



DESAUTEL LAW

MEMORANDUM

RE: EERMC MEMBER ACTIVITY OUTSIDE OF EERMC MEETING
FROM: MARISA DESAUTEL, ESQ. - DESAUTEL LAW
TO: EERMC
DATE: 4/30/2020

This Memorandum is provided to the Energy Efficiency & Resource Management Council (“EERMC” or “Council”) in response to the following questions, posed by members:

Can a member of the EERMC participate in a non-EERMC member capacity at a non-public meeting? If so, does that participation count towards the EERMC’s quorum provisions in state law?

The above question relates to the potential for certain activity outside of a regularly held open meeting of the EERMC. Specifically, there are certain non-public meetings held by National Grid with key stakeholders who often become settling parties for an annual Energy Efficiency filing with the Rhode Island Public Utilities Commission. These meetings were formerly called “the Collaborative meetings.”

It can be difficult for EERMC members to know when and how to participate at events that are not the typical EERMC regular monthly meeting. There may be events attended by Council members where those members wish to speak in public forum, but not in their capacity as an EERMC member.

Council members are not precluded from attending and speaking at other stakeholder events, as those types of meetings are not EERMC “meetings” as contemplated by the state’s Open Meetings Act as follows:

(1) "Meeting" means the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power. RIGL §42-46-2.

If a Council member is at an event that is not the convening of the EERMC to discuss or act on a statutorily proscribed area of jurisdiction, that event is not considered an EERMC meeting.

Given this framework, there are certain guidelines that must be followed in a public forum, however. Council members must always be aware of the subject matter upon which they are speaking. If any EERMC member comments on or speaks with other EERMC members at a public forum regarding any statutory EERMC matters, there is a risk of violating the Open Meetings Act. As a result, I would advise that the Council members adhere to speaking only on the stakeholder meeting topics during those meetings. Council members should refrain from speaking about any EERMC-related topics in any forum other than a regularly-scheduled EERMC open meeting.

I also advise that, when speaking in a public forum such as the "Collaborative meetings," EERMC members should make a statement that they are attending and commenting not in their capacity as Council members, but in a private capacity as an individual. This type of declaration ensures that the record (if there is one) reflects the intent of the speaker.

This office previously supplied a memorandum to the Council on an issue known as the rolling quorum. The rolling quorum rule applies to members as they speak to and amongst themselves about Council matters. Making a public statement and/or participating in a non-EERMC capacity (as above) does not count as a rolling quorum activity.

Please let me know if you need additional information or have questions.