

MEMORANDUM
CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION

TO: Board of Directors, Orcas Power & Light Cooperative

FROM: Mr. Joel Paisner, Ascent Law Partners, LLP
Mr. Arthur Butler, Ater Wynne, LLP

DATE: February 6, 2014

RE: Member Proposed Bylaw Amendment to Web Stream Board Meetings

INTRODUCTION

This memorandum reviews whether a member proposed bylaw amendment requiring that all non-executive session portions of an open Board meeting be streamed over the Internet.

**OPALCO'S ARTICLES OF INCORPORATION AND BYLAWS DO NOT
RESTRICT STREAMING BOARD OF MEETINGS OVER THE INTERNET**

As discussed in our previous opinions regarding the member-proposed bylaw amendments, each bylaw amendment must be proper as to form and consistent both with the Articles of Incorporation, as amended ("Articles"), and state law Chapter 24.06 RCW, the Mutual Corporations Act. See RCW 24.06.025. To the extent the Bylaws conflict, the Articles of incorporation are controlling.

A member submitted petition seeks to add a new section to OPALCO's Bylaws, Article IV, Meetings of Directors, that states as follows:

The cooperative shall allow member-owners access to open board meetings (non-executive sessions) through Internet web-based streamed audiovisual (AV) and optionally videoconference. All AV will be presented unedited (except to excuse breaks and executive sessions) and made available on demand through a web server to energy members within 7 days of the meeting. Such AV will remain available for at least 24 months from the date of first posting. The board may restrict access to the AV to include only member-owners and set terms of use restrictions.

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The statutes are generally silent regarding the Internet broadcast of board of director meetings. The only reference to communications and meetings is in RCW 24.06.100, which provides, if the articles of incorporation or bylaws so provide, members may participate in any member meetings by any means of communication so long as all persons participating in the meeting can hear each other during the meeting. This does not address meetings of the Board of Directors, and the proposed bylaw amendment only addresses broadcasting of those meetings, not meetings of the membership. Thus, this section does not prohibit the proposed bylaw amendment.

The Articles do not specifically address meetings of the Board of Directors. All of the rules regarding membership meetings and Board of Director meetings are contained in OPALCO's Bylaws. The Bylaws generally address regular meetings, special meetings, notice requirements, voting rules, and manner of attendance.

CONCLUSION

Based upon a review of state law, the OPALCO Articles and Bylaws, we find no legal objection to this member-proposed Bylaw amendment or its form. We do note that it specifically exempts any executive sessions conducted by the Board of Directors. This is an important exception because by law Directors are entitled to rely on opinions of legal counsel, as well as accountants, to fully discharge his or her duties to the corporation. RCW 24.06.153. Any limitation on the right of the Board of Directors to limit consultation with its lawyers or accountants would be contrary to statute. By excluding the executive session portion of all meetings of the Board of Directors, this proposed amendment avoids that issue.