



Setting the Standards for
Home Energy Efficiency

Results of RESNET Board Electronic Ballot on the Determination that the Agreement with EnergyLogic was in RESNET's Best Interest; that it was Entered Into for its Own Benefit; and it was Fair and Reasonable

July 26, 2017

As part of the research regarding conflict of interest and the RESNET Board, an issue came up with respect to QA Genie software program. RESNET has a sublicense with EnergyLogic for QA Genie that was entered into when Steve Byers served on the RESNET Board. The sublicense agreement between RESNET and EnergyLogic was provided to RESNET Board members to review along with the ballot.

RESNET Board member Steve Byers is a partner in EnergyLogic. The sublicense agreement was entered into prior to the RESNET staff and the RESNET Board being aware of the self-dealing transactions provisions of the State of California and IRS for non-profit corporations.

Roy Honican directed RESNET staff to have the California non-profit law firm that wrote the approved RESNET Conflict of Interest Policy to review the relationship between EnergyLogic and RESNET. It was advised that a "self-dealing transaction" exists, putting RESNET out of compliance with California and IRS rules.

RESNET contracted with a professional vetted by RESNET's California attorney to determine whether the financial terms of the agreement were more than fair market value. This provided RESNET Board members with expert disinterested third party advice on making their decision.

The consultant determined that:

It is my professional opinion that not only did RESNET get their money's worth but it would have been difficult to find a strong competitor providing the same services for such a unique requirement. Furthermore had RESNET found a competitor it is my belief that the costs would have been similar if not more expensive as no company likes to gamble with projects similar to this one. A lot of unknown going into it and while I am sure there were unforeseen costs they were fair and reasonable in order to get the job done.

The consultant's report was submitted to members of the RESNET Board to review.

Following RESNET's Conflict of Interest Policy, the RESNET Board reviewed the evidence and make a determination whether the transaction with EnergyLogic was advantageous to RESNET. Since the agreement has already been entered into, the RESNET Board needed to make an after the fact determination whether the arrangement is in RESNET's

best interest; that it was entered into for its own benefit; and whether it is fair and reasonable.

RESNET’s legal counsel has advised RESNET staff verbally that both the State of California and the IRS will be lenient to RESNET if we take this issue seriously and conduct a full investigation with a reasoned determination.

Roy Honican is giving each of the affected board members the option of waiving their presentation to the board in a GotoMeeting. When a board members waives presenting to the board we will have a simple electronic ballot. Where the board member wishes to make a statement to the board, a board call will be arranged. According to the RESNET Conflict of Interest policy, a board member who is the subject of the call will need to sign off on the call after the person’s presentation and cannot participate in the further board discussion.

Steve Byers has decided to waive his right to a board meeting so RESNET Board and authorized that the RESNET Board will have an electronic ballot on its determination.

The following is the results of the electronic ballot:

After reviewing the documentation, does the RESNET Board find that the agreement with EnergyLogic was in RESNET’s best interest; that it was entered into for its own benefit; and it is fair and reasonable?

Yes - 17	No - 0	Abstain - 1	Not Voting - 0
Jacob Atalla		Brett Dillon	
David Bean			
Dave Bell			
Robert Eipert			
Philip Fairey			
David Goldstein			
Matt Gingrich			
Roy Honican			
Cardice Howard			
Mark Jansen			
Cy Kilbourn			
Abe Kruger			
Curt Rich			
Nancy St.Hilaire			
Kelly Stephens			
Clayton Traylor			
Daran Wastchak			

Steve Byers recused from voting

The motion was adopted.

Respectfully submitted
Matt Gingrich, RESNET Board Secretary