

Approved 10/31/23

**NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC.
MINUTES OF THE SPECIAL BOARD MEETING**

October 5, 2023

A Special Meeting of the New Hampshire Electric Cooperative, Inc. (NHEC) Board of Directors was held October 5, 2023, via Zoom videoconference.

Directors present were Sharon Davis, Alana Albee, Brenda Boisvert, William Darcy, Leo Dwyer, Edward French, Carolyn Kedersha, Madeline McElaney, Thomas Mongeon, Jeffrey Morrill, and Harry Viens. Others present were Alyssa Clemsen Roberts, President/CEO; Paul Phillips, Attorney; and Sharon Yeaton, Executive Services Administrator (recording).

Chair Davis called the meeting to order at 9:03 a.m. She noted that the purpose of the meeting is to review and reconsider the board resolution adopted by the board in the executive session of the September 26, 2023, monthly meeting. Since today's discussion is for purposes of confidential legal and investigative matters, Chair Davis called for a motion to go into executive session, which was moved by Mr. French.

Mr. Darcy objected until there is an explanation for the three reasons that called for the meeting, noting that they included an objection that the original motion was in executive session and that was improper, and general counsel's conclusion on the resolution.

Attorney Phillips advised that discussing attorney client privileged matters in open session is not allowed and discussing a general counsel analysis that was provided to the board is clearly privileged.

Chair Davis stated that the reason for the meeting that can be shared in public session is that we must make a public disclosure of the board action from the executive session because we didn't come back into public session and acknowledge that we had passed a resolution in executive session and that needs to be part of the public meeting.

In response to a question if that means any action, whether for or against a resolution or motion, has to be disclosed in subsequent public session, Chair Davis stated that is what she believes under advice of counsel.

Mr. Darcy stated that he would like to make a motion before executive session that Attorney Phillips disqualify himself from further involvement in this matter. He indicated that the reason is that Attorney Phillips would be a witness for an investigation, a potential subject of an investigation, and that his advice was biased because the resolution and issue questions completeness of his analysis and he has already opined that he believes there is insufficient facts for an investigation. Mr. Mongeon seconded the motion.

In response to a request for clarification on point of order, it was confirmed that there was not a second to the motion to go into executive session prior to Mr. Darcy's objection.

There was discussion on Mr. Darcy's motion. Attorney Phillips advised that he will not disqualify himself because he doesn't see any basis for doing so. He noted that he serves at the pleasure of the board so if the board believes he should be disqualified that's an action the board

can take. He suggested if the board does that they are venturing into dangerous territory. He discussed points he tried to make clear in his memo to the board regarding the board's actions and underscored the fact that he is trying to represent the best interests of the Co-op. Addressing the notion that he would be a fact witness in an investigation, Attorney Phillips indicated that if the board proceeds with the investigation his intention is to invoke his constitutional right of privacy under the New Hampshire constitution, noting that he does not intend to be interrogated about any private matters in his life. He suggested that if the investigation proceeds he thinks the board would be inviting litigation. He stated that if it was insisted that he explain his activities he would do so through an affidavit and that would be the extent of his involvement in an investigation.

It was suggested that the first motion to go into executive session should be cleared and we should allow someone to second the motion. Ms. Kedersha seconded the motion.

Mr. Mongeon commented that at least a part of what Attorney Phillips was describing sounded like he was giving advice which would be protected under attorney client privilege. He stated that based on what Mr. Darcy brought up, and based on past experience, he thinks there is at least a perception of a conflict of interest and so Attorney Phillips should recuse himself. He added that since he is raising the perception of a conflict of interest the board needs to address that conflict before we go into executive session.

In response to Attorney Phillips' request for an explanation of the nature of the conflict of interest, Mr. Mongeon suggested that Attorney Phillips is potentially a subject of the investigation and since he has indicated he would plead the fifth he would not be representing the best interest of the Co-op.

Attorney Phillips suggested being careful in the language being used, advising that pleading the fifth arises in the criminal context and suggests there is enough evidence to prosecute him criminally. He clarified that what he spoke about was his constitutional right to privacy which is to be free from undue intrusion into his personal affairs. He stated that he views the investigative resolution that the board passed as being so sweeping and all-encompassing that virtually any person could be subject to that investigation, including all of the board. He stated that it's not appropriate to suggest he needs to disqualify himself from an investigation that is essentially open ended. Messrs. Darcy and Mongeon commented that the intent of the resolution is in no way sweeping.

Mr. Dwyer commented that this country is in a crisis of confidence because people don't have confidence in institutions and he sees this organization as being a mirror of that and we are destroying the confidence. He stated that he has no confidence in fair process and suggested thinking about that as we proceed here.

Vote on the motion to move into executive session was ten in favor (Directors Albee, Boisvert, Darcy, French, Kedersha, McElaney, Mongeon, Morrill, Viens, and Davis) and one opposed (Director Dwyer). Mr. Dwyer indicated he was voting no because as he understood it advice of counsel is not to go into executive session. Attorney Phillips advised Mr. Dwyer that his statement was not accurate. The motion carried and the board moved into executive session at 9:18 a.m.

The board moved out of executive session at 9:59 a.m.

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Chair Davis made a statement for the public record that the board passed a resolution in executive session to reconsider and rescind the New Day Resolution in response to passage by the board in the September 26, 2023, executive session where they voted to pass the New Day Resolution.

In response to Mr. Mongeon's request, Attorney Phillips stated that during executive session there were allegations of conflict of interest that the board chair resolved within her powers under Board Policy B-3, Attachment A.

Mr. Mongeon clarified that there were allegations of perceptions of conflict of interest.

Adjournment

Chair Davis adjourned the meeting at 10:02 a.m.

Brenda Boisvert, Secretary

A TRUE COPY ATTEST:

Sharon Davis, Chair of the Board