

# Minutes of Board of Directors Meeting

Final - Approved May 2, 2014

## December 9, 2013

The Western Climate Initiative, Inc. Board of Directors (the “Board”) held its annual meeting on December 9, 2013, in Sacramento, CA. The Board elected officers, appointed committee members, and adopted a Records Availability Policy and budget for 2014-2015. The Board then convened an executive (closed) session to discuss procurement and personnel matters.

The meeting was called to order by the Chair, Matthew Rodriguez, at 2:00 p.m. Pacific Time. Lydia Dobrovolny kept the minutes of the meeting. Consecutive interpretation between French and English was provided during the open session. Five members of the public attended the meeting in person, and approximately five attended by phone.

Directors welcomed Geneviève Moisan, the new Class A Director from Quebec, who has replaced Charles Larochelle on the Board.

### Attendance

The following Directors were present, constituting a quorum pursuant to the By-Laws:

- Matthew Rodriguez (Chair)
- Mary Nichols (Treasurer)
- Tim Lesiuk (Secretary, by phone)
- Jean-Yves Benoit
- Geneviève Moisan
- James Mack (by phone)
- Alain Houde (non-voting)
- Diane Griffiths (alternate for California Assembly Member Skinner, non-voting)
- Kip Lipper (non-voting, by phone)

Also present were:

- Patrick Cummins, WCI, Inc. Executive Director
- Clifford Case, WCI, Inc. Corporate Counsel (by phone)
- Michael Gibbs and Mark Wenzel, State of California
- Patricia Russell, Province of British Columbia (by phone)
- Dave Tiffin, Province of Ontario (by phone)
- Lee Alter, WCI, Inc. Project Manager
- Lydia Dobrovolny, Ross Strategic

- Bryan Lopuck, Lionbridge (translator)

## 1. Approve September 19, 2013 Board Meeting Minutes

Mr. Benoit noted that the minutes reflect the meeting that occurred, but that two changes were required. The word “Canadian” as a modifier to “French” should be struck from both the English and French versions, and a minor correction is needed to the French translation. Ms. Nichols made a motion to approve the September 19 minutes, with the two changes as noted. The motion was seconded by Mr. Benoit and unanimously approved by the Board.

Ms. Griffiths joined the meeting at 2:15 p.m.

## 2. Election of Officers and Standing Committee Members

As provided for in the By-Laws, the Board elects officers and appoints members to standing committees annually.

Ms. Moisan nominated a slate of candidates to serve as officers for the Corporation in 2014, and made a motion on the following resolution, which was seconded by Ms. Nichols and unanimously approved by the Board:

***RESOLVED*** that the following-named persons are elected to the offices set forth beside their respective names, to serve until the next annual meeting of the Directors and until their successors are duly elected and qualified:

- Chair: Matthew Rodriguez
- Vice Chair: Geneviève Moisan
- Treasurer: Mary Nichols
- Secretary: Tim Lesiuk

The membership of the Executive Committee is established in the By-Laws, and consists of the four officers and at least one Class A Director from each Participating Jurisdiction. The Chair of the Board serves as chairperson of the Executive Committee. The Board may also appoint additional Directors to standing committees. Ms. Nichols made a motion to approve the Executive Committee with the four officers and Mr. Benoit as an additional member in 2014. The motion was seconded by Ms. Moisan and unanimously approved by the Board:

***RESOLVED*** that the Executive Committee shall be comprised of the four officers and Jean-Yves Benoit.

Mr. Cummins reviewed the purpose of the Audit Committee and its powers under the By-Laws. The Audit Committee is responsible for addressing any issues affecting the quality and integrity of the Corporation’s accounting, auditing and reporting practices. Specific requirements for the Audit Committee are outlined in the Audit Committee Charter. Upon a motion by Mr. Rodriguez, seconded by Mr. Benoit, the Board unanimously approved the membership of the Audit Committee for 2014:

**RESOLVED** that the Audit Committee shall comprise the following Directors: Matthew Rodriguez, Geneviève Moisan and Tim Lesiuk.

Mr. Cummins reviewed the purpose of the Finance Committee and its powers under the By-Laws. The Finance Committee advises the Treasurer and the Board as to the funds management, budget, tax filings, and general fiscal policy of the Corporation. The Treasurer serves as chair of the Finance Committee. Upon a motion made by Mr. Benoit and seconded by Mr. Lesiuk, the Board unanimously approved the membership of the Finance Committee for 2014:

**RESOLVED** that the Finance Committee will be chaired by the Treasurer and shall comprise the following Directors: Mary Nichols (Treasurer), James Mack, Jean-Yves Benoit, and Nancy Skinner.

### 3. Discussion of Director Responsibilities

WCI, Inc's corporate counsel provided an overview of the roles and responsibilities of the Directors. A major duty of Directors of non-profit organizations is the duty of care. This duty requires Directors to act in good faith and use the care in serving as Director as they would use in their other regular activities. To fulfill this duty, Directors should be aware of the purposes and objective of the organization, participate in meetings of the Board and Committees, be aware of any issues facing the organization, and oversee the management of the organization. The standard is not one of perfection, but of due diligence and careful oversight.

Loyalty is another major duty of each Director. Directors must honor the objectives of the organization and serve these with loyalty. Loyalty to the organization includes avoiding conflicts of interest. If at any time a Director becomes aware of potential or real conflict between obligations to the organization and personal obligations, it is the responsibility of the Director to disclose the conflict to the Board and to the Chair, and to abstain from voting on any matter that is related to the conflict.

Directors had no questions for counsel.

### 4. Corporate Policies

#### a. Treasurer's Evaluation of Compliance with Funds Management Policy

WCI, Inc. maintains a Funds Management Policy that establishes requirements for the management of the Corporation's funds, including that the Treasurer shall prepare and present to the Board an evaluation of the compliance with the policy at least annually. Ms. Nichols, Treasurer, transmitted her evaluation in writing to the Board in advance of the meeting; this was also posted to the WCI, Inc. website. Ms. Nichols presented her evaluation, which found that WCI, Inc. is in compliance with its Funds Management Policy. Directors thanked Ms. Nichols for her evaluation.

Directors discussed the finding in the evaluation specific to the WCI, Inc. cash flow projections. The 18-month cash flow projections are updated and reviewed regularly by the Finance Committee, and have been found to be an important and useful tool for managing the Corporation's funds. The Funds Management Policy calls for the Treasurer to provide cash flow projection to the Executive Committee at least quarterly; however, the Executive Committee did not meet during the period examined. The

recommendation in the evaluation is for the Board to receive updates directly on the management of the Corporation's funds, as was done at the May 2013 Board meeting. Directors agreed to receive regular updates on the management of the Corporation's financial assets as an agenda item at future Board meetings.

Ms. Nichols excused herself from the meeting at 3:00 p.m.; her alternate, Mr. Gibbs, took her place.

#### **b. Records Availability Policy**

Mr. Wenzel presented a revised version of the draft WCI, Inc. Records Availability Policy. A general explanation of the approach and a draft policy was presented to the Board at its September 2013 meeting. The policy was drafted after review of the public records acts of California, Quebec, British Columbia and Ontario, and similar policies in place with RGGI, Inc. and the California Independent Systems Operator. At the meeting, Directors requested clarification about the scope of the public records that are covered by the policy, and exceptions for making this information available. In response, staff have revised the policy, with substantive changes made in particular to section 5.3 "Confidential Records" to remove the term "commercially sensitive matters" in the fourth bullet, and to replace it with a more specific and narrow definition of the records that shall be kept confidential.

Ms. Griffiths thanked staff for the revisions and expressed that while Ms. Skinner believes the changes made to the last bullet have appropriately narrowed that exception, she is concerned that the fourth bullet remains too broad. Mr. Rodriguez affirmed that the goal of this exception is not to withhold information, but to protect the market mechanism, and the Board can revisit the policy at any time to ensure the policy is working as envisioned.

There were no comments from stakeholders.

Upon a motion made by Mr. Gibbs and seconded by Ms. Moisan, the Board unanimously adopted the WCI, Inc. Records Availability Policy.

#### **c. Ethical Guidelines and Conflict of Interest Policy**

Mr. Cummins presented proposed edits to the WCI, Inc. Ethical Guidelines and Conflict of Interest Policy to better reflect the information each director and employee provides regarding potential conflicts. Changes include replacing the disclosure questionnaire with a certification form, and updating the definition of a "related party".

Mr. Lipper joined the meeting via teleconference at 3:20 p.m.

Directors asked for clarification about the phrase "prospective or potential conflicts". Mr. Case noted that in his experience it is common for corporate policies to use this language, and the reporting requirement is for prospective or potential conflicts that are known. Mr. Case is available to advise Directors about any questions they may have regarding a prospective or potential conflict. Directors have an annual responsibility to complete the certification and an ongoing responsibility to disclose any actual or potential conflicts as they become known.

There were no comments from stakeholders.

Upon a motion made by Ms. Moisan and seconded by Mr. Gibbs, the Board unanimously adopted the updated version of the WCI, Inc. Ethical Guidelines and Conflict of Interest Policy.

#### **d. Revisions to Existing Policies as Necessary**

No additional revisions were identified as necessary to other WCI, Inc. policies.

### **5. Finance Committee Report**

Mr. Cummins presented the calendar year 2014 and 2015 budget to the Board. A narrative description of the budget was transmitted to the Board in advance of the meeting and posted to the website. The basis for the technical and program requirements contained in the budget were developed by jurisdiction staff serving on the Auction and Monitoring Work Group and the Tracking System Work Group. These specifications defined the initial level of services and cost estimates for the Compliance Instrument Tracking System Service (CITSS); CITSS Help Desk; Auction Platform; Financial Services; and Market Monitoring. The Management Work Group reviewed these estimates and provided guidance based on critical needs. WCI, Inc. staff then coordinated with the workgroups and contractors to finalize the proposals. Mr. Cummins provided an overview of two-year contract extensions to secure these services that were presented for Board consideration later in the meeting during the executive (closed) session.

Personnel and operations expenditures are expected to continue at approximately the same levels as in 2013, with the exception of the addition of an Assistant Director in Quebec.

WCI, Inc. expects to apply both existing and new funding to meet the 2014 and 2015 budget needs. A portion of current funding will be maintained to support cash flow and contract obligations, and the remainder applied to the 2014 and 2015 budget needs. WCI, Inc. also expects to complete new, two-year funding agreements with California and Quebec, and will bring those to the Board for consideration in early 2014.

The budget serves as a planning tool and is based on requirements that have been defined by the participating jurisdictions. Having a two-year budget enables planning for technical services that the jurisdiction programs can rely upon, and also allows the jurisdictions to provide guidance to WCI, Inc. regarding the contracts and other activities necessary in order to put in place the required services. The Board is being asked to approve the budget, with funding agreements to be put in place at a future Board meeting; having an approved budget enables the jurisdictions to prepare funding agreements that are consistent with the requirements of the organization.

Mr. Lipper expressed concern regarding the consideration of a two-year budget by the Board. The California Legislature has acted to appropriate funding for fiscal year 2013/2014, but has not yet acted to appropriate funding for fiscal year 2014/2015. Mr. Lipper suggested that by adopting a budget based in part on total funding implied for California, the Board would be prejudicing future action of the Legislature. He proposed that the WCI, Inc. Board instead consider a budget based on funding that the

Legislature has already appropriated, and that a budget based on additional funding be considered only after the Legislature has appropriated those funds.

Mr. Gibbs noted that under the terms of the California funding agreement, funding from California for WCI, Inc. has been and will continue to be contingent on the availability of appropriated funds, and that it is not unusual for state agencies to enter into multi-year agreements that include contingency clauses which recognize that subsequent budget years remain to be acted upon by the Legislature. Ms. Moisan noted that the situation is the same in Quebec.

Mr. Cummins explained that the contracts entered into by WCI, Inc. contain termination clauses that allow contracts to be terminated at any time, including due to funding not being available from participating jurisdictions. Consequently, the WCI, Inc. budget does not create a funding obligation on any particular jurisdiction.

Ms. Griffiths asked whether adopting a two-year budget precludes the Board from revisiting the budget sooner. Mr. Rodriguez clarified that the budget can be brought back for Board review and subsequent revision at any time, as was the case with the 2012 and 2013 budget which was first adopted at the annual meeting in 2011, and subsequently updated at the 2012 annual meeting.

The Chair invited stakeholder comments. A member of the public, Erica Morehouse from the Environmental Defense Fund, submitted a written comment congratulating the WCI, Inc. Board and staff on completing five successful auctions in California and one successful auction in Quebec without any major technical problems, and thanked the Board and staff for the careful and thorough work that this represents.

Mr. Gibbs made a motion that the Board adopt the two-year budget as proposed, with two provisions intended to recognize the comments received, including the particular concerns voiced by the California Class B Directors, and WCI, Inc.'s need for a two-year planning horizon:

- The Board will review the WCI, Inc. budget after the California Legislature and the Québec Executive Council take action on their respective budgets, but no later than the next annual meeting of the Board, and
- The Board acknowledges that adopting this two-year budget for WCI, Inc. is not intended to, and does not, prejudice the future actions of the jurisdictions' legislative or executive processes.

Mr. Rodriguez invited further comments.

Ms. Moisan noted the French translation of the budget narrative will need to be amended slightly to match the English version.

Mr. Lipper affirmed for the record that the timing of the WCI, Inc. budget review is awkward given the California funding calendar, that the administrative process should follow the funding process, and that the approach of having contractors and other parties interspersed between complying entities and the California regulatory bodies is deficient. Mr. Rodriguez noted that the California representatives can continue the discussion about California's Air Resources Board compliance with AB 32 requirements.

Mr. Rodriguez requested a vote on Mr. Gibbs' motion, which the Board unanimously approved.

## 6. Executive Director's Report

Mr. Cummins presented an update to the Board on operational matters:

- Mr. Cummins is continuing to work with legal counsel to register WCI, Inc. to conduct business in Québec and Canada. Once complete, WCI, inc. will hire an Assistant Director and open an office in Quebec.
- The next meeting of the WCI, Inc. Board of Directors will be scheduled in the first half of 2014 to present funding agreements for Board approval, and no later than early May to review the tax return and audit.

There were no comments from the public.

At 4:25 p.m. the Board adjourned the public portion of the meeting.

### Executive (Closed) Session to Discuss Procurement and Personnel Matters.

At 4:40 p.m., the Board reconvened an executive (closed) session to discuss procurement matters. During the executive session, the Board approved two year contract amendments with the following cap-and-trade service providers, which were executed following the meeting and made publically available on the WCI, Inc. website:

- SRA International, Inc., to provide hosting and tracking system services for the Compliance Instrument Tracking System Service (CITSS);
- Monitoring Analytics LLC, to provide market monitoring services;
- Markit Group Limited to provide implementation of multi-jurisdiction allowance auctions; and
- Deutsche Bank National Trust Company to provide financial and transactional escrow agency services for the cap-and-trade program.

The Board also approved one year contract amendments for staffing support services with Earth Measures, Inc. and Ross Strategic. The Board also agreed to look at the possibility of providing direct banking services in Quebec for Canadian participants.

There being no other business and upon unanimous consent, the executive session and the Board meeting was adjourned at 5:15 p.m.

Respectfully submitted,

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Tim Lesiuk, Secretary