by the Public Utilities Commission of Nevada pursuant to [NRS 704.7821](#), which is basically NV Energy customers. We have established a

number of agency programs that satisfy this goal and we intend to continue these programs. However, there are a lot of needs for utilization of the funds in this account for other programs. So our proposed regulation is actually in accordance with 701A.450 (6) (a) which states, The Director of the Office of Energy may by regulation establish:

(a) Other uses of the money in the Account;

All we are trying to do is establish by regulation the ability to use the account towards other purposes that satisfy our agency initiatives and our strategic planning goals that the Governor and the Legislature have established for our agency. So you'll see in blue our proposed amendment, the money in the Account may be used for purposes which satisfy the initiatives and Performance Measures established by the Office of Energy, the Legislature, or the Governor. Director Dykema asked for comments on this amendment and there were none.

She continued on to Section 2 and stated, the intent here is to clarify that we can ask for justification or documentation that would show the explanation for a county in denying an application. NRS 701A.365 (2) (b) (1) and (2) stated that the Director may in considering an application pursuant to this subsection, deny an application only if the Board of County Commissioners determines, based on relevant information, that:

- 1) The projected cost of the services that the local government is required to provide to the facility will exceed the amount of tax revenue that the local government is projected to receive as a result of the abatement; or
- 2) The projected financial benefits that will result to the county from the employment by the facility of the residents of this State and from capital investments by the facility in the county will not exceed the projected loss of tax revenue that will result from the abatement;

Our intent is to have evidence in order to ensure that the application denial is indeed based on those parameters set forth in NRS 701A.365 (2) (b) (1) and (2). I will give an example, a couple of years ago an application was denied and the county did submit some back up documentation showing us how they reached their conclusion regarding projected financial documents. Upon reviewing the information with our Department of Taxation, we found there were errors in the data submitted and therefore the justification wasn't accurate so the denial of the application wouldn't hold up because it was inaccurate information. As it stands we cannot request that documentation from the counties, this enables us to require that the county show us how they made that determination.

A member present stated, one of the concerns I have is that the statute requires the Board of County Commissioners make a decision within 30 days of receiving the application and if they don't it is deemed approved, is this additional requirement for documentation still within the 30 day window. I would suggest some qualifying language put into this like the one Lewis and Rocca put in to the effect that the 30 day timeframe is still pertinent to the additional requirement.

Director Dykema agreed this seemed reasonable.

Ms. Dagny Stapleton commented, we don't read the statute as giving the Office of Energy authority to make a determination on the denial, it is the county's authority to make a determination on the denial based on the criteria. The Office doesn't have any further authority to then make another

determination on the county's information. So adding this to the regulation is adding authority to you guys that we don't think exists in statute. We are open to a change and we agree that it needs to be clarified.

Director Dykema, asked, so your suggested change is, Director will issue a final decision denying an application for a partial abatement of property taxes imposed pursuant to chapter 361 only if the Board of County Commissioners recommends denial pursuant to that. This proposed change would not meet our intent in amending this regulation because that doesn't give us the ability to ask for documentation to support the denial. At the moment I may deny an application only if the Board of County Commissioners determines, based on relevant information, that: one or two is met and I do not feel comfortable making that decision unless there is evidence.

Ms. Stapleton added, we believe the decision lies with the County Commissioner and not the Office of Energy as clearly stated in statute and there is no other process required and that is our interpretation.

Director Dykema stated, my interpretation is that for the sake of transparency to all stakeholders in the process is that all information needs to be submitted to the agency to make the most prudent determination so it is not just an arbitrary and capricious decision.

Ms. Stapleton continued, Mineral County actually did provide that even though it wasn't in the regulation and if there were a decision that the company or the Office of Energy thought was arbitrary or capricious, the burden would be with the County Commission. Those decisions are made in public meetings so that there is a record of how they made that determination.

Director Dykema said we would note that concern and without that back up determination it will be difficult for the agency to deny the application. Ormat submitted a proposed change to the recommendation, would you like to walk us through that?

Mr. Roman Borisov stated, our proposed NAC is to take your recommended changes but strike the last sentence which says, unless the Director receives written notice of approval of the application from the Board of County Commissioner of each county in which the facility is located or the application is deemed denied. We feel the intent is still met without this last sentence.

Director Dykema asked, this would mean if we receive nothing it is deemed approved.

Mr. Borisov continued, the regulation only says when the Office of Energy is compelled to deny an application, and the only scenario is if it receives a determination from the counties. So this is almost like superfluous language.

Director Dykema continued, our only way to deny is if this is submitted but there is nothing else in statute that says we must receive something in order to approve. Ms. Linfante agreed.

Ms. Linfante read the section referring to this topic. She stated there is no definition for 'deemed approved'.

Mr. Borisov spoke in regards to the County's concern he said, our perception is that the statutes requires that the denial be based on relevant information which implies that the information also be accurate. Sections B1 and B2 have an implied requirement that there be reliable information to support a decision.

Director Dykema said, maybe it is not necessary that we include 'accurate information' in these changes.

Ms. Stapleton said, we do agree that it is the responsibility of the county to ensure that it is accurate information.

Director Dykema added, the only reason we included this was based on our prior experience.

A member present stated, but there is no remedy if the information is inaccurate.

Ms. Stapleton stated, regarding that example you gave, I discussed it with Mineral County and they never did receive information from the Department of Taxation or your office showing how it was inaccurate and they don't agree.

Director Dykema said we could consult the record to see how that was determined.

Ms. Linfante added, we didn't actually review their detailed financial information because who are we to say what the costs are. However, the one detail which was incorrect was that they didn't use the entire capital investment number which they did have a record of because they have the application.

Ms. Stapleton said, the county did withdraw their denial but they believed your office should have denied but they are a small county and didn't have the resources to pursue that. In my discussion with the county, they stated your analysis was incorrect and they never received your analysis of the facts. The decision lies on the county and its commission not this office which makes them liable.

Mr. Borisov added, this still means the final decision lies with the GOE because it says you shall not approve which means you are going to deny. If this determination was challenged I think you would be the defendant.

Director Dykema continued, as it stands right now they can deny an application without any accurate information.

Mr. Borisov continued, if there is inaccurate information and the GOE sees it but continues on with the county's decision, they would be liable in court.

Members present noted that there may already be a remedy if the county has used inaccurate information. They stated that the county's denial is already public record and in that case the facility could reapply.

Ms. Stapleton asked how often this really happens.

Ms. Dykema responded, this is just to prevent and have legal recourse to document the decision.

They continued on to review the applicable NRS and some noted that the regulation really should not give authority that the NRS does not provide. Members stated that the power was granted to the county not the Office of Energy.

Director Dykema asked, if you can guarantee that the county would be able to provide documentation on how they reached their decision, then what is the harm in requiring that they provide it?

Ms. Stapleton responded, because the only requirement is that they provide a denial and it is not within your power to make that determination.

Ms. Dykema said, but it is within my power because I need that documentation in order to make that informed decision. Ms. Stapleton did not agree.

Mr. Borisov stated, what if the county denies an application based on a non-issue?

Ms. Dykema continued, then I am the one who goes to court because I have no back up.

Ms. Stapleton said, I don't think so because it says that you are not the one making that determination so we believe the county would be on the hook for that.

Others agreed that the final agency making the decision would be the ones held responsible for that decision and how it was made.

Ms. Dykema said, this covers the intent to protect the state and make the most informed decision, if it is a public document then there shouldn't be any concern in sharing it. We will note your opposition to the proposed changes.

Ms. Stapleton continued, we would just like to say that this is not how we interpret the statute. We were involved in drafting this language and the legislative intent was clear that the counties were given the authority to deny an application. Changing the regulation to grant additional authority to the Office of Energy not only goes against the statute but the intent of the legislators to give that authority to counties. It is very rare across the country for counties not to have the authority to deny this type of application.

Ms. Dykema responded, I don't think we are asking for more authority all we are doing is requesting additional information.

A member present asked, what happens if the Office of Energy continuously reverses decisions because they claim the information is inaccurate? Who's to say that decision was correct?

Ms. Dykema responded, we make that decision based on review and there is still legal recourse.

The same member said, I think that is exactly what we are saying the county is willing to do.

Ms. Linfante added, one of the difficulties with the Mineral County case was that we didn't necessarily understand what we were looking at because there were so many numbers but very important details jumped right out as incorrect. So we thought maybe what we could do is have a prescribed form or questionnaire that can be filled out. We could get 40 pages of data and still not know how accurate this information is.

Ms. Stapleton mentioned, the change says 'and' and the statute says 'or' so at the very least it should says 'or'.

Ms. Dykema agreed.

Ms. Hogan stated she was supportive of the change to the regulation.

Ms. Dykema moved on to Section 3, regarding the posted wage requirement.

Ms. Linfante stated, changing this section does not change how wages are calculated. When you are in a construction period beyond a year, if the wage adjusts mid construction period, what is the average? It is an inability to comply with the construction wage and the second part of this is that there is no state wide average released mid-year, August 1st.

Mr. Wilson asked, what you are saying is that when the abatement is granted, you will use the wage set at that time instead of having it change every year if the construction period lasts several years?

Ms. Linfante stated, correct. Operational employees will see increases every year, I just wanted to make that clear and that has never been a problem before.

Mr. Wilson continued, we support this because wage requirements are very difficult for contractors when it comes to this.

Others present expressed their support. And Mr. Seymour asked, the quarterly reports are public correct? Regarding insurance, is that optional?

Ms. Linfante replied, the reports are required annually. Davis Bacon is not a requirement to us but they would have to show at least 175% and they would not be reporting that to us. Insurance is not optional.

Ms. Dykema, stated because this is not one of the proposed amendments agendized we will have to move on from that. Section 4 proposes clarification regarding the due date of the compliance report, we would like to include that we may grant a 30 day extension upon request.

Mr. Borisov stated their support for amendments to Sections 3 and 4.

5. Public comment and discussion (2nd period): Director Dykema asked for public comment in either Carson City or Las Vegas, there was none.

6. Adjournment: The meeting was adjourned at 3:06 PM.