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TO: Members of the LCFS Expert Workgroup

FROM: Ellen M. Peter 
Chief Counsel

DATE: February 22, 2010

SUBJECT: California Open Meeting Laws

Congratulations on your selection to the Low Carbon Fuel Standard Expert Workgroup (Workgroup). I am writing this memorandum to let you know about the open meeting laws that apply to the Workgroup. California's open meeting laws require most state and local bodies to conduct their meetings in public unless specifically authorized to meet in closed session. These laws apply to advisory bodies such as the Workgroup. This means that the Workgroup must conduct all meetings in public and meet various other requirements that are described below.

The specific open meeting law that applies to the Workgroup and other "state bodies" is called the Bagley-Keene Act. It is similar to the Brown Act, which applies to local legislative bodies such as the governing boards of cities, counties, and school districts. Both the Brown Act and the Bagley-Keene Act reflect a basic value judgment by the Legislature: that members of the public should be allowed an opportunity to monitor and participate in the decision-making process. The public's ability to participate would be compromised if state bodies were allowed to meet in secret. When the goal of greater public involvement is kept in mind, it may be easier to understand the sometimes burdensome restrictions that are imposed by California's open meeting laws.

Attached to this memorandum is: "A Handy Guide to the Bagley-Keene Open Meeting Act 2004" (Guide), which is published by the California Attorney General's Office. It contains an introductory discussion of the Bagley-Keene Act (Act) followed by the text of the Act itself. Although the Guide is dated 2004, the Act has not changed significantly since 2004 and the introductory discussion is up to date. I am also attaching the most recent (2010) version of the Act.

As mentioned above, the Act requires that all "meetings" of the Workgroup must be open to the public (see the section entitled "Advisory Bodies" on page 3 of the Guide). In general, a meeting occurs when a quorum of the body meets in one place to address issues under the body's jurisdiction. The general rule under Roberts Rules of Order is

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that a quorum consists of a majority (i.e., more than half) of the current membership of a board or workgroup. Since the Workgroup has 30 members total, a quorum of the Workgroup would ordinarily be 16 members. So any gathering to discuss Workgroup business would be an illegal meeting if 16 or more Workgroup members (or alternates) are present at the meeting. A gathering of 15 or fewer members does not constitute a "meeting" under the Act because a quorum is not present.

However, it is important to realize that the term "meeting" also covers situations that you might ordinarily not think of as a "meeting." The Act also prohibits what are known as "serial meetings." I advise you to carefully read pages 5 and 6 of the Guide, which explains the types of situations that constitute a serial meeting. For example, a serial meeting would occur if one member of the Workgroup makes 15 separate phone calls to 15 other Workgroup members to develop a collective concurrence about what action the Workgroup should take on a particular issue. In open meeting parlance, the member who initiated the communications would be acting as the "hub of the wheel" by communicating with 15 other members (the "spokes" of the wheel) to conduct a serial meeting with a quorum of 16 members. In this situation, a serial meeting has occurred even though none of the members were physically present in the same place at the same time, and no more than two Workgroup members ever participated in an individual conversation about the issue.

A serial meeting can also occur by an exchange of emails between a quorum of Workgroup members. Like face-to-face meetings or telephone conversations, email contacts with a quorum would be an improper serial meeting if the emails are used to develop a "collective concurrence" concerning action to be taken by the Workgroup. Emails not used to develop a collective concurrence are OK. You should be aware, however, that the Attorney General's office has broadly interpreted the phrase "collective concurrence" to include any substantive discussions "which advance or clarify a member's understanding of an issue, or facilitate an agreement or compromise among members, or advance the ultimate resolution of an issue."

Exchanging emails on any subject is permissible if less than a quorum participates in the exchange. So a subgroup consisting of less than a quorum (i.e., 15 or fewer members) could be formed and email communications between the subgroup members would be permissible. Problems can arise, however, because it is so very easy for email recipients to forward emails to other Workgroup members, who then send the emails to still other members, until eventually a quorum of members has improperly engaged in a serial meeting to discuss an issue via email. Therefore, I recommend that Workgroup members be very careful when communicating by email to other members. The safest approach is to avoid substantive communications and confine emails to logistical issues such as possible dates and locations of future meetings.

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Following are two additional open meeting requirements that you should be aware of:

- A public notice and meeting agenda must be prepared and made available to the public at least 10 days before each meeting (see pages 7 and 8 of the Guide). ARB staff can take care of sending out the notice and the agenda, although the Workgroup would of course decide what items will appear on the agenda and the time and date of the meeting.
- Members of the public must be allowed to attend all meetings and must be given an opportunity to address the Workgroup on each agenda item before or during the Workgroup's discussion of the item. Pages 9 and 10 of the Guide summarize the rights of the public to participate in meetings.

The Act contains many other provisions besides the ones mentioned above. These provisions are described in the Guide. In addition, ARB staff will be available to advise you on open meeting requirements as situations arise in the future.

I hope that your service on the Workgroup is a rewarding experience. If you have any questions on this memorandum, please feel free to call Senior Staff Counsel Bob Jenne at (916) 322-3762, or Staff Counsel Claudia Nagy at (916) 445-5507.

Attachments