

August 15, 2018 Board of Directors Meeting Transcript of Attorney Denning's Discussion with the LPEA Board of Directors on the LPEA Board of Directors Potential Conflicted Interest Transaction Form

Denning: There has been a lot of discussion about whether directors have a conflict and whether or not they can participate in that sort of thing. And so, what I did is, I put together a memo found in the board packet. Basically, I wanted to run through that and talk about a new idea I had in dealing with or addressing conflicts. Then I want to run through each of the specific conflicts that have been alleged. I think it's important for the board to deal with things as they come up and deal with them quickly and make sure we have a good process in place for figuring out whether or not we have a conflict and how that might impact us.

So, let's talk about conflict as a general proposition. I may sound like I am preaching but I think this is important to keep in mind. We changed the bylaws at the last member meeting and removed a provision that would disqualify directors for a particular conflict. And if you will recall, what we told the members and one of the reasons we urged this change, and I think was the right decision was that, the board has got a process in place, we have statutes in place to address conflicts, and the board is capable of policing itself.

Now why is that important for us to keep in the forefront of our mind? Because the members trust the board to make good decisions and to police themselves. The allegations we are getting from members that there are conflicts, and the concern we've got in the boardroom is important to deal with so that we have member trust and so that we have trust amongst each other, and that we help each other watch for conflicts and address them when they come up in a fair and open manner. Doing this increases transparency and I think everyone is talking about this as something that is important, and it is something I want to help facilitate.

And so, whenever we look at this, there are protections in place for board members and protections for making decisions. So, whenever the board votes on whether or not to approve a contract or buy a piece of equipment and the board votes yes and later it turns out to be a stupid decision, the board is protected in that because of the "business judgment rule."

The business judgment rule says we make our decisions based on the best information we have at the time, and we make the decision that we believe at the time is in the best interest of the cooperative. The reason that conflicts of interests are important in that overlay, is that if you have a conflict of interest then it impairs your ability to make a decision in the best interest of the cooperative. And so, we want to identify those and address those so that you all know whenever you are sitting here, and the members know whenever you are sitting here voting on an issue, you are doing so in the best interest of the cooperative to make that decision and that there is not another factor that is influencing your individual decision.

Is that also important to you personally? It can call into question whether or not that vote to enter into a contract or buy a piece of equipment is valid; and it can also impact you personally because if you have a conflict, there is case law saying that if you have a conflict, you lose that protection under business judgment rules. That "stupid" decision, that piece of equipment, could impact you personally. So, if we look at what the statute says on page 2 of the memo, what we are talking about is whether or not there is a conflicting interest transaction.

5:09 – A conflicting interest transaction is a contract transaction or other financial relationship between the nonprofit corporation and the director. Director is a broad term that means you, your family member, and your businesses. Think of being a director as everything that is related to you and not just you personally sitting here.

The main part that we are going to be dealing with is section 3 of the statute, in the final paragraph at the bottom. It says a conflicting interest transaction shall not be void and shall not give rise to an award of damages. This is saying there is protection for the board, there is protection for you for making decisions where a conflicted transaction takes place. As long as one of 3 things exist: the first is that the material conflicts have been disclosed and are known to the board members, and the board in good faith approves the conflicted interest transaction by an affirmative vote of the majority of disinterested directors. So, for example, a question comes up - do we enter into this contract? Kohler says I have a conflict because this involves a company that my son owns. I'm not going to participate. The rest of the board understands that and still votes in favor of the contract. If that turns out to be a stupid decision no one will be personally liable for that bad decision and Kohler is not going to be liable for that decision because he disclosed it, and the board talked about it, and made a decision even though there was a conflict disclosed by Kohler (McInnis).

7:31– a second thing is related to a conflict for questions that are brought by the membership-we haven't really had that in our situation so I'm not going to address that. The third thing is that you can have a conflicted director voting if it is fair to the cooperative. I would rather not have to deal with a case where I am having to argue that, even though we had a conflicted director voting and participating, it was still fair because that is something subjective, and is a question in fact for a jury, and it is really expensive to have to defend

8:03 – so we want to address conflicts whenever they come up, do we have a conflict or not? That is something, that is what I'm going to ask each director to do. That is, sort of, dig down into their gut and ask, am I OK on this or do I have some other factor besides the best interest of the cooperative pulling me? If so, you need to be honest about that and say that I need to step aside.

Unger: you are saying this is on a case by case basis. So, if there is a contract to do X or a decision to do X then you would need to decide if you are conflicted. There is nothing that generally would cause a director to not be eligible to serve because of a conflicted transaction?

8:57 – Denning: So, before we amended the bylaws there was. There was the bylaw provision that said that if you've got this conflict then you are not eligible to serve. Since that was removed, then correct, there is not an overarching, you must resign your position because of the conflict. So, then that deals with the statute. Our policy tracks intentionally with the statute. And so, in looking at that there have been no amendments to the statute that would require an amendment to the policy, and I am not recommending a policy change at this time. However, I did find an NRECA model policy that I have attached to this memo. And if the directors really want to try to spell this out and get specific, I thought this was a good policy to follow, and we can definitely address that at another board meeting.

But the way the policy reads is pretty close to what I ran through here and it also requires you to fill out this form over here that provides your conflicts. And the reason that's the case is, touching back on what Mike says every year when you fill this out, you are providing information to everybody, so we can help police each other and understand where conflicts might exist. By doing that, you are putting everybody

on notice that these are the places where I may have some issues. It's a really good thing to be inclusive and put down everything that you think, all of the organizations you belong to, all of the businesses that might come into conflict with decisions about LPEA. And the reason that happens is, again, we can police each other, we can help identify areas that you might not think of, and make sure that you don't inadvertently have a director voting on a transaction that leaves the cooperative vulnerable.

10:57 – Unger: So, I have another question on that. Obviously, the only things you can put on the form are things that you actually think of that you can come up with. So, for instance I was late in putting on the disclosure form that I was running for office. The reason I was late, is that it never even occurred to me that there would be a conflict there. So, you know, in my thinking, it simply was not an issue. So how do you deal with that? If somebody doesn't put something down that ends up being a conflict because they didn't think it was going to be a conflict or it just didn't occur to them? You know what's the liability if any coming from that?

Denning: so, if you didn't put it down because you just didn't think about it, we aren't talking about liability from the standpoint of "you didn't put it down. " What we're talking about is liability if we don't catch that you have a conflict... because of your interest in running for office. So, whenever you think about it and say "oh I need to put that on there, " amend your form and make sure it gets stuck on the agenda for the next board meeting to say director Unger amended his form because of X and everybody knows that it has been amended and to help watch for that.

12:22 – Skeehan: So, if you have forgotten something, and something comes up and you are like, oh shoot! You know my brother, was involved in that. Then you can identify it later, but if that's going on right now, you right then say "I'm out of here. "

Denning: Raise your hand and let it be known. And if it is something where your brother started a new business, it's the middle of the year and you had no idea that his business was going to bid on a contract or RFP that LPEA sent out, ... what you want to do is raise your hand and say I need to amend my form and let's discuss it.

Landis: This is just a comment to head off some of these things and build capacity for a knowledge base in all of our heads. This could be a new piece for our director orientation. Because I think we always fill it out like it gets slapped on the table your first day and you're like, what is this thing? I don't know! Someone could coach us through thinking about all those different nuances that might help. I think that might be a good starting place.

Denning: and I think that, and this goes to some discussions that Mike and I have had-sometimes we have a big group discussion about these forms and sometimes we don't. I would really recommend that whenever we fill them out. And I believe it's always the first meeting after the annual meeting, one thing that Mike has recommended, and I think it's an excellent idea, is start with fresh forms and really think about if you might have a conflict and what are those conflicts. Instead of going, yeah sounds fine.

14:06– so fill out new forms at that meeting and then we put something on the agenda where we all go through and talk about what those conflicts are so that we are all aware of those and it puts it in the forefront of our mind

Montoya: some boards I've served on have liability insurance, Those I'm aware of say that they cover a director's liability so long as they don't do something illegal or conflicts of interest or self-serving. Do you know what our directors liability insurance says?

Denning: I will look to Dennis, but my understanding is, it will be very similar for our directors and officers insurance coverage.

CFO Svanes: we cannot insure with any insurance company, any knowingly wrong activities by any individuals. If somebody knowingly does something wrong, there is no insurance for it. So that, I think, answers your question.

Lyon: Back to Unger's point a few minutes ago. So, what I heard you say, is there a conflict of interest issue with basically, generally speaking, you running for office. And I think the answer was no, however I think there could be a conflict of interest issue if there is some specific contract that comes along and that could cause you to vote in a certain way that might not be in the interest of the cooperative. Did I hear that correctly? I'm getting to the Zink letter.

16:10-Denning: we've got something that is case-by-case basis, these are fact specific things. So that's where we're going to go with the forms that I am going to suggest. So, if we can hold you your question on that and we will deal with that specifically in a bit

McInnis: so, I want to talk about the elephant in the room and that is, the company that has proposed a QF to us with ownership within the board. I don't know exactly what it is now, I'm a little bit confused about getting off the board and where that goes. And I think the conflict sheets that we fill out is a step way beyond that. You can put down that you are in conflict with a particular company, but the actions of that company can reach all the way across pretty much everything that LPEA does. Including their relationship with Tri-State and anything to do with power requirements that has an affect on us. And I also think the perception, I'm getting a lot of calls from members and one of them told me there is a "common person theory. " They take a common person and they say, Is this a conflict? Everybody that's talking to me sees it as a conflict, a true conflict. And what they are saying is that OK, we are pushing to get out of Tri-State and pushing for local renewables and that potential renewable is owned by someone who makes decisions. I don't think that is addressed properly with a form that we are filling out and I think we are getting ourselves into big trouble and if LPEA does business with this company, any other company which I would consider a competitor, including Tri-State would then go, "Wait a minute, is this fair dealing?"

Denning: so those lines, again, this is something that is fact specific and there are facts that we need to discuss about that. And so, I think we need to address each one of these individually, so if I could hold off on that one until we can get to the conflict form, let's try filling out this one and see what comes. Are there any more questions related to my memo and concerns about the statute or potential liabilities?

Member: On the issue of voting, any comments on the issue of being involved in the discussion leading up to the vote?

Denning: what the statute talks about is both participating in discussions and participating in the vote. And if you've got a conflict you need to not participate in any discussions and not participate in the vote, and that's how we have things set up.

19:14 – Member: I would argue that your colleagues could allow you to participate in the discussion just to get information. Just my argument.

Montoya: I have taken several fiduciary responsibility classes, and of course you can ask somebody a question. We kind of got away from this the last time this thing came up. But normally in the past it's always, I was always taught that someone who had a conflict during those discussions was asked to leave the room.

Denning: so, I was thinking about that question and one of the questions I had about that was, was that dealing within open Session or an executive session?

Montoya: it was in open session but as what we've done here many times in the last couple of months, talked about strategy and such in open session but if you have one party of the group that's going after a contract with us sitting here at the table they're getting all of the strategy and I don't think the other companies would appreciate that.

Denning: the problem with kicking someone out of the room during an open session is That the public is there, and the other companies could sit over there and get the exact same thing. And so, if it's a situation where you would feel uncomfortable with the conflict of a director hearing this information then we need to go into executive session and ask the director to leave. So, we need to do better about policing ourselves on those discussions and if you feel uncomfortable talking about it with a conflicted director sitting there, then it needs to go into executive session.

Member: so, you had said that no directors were currently in violation. Because of the new policy change?

Denning: that's not what I'm saying. I'm saying we haven't gotten to the point of... I've got some new plans for evaluating current allegations of conflict. What I'm saying is, that because of the removal of that bylaw provision there is not an automatic "director must get kicked off the board " in the event of a conflict.

Member: I guess, a lot of people I've talked to, it's just difficult even with that new change, new forms and things like that, what about the past 6 years when Britt's been on the board and, and a couple months before he filed with the state and or in May whenever that by law was changed. So, they were in conflict before? I guess I'm just confused. So, if they are not now because of the policy change, weren't they before then?

Denning: so, director Bassett was a shareholder and an owner of CalCom solar. And the question came up many years ago about whether that ownership interest caused him to be in violation of the bylaws policy and making him no longer qualified to be a director. The decision at that time was that at that time CalCom was not doing business in the state of Colorado, that they were a California company. And so therefore he was not found to be disqualified as a director and was allowed to remain on the board. There was discussion at the board level and a decision on that issue. And so, with the removal of that by law provision, that no longer became a question as to whether he was qualified to be a board member regardless of where the company does business. Now there is a question about whether or not a specific issue that comes up for the board with a contract, you know go down a certain road that sort of thing, creates a conflict for the director to make that particular decision and vote on that particular issue. And so that's what we're addressing today: for a particular issue are you conflicted?

23:35 – Lyon: OK, I have comments too. But you said you had specific things that you might want to go over that might inform what the rest of us have to say.

Denning: I'm hoping so, maybe we can walk through these forms.

Lynch: yes, take us through that.

Denning: OK, so if everybody wants to pull up that form that I put together on page 205 of the board packet. So, we are looking for the potential conflicted transaction form. Does everyone have the form pulled up? So, what I would like to do is whenever we have a question about, is this a conflict or is it not a conflict, I would like to take a minute to fill out the form and then we can decide as a group, is this a conflict is this not a conflict. I would welcome any suggestions as far as changes. This is me trying to make a workable list of questions that can easily be filled out

Unger: so, what would trigger this?

Denning: A member says you have a conflict because you are a running for state Senate...

Unger: So, any member coming to the board and saying I think there's a potential conflict of interest would trigger this process?

Denning: I think that it would be a good idea to do that.

Unger: That would be the same thing as if a director thought there was a conflict of interest?

Denning: We are going into a discussion about qualified facilities, somebody's got a concern about director Bassett and his interest in CalCom. Let's stop and fill out the form and say, is this a problem or not?

Wheeler: So, if a director just recused themselves of that discussion and of that vote, would you still need to fill this form out?

Denning: I think that it would be a good idea to note it in the minutes that you recused yourself. But if you're saying, hey I already know about a conflict or I already don't feel comfortable participating in that vote, then I don't think we need to fill that out if you are self-recusing.

Landis: I guess one thing, I could just see people doing this you know, I just want to stall this out and get us locked up. So, do we have some sort of process where this can't just be used as a stall tactic or a political, like it's real and it's legit. So, has it got kind of a staggered, if no to question one, we stop cease and desist, it took 30 seconds and we move on?

27:07 – Denning: so, I'm thinking that questions, if you say no to questions 2 through 5, that's a pretty fast route and you stop and move on. And here's the other thing, this is my suggestion for how to handle this. The board can decide something different. I'm trying to put together something that can be very transparent

Skeehan: yeah, so I have inherent conflict because of my Tri-State, I'm on the Tri-State board. This seems to be, and I really appreciate having that public because you have been really good at, oh! we're getting kind of close! And I really do like that. I find it helpful because sometimes I'm marching down the path and I don't know it. I am, I mean every time you say that, are we filling out this form?

Denning: I think that these are for close calls, and the questions, and I'm not sures. And so, if I am saying we are marching pretty close, then nu-uh, we move on.

Skeehan: OK good.

Denning: this is my attempt to say for the close calls, for the questions, for the I'm not sures, then we went through a form that helps us make that answer so that you are not relying on me to really quickly try to find the policy and read through the policy and say yes or no on the fly. Because I don't feel like I am really equipped to make good decisions on the fly for these kinds of questions.

Montoya: am I hearing you say that if I am an owner in a company that's going to do a contract with La Plata electric and one of our members comes to the board and says, we think Davin (Montoya) has a conflict of interest and we don't think you should participate. And the majority of the board votes and says no we don't think he has a conflict, then he doesn't have a conflict?

Denning: I think this is the board policing, so- we may be wrong in our decision, that could leave La Plata vulnerable to a case. However, I think that as a group of 12 we are capable of analyzing whether or not there is a conflict and that would be important information in a subsequent case. So for example let's go to the extreme: your company wants to come in and bid on an RFP and somebody comes in and says I'm worried that that is a conflict and the majority of the board looks at it and says we don't care that you are the majority owner in this company, and we don't care that he's going to get \$1 million out of this thing, and we just don't think it's a conflict because he's a good guy and he's going to vote in the best interest of the cooperative. The board made that decision and that is something we will note because the board is the final arbiter of what we do here. Now that could leave us vulnerable to a lawsuit because that's probably not a good decision. But I think that, reasonable people that we are, we would say ... there may be a conflict that we should evaluate. And so, I trust you guys to adequately evaluate close calls and make the decisions.

30:30 Montoya: so, a court could reverse our decision?

Denning: we could be wrong.

Landis: this is just a content question. Because I know the question always comes up, Is this material conflict? Like that's how we define material - question 6, will a director materially benefit from the contemplated transaction? And here you have, kind of defining material as 10% of the applicable persons or entities average monthly income. I guess I was just wondering if this was just based on precedent or anything else?

Denning: this is me trying to think about what would constitute materiality, and I couldn't find any guidance in statute or case law. So, is everybody OK with trying to fill out a couple of these and see how it goes?

Lynch: can we make it as practical as possible and use the real cases?

Denning: I want to run through the real ones, the ones that have been alleged.

Unger: so, the board will fill this out as a process? You driving the board or something? It's not something to be filled out by the potentially conflicted director?

Denning: right, this is something I am trying to do is, this is something we all fill out together and do right quick and I'm going to start stashing some of these in my bag...

Skeehan: it should be a just in time kind of thing, I mean we will go through it now with what's been raised up but it's, just because we do it today doesn't mean that next month if we start voting on a contract or something comes up, we've still got to do it right then.

Denning: if something new comes up. I'm not anticipating every single time we talk about this single issue we have to revisit the old information. But, if we have a new wrinkle to it then yeah, we have to fill it out. So, the first one I want to do is kind of an easy starter and that would go towards, this one's not going to be a conflict. And that is, whether or not directors have a conflict on voting on the residential rate tariff. That's one of the things you guys are going to be asked to do. And so, do you have a conflict for that? And so, we would...

Bassett: I suggest that perhaps you make that a little bit more complicated, because the one that is actually a concern is those who vote on the net electrical metering tariff for instance. That is just a slight step from that, but there's concern there.

Denning: I want to go to that one after this one.

Montoya: so, are you saying that, your question is, is there a conflict on residential only?

Denning: I'm asking, are the directors conflicted in voting for changes to the residential--

Montoya: I don't think you can say that without including the net metering. The net metering is part of that tariff.

Denning: the action we've got is the net metering tariff. We have a residential rate and we have a separate net metering tariff.

Multiple voices: let's get started, so we are filling this out? Let's go for it

34:10- Skeehan: So, the first one for me, I would say, yeah. Yeah, I pay an electric bill, I pay 2 residential electric bills and I do have a potential conflict.

Denning: so, she is saying she pays on 2 residential accounts. So, the first question is do you feel like that disclosed all of the material facts that you need to know related to this? If not, then we go down to that section. If not, then this is your opportunity to say what other information do you need? If the director says I'm not telling you that, then we are going to consider you a conflicted director.

Skeehan: did I disclose all of my material facts? I did not tell you the size of my electric bill, so you wouldn't necessarily know. But my only income, so it's less than 10% of my...

Denning: so, the second question is this a contract or other relationship between LPEA and the director? Yes. Right? Because this is her bill and she's got a financial relationship with LPEA and an obligation to pay the bill. And so, if that answer was no, keep on walking through to see if there's more to be brought. So, then we get to the next thing and say if the answers to questions 2 through 5 are yes, then we have to answer 6 and 7. If not, then you're fine and we roll along.

The question that's next, would the director materially benefit from this transaction? I made up what constitutes material, if the board feels like this is not a good definition of material please tell me. I'll be happy to change it. My thought was, when does it make a difference to your bottom line?

Lyon: that's a fair, That's a hard one, right? I mean, because you can say oh yeah, it's less than 10%. But that's still a lot of money. Maybe such and such is highly compensated

Denning: so, what I tried to do is say is that, question 7 is whether or not it was 10% or not, does it have a tendency to impair your decision? So, it may be less than 10%, but you're pretty rich so therefore it's not more than 10%, but it still means a lot of money and may impact your decision.

36:42 – Denning: so, we are going to say for Director Skeehan, is this material for her? We probably don't need to know numbers, but we can ask her, is this material?

Skeehan: so, I would say yes. So, I can keep going, right? So, I'll say yes.

Denning: so, if it's yes then that means that you've got a conflict. It means this is something that is material and it matters to your bottom line.

Montoya: this part is pretty troubling to me because, does that mean I can do a conflict, a self-serving conflict, as long as it's less than 10% of my account? I'm fine? I mean I'm guilty, I make lots of money, so 10% could be like \$10 million.

Denning: so, then what I would say is, that's to director Lyon's point. If you read number 7 it says, regardless of whether there is a material conflict, does this have a tendency to impair your judgment? I would say if it's \$10 million then that's probably going to impair your judgment.

Montoya: ... my point is, if a director is rich and he has someone in the audience who is barely making their payments they feel like getting cheated out of \$10 important.

Denning: this is why the board needs to go through this and say, do we feel like we need to answer these questions together? So, in response to director Skeehan's question, is this material for you, is paying your electric bill a material expense for you?

Skeehan: yes.

Denning: OK, so then she is saying yes, it's actually more than 10%, it's material to me. So, when we answer question 7 and it says regardless of whether or not it's a material benefit, then I guess I should say this. Then we stop because she is conflicted

Skeehan: OK so, then let me say no.

Bassett: so, we stop there, and she is conflicted in this particular example. Then when we are doing residential rate structure she would have to just sit there mute and not vote. It wouldn't mean we are going to kick her off the board in an instant. It just means that she can't participate in the discussion about residential rate structure?

Denning: she is conflicted for the purpose of that transaction. We are looking at transactions. We are not looking at her ability to serve as a director. We are saying for this transaction, this decision, this thing, is she conflicted?

39:30 – Landis: just a process thing to help us out... 10% gives us a gauge but always just ask that, because that person should have a chance to advocate one way or the other, and the board should also have a chance to go, nah or yeah.

Denning: I think that if it is a material for the director, then I would say that you have got a conflict because of the materiality provision. And I think from a legal standpoint if it is material, the answer is, no you need to sit out

Landis: well I understand that. When I heard you say is 10% is a totally random number... So, like we have to add some sort of definition otherwise...

Denning: The reason I am a little concerned about that is that, first I'm going to get the ... that this is material or not, versus OK, it may not be material, but because of, insert reason, it's still means that you're not going to be able to answer the question about the money...

Landis: I guess all I'm saying is, both/and. Is there way, great we've got some objective gauge, and then there is a follow-up conversation about what is unique about you and your situation, and for us and for our interpretation. And so, it's not just an automatic...

41:15 – Denning: we want to have an objective gauge and a subjective gauge. So, I'm trying to do an objective gauge first with the 10%. If 10% isn't the right answer then we need to change it so that we have an objective gauge....So, let's say this, she says yes, this is material to her. So, you say regardless whether or not it's material, you still have to make a decision. And what happens is, that makes us vulnerable because she is materially interested in this because of the amount.

Unger: so, we are talking about monetary financial conflicts of interest. Is there any concern with other conflicts of interest? For instance, if someone has a religious objection or something or a political objection, there could be a potential conflict of interest they have that is not financial.

Denning: which is number 7. Which is to say regardless of whether or not it's material. So we're saying it's not material for Director Skeehan to deal with the residential tariff because it's within 10% of her income. Regardless of that, does a majority of the board believe that her judgment might be impaired because of her religious beliefs or because of her interest in something else? Or, for example, Director Turner has recused himself from votes related to 4CORE because of an interest he has there. So, what I'm trying to do with 7 is capture the things besides just financial.

Unger: so, it might be good just from a wording point of view to state that. Everything we talked about is pretty much financial and there could be other non-financial interests that would impair her ability...

Denning: I will make some changes to 7 to add some examples of things those could be.

Montoya: This is troubling to me because it seems like it's transferring liability from individual directors to the whole board to make decisions based on the things they fill out on this form. If you're going to ask the board if Jack is conflicted based on his filling out this form, he might be quite modest about his answers. And yet we have to base our decision on what he said as a board and we might give the greenlight to someone who is conflicted, and I don't like that. I think each director is responsible for his own actions. I don't know, there is a lot going on here that in my mind...I think if we make our case that somebody is conflicted, I don't know how the board can be the responsible party for somebody else's actions

Denning: I'm willing to look at other alternatives, this was my best whack at it . I'm not sure how else to police this and how else to deal with member concerns if we don't address this as a group.

45:12 – Unknown: (chatter)

Unger: so, this comes up all the time. You can obviously make decisions based on the information that you have, and I feel certain that our director's liability insurance covers us as long as we are making reasonable decisions based on the information that we have, right? And again, this is only going to come up when somebody makes an allegation. If somebody recuses themselves, we don't go through this process. It would only happen if there is an allegation. Presumably whoever is making the allegation would have evidence to back up what they are alleging. So, it seems to me that we don't really have a problem with the board acting as the arbiter, and that's our job.

45:53 – Denning: to my point and director Montoya's as well, do you know if you're lying whenever you're telling us about your potential conflicts and not disclosing all of your information? Then that goes back on you for lying. And then we'll have a cause of action against you for that point. And so, I trust that everyone would be open in telling us the extent of telling us their conflict and not putting us in that position.

Lyon: So, the Board makes this judgment about whether or not there is an issue. What if the board makes a decision that a reasonable person would make. Then for whatever reason, like we're buddies or we don't like conflict, or whatever it is, and I'll give you one example now. The Board is unanimous in that decision that a reasonable person would not make. Who is in legal jeopardy?

Denning: The organization.

Lyon: Ok. Now what if the vote is split and it's narrow and part of the board says, unreasonable this cannot stand. And the other part of the board says, I think it's fine.

Denning: The organization. And the other thing is, that I think everybody that voted in favor of this obviously wrong decision could be potentially breaching their fiduciary duties. It may be on the director too. So, if you are buddies and you decide to vote in favor of your buddy because of some reason, then that could potentially get you, too.

Lyon: that's a big statement. I heard that loud and clear. Okay thank you.

Denning: so, one of the things is that we are all trusting each other to make good decisions. And if we can't trust each other to make good decisions then we've got bigger issues here. So, what we are trying to do is set up a process to work through the "I don't knows", the "I'm not sures", and work through that as a group. If you are lying that's a big problem. If you are voting for your buddy because they are your buddy, that's a big problem, so I am hoping this is a way to make this process efficient.

So, then we are going to say on number 7 that, regardless of the fact that director Skeehan is not materially benefiting from this decision, is there some other reason why she may not be able to act faithfully in voting on the residential tariff? I think everybody on the board would say, no there's not a problem. So, with the answer to number 7 no, we decided she was okay to vote on that, so we are done with this form. Now one of the questions I have for you guys is, whenever we finish filling out this form, do you want it to be appended to the minutes or do you just want to note that we went through the form and this was the decision? You can do either or.

Lyon: I want full disclosure in the minutes.

49:04 – Denning: Meaning you want me to attach this form to the back of the minutes?

Lyon: As we fill all this thing out, will what we wrote on the form will become part of the public record? I think it should be.

Denning: Is everybody in agreement with that? (someone answers, sure) is there anyone that's not?

Montoya: so, when we started this out one of the things that is kind of confusing to me is that a person will put in here their potential conflicts, and I should read through all of these points, and if I think they are conflicted... Why would the board need to go through everything if I say I've got a conflict and I'm not going to vote. Does the board really need to go through the rest of it?

Denning: These are for the I don't knows and the I'm not sures ...

Montoya: thank you.

Member: is there any, if there is a conflict and it is not mentioned, what recourse is there? Because there hasn't been anything in the past. Does this just say, this director is the one that's liable?

Denning: what it does is, that it calls into question the ultimate decision and get off the ground where there is potential director liability.

Member: so, as a member the only thing that we could do would be...?

Denning: if you have a conflict that you think is existing, and there is a member comments in the beginning of the meeting, then you can address it there. And the directors will pull out this form and by voting on something that you are conflicted on, that creates potential liability for the organization -- potential liability for the director personally. So, as a member, you have an opportunity to address that. As a member, you won't be given legal advice if you have concerns about that, you'll have to contact your attorney.

Member: or maybe with the PUC.

Denning: OK so, let's go to one that's actually a little muddier. Who here is a net meter? So, we have director Huntington, director Unger this does not include community solar garden. Director Huntington could you please describe the nature of your conflict?

Huntington: I have a hydroelectric generator that's separate metered and offsetting 4 other meters kilowatt for kilowatt.

Denning: what vote are we concerned about, the net meter tariff?

Unknown: yes.

Bassett: another one might be, any discussion or vote on virtual net metering?

Unger: but this would be a case-by-case basis. She could run down that case if we were voting on the net metering, but she's running down just this case.

Denning: I had a note to say since we were addressing that since we know that's a potential, let's get it out of the way so we don't have to deal with it in the future. Does anyone believe Director Huntington needs to disclose any other facts, do you have any questions about the facts that he's disclosed?

Skeehan: We had a presentation a while ago and it showed folks who were net metering that were over budget or excess net metering, and I don't know what question would come up that I think it would affect, but I think it would be good to know if they are over and above the...120% cap? I think that would be a material fact.

Lynch: So, maybe we would want to know how much over Dan's (Huntington) is.

Meier: do you get a check once a year from LPEA? That's the question.

Huntington: No, I'm not over. No, I don't get a check, I get a credit.

Landis: Is it material?

Denning: So, would it be fair question to say how much excess generation does the director have on average? In a year?

Huntington: I think so. A dollar amount of a \$1,000 credit for excess generation.

Denning: Does anyone have any additional questions regarding material facts that they think are important? Okay, then moving on to question 2, is the contemplated transaction between LPEA and the director? That's yes. Then is this a material benefit? Is the \$1,000 credit for net metering a material benefit to you director?

56:17 – Huntington: not more than 10% but it's a financial relationship whatever for 3,4, and 5.

Denning: so, we are going to say no on 6. Regardless of the fact that it's not material, are there any directors that are concerned that his judgement may be impaired in voting on the net metering tariff or in voting on anything related to virtual net metering as a result of his ownership in this system?

Unger: question. Let's suppose that 2 of the directors felt like there was a concern, and the other directors felt like there wasn't. is there a vote that takes place here?

Denning: Yes. I am contemplating having a vote on this and am asking this first, to say, does anybody feel like there is? And if there is, then let's discuss it and take a vote.

Unger: okay.

Montoya: Are we just talking about Dan's net meter because his is different than solar rooftop, this is hydro.

Denning: yes, this is something...conflicts are case by case very specific. So, we are talking about Dan and we will deal with the other director here in a minute.

Montoya: so, I have a question for Dan Harms, is the hydro and the rooftop solar the same tariff?

Harms: yes, it all falls under the net metering tariff thing.

Montoya: I would think there is a potential for conflict.... based on the rates ... he could vote for something that is better for himself. I don't know how else to say it.

Wheeler: My question right now is, are we debating this non-material, in this specific instance, so we can understand and take a vote on it? I think that was Guinn's (Unger) question. That's what we're doing right now?

Denning: yes.

Wheeler: okay so, I have a question to put forth which is, basically the tariff that we talked about, and agreed to in the last board meeting would actually lower his income on excess. So, I would say that's probably not a conflict. Because we are going to end up with a tariff that would actually lower the excess payment.

McInnis: But he's still getting a payment

Unger: for the sake of this exercise let's say Davin has brought up what he thinks is a conflict, I am going to play devil's advocate here and for the sake of the exercise say, I know Dan, he's a good guy, he would never vote in his own best interests over the interests of LPEA. So, now we've got somebody on each side.

Denning: so, is there anybody else who believes that this wouldn't be a conflict, even though it's not material for him. Is there anybody that believes that he wouldn't be able to act faithfully in voting yes or no on the tariff, that he can't be impartial?

Montoya: Here's where I have a problem with the board and this is going to make some people mad. But when I ran for the board I didn't accept any outside money from anybody. I funded my own campaign to the tune of \$250. Some of the directors could be accepting campaign funds from special interest groups and I think that lends more to ...how they would see things and vote. And so, Dan, I don't think received a dime from any special interest groups in his campaign so, I wouldn't be concerned. With someone else, that would be different.

1:00:56 – Denning: So, then that would be a material fact that we would need to know in order to make a decision? So, would you like to add a question under question 1 that speaks to additional information we need from Dan? It says the additional information that you need is, did he accept any campaign money from special interests that would be interested in the decision being made?

Lyon: and that special interest is that money...the argument would be then... that the money and the people helping out with the money would have an interest in seeing Dan (Huntington) elected, and then Dan (Huntington) would benefit from being elected and whatever those benefits might be. Is that the argument?

Denning: and so, to rephrase the questions, did he receive any campaign money from special interest groups that would benefit from net metering, is that fair? Director Huntington what is your answer on that?

Huntington: no. I could answer yes, and we could keep going with the exercise.

Denning: no, this one is for real.

Landis: to me this is so weird. Because this all comes back to the fact that, it's like a day of just piling on, that there's a lack of trust and integrity, right? And so, that's what this is trying to get at, and it's not actually about a tariff and whether or not he can vote that. It's like, are you an objective human at all? And so, within this, again, this exercise is taking quite some time. And I am not opposed at all to getting all of this sorted out, because I think this lack of trust keeps getting in the way of us being able to move forward and actually do stuff, right? But what I am curious about is, so someone gets into campaign things and hopefully we get a policy down the road where all that is disclosed in the beginning and we're not going to have that brought in here. But we've just got this interesting chasing our tails situation where it's, well did he get contributions from people with special interest groups? But then, I think Doug (Lyon) brought up well, I think we're talking about the tariff policy at hand? Or are we talking about whether or not Dan gained benefit from getting elected, you know what I am saying?

1:03:48 – Denning: so, here's the thing ...we are trying to figure out if it's okay for him to vote yes or no on a change to the net metering tariff. So, what things could go into whether or not he can, whenever he votes on that, say with certainty that, I am voting in the best interests of the coop and not because it benefits me or my family or whatever. And so, director Montoya believes that one of the things that is important to know is whether or not he got money, whether or not he got elected and is beholden to someone who is interested in net metering. Now whether or not he is right, and the answer yes or no actually matters for whether or not he can actually vote on that, is something for the board to decide. But that is important for Director Montoya. I know this is taking a really long time and if somebody has a better idea on how to do I would love it.

Landis: no, it's not a dig on your process, I am frustrated that we have to do this because we can't just...

Denning: I understand that, and my hope is that we get into a mode of policing ourselves and we can just stand up and say not going to vote on this because of x-y-z and roll along, but we're not there yet.

Denning: okay I am going to flip the question. My first question was, does anybody believe that his judgement might be impaired? Does anybody believe his judgement would not be impaired?

Lynch: ... I believe his judgement is not impaired

Denning: and why do you believe his judgement is not impaired?

Lynch: I believe that those who actually do net meter like he does understands it and his interests are on the whole, with the coop. So, I don't think he's ...I think he'd actually make a more informed vote about the rate because he has net metering.

Unger: I said before, I know Dan, I believe that he would act in the best interests of the coop and this, not being material, will not sway him.

Denning: does anybody else wish to speak on this issue because the next thing we are going to do is vote yes or no.

Turner: So, I am struggling as part of the exercise too, and that's... I think in my experience Dan is not impaired whatsoever and has been pretty open about acknowledging that he is a net metered hydro facility. But I want to get back to when we start talking about political contributions. I mean we are a...I think that the one thing that I am really proud about the cooperative itself, and especially today, is that it does represent the foundation of our democracy. Democracy works in ways where people who have interests are participating with money. That that becomes an issue in a democratic process really kind of concerns me. So, I kind of feel like we are a bit, I don't know what we are doing here, but I think we are threatening the principal of what we stand for when it comes to cooperative membership and democracy when we do that.

The second thing I am having trouble with which may be more grounded is (with the idea of material) material. Financially, I can understand that, but when we're starting to judge a person materially, I want to know where in other examples, and what other precedents have been set by other cooperatives where they haven't behaved materially. I think when you find out what that bar is that... will help us understand what really is material when it comes to when a director or a board is really out of fiduciary responsibility. Does that make sense?

Denning: So, your question is what should the definition of material be, and I looked for any case law related to the materiality question, didn't find anything that was instructive. So, then I kind of looked at what the definition of material would be. And material is basically when it matters. When something matters to your bottom line, whenever there's a material benefit or whenever it's an important thing. And so, I came up with the idea of 10% because I thought that something around 10%, it starts to kind of impact your bottom line any you might be personally concerned about it. If the majority of the board believes that it's some other standard like 50%, or something not related to a percentage, then we need to change that and put that in there. To director Landis' point I am trying to make this an objective standard so that we say if you hit this bar, it's a no.

1:08:39 – Turner: So, when we're talking about materiality around the impairment, when it becomes really subjective, when we're going to have to like, is Dan (Huntington) impaired? I mean that's really a subjective point and it's very material. And I think it would be helpful if we had a precedent or an example of what is considered materially impaired.

Denning: so, material impairment means that he can't make a fair decision because whenever he thinks about making that decision he is swayed by thinking about his own personal interests, not about what's in the best interests of the cooperative.

Turner: okay, that's great, I would like to see that in writing.

Denning: I can change number 7 a little bit to make that clear. So, we've done the objective one in 6 to say did he hit this bar? The answer is, no he didn't hit this bar. So, then in 7 this is something that goes towards the board and says, do you guys still think that he can't make a decision based on the best interests of the cooperative because he is impaired?

Huntington: She's trying to get through this exercise on page 3 so, let's mark 7 as yes and go on and finish the exercise.

Multiple voices: wait, I think this is a real one...this is live fire... this is going to go in the minutes...this is not an exercise... we are about to throw you off the board Dan, be careful (laughter)... no, we aren't throwing you off the board.

Denning: I did the first one that was supposed to be an easy warm up to show you that no, obviously everybody's probably fine to vote on the residential rate tariff. The net metering tariff is a little bit stickier and so, we're actually going through this one for real and we're going to put this in the minutes at the end of this, and we're going to say, when we get to voting on the net metering tariff whenever Dan (Huntington) gets there, whether or not he's allowed to raise his hand or not. So, is there anybody else that wants to speak whether or not they are in favor or against number 7.

Wheeler: so, I don't think that he's materially impaired. I think that's the question, right? A lot of my reasoning has to do with, you know there is, as directors we are elected into office by members to exercise this judgement. We want to be assured that we have if possible, as many members on this board that reflect other members in our coop as possible. So, similar to what Bob said, there is a member who is a net metered customer, and it doesn't seem like the information presented so far seems to suggest that Dan isn't doing this to get rich or to provide an advantage to himself, as much he is trying to reflect his constituency and what they have given to him as members as input. And I don't want to take away that ability for him to exercise that right and that vote in this case at all. It seems like taking you out of that is outweighing the benefit of having you vote, that's how I see it.

Lynch: haven't we had 3 people say we don't think Dan's (Huntington) conflicted at all?

Denning: and then we have had some people say that they thought he was, so, I want to go to a vote. And so, everybody take a second to actually read 7 all the way through, and then let me know whenever you are done reading it all the way through.

Denning: okay, has everybody read it and understand it?

Turner: and you are going to re-word it like we talked about?

Denning: I will make some changes to it and bring it back for the next time around. The idea behind this is from a subjective standpoint, do you believe that Dan can still vote in the best interests of the coop knowing what you know about his potential conflict? Does everybody understand that?

Lynch: so, yes means you think he can vote?

Unger: yes, says he's impaired, right?

Lynch: on that one, yes says that he's impaired.

Denning: correct. So, if you vote yes, you say no he can't vote (laughter). So, let me reword this. So, everybody who thinks that Dan is a conflicted director and should not vote on the net meter tariff, please raise their hands.

Member: does the subject of the investigation get to vote? (laughter)

Denning: okay everybody that thinks that he (Dan) is okay to vote please raise your hands. Director McInnis would you like your vote recorded in the minutes?

1:13:58 – Denning: okay, then based on this form you have answered no to 6 and 7. So, therefore Director Huntington is not considered a conflicted director for the purpose of the net meter discussions. So, he's done. Now my next part down there is to say, are there any directors who have a potential conflict based on this director conflict. Now this is the situation where, we are going to deal with this in a minute, Director Unger got campaign contributions from CalCom Solar. And so, those 2 have a relationship that we need to deal with. We are going to deal with Director Unger's potential conflict as a net metered owner in just a minute. So, I am going to no do this one because these 2 questions are not directly related to each other. So, therefore we are done with Director Unger's campaign contribution.

Skeehan: I have a question. So, I am looking at 9 and I am thinking about who is able to vote. So, only disinterested directors can vote on it. So, if we are going down this net metering, then I would think that anybody that we are asking this net metering question about should not be able to vote. So, should we not let a net meter director vote? This is great though.

1:15:40 – 1:16:45 chatter unrelated

1:16:46 – Denning: so, the nature of the potential conflict for Director Unger is the same as for Director Huntington. The concern is whether or not he is eligible to vote on net metering and any discussions about virtual net metering in the future. Director Unger could you explain your net metering system?

Unger: I have solar on my roof which is on a net metered tariff.

Bassett: Do you recall how big it is? About 6 kW or something?

Unger: it's 12 kW.

Denning: you have a 12kW installation on your roof?

Unger: yes.

Denning: does anybody else have any follow up questions that you believe are important for him in knowing whether or not he's got a conflict?

Wheeler: how big is your excess check?

Unger: I haven't had it long enough; my guess is I am not going to have any excess.

Denning: Any other questions that you feel are important?

Unger: can I ask about campaign contributions?

Lyon: How much was it?

Unger: it wasn't made directly to me it was just other organizations acting on my behalf.

Denning: Just to say that, there were a couple of groups working to get me elected. They did not give me money. Okay, they went off and did their thing and I was talking to them about what my positions were, that sort of stuff. They did not directly give me money. I know they spent a substantial amount of money on their efforts to get me elected.

Lyon: so, that's our other topic really. That's the financial campaign contribution disclosure thing. And that's I mean the campaign contribution thing we got a separate agenda item for that, a whole separate policy coming up.

1:19:09 – Denning: anybody have any other additional questions? Alright.

Montoya: I am confused about what you just said. We talked about financial contributions and did you say we weren't going to put that in this form?

Denning: No, nobody had any questions about that, and then you (board) went ahead and answered it. If you have any questions related to material facts that make a difference to you as to whether or not he's got a conflict you need to ask them.

Montoya: ...I guess he just answered that they spent substantial money on his election, but they didn't give money to his campaign is that what I heard?

Unger: yes, they didn't give me any money to spend.

Montoya: they spent it directly?

Unger: they spent it directly.

Denning: director Landis?

Landis: is the primary driver for getting solar a monetary benefit?

Unger: No, no.

Denning: any other questions? Does everybody feel like they have enough information from director Unger to make a decision? Okay. We are answering number 2 yes, because it's his solar project, now we are skipping down to number 6. Director Unger, will you materially benefit from this transaction?

Unger: Um, I do not expect to benefit at 10%.

Denning: okay, so, the answer to number 6 is no. Number 7, is there any discussion related to whether or not you believe he does have a conflict or doesn't have a conflict?

Turner: in my experience of Guinn (Unger) in over a year, I am pretty clear in where he stands and where he's going to vote, and I don't think that anything is going to be any different about that with him. He's pretty straightforward, I don't think there is a conflict.

Denning: Anybody else have anything they want to say? Alright, so, let's try to vote on number 7. Everybody who believes that he has a conflict and should not vote on net metering, please raise your hand? We have 2, would you like your votes recorded? Okay. I want to note that director Huntington is abstaining because the question about net metering was related to him. Is there anybody who feels like Director Unger does not have a conflict? Everybody who thinks it's okay for Director Unger to vote on net metering raise your hands. Okay. So, what we determined is that Director Unger is not a conflicted Director for the purposes of voting on the net metering tariff.

1:22:10 – Denning: Next thing I want to deal with is Director Bassett and the concern about CalCom. There were 2 items that were included in the packet related to Director Bassett's ownership interest in CalCom. I would ask that you speak directly to that.

Bassett: I was a founding partner of CalCom Solar, served on the Board, and was obviously very employed by them for years. I no longer have any ownership interest in CalCom, I am no longer on the Board, I am no longer employed. However, I am still conflicted and will recuse myself because they are friends of mine and I don't feel like I would be able to vote fairly if I saw 2 equal proposals, I would vote for them. So, therefore I am still conflicted even though I have no financial conflicts anymore. I am out, I am retired, woo-hoo! I did it! CalCom Solar is a 100% employee owned company now under the IRS terminology of employee stock ownership plan. It's actually a really cool deal for the employees and they did a good job getting there and I am proud of it.

Lynch: so, you are recusing yourself from discussions and voting on anything related to CalCom?

Bassett: yeah, unless there is a reason to go through this process to answer these questions. But yes, I am going to recuse myself.

Lynch: I think that saves us the questions.

Denning: I've got a nuance to this one.

Lynch: Okay.

Denning: I know you are trying to get the meeting over with...

Lynch: no, no that's alright.

Denning: but the other concern that has been raised is, whether or not there has been a conflict regardless of your ownership percentage or not in CalCom, is whether or not there is any concern about voting on other QF proposals, or on items related to QF because of your interests in CalCom. You said if it's CalCom you are not going to vote, and if it is something related to other QFs do you feel like you have a conflict, or do you think you are okay?

Bassett: Other QFs, I probably ought to stay out of the whole thing. I'll recuse myself for any other voting on any other QF contracts that come up or anything like that.

Denning: okay. I am sorry, let me get through my list here. So, then the last thing that is a question is that, we are going to be talking about setting...the avoided cost for QFs. And based on that, do you have concerns about receiving information related to QFs and potentially voting on an avoided cost calculation?

Bassett: no, I don't. I would like to vote on it and contribute to what the avoided cost is, because that would apply to all of them equally.

Denning: so, what we've currently got here is, we've got Director Bassett saying he is uncomfortable voting on issues, anything related to CalCom. So, yes or no on a CalCom proposal or on a CalCom contract? And also, he is not comfortable voting on an issue related to any other QF proposal or QF contract. However, he does not feel like he has a conflict whenever it relates to just addressing avoided cost calculation and discussions about QFs and how we set up our processes for those.

Bassett: anything that would affect all of them equally. Whomever won or lost, I would still think that I should participate in.

Denning: Thank you for that, that helps. So, then what I want to do is run through the form on that question. Is there anybody who has concerns about that?

Landis: Just a question, again it's trying to understand. So, this is also, removing the ability for discussion for him to input. I'm just thinking about the other QFs and he is one of the only ones who understands hydros and how they work and what the glitches and tweaks are and blah-blah-blah. Like, I think Britt brings bigger install project insight. And so, like he can't participate, or like ask any pointed questions or?

1:26:17 – Denning: so, if we are going to talk about approve the contract, and you have a pointed question about CalCom, I think because he has information, then he can provide the information, but he can't say I really urge you to vote in favor of this because of x.

Landis: totally.

Denning: so, if you have a pointed question related to that, then you can still ask him. But he said he doesn't feel comfortable voting on it.

Meier: or any other QF, he has self-recused himself of all QF discussion and voting because of conflicts.

Denning: anything else before we try and go through the form?

Unger: so, just as I understand it, whether or not he voted yes or no on a QF for some other company would have no effect on CalCom. I mean, it's not like they are competing against one another. The QF is driven by PURPA law and we have to respond to each one individually. So, I'm sort of curious as to why he thinks he couldn't vote on some other QF.

Bassett: I guess I was thinking of them more as competition. If um, if they are totally unrelated, that's actually an interesting point.

Denning: To that point, you know if we've got room under the 5% and whether or not we use it, do you say, so, I'm not going to vote on whether or not to approve CalCom's, but do you vote yes or no on...?

Unger: QFs are not related to the 5%.

Denning: so, save that for executive session. Um so, if the question comes up on a vote, do you prefer one QF over another, that kind of thing, I think you've got a good point.

Bassett: it's probably best that, at this point I don't vote on any QF anything... (chatter) ... I would probably limit that to solar QFs. If somebody comes in here with a hydro project I would still want to be involved.

Denning: so, one of the things I will say is, that Director Bassett has said what he personally feels comfortable with. There is a level of your gut and he is looking at it saying, hey my gut tells me I'm not very comfortable with this. As a board we need to respect his gut feeling, because he is saying this is what I personally feel.

McInnis: I think it goes beyond just a QF. A QF is a power resource and therefore I think we also, need to consider Tri-State in this. We talk about 5% and increasing that, put pressure on that, and that benefits their power resources. I agree with what everybody has said ...but I think that the QFs could be confused with each other. I think yours is a 35 mW and we had another one the day after last month's thing with another 25-50. At some point in time, no matter if we're going to have to negotiate with them or not, we're going to have to have more energy offered to us than what we need, so, it will become competitive.

Denning: and so, what related to Tri-State?

McInnis: as far as replacing Tri-State power, increasing that 5%, or modifying the contract in some way that... would allow less dependency on Tri-State.

Denning: Okay, so, here's a question for the Board. There has been concerns regarding, Director Bassett has a conflict for consideration of QF discussions and regulations. Meaning what we do related to QF, how we determine avoided cost calculations, and the Tri-State power replacement such as ... increasing the 5% or getting out of Tri-State. We can deal with those all as one group or fill those out separately.

Unger: I think they are very separate. The QFs by and large, I mean there might come a situation where the 2 bump up against one another. But I think with the majority of circumstances as we know them right now, that's not likely to happen. So, I think that if we're going to start talking about the Tri-State contract that should be totally separate.

Lyon: Well, we can deal with Guinn's (Unger) point, but I'd like to make a point before we move to our next topic.... So, we have established a conflict-voting on QFs particularly one that involves CalCom. What about all the inside information available to a director that could be used to enhance the CalCom's competitiveness? Will we be affording all competing QF projects the same level of access to the Board? Same level of access to LPEA data? Same level of access to confidential attorney-client privileged memos like the one dated from Saturday? That's the big problem, and if we screwed that one up and I'll be speaking for the minutes here Charis, I'm very worried about that. Doug Lyon is very worried about what he just talked about. If CalCom Solar hypothetically wins, everybody in sight can sue us. And CalCom Solar had an unfair advantage in the bidding and in preparing their bid. Even if Mr. Bassett has recused himself from the actual vote... please put that in the minutes Charis, Doug Lyon is concerned.

Denning: so, to that point, hang on. I want to deal with this as part of the form. This is why I want to do the form. So, Director Bassett said that he is not going to deal with CalCom or any other QF. So, whenever we are going to discuss contract terms related to those QFs, as in CalCom's proposal, we're going to go into executive session, we're going to ask Director Bassett to leave, he's going to leave. That's going to happen for every QF that comes in.

1:32:55 – Lyon: But the entirety of our conversation, I mean half of our conversation touches on this in some way, access to Directors, access to LPEA data, negotiating strategies... sitting right here an email Britt got on Saturday. I'm quite concerned. I'm done now.

Denning: So... that's what I want to run through on this form. So, he said that he's going to do that. Now the question is, what about all that other stuff. You believe there is a conflict or potential conflict and you have concerns. We want to deal with that in a form. The question on the table now is, do we deal with that issue plus the Tri-State issue in one, or do we deal with that issue and then deal with the Tri-State issue separately?

Lyon: I see this as a straight issue. I see the Tri-State issue as a separate issue.

Denning: How many say, deal with it in 2 pieces? How many say deal with it as one thing? Okay we are going to deal with it in 2 pieces. The first one we are going to deal with is the QF part of it. And so, the concern that's been raised is whether or not he has a conflict related to the larger QF process, how a QF works, what the regulations are related to QFs, how we determine avoided costs and what that avoided cost might be. Does everybody understand that?

Bassett: ... point of clarification, anything that applies equally to all of them, I will be involved in.

Denning: so, if we say anything QF related that deals with all QFs?

Bassett: that's correct. Nothing that would benefit one over another in any way.

Harms: Shay, I am just wondering if QF should be replaced with PPA? It may be broader than just QFs.

Lyon: Fair point.

Denning: so, what is PPA?

Manager of Rates & Energy Policy Harms: Purchase Power Agreement.

Denning: what other things would that be?

Harms: if we do a Policy 118....

Denning: okay because you are saying QF is a specific designation under FERC. They may not be a QF. Does everybody agree that? when I am saying QF at this point, that we are talking about the larger question?

Unger: no. I do not agree with that. I think we are specifically talking about QFs here, because that's where we started from, because there were QF proposals that were coming in. 118, you know, is something really different. I mean, I understand where you're coming from that there could be a conflict there. But again, just as on the Tri-State thing, it seems to me that ought to be a separate issue.

Harms: we don't have any QFs yet. Only QF proposals.

Unger: Well, I mean we've had QF, we've had at least interest from that point of view. I mean that's where we started was QFs. And I don't think that going out now extending that off into some other direction that's not specifically QFs makes any sense in terms of this particular exercise.

Denning: okay. To move this thing along, how many people agree with Director Unger that we should deal with that in a separate form, or should we roll it into a larger question about whenever we say QF in this part of it, we're talking about the larger distributed generation PPA part?

McInnis: could Dan (Harms) tell us what the proposals were? Were they QFs or were they a mixture or were they PPAs that...

Harms: we are only in discussion phases with everybody at this point. A QF is an option but that's not necessarily a route that...

McInnis: so, not specific to QF proposals?

Denning: so, right now we do not have somebody that qualifies under the FERC definition of being a QF. The things that have come to us at this point do not qualify as QFs yet. So, the proposals that have come to us are under the broader blanket.

Landis: So, I guess just one thing I notice is that we are in a rabbit hole here. So, the question at hand is whether or not Britt (Bassett) has got a conflict but we're talking about CalCom's... when we're talking about this particular proposal, right? It's transaction based. So, can we kind of come back to that?

Lynch: we answered that.

Denning: We're trying to define what the conflicted part is.

Lyon: Whether it's a QF or PPA, if it involves CalCom Solar, I'm concerned.

Denning: The question that is currently before us is that Director Unger is concerned about addressing QF proposals separately from the broader question that Dan brought up, which is the distributed generation contracts or people that are coming to us requesting distributed generation contracts. Is

there anybody else that agrees with Director Unger that we need to divide up those questions into 2 separate issues?

Denning: okay, so, I've got 3. So, then the majority of the board is comfortable with saying that this is a broader question. The question that we are dealing with right now is, whether or not Director Bassett has a conflict for anything that is any discussions or votes related to ...PPAs.

Harms: everything is going to wind up a PPA at some point, whether or not...

Denning: so, distributed generation PPAs. Okay so, the question that is currently on the table in the form that we are going to fill out is, is does Director Bassett have a conflict for anything related to distributed generation PPAs, whenever it deals with them as a whole, and is not benefitting a particular company? Okay? So, that's the question we are going to deal with.

1:39:07 – Unger: so, we started at the top of the form talking about QFs, now we've gotten down to the bottom of the form and now we've changed the subject.

Denning: I haven't filled out the form yet, I am still asking the first question.

Lynch: I just sort of feel like as a point of order that we, what we needed to accomplish today had a lot to do with Britt and CalCom, and we've established that there is a conflict with CalCom and Britt (Bassett) won't deal with anything related to CalCom.

Bassett: We've established 2 things, excuse me Bob (Lynch) – one is that I have no financial interest and am not involved in any way, and I am retired from it. And I hope people can trust that I'm not going to sit here and then after these meetings get on the phone and call CalCom Solar and tell them anything about it. I am not going to participate in executive session as you said. So, the things we've established are, that I have no more financial interest in it, and that I still consider myself conflicted because they are friends of mine and I am not going to participate.

Lynch: anything, related to CalCom whether it's a QF or a PPA or any of those other forms. To try to keep going further with it today, I think we're just going to go forever.

Denning: and I respect that, and my only concern is that we're going to go into executive session and talk about a memo that we received from a law firm. And the question is, is he conflicted out of sitting in on that and should I have not sent that memo to him? And so, I do think that we've got to do this one and then the rest of them, I think we can start killing the rest of these off.

Lynch: and do them case by case as we said, as we go along.

Denning: if we can get through this one I think I can sit down and you guys can stop listening to me.

Bassett: I'll speak for myself that I am not conflicted because I am certainly not going to take a lawyer memo and go share it with people in some private corporation. No, it's ridiculous.

Denning: so, we are filling out the form. The first question is, that we have identified what the potential conflict is.

1:40:53 – Montoya: I've been told never to assume anything and Britt, I'd just like to ask you. Do you have any relatives that are owners, and do you have retirement, have anything to do with CalCom? And I think it was just in the last month that you updated your disclosure form to say you were on the Board of directors...

Bassett: didn't I already address that? (Chatter)

Montoya: but you didn't address whether you had retirement, relatives with ownership in CalCom.

Bassett: no, I don't have any relatives involved in any way. I do have a note that they hold as part of the employee stock ownership plan, that they will, if they survive, they will pay me back funds for. I turned over my ownership to the company.

Montoya: isn't that a financial interest?

Lynch: and thus, he has recused himself from any CalCom discussions.

Bassett: but it's a fixed note that has no bearing on whether or not they make profit or not.

Lynch: but you've still recused yourself so, that addresses that issue. (chatter)

Lyon: he's still got the inside information. Are we granting the same level of access to the boards thinking, LPEA's data, the opportunity to influence the board to the other competing bids? And I'm not going to hammer this issue, I will be done with this issue in a second as long as I'm in the minutes making my concerns known.

Denning: I am going to stop for a second if I can have the floor on this. I want to walk through the form because the point of this is to try to have an orderly discussion.

Lynch: Okay. You got it.

Denning: so, the question that we've got is, we are evaluating discussion of things solely related to distributed generation PPAs, that address decisions related to all PPAs, and does not prefer a particular company. That is the conflict and the transaction that we are trying to decide. does anybody feel that there is additional information that they need in order to decide whether or not director Bassett has a conflict?

Lynch: conflict for what?

Denning: for that specific question. For whether or not he can get information, participate in discussions and vote for issues related to distributed generation PPAs, that are addressing all of them. So, an example would be the memo I sent out to you guys on Saturday. Does anybody have any other information they need from him related to his relationship with CalCom, or his interest in any of it?

1:43:50 – **Denning:** okay. The question would be, is the contemplated transaction or other financial relationship between LPEA and the director? This would be something that would be related to director Bassett's potential interest in CalCom, because he's already said he doesn't have a family member that is related to this, that his business is not related to this, that sort of thing.

Huntington: but he's got a financial relationship.

Montoya: did he not just say he had a note with them?

Denning: correct.

Montoya: so, isn't that a financial interest?

Denning: that's part of the information that you found that was relevant to decide whether or not he had a conflict. So, we are dealing with him individually, not something his brother is doing, or his sister is doing, or something like that. It's him individually. Director Bassett, do you feel like that there is any material conflict?

Bassett: no.

Denning: okay. Does anybody want to speak to whether or not regardless of the materiality that they feel like he's still got a conflict?

Skeehan: Doug when you were talking about it, it occurs to me that any of us can go to any competitor and say, 'hey they are doing this.' So, then we have to ask the question. So, then there is a former relationship. I think you are saying the risk is higher because there is former relationship.

Lyon: and there is a note, and there is a very significant former relationship. This is not an accusation of malfeasance. This is fiduciary responsibility in my membership in the board to look at this stuff and say, holy mackerel, we have a problem here that could occur. And the history of the world is filled with boards of directors that didn't make a hard decision because they thought it would be too aggressive, or that's my buddy I don't want to say such a thing. The reality is, I believe I have a fiduciary responsibility to observe that, I don't know what the dollar amount is on the note that they owe you, but I would suspect it's fairly substantial. This particular project could be material to, your words here, the survival of CalCom Solar. We're talking up to 35 mW. If we were to buy 35 mW I wonder to myself, instead of just purchasing the power, we were to actually buy a 35 mW system, is that \$35 million?

Unknown: Order. (chatter)

Unknown: point of order. (chatter)

Skeehan: I was just asking you about that certain part that you think is about a prior relationship-

Lyon: I am only raising my concerns, I am done talking unless you ask me a question.

Skeehan: ... so, some people have a concern that it might be because of a prior relationship. Any of us could do this based upon whatever reason. So, basically are we saying that -- so, for me I would have to judge that Britt would go against his fiduciary responsibility and go out and do something, even though there is not a material effect, as stated in number 6 here, there is not a material effect. If the note doesn't get paid off, the note doesn't get paid off. Great, no material effect. So, I don't...you had asked is there anybody who had, says something about number 4-

Bassett: excuse me. Remember what Shay (Denning) is talking about, I've already recused myself from CalCom Solar stuff. This is the broader picture of distributed generation stuff. That's what troubles me about what Doug's (Lyon) worried about.

Skeehan: I'm sorry, I was trying to keep it broad and I might have narrowed down. So sorry about. Thank you.

Wheeler: So, when we look at that broader question, which is why I ask again, to see if I was thinking correctly- you know there is no, I don't see any kind of material relationship between how director Bassett brings information. He's one of the most knowledgeable on this board about these kinds of issues. And he brings a great deal of knowledge and perspective to this. I have never seen even a case yet so far where he has not acted in the best interests of the coop, right? And he's disclosed and recused himself from the conflict of interest related to CalCom, over and above what I think could be expected of many people. And you know the idea that somehow, he's getting privileged information he's taking back to CalCom and will somehow affect a larger distributed generation conversation seems very tenuous at best, right?

In addition, any one of those competitors or any of those other people, as our attorney said a little bit ago, could come in here and sit like these fine folks have been doing all morning listening to us. And in terms of the executive session, we are all under that requirement to keep our mouth shut. That's a completely different thing. You disclose what's in an executive session, that's a different liability that we all have risk for. We all signed and agreed to keep that quiet. So, I don't really see any kind of material thing here. In fact, I would regret not having the knowledge of somebody like Britt who brings a lot to this board and who also represents a significant portion of this community through the district he represents which I think is also yours, Mr. Lyon. So, thank you.

Huntington: I agree with Doug (Lyon). Perception is everything. The members outside of the board room are going to see and hear what has happened and I think that we are setting ourselves up for liability.

Turner: We've had dark moments in this board room and I really consider this one of the darkest and I'm not proud of it. And I'm really proud to be a part of this organization and I think where we are going with this is not good for the organization, nor the employees or staff that are here with us. I think that we've gone overboard and overreached with what we're doing with Britt (Bassett). And to Dan's (Huntington) point about perception, I think we've worked enough with each other on this board, we've had several consultants that have come in and shared how each one of us and where we are as a director are fiduciary and dedicated to this organization. And that we're starting to question that amongst ourselves, I think we've gone overboard here, and I think what we're doing is really, the impact it's having is um, is starting to impact morale. And it's starting to impact our well-being and our purpose.

I think Britt (Bassett), like Guinn (Unger), like Dan (Huntington) has shown up in ways that we know how they're going to show up. There's no question about that. And when we start over reaching, to start shutting their voice down, which is what I am experiencing, again, goes against what we are as a democratic process. So, I'm going to point that out again, this is one of the darkest, I've been here almost 6 years, one of the darkest moments on the board that I have ever experienced, and I am not proud of it.

Unger: I totally agree with what Jack just said. I would also, like to just read number 7. Does the director, so, in my case that's me, or a majority of the board believe that the other director's judgement might be impaired such that the director may not be able to act faithfully and in the best interest of LPEA in deciding this transaction? Again, from what I know of Britt (Bassett), talking to him, being on the board with him, I absolutely do not believe that his judgment would be impaired. Now you can talk about you know, whether we're, there is some appearance thing here, but the fact that he has already recused himself from the things where there might be a conflict of interest and I don't believe that even in the case of CalCom that he would do anything that is against the best interest of LPEA. But then to extend that all the way out to any PPA that we might go against...you know I would absolutely vote against him being impaired on this particular question.

Landis: Yeah, I think similar, as I've been sitting here processing, trying to figure out why I am so, opposed to this process. I think it's to the point that Jack brought up. The intent is really good, we're trying to find an objective way to suss out some of these, you know, accused conflicts, alleged conflicts and that's really good. However, I think it's being, there is a lot of caution and finesse that we need to do this so, it's not dredging up basically turf wars. Right?

I mean we've been working really hard to get over, and so, I wonder if it's wise to keep going? If we can just consider this, again I want to get through this. To Dan's (Huntington) point about perception, etc., yeah, we want to have a clear stand going forward that's based on objective things. Perception doesn't matter, we're here to do a job, and the objectivity is to say like we did our due diligence, we have faith in people. You all can think what you want to think out there, we're doing our job. And so, I guess yeah, if we move forward I don't want to keep denigrating director Bassett's integrity which is what this feels like. Because it's all subjective. It's, can you vote this, and that, I don't know.

Lynch: I just feel like as the Chairman I get to have some discretion on how far we go, and with respect I think we've got a lot of good tools here that we will use case after case. But I think we got what we wanted today. I think we got an agreement from Britt that CalCom and QFs are off the table. And if any other issue. And if any other issue comes up...I'm satisfied that we established what the conflicts are and what they aren't. I know there are other concerns in the room, but I think continuing to you know, work it down and weed it out at every possible suspicion is doing more harm than good.

1:55:00 – Denning: and I understand your concern. I guess this would be what I need to say. The thing that we're going to be deciding right now is whether or not he needs to be recused from the executive session we're going to have at the end of the meeting. I think that unless anybody has anything new to add to that question, I think we're ready to vote on number 7 which should finish up this exercise. So, is there anybody else that feels desire to add something before we deal with that.

Skeehan: something material?

Denning: something material, thank you.

Bassett: can you be more specific on what is in that executive session this afternoon, in general that...

Lynch: it is an executive session with total confidentiality as the umbrella that is established.

Denning: so, the thing that we're going to deal with in executive session is the memo that we got from [confidential]. We're going to talk that through and that's why I'm worried about going through this is,

to see if we've got a concern over a conflict there, because that's been raised as an issue. So, in looking at number 7. Again, going to re-word this, sorry for it being confusing. How many people, based on what's been discussed, feel that director Bassett has a conflict over the larger question of distributed generation PPAs? So, I've got 5. How many believe the other way? So, I've got 6 that believe he's not conflicted, 5 that believe he is. So, therefore, the majority of the board has decided that he is not conflicted. So, we're going to say that he continues to participate in things like we're going to discuss in executive session this afternoon. To make sure that we have clarity, I am going to record the yeses and nos.

Lynch: I know that's hard work and thank you for your... we have a tool that I think we're able to use again and again in one-off situations that come up.

Denning: so, then, in looking at the agenda I think that that deals with everything on the agenda related to a potential conflict between now and the end of the meeting. There's other allegations that have been raised but I think we can deal with those on another day because I know I've taken way too much time.

1:57:23 – Lynch: no, you're, it's hard not to Shay (Denning). Thank you for your hard work. Let's go ahead and take a short break here and then we'll come back...

Transcribed by C.E. Charistopoulos, October 16, 2018