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Bruce E. Bailey
Megan C. Kelley
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Paul M. Nick
Executive Director

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ADVISORY COMMITTEE
MINUTES OF MEETING
May 11, 2022

Present: Commissioners Bruce Bailey & Megan Kelley
Executive Director Paul Nick
Staff Advisory Attorneys Kristin Cly & Christopher Woeste

The meeting was called to order at 10:06 a.m. via videoconference as authorized by Sub. HB 51. (Ms. Rutter was excused from the meeting due to a potential conflict of interest).

Mr. Nick introduced the sole agenda item for the meeting - the informal advisory opinion draft to Assistant Licking County Prosecutor Austin Lecklider regarding donations from Harvey Solar I, LLC offered to Hartford Village and Hartford Township.

Mr. Woeste summarized the issues in the opinion and noted Commission Staff had solicited and received input from various stakeholders, including the Ohio Power Siting Board, JobsOhio, Ohio Department of Development, legal counsel for Harvey Solar, the Ohio Chamber of Commerce, and the Ohio Township Association, which was incorporated into the draft.

Mr. Bailey noted that he agreed with the outcome of the draft opinion but suggested that it be styled as a formal opinion rather than an informal opinion. Mr. Nick provided an overview of the differences between an informal and formal opinion, including that a formal opinion has broader application and a syllabus, but that the precedential weight of both types of opinions is the same. Ms. Kelley agreed that the opinion maybe should be released as a formal opinion because the ethical implications of energy projects providing donations to public entities is likely to reoccur. Mr. Nick stated Commission staff will modify the draft into the formal opinion style which will be provided to the Commission at its next meeting along with the informal draft opinion, for consideration by the Commissioners.

Mr. Bailey stated the main issue before the Commission is the non-tax-exempt donations being offered by Harvey Solar because the tax-exempt donations are already permitted by statute. He questioned whether these payments should be considered donations or compensation. Ms. Kelley agreed that the payments offered by Harvey Solar were not the typical kind of donations the Commission usually analyses. Mr. Woeste noted Harvey Solar and Mr. Lecklider described the payments as donations in their communications with Commission staff, which guided the Commission's analysis.

Mr. Bailey expressed concerns about the recommendations on page seven of the opinion while Ms. Kelley found them to provide beneficial guidance. Mr. Bailey asked about draft advisory opinions being subject to a public record request. Mr. Nick stated the Attorney General's office has previously advised the Commission that drafts of opinions are public records, and the Commission has provided drafts of the opinion at issue pursuant to such requests. Mr. Bailey requested that Commission staff follow up with the Attorney General's office to inquire if there was an exception to the public records laws regarding draft opinions used during deliberative processes.

Mr. Nick opened the meeting for public comment but there were none offered by remote attendees.

The meeting was adjourned at 10:47 a.m.

These Minutes were prepared by Executive Director Paul M. Nick.