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Home Energy Efficiency



Results of RESNET Board Electronic Reconsideration Ballot on Adopting New Conflict of Interest Policy

April 12, 2017

On the original ballot to adopt the new RESNET Board policy on conflict of interest, Brett Dillon voted against adopting the new policy. Brett's reason for voting no was:

The definition in this document of "interested person" goes far beyond the CA legal definition of "interested person". RESNET Staff (and presumably, the attorney they hired) defined "interested person" as

"Any director, officer or employee of the Company who has a direct or indirect financial interest in any transaction of the Company is an Interested Person. Also, Interested Persons are any third party, whether or not a contractor to the Company, and whether a person or entity: a. That supplies goods or services to the Company; b. From whom the company leases property or equipment; c. With whom the company is dealing or planning to deal in connection the gift, purchase or sale of real estate, securities, or other property; d. That is a competitor or affinity organization to the Company; e. Who is a donor or other supporter of the Company; and f. That is an agency, organization or association that affects the operations of the Company. Finally, any person who is related by blood or marriage, including by adoption, to any such person, or any person or persons who in the aggregate own more than 35% of the profit, voting or beneficial interest of any such entity, are Interested Persons." This blanket covers every single board member and is quite a bit different than the actual California legal definition: "(a) Any other provision of this part notwithstanding, not more than 49 percent of the persons serving on the board of any corporation may be interested persons. (b) For the purpose of this section, "interested persons" means either: (1) Any person currently being compensated by the corporation for services rendered to it within the previous 12 months, whether as a full- or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as director; or (2) Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person."

California Corporations Code Section 5227

- See more at: <http://codes.findlaw.com/ca/corporations-code/corp-sect-5227.html#sthash.oDtGaL9S.dpuf>

I brought the issue of the broad definition up during the board teleconference call. I want this document to reflect the actual definition of “interested persons” under California law, not the broad definition that disqualifies all the board members as presented in this current draft document.

Following the RESNET Board procedures, a reconsideration ballot was sent to all board members who voted yes along with Brett’s reasoning.

The final results of the reconsideration ballot are:

Shall the RESNET Board of Directors adopt the March 3, 2017 draft of the RESNET Board Policy on Conflict of Interest prepared by RESNET's California non-profit attorney?

Yes (18)
(0)

No (1)

Abstain

Jacob Atalla
David Beam
Dave Bell
Steve Byers
Bob Eipert
Philip Fairey
Matt Gingrich
David Goldstein
Roy Honican
Cardice Howard
Mark Jansen
Cy Kilbourn
Abe Kruger
Curt Rich
Nancy St. Hilaire
Kelly Stephens
Clayton Traylor
Daran Wastchak

Brett Dillon

The March 3, 2017 draft of the RESNET Board Policy on Conflict of Interest prepared by RESNET's California non-profit attorney was adopted (Attachment A).

Attachment A

CONFLICT OF INTEREST POLICY

of

Residential Energy Service Network, Inc.

a California Nonprofit Public Benefit Corporation

ARTICLE I. INTRODUCTION AND PURPOSE

Residential Energy Service Network, Inc. (the “Company”) requires its directors and officers, as well as its employees and contractors who may influence the activity of the Company or who control more than ten percent of the Company's revenue or expenses, to observe high standards of integrity and business and personal ethics in the conduct of their duties and responsibilities. In particular, Interested Persons* are expected to avoid activities or conduct that involve a conflict of interest or even the *appearance* of a conflict of interest.

The Board of Directors (the “Board”) of the Company is entrusted with resources devoted to the Company's tax-exempt purposes. This includes ensuring that the Company does not engage in conduct that can jeopardize if financial stability, public support and tax-exemption. Therefore, the Board has adopted this Conflict of Interest (the “Policy”). The purpose of this Policy is to protect the Company's interest when it contemplates entering into a transaction or arrangement that might benefit the private interest of an Interested Person, any other person in a position of authority within the Company, or any person related to such persons by blood, marriage or certain common business ownership. It also covers any transaction with another entity in which such a person is an officer or director.

Note that not all such transactions are impermissible. The Policy details the procedure the Board is to follow whenever such a transaction may be encountered. The procedures guide the Board in determining in which circumstances such transactions may be permissible and when approval by the Board is required before entering into such transactions.

The Company strives to avoid conflicts of interest. Failure to do so can jeopardize its tax-exempt status, damage its relationship with constituents, and result in personal liability to the Company's directors. This Policy is intended to supplement but not replace any state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.

*For definition of Interested Person go to Section 1

ARTICLE II. DEFINITIONS

Section 1. Interested Person.

Any director, officer or employee of the Company who has a direct or indirect financial interest in any transaction of the Company is an Interested Person. Also, Interested Persons are any third party, whether or not a contractor to the Company, and whether a person or entity:

- a. That supplies goods or services to the Company;
- b. From whom the company leases property or equipment;
- c. With whom the company is dealing or planning to deal in connection the gift, purchase or sale of real estate, securities, or other property;
- d. That is a competitor or affinity organization to the Company;
- e. Who is a donor or other supporter of the Company; and
- f. That is an agency, organization or association that affects the operations of the Company.

Finally, any person who is related by blood or marriage, including by adoption, to any such person, or any person or persons who in the aggregate own more than 35% of the profit, voting or beneficial interest of any such entity, are Interested Persons.

Section 2. Conflict of Interest. As set forth in the second paragraph, above, a "conflict of interest" is a situation in which a transaction of the Company benefits the private interest of an Interested Person, any other person in a position of authority within the Company, or any person related to such persons by blood, marriage or certain common business ownership. It also covers any transaction with another entity in which such a person is an officer or director.

Conflicts of interest may be direct or indirect. A direct conflict can arise where an Interested Person has a personal or financial interest in any matter or transaction involving the Company or has a financial or agency relationship (i.e., is a director, officer, manager, partner, associate, trustee or has a similar agency relationship) with an entity involved in a transaction or other business with the Company.

An indirect conflict can arise where a person related to an Interested Person by business affiliation (e.g., collective ownership or voting interest by all Interested Persons of 5% or more of any business) or by blood or marriage (i.e., a spouse, parents-in-law, ancestors, siblings (whether whole or half blood), children (whether natural or adopted),

grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren, hereafter "Family Members") has dealings with the Company. By way of example, an Interested Person has a financial interest if such person has, directly or indirectly, through business, investment or a Family Member:

- (a) An ownership or investment interest in any entity with which the Company has a transaction or arrangement.
- (b) A compensation arrangement with the Company or with any entity or individual with which the Company has a transaction or arrangement. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.
- (c) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Company is negotiating a transaction or arrangement.

Section 3. Duty of Loyalty of Interested Persons. The duty of loyalty is a statutory requirement that a director or other Interested Person always make the best interests of the Company paramount. There is no exception to this duty. As a matter of law, an Interested Person can be required to reimburse the Company for any benefit he or she receives, or any harm caused to the Company arising from his or her violation of the duty of loyalty.

The duty of loyalty requires that any Interested Person who may be involved in a potential conflict of interest situation, or becomes aware of one, bring it to the attention of those designated under the disclosure procedures in Article III. The duty of loyalty requires that an Interested Person not make the decision about whether a conflict of interest exists unilaterally.

Section 4. Potential Conflicts of Interest. Acts that mix the personal or financial interests of an Interested Person with the interests of the Company are indicative of a conflict of interest. However, not every potential conflict of interest is an actual conflict of interest. As an entity intimately involved in public activity and that works with public agencies, it is the policy of the Company to avoid potential and actual conflicts of interest, as well as the appearance of conflicts.

As a matter of policy and law, an Interested Person is neither capable nor competent to assess whether any activity or conduct in which he or she may engage constitutes an actual conflict of interest. It also is important to note that acts that give the appearance of a conflict of interest can be damaging to the reputation of the Company even if they do not constitute an actual conflict of interest.

Section 5. “Self-Dealing” Transactions of Directors. Self-dealing transactions are defined by Section 5233 of the California Corporations Code and are a type of conflict of interest transaction. A self-dealing transaction is any transaction in which a director has a material financial interest (an “interested director”).

Exempt from the definition of self-dealing transactions are: (i) approval of an action fixing the compensation of a director as a director or officer; (ii) good faith approval, without unjustified favoritism, of a charitable program of which a director or a director’s family member(s) are among the intended beneficiaries; and (iii) a transaction about which an interested director had no actual knowledge involving an amount that does not exceed the lesser of one percent of the gross receipts of the Company for the preceding fiscal year or \$100,000.

Section 6. Examples. The following is a non-exclusive list of the types of activities that may present a conflict of interest:

- (a) Participation by an Interested Person in decisions or negotiations related to a contract, transaction or other matter between the Company and: (i) the Interested Person; (ii) an entity in which the Interested Person or a Family Member of such person has financial interest; or (iii) an entity with which the Interested Person has an agency relationship.
- (b) Having a direct or indirect significant financial or other interest in, or financial or other relationship with, any competitor, customer, vendor or supplier of the Company. (What constitutes a “significant” interest or relationship will depend upon the specific factual situation; however, an interest of less than one percent of any publicly held company shall not be considered a “significant” interest.)
- (c) Competing directly or indirectly with the Company.
- (d) Use of the Company’s resources (for example, staff, contracts, donor lists, or name) for personal purposes of the Interested Person or a Family Member of such person.
- (e) Unauthorized disclosure or use of the Company’s confidential or proprietary information or trade secrets.
- (f) Acceptance or solicitation of gifts from any person or company having or seeking a business relationship with the Company.
- (g) Participation in activities or conduct that conflict or are inconsistent with any activity of the Company, or that would cause a reasonable person to believe that the Interested Person’s judgment, loyalty or objectivity might be influenced in a way that is adverse to the Company’s interests.

- (h) Involvement in any political activities without making clear that such involvement is personal and not based upon the Interested Person's affiliation with the Company.

ARTICLE III. PROCEDURES TO DISCLOSE AND RESOLVE CONFLICTS

Section 1. Duty to Self-Disclose. An Interested Person has an affirmative duty to disclose all material facts, including the existence of any financial interest, at any time that any actual or potential conflict of interest situation arises. If an Interested Person becomes aware of any potential self-dealing or common directorship transaction or other conflict of interest involving another Interested Person, he or she should report it in accordance with the requirements of this Article III.

This disclosure obligation includes instances in which an Interested Person knows of the potential for a self-dealing transaction as described in Section 4 of Article II, or a transaction involving common directorship as described in Section 6 of this Article III. It also includes instances in which the Interested Person plans not to attend a meeting of the Board (or a Board committee with governing board-delegated powers, referred to as a "Committee") at which he or she has reason to believe that the Board or Committee will act regarding a matter about which he or she may have a conflict. This disclosure shall be made to the President of the Board, or, if the potential conflict of interest first arises in the context of a Board or Committee meeting, the entire Board or the members of the Committee considering the proposed transaction or arrangement that relates to the actual or possible conflict of interest.

Section 2. Annual Conflict Disclosure Report. All Interested Persons shall, in accordance with Article VI, make an annual disclosure of ongoing relationships and interests that may present a conflict of interest.

Section 3. Evaluation of Potential Conflict.

- (a) After disclosure of all material facts and any follow-up discussion with the Interested Person with a potential conflict of interest, a determination must be made about whether a material financial interest, self-dealing transaction or other kind of actual conflict exists. If the potential conflict is first disclosed during a Board or Committee meeting at which the Interested Person with the potential conflict is in attendance, the Interested Person shall leave the meeting while the determination of whether a conflict of interest exists is either discussed and voted upon or referred to Committee for further consideration.

In either event, the decision-making body will evaluate the disclosures by the Interested Person and will determine on a case-by-case basis whether the disclosed activities constitute an actual conflict of interest. If the disclosure is made outside of the context of a meeting, then the determination of whether a conflict exists will be referred to the Executive Committee for decision and action. Factors the decision-making body may consider when determining whether an actual conflict exists include (i) the proximity of the Interested Person to the decision-making authority of the other entity involved in the transaction, (ii) whether the amount of the financial interest or investment is de minimis relative to the overall financial situation of the Company, and (iii) the degree to which the Interested Person might benefit personally if a particular transaction were approved.

- (b) If it is determined that an actual conflict of interest exists that also constitutes a “self-dealing” transaction as described in Section 4 of Article II, then the transaction or matter in question may only be authorized if approved by the vote described in Section 5(a) of this Article III after the Company has followed the procedures set forth in Section 4 of this Article III.
- (c) If it is determined that an actual conflict of interest exists that is not a “self-dealing” transaction, but involves participation by the Interested Person in decisions or negotiations related to a material contract, transaction or other matter between the Company, on the one hand, and (i) the Interested Person, (ii) an entity in which the Interested Person or a Family Member of such person has financial interest, or (iii) an entity with which the Interested Person has an agency relationship, on the other hand, then the matter in question may only be authorized if approved by the vote described in Section 5(b) of this Article III after the Company has followed the procedures set forth in Section 4 of this Article III.
- (d) In all other circumstances where it is determined that an actual conflict of interest exists, the decision-making body will recommend an appropriate course of action to protect the interests of the Company. All disclosures and the outcome of the deliberation about whether a conflict of interest exists will be recorded in the minutes of the appropriate deliberative meeting.

Section 4. Procedures for Addressing a Conflict of Interest. Prior to voting on a contract, transaction or matter in which an actual conflict of interest is found to exist, the Board will follow the procedures described in this Section.

- (a) The Interested Person may make a presentation at the Board meeting at which such transaction is being considered, but after the presentation, he

- or she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- (b) The Chairperson of the Board shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
 - (c) After exercising due diligence, the Board shall determine whether the Company could obtain with reasonable efforts a more advantageous transaction or arrangement under the circumstances from a person or entity that would not give rise to a conflict of interest.
 - (d) If a more advantageous transaction or arrangement under the circumstances is not reasonably possible, the Board or Committee must determine whether the transaction or arrangement is in the Company's best interest, will be entered into for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, the Board shall make its decision as to whether to enter into the transaction or arrangement by the vote described in Section 5.

Section 5. Vote Required for Approval of Conflict Transaction.

- (a) A self-dealing transaction must receive prior approval by a vote of a majority of the directors in office, without counting the vote of any interested director, and with knowledge of the material facts of the transaction and the involved director's interest.
- (b) A transaction in which an actual conflict of interest exists but is not a self-dealing transaction must receive prior approval by a majority vote of the disinterested directors members present at a meeting at which a quorum is present.

Section 6. Interlocking Directorships. Section 5234 of the California Corporations Code permits transactions between corporations having common directors so long as all material facts regarding the transaction and the relevant directorships are known to the respective boards of directors, and the matters are approved in good faith by a vote sufficient without counting the vote of the common director(s). Such transactions are not self-dealing transactions subject to Section 3 of Article III.

Section 7. Violations of the Conflict of Interest Policy.

- (a) If the Board has reasonable cause to believe that an Interested Person has failed to disclose actual or possible conflicts of interest, it shall inform the Interested Person of the basis for such belief and afford the Interested Person an opportunity to explain the alleged failure to disclose.

- (b) If, after hearing the Interested Person's response and after making further investigation as warranted by the circumstances, the Board determines the Interested Person has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

ARTICLE IV. RECORDS OF PROCEEDINGS

The minutes of the Board meeting convened to consider a transaction subject to the mitigating procedures described in Article III shall contain:

- (a) The names of the Interested Persons who disclosed or whom otherwise were found to have a financial or other interest in connection with an actual or possible conflict of interest, the nature of the financial or other interest, any action taken to determine whether a conflict of interest was present, and the Board's decision as to whether a conflict of interest in fact existed.
- (b) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

ARTICLE V. COMPENSATION

Section 1. A director who receives compensation, directly or indirectly (e.g., if the compensation is paid to a Family Member of the director), from the Company for services, whether as an employee or otherwise, is precluded from voting on matters pertaining to that director's compensation.

Section 2. A voting member of any Committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Company for services is precluded from voting on matters pertaining to that member's compensation.

Section 3. No voting member of the Board whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly from the Company, either individually or collectively, is prohibited from providing information to any Committee regarding compensation.

ARTICLE VI. ANNUAL STATEMENTS

Each person subject to this Policy shall annually sign a statement on the conflict of interest disclosure form ("Conflict of Interest Disclosure Form," attached as **Schedule 1**) or such other form as the Board adopts, which at a minimum affirms that such person:

- (a) Has received a copy of the Policy;
- (b) Has read and understands the Policy;
- (c) Has agreed to comply with the Policy; and
- (d) Understands the Company is charitable and that in order to maintain its federal tax exemption, it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

In addition, Interested Persons shall make an annual disclosure of ongoing relationships and interests that may present a conflict of interest. Disclosures should address current affiliations, as well as past affiliations for the prior two years. Conflict of interest disclosure forms will be submitted to the Deputy Director if an employee and to the President if a Director or Officer. All reported conflicts are disclosed to the Board at each meeting, and when appropriate, at or prior to action on relevant business transactions.

ARTICLE VII. PERIODIC REVIEWS

Section 1. To ensure the Company operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- (a) Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining; and
- (b) Whether partnerships, joint ventures and arrangements with management companies conform to the Company's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes, and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

Section 2. This periodic compensation review shall be in addition to the Board's statutory obligation to periodically review the fairness of compensation, including benefits, paid to the Executive Director (i) once such officer is hired; (ii) upon any extension or renewal of the officer's term of employment; and (iii) when the officer's compensation is

modified (unless all employees are subject to the same general modification of compensation).

ARTICLE VIII. USE OF OUTSIDE EXPERTS

When conducting the periodic reviews as provided for in Article VII, the Company may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of the responsibilities for ensuring periodic reviews are conducted.

ARTICLE IX. CODE OF ETHICAL CONDUCT

Section 1. Code of Ethical Conduct. In conducting business and activities which are connected with the Company, an Interested Person shall follow these guidelines:

- (a) **Ethical Conduct.** Be honest and ethical in his or her conduct, including ethical handling of actual or apparent conflicts of interest between personal and professional relationships. An Interested Person shall not engage in activities that have or may have the appearance of impropriety or conflict of interest, or that may call into question the actions or integrity of the Company, or of the Interested Person as he or she relates to the Company.
- (b) **Legal Compliance.** Comply with applicable laws and regulations, including the California Nonprofit Integrity Act of 2004, and report his or her concerns to the appropriate person listed in Article III if it appears that any other Interested Person is not complying with applicable laws or regulations with respect to the Company's business.
- (c) **Confidentiality.** Maintain the confidentiality of all internal information about the Company, including its donors, clients and beneficiaries, except when authorized or otherwise legally obligated to disclose such information.
- (d) **Fair Dealing.** Deal fairly with the Company's staff, donors, volunteers, beneficiaries, and suppliers.
- (e) **Protect Assets.** Protect and ensure the proper use of the Company's assets, including its name, goodwill, donor community, and reputation.
- (f) **Personal Influence.** Be mindful of the interaction between his or her relationships inside and outside of the Company and not allow inappropriate personal influence over the affairs of the Company.
- (g) **Commitments.** Do not "speak for" the Company or make or imply commitments by the Company without proper internal authorization and communication.

- (h) **Loans.** The Company may not make loans to Interested Persons. No Interested Person shall approach the Company about extending a loan to him or her.

CONFLICT OF INTEREST POLICY AND CODE OF ETHICAL CONDUCT

SCHEDULE 1: CONFLICT OF INTEREST DISCLOSURE FORM

Notice to RESNET directors, officers and employees.

This form is to initially be submitted upon your acceptance of election/appointment as a member or officer of the Board of Directors or as an employee of Residential Energy Service Network, Inc. (the "Company"). You are further required to re-submit this form each year thereafter that you serve as a director, officer or employee of the Company as well as each time you or an immediate family member receives a personal financial benefit or has any other interest in a transaction resulting from your position as a member or officer of the Board of Directors or as an employee of the Company. Further, by signing this Disclosure Form, you are warranting and representing that you have received and have read, reviewed and understood the Bylaws and policies of the Company, including but not limited to the Conflict of Interest Policy of the Company.

Name:

Name of Employer:

Title with Employer:

Address:

Telephone Number:

Home _____

Work: _____

Cell: _____

(circle primary)

Email Address:

AT THIS TIME, I HAVE NOTHING TO DISCLOSE

OR

I am disclosing the following significant financial interests related to my position as a member or officer of the Board of Directors or as an employee of Residential Energy Service Network, Inc. (Responses should include interests of the individual, his/her spouse, and/or any dependent children.) **USE ADDITIONAL SHEETS FOR EACH ENTITY IN WHICH YOU HAVE A DISCLOSABLE INTEREST**

Name of Entity or transaction in which you have an interest ("Entity"):

Description of transaction in which you have an interest:

Address of Entity:

Principal Type of Business:

Are you a director, officer, partner, trustee, or employee of the Entity? Yes No

Do you have an investment of \$1,000 or more in the Entity? Yes No

If so, how much? _____

Do you hold an equity position of 5% in the Entity? Yes No

If so, what percentage? _____

Do you receive contingent compensation from the Entity? Yes No

If so, please describe:

Have you received a loan from the Entity for which the outstanding? Yes No

Do you have an interest in any intellectual property rights? Yes No

Certification:

- I agree to update this disclosure either on an annual basis, or as new reportable significant financial interests are obtained.
- I agree to cooperate in the development of a plan to address any actual or potential conflict of interest identified via this Disclosure Form.
- I agree to comply with any conditions or restrictions imposed by the Company to manage, reduce, or eliminate actual or potential conflicts of interest or forfeit the award. I further understand and agree that my violation of the Conflict of Interest Policy of the Company is grounds for disciplinary and corrective action.
- I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed: _____

Date: _____

Name: _____