



SEN. EMILY ANN CAIN, SENATE CHAIR  
REP. CHUCK KRUGER, HOUSE CHAIR

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

MEMBERS:

SEN. ROGER KATZ  
SEN. DAVID C. BURNS  
SEN. MARGARET M. CRAVEN  
SEN. CHRISTOPHER K. JOHNSON  
SEN. EDWARD M. YOUNGBLOOD  
REP. PAUL T. DAVIS, SR.  
REP. ANDREA M. BOLAND  
REP. H. DAVID COTTA  
REP. LANCE E. HARVELL  
REP. MATTHEW J. PETERSON

**MEETING SUMMARY**  
**October 28, 2013**  
**Accepted December 12, 2013**

**CALL TO ORDER**

The Chair, Sen. Cain, called the Government Oversight Committee to order at 9:02 a.m. in the Cross Office Building.

**INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS**

The members of the Government Oversight Committee introduced themselves for the benefit of the listening audience.

**ATTENDANCE**

Senators: Sen. Cain, Sen. Burns, Sen. Craven, Sen. Johnson, and Sen. Youngblood  
Joining the meeting in progress: Sen. Katz

Representatives: Rep. Kruger, Rep. Davis, Rep. Boland, and Rep. Cotta  
Joining the meeting in progress: Rep. Peterson  
Absent: Rep. Harvell

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA  
Wendy Cherubini, Senior Analyst, OPEGA  
Scott Farwell, Analyst, OPEGA  
Etta Connors, Adm. Secretary, OPEGA

**SUMMARY OF THE SEPTEMBER 19, 2013 GOC MEETING**

Rep. Boland referred to the **Presentation of Final Report on Public Utilities Commission** and the discussion of health and safety items discussed. There was a question raised as to whether health was considered or only safety and she did mention, and would like to have included in the Meeting Summary, that the Law Court had said the PUC needed to do the health and safety work.

That correction will be made and a draft will be emailed to the GOC members for their review and approval prior to posting the Summary to the GOC website.

## NEW BUSINESS

- **Report on Public Utilities Commission**

- **Public Comment Period**

For the individuals who gave public comments at the GOC meeting and provided a copy of their testimony, that testimony is attached to the Meeting Summary. For individuals who provided public comments, but did not provide copies, a brief summary of their comments is included. Also included in the Meeting Summary are the GOC members' questions and comments

**Elery Keene** – a copy of his testimony is attached.

Sen. Burns asked if Mr. Keene had any specific examples regarding the process being flawed. Mr. Keene said, as an intervener, he has received hundreds of emails from the Public Utilities Commission (PUC) that are identified by a very long and complicated letter and number system, but tells him absolutely nothing about what aspect of the case it pertains to. He finds it extremely difficult to use that form of information and thinks it could be done in a much more user friendly way. He is sure the PUC has received complaints about it, but have ignored them.

**Jane Edwards** – a copy of her testimony is attached.

Rep. Boland asked if Ms. Edwards knew of anyone who found the system complicated enough to decide not to participate. Ms. Edwards said she did, but was not comfortable giving names. Many individuals have contacted her for help, but she does not have the time to assist everyone. Rep. Boland asked if she knew anybody who had called PUC to see if there was help available by phone. Ms. Edwards said she has done that herself and those she has talked with at the PUC have tried to be helpful, but that still requires quite a bit of time.

Sen. Burns referred to Ms. Edwards' comments regarding how the EPA and FERC conduct public hearings in a friendly manner, and asked how many experiences she has had with PUC that was just the opposite. She said she has attended four or five open meeting proceedings at the PUC building in Hallowell and also tried to participate three or four times in telephone conference proceedings.

**Robert Bemis** – a copy of his testimony is attached.

Rep. Boland noted that Mr. Bemis referred to the OPEGA investigation as a "so-called investigation" and ask what led him to make the remark. Mr. Bemis said first and foremost every time over the last nine years when he and others involved in a case against the PUC came to a brick wall, there was an ex Central Maine Power (CMP) attorney or employee standing there making the decisions. He had quite the go-around with Director Ashcroft just to get her to listen to what his testimony was and said he has thousands of pages of documents to prove his case and only after he got really feisty did he get to meet with OPEGA Analysts Wendy Cherubini and Scott Farwell. Mr. Bemis said he has never been able to come before a State agency that wanted to hear what he and others had to say.

Rep. Boland said she understands his frustration and has heard others express theirs. She had concerns, because of OPEGA's good reputation on the work that they do, and asked if Mr. Bemis found anything that was wrong in the Report. He said everything throughout the Report is referred to as "appearances" and said they are not "appearances", they are actualities. The fact is there is a severe conflict of interests in the PUC, the staff, and the way they have handled those things. All these people are ex-CMP employees. Three different attorneys, who are or have been the Chairman of the PUC, are ex-employees of CMP. That is so bias and so wrong.

Sen. Johnson asked if Mr. Bemis had brought copies of any of the information with him, or was all the information provided to OPEGA. Mr. Bemis said it was all offered to OPEGA.

**Ed Friedman** – did not provide a copy of his testimony at the meeting, but emailed his testimony on December 11, 2013 and a copy was provided to the GOC members at their December 12, 2013 meeting.

Mr. Friedman said he is the lead complainant in the Smart Meter case ongoing before the PUC. He said he was disappointed in OPEGA's Report and thinks OPEGA handed the PUC a softball. The most enlightening piece of the Report was the reference to and quotes regarding perception of conflict of interest, but he does not think conflict is addressed as well as it could be in the Report. In his experience as an intervener, he thinks the problems with the PUC are the tendency for the Commission to ignore the law, to make up their own law, and the obvious conflict of interest. It may not be a financial conflict of interest, but it is a very strong perceived and actual conflict.

Mr. Friedman gave several examples from his personal experience of instances where PUC had shown bias in making decisions favorable to a utility, particular CMP. Those decisions had ignored the law and/or allowed the utility to go forward with expensive projects when other alternatives were not well considered. Mr. Friedman's examples included the following matters that had been or currently are before the PUC:

- CMP's Smart Meter project as regards health issues;
- CMP's Maine Power Reliability Project (MPRP) as regards by-passive environmental reviews;
- CMP's current rate case as regards impact of MPRP and the Smart Meter Project;
- First Wind's Wind Power Project as regards violating State law of prohibiting a utility from owning both transmission and generation infrastructure.

Mr. Friedman also said the PUC ignored the law on the Smart Meter project as they did not ensure safe, reliable and adequate power. As a result, complainants have run up a bill close to \$160,000 because PUC did not exercise due diligence and didn't follow the law. He does not know what the proceeding has cost the PUC or the OPA, but that is also tax payer money. He said CMP's expenditures were over \$400,000, in large part due to their buying expertise from Exponent, a protection firm, that was hired to protect tobacco, asbestos, Toyota, etc. CMP would not be hiring those people if there was not a problem with health and safety aspects of Smart Meters. The statute says "the PUC shall ensure" that is a guarantee. There have been thousands of documents, peer reviews, etc. submitted to the PUC showing that there are biological effects to the low level radio frequency radiation that Smart Meters emit and if the PUC agrees with just a few of those documents, there is no way they can say that Smart Meter safety is guaranteed.

Lastly, Mr. Friedman spoke to the problems with conflict of interest in regulating utilities. Mr. Friedman said the current Nestle Fryeburg Water conflict is a perfect example of how conflict within the PUC has basically hamstrung the agency. The PUC cannot hold a proceeding because Commissioner Littell is the only Commissioner not conflicted out on the case. Mr. Friedman also said conflict of interest is not only limited to the PUC. Rep. Hobbins, the Co-chair of the Energy, Utilities and Technology Joint Standing Committee, is an attorney who has represented ATT on the siting of cell towers throughout the State. Does he recuse himself? No. Mr. Friedman asked why most Commissioners are from Pierce Atwood, an OPEGA staff person and the new Public Advocate are also Pierce Atwood alumni.

Mr. Friedman suggested that the Commission, if there is going to be one, needs to be larger and more diverse, should not be represented by industry and there should be an active independent oversight committee. Alternatively he would suggest that, if a lot of money wants to be saved and to make it simple, Pierce Atwood probably has a spare office.

Rep. Kruger asked if there was an organization that ties PUC interveners together on single or multiple issues. Mr. Friedman said they were speaking for themselves. Obviously there are a few individuals at the meeting involved in the Smart Meter case to different degrees, but no, the different parties have had different troubles with the PUC.

**Wanda Curtis** – did not provide a copy of her testimony, but did provide several documents which are attached.

Ms. Curtis said she was disappointed with OPEGA's Report. She shared information by email and also made a number of calls to OPEGA regarding personal experiences with the MPR Project. This has been her first experience with the PUC and said it has been a horrible experience and a torment.

Ms. Curtis is very concerned that the PUC is not fulfilling its duty with regard to health and safety issues related to EMF emissions from high voltage transmission lines and substations. Ms. Curtis said there are studies that link high EMF to increased childhood leukemia and cancer generally. She has brought information, and studies, and took the time to make her issues concise. Ms. Curtis said the law states it is the PUC's job when approving power lines to consider the public health and safety and the proximity of the proposed transmission line to inhabited dwellings and alternatives. (A copy of Law is attached.) However, PUC does not thoroughly examine the health information and does not require CMP to properly mitigate EMF.

Ms. Curtis mentioned CMP being willing to spend \$1.8 million to re-route transmission lines away from a former PUC Commissioner's property (article is attached) but CMP saying they did not have the money, and it would cost rate payers too much, to do EMF mitigations in the Town of Chelsea. Ms. Curtis also said that PUC had approved the substation site in Chelsea without asking what the EMF levels would be at this site, or any other substation under construction as part of the MPR. She asked how the PUC can approve construction when they do not know what the EMF levels will be.

Chair Kruger said he has been involved with the issues Ms. Curtis has discussed and said his assumption had always been that what she talked about was really in the purview of the OPA. He asked her for a comment regarding her experience with the OPA. Ms. Curtis said Mr. Bryant from that Office did help her. He told CMP they needed to provide the EMF levels, but CMP didn't even listen to Mr. Bryant. He intervened in their case, filed a brief stating that CMP should be required to use mitigations where it was requested for levels above 3 miligals and asked that they do a childhood leukemia study in Maine. CMP refused and was angry with Mr. Bryant at the oral arguments because he suggested those things and asked why he had changed his position. She said the PUC and CMP try to lead people to believe that EMF is not an issue and said if EMF is not an issue, why have they spent millions of dollars to mitigate EMF in certain areas of the State. They used tall steel poles in Lewiston with reverse phasing to reduce the impact of EMF in that area. Why would you reduce EMF if it is not a problem and why would you spend rate payer dollars in Lewiston if it is not a problem. Sen. Craven said the municipality of Lewiston paid for the high poles in their area.

**Bruce Taylor** – a copy of his testimony is attached.

Rep. Boland noted that several people spoke about feeling unequal in cases with the utility companies and questioned if their testimony was taken seriously. At a previous meeting it was said that the PUC does contact individuals to clarify that person's position. She asked if Mr. Taylor had experienced that or if he knew others who received such calls. Mr. Taylor said he did not personally experience that, and after about three months into his case, went in with another intervening group.

Rep. Boland said in the hearing process interveners might feel that they are not being treated as fairly or equally, but she thought there might be a different dynamic where PUC was actually calling to try to get more detail or a sense of the validity of any interveners. Mr. Taylor said the Deputy Public Advocate did assist him

initially and he thought he received fair and honest advice. From his experience, and from listening to others, he thinks a real ethical issue is the influence of industry throughout the whole government process, not just with the PUC. How does aggressive lobbying and legal support factor into the fairness for citizens who have very limited time and resources?

**Douglas Bowen** – did not provide a copy of his testimony.

Mr. Bowen said he has been involved in the Nestle Corporation case, has attended several PUC hearings, listened to several of the conference calls and was dismayed when he learned that all three of the PUC Commissioners had previous connections to Nestle. He felt that the PUC, as a whole, was unqualified to hear the case due to the fact that they had all had such strong ties to the Nestle Corporation and the Pierce Atwood law firm. Mr. Bowen did not think of the Commissioners as corrupt people, but he kept going back to the fact that these Commissioners, who were more connected to Nestle than any others previously, were hearing a case in which Nestle and the Water Company were seeking a contract whose duration was far in extreme of anything else that had ever been brought before. It would, in fact, be the longest such contract in the nation, if approved. Mr. Bowen said such coincidences should never be in State government.

Mr. Bowen said the conflict of interest is not specific to the Nestle case, that there is a systemic conflict of interests in Maine's political establishment. He mentioned the rise in amounts of money being spent by outside interests, including the Nestle Corporation who contributed more money to political campaigns than any other corporation during 2000 and 2010. He knows that is not within the GOC's purview, but it is the elephant in the room.

Mr. Bowen would like to see the PUC Commissioners increased to five and would like to see more diversity in Commissioner's background including trying to ensure that at least one Commissioner has a consumer interest background.

The GOC members did not have any question for Mr. Bowen.

**Kathleen McGee** – did not provide a copy of her testimony.

Ms. McGee said she has worked with a lot of State agencies and found that the PUC is the most difficult agency to work with as far as being transparent.

Ms. McGee referred to the sentence in OPEGA's Report "We observe that Commissioners with technical knowledge are better able to analyze utility provided information and understand the impacts of Commission decisions on consumer" and said there is no evidence that shows that someone with technical knowledge is better able to analyze a utility. She would like to see that statement backed up with evidence that OPEGA has that the observation is deserved. In her experience with the Legislature and legislators she has worked with, you don't walk into a job with all that information, you have to learn things over time. The whole legal system is based on a jury of your peers who make important decisions based on information they have. You do not have to have people tied to industry to help people through complicated issues with energy.

Ms. McGee said she was very disturbed by the fact that an OPEGA staff person is connected to CMP and disappointed that the GOC did not ask about that conflict and have somebody else write the Report.

Ms. McGee referred to OPEGA's Report quoting "We did not examine the quality, appropriateness, or results of specific decisions made by the PUC". She would note that many individuals spent hours with staff to talk about their experiences, and those experiences form the whole basis with the problems with the PUC, including the fact that there are questions about whether CMP and the PUC lived up to its statutory mandate to ensure safety with regard to Smart Meters. Even the Maine Supreme Court said clearly that PUC should

not have dismissed the portion of the complaint against CMP addressing health and safety, and vacated that portion of the PUC's judgment.

Ms. McGee noted that OPEGA's Report claims there is considerable transparency and the PUC's decisions are made in public. She would argue that point because when the case she is involved in was dismissed without merit that decision was made in private behind closed doors even though the vote was taken in public. She was never given any explanation as to why the case was being dismissed without merit except that the PUC had already decided the issues. The public did not have opportunity to speak or have input when those deliberations are being made and ended up having to spend over \$100,000 to counter an abuse of the law by the PUC. The Court has now remanded the case back to the PUC and the public is now forced to spend thousands of hours of time and more money on this case.

Ms. McGee is concerned because OPEGA's PUC Report is not very accurate, and does not go into the issues very deeply.

Ms. McGee also said she views the Consumer Affairs Division (CAD), PUC and the OPA as being under one roof. They do work together and not necessarily in the best interest of the public. It has been difficult to work through the stages of the Smart Meter case when both the OPA and CAD have said they were told by the PUC to not answer questions. In regard to opting out of Smart Meters, nobody wanted to talk with them and none of the above stated organizations were very helpful. They finally worked it out with the PUC who said CMP would not turn off their electricity until the case was over, but were going to keep collecting the opt out fees. Allowing CMP to continue to collect the opt out fees is outrageously upside down and unfair because they have not determined if Smart Meters are safe, yet the consumer still has to pay to be protected from them.

Ms. McGee would ask that OPEGA's PUC Report not be approved, that it be considered a draft and that some of the issues be reconsidered. There is not a lot of evidence to some of the assertions made.

**Tom Welch, Chairman, PUC** – did not provide a copy of his testimony.

Mr. Welch said it is discouraging to hear a certain amount of confusion, or misperception, of decisions that are made in good faith, on difficult evidence, and difficult cases being translated into preconceived notions or bias. The PUC does work hard to avoid making decisions based on bias or prejudice. Mr. Welch said when people don't get the decision they want in a case, they may look for reasons other than the merits of the case, and he understands that impulse.

Mr. Welch said there is a lot of room for improvement at the PUC to make their system user friendly. He and the Public Advocate have discussed the idea of putting an ombudsperson in OPA and having that person assist members of the public in sorting their way through the processes.

Sen. Johnson said he has difficulty dismissing as a misperception – a concern about defining different permitted levels of EMF on projects adjacent to people's properties and their exposure. Mr. Welch said he is recused from the MPR case so does not have the details, but could get the GOC information on exactly what was going on. He understands there were a couple of provisions in the agreement that lead to the conclusion of the case. One provision was setting up an ombudsperson to deal with particular issues, and the general admission that in building the project, the measures recommended by the World Health Organization would be undertaken, but he is not familiar with those particular numbers.

Sen. Johnson was confused about why levels of EMT would be different in one case versus another of what the right exposure that is permissible for people might be. Mr. Welch was confident the numbers were not indications of anyone's conclusion about what was safe or what was not safe. He is not aware of any Commission decision that says that in one case a certain level is safe and in another case, a different level is safe. On the MPR Transmission case the conclusion was that certain measures would be undertaken

consistent with what the Commission talked about with respect to World Health Organization, and then there would be certain mitigations that might be undertaken on a case-by-case basis through the ombudsman process.

Sen. Johnson asked where in the PUC's process does it make the determination of what is safe for the public and where in each case was that a rule of the Commission. Mr. Welch said there is at least an implicit determination in the MPR case that the lines themselves are safe, and that is based on the evidence in that case, and was settled by stipulation so the Commission's decision has a different characteristic. There was considerable evidence in that case that levels below a certain threshold did not create a particular health issue, and even for levels above that, potential health issues would have to be balanced with respect to cost and other issues of that nature. There was a lot of analysis done of exactly what EMF levels were at various points along the right of way. The implicit conclusion for sure in that case is that those levels do not exceed levels which would compromise the health and safety of the public. Mr. Welch said there is nothing that is absolutely safe, everything in that context is a balance. He thinks the conclusion was implicit for sure that those did not create issues that would cause the Commission not to approve the project. Sen. Johnson finds it disturbing that the Legislature is not talking about changing what the definitions are of safe levels of EMF if there are studies indicating health impacts. Mr. Welch said there is legislation that the Energy, Utilities and Technology Committee will be considering in the upcoming session that examines that question.

Chair Cain said the GOC should focus its questions for the Chairman on the Report. The GOC will have a work session on the Report and will have the opportunity to not just look at the Report, but to also convey to the EUT Committee concerns heard here that should be emphasized to the EUT Committee.

Chair Kruger was confused by Mr. Welch's reference to establishing an ombudsperson and thought that was the role of the Public Advocate. Mr. Welch said it was something that was suggested in OPEGA's Report. There are a number of situations where the Public Advocate, which has a specified role to protect the interests of residential and small business customers, might reach a different conclusion than some subset of the public. It is awkward in those instances for the people on OPA's staff, who are acting as attorneys or experts for the Public Advocate, to assist someone who is actually taking a different position. The idea would be to create a representative who was agnostic with respect to particular views on a case to assist a member of the public in the process.

Sen. Katz said there was a lot of comments made at the meeting about various studies and he knows in a fair amount of the PUC's cases, particularly the Smart Meter and transmission line cases, the Commission was faced with conflicting information and asked Mr. Welch how they deal with the fact that studies are in conflict and reach different conclusions. Mr. Welch said the Commission always has to sort out, typically through cross-examination hearings, and based on their own experience and expertise, where the right answer lies when you have experts who disagree. He thinks with respect to Smart Meters or EMF, clearly the Commission does not necessarily have internally the kind of training or expertise needed. The Commission looks at as many studies as presented to them, or those they seek for themselves, and it often comes down to the weight of scientific evidence. If there seems to be a preponderance of studies in one direction, you look to see what other jurisdictions have done in some cases. He thinks the Commission usually does probe the bases upon which the studies are made. In a scientific study on health effects, it may make a difference whether the studies are just epidemiological studies and whether there is a physical cause that has been identified. Science evolves over time, but the Commissioners try to keep current. They have to judge from what is presented, what makes sense, what the weight of the evidence is and make your best judgment.

Sen. Katz asked Mr. Welch to comment on the extent he thinks it is appropriate for the Legislature to be making decisions regarding, for example, what the appropriate level of electromagnetic field exposure is as opposed to the Commission making that determination after going through a judicatory process. Mr. Welch said the Legislature makes policy and the Commission administers it. Clearly the question of what degree of safety or what degree of insulation from any possible risk can a society afford, is in some sense a

fundamentally legislative question. There are a number of areas that the science is evolving a little and legislation is harder to change than regulations and so he would be cautious to lock in particular standards. He would recommend the Legislature not do so without a deep familiarity with the literature on the subject.

Sen. Katz asked Mr. Welch how many Commissioners the PUC should have and whether there should be slots for particular backgrounds, like a consumer advocate. Mr. Welch said three is a typical number for Commissions and that is for economic reasons as much as anything else. He has seen a five person commission where not all commissioners pay attention to all issues. An advantage of a smaller commission is that all three of them do everything, but if one of the Commissioners finds himself as the swing vote, that can be uncomfortable. There are clearly some benefits with increased diversity, depending on who is selected for the role. Mr. Welch said the idea of setting aside slots has come up periodically and it would be useful to have a diversity of backgrounds, but it is important to steer away from the notion that this is like an arbitration panel. Looking for someone with a strong consumer background is valuable and would be worth exploring.

Sen. Burns acknowledged the frustrations voiced by those testifying at the public hearing regarding OPEGA's Report noting they have taken it upon themselves to bring issues forward because not everybody is able to do that. He saw underlying concerns, not having to do with scientific information, but about the PUC's process being complicated, not appearing transparent, not user friendly, the perception of conflict of interests and concern of the number of Commissioners. When there are three commissioners and one has a conflict, that leaves two and that is not a very diverse group to be making complicated and overwhelming decisions that impact society. Sen. Burns asked Mr. Welch to explain what actions the PUC plans to take, what the PUC has done to date, what progress has been made and when actions would be completed.

Mr. Welch reviewed the actions on each OPEGA recommendation.

**1. The PUC Should Explore Ways to Assist Consumers Appearing *Pro Se* in Commission Proceedings**

Mr. Welch said that he has had the conversation with the Public Advocate about setting up an ombudsperson. They think the best idea is to create a particular person with a particular slot in OPA. He expects that proposal will be forthcoming from the Public Advocate's Office.

Sen. Cain recalled from the last GOC meeting that Mr. Welch had raised the point that the reason to have an ombudsperson is because sometimes the Public Advocate is an intervener and having an ombudsperson would provide more independent help. Mr. Welch said there is an issue with matters brought forward by members of the public who would be taking positions different from, and adverse to, what the Public Advocate is doing. In that context, you do want to have somebody who is there, not so much as their lawyer, but to assist them through the process.

**2. PUC Should Continue to Improve the Usability and Accessibility of Its Online Case File System**

Mr. Welch said PUC does have, and will continue to have, periodic meetings about their Case Management System and does recognize it is not perfect. They have both computer issues and facilitation issues. PUC thinks it is being responsive, unfortunately fixing computer systems is not always instantaneous, but they continue to work on it. They have open stake holder meetings soliciting suggestions from the public as to how they can make it better and the PUC is implementing suggestions. That will be an ongoing process. Sen. Burns asked what the PUC has accomplished to make their system more user friendly. Mr. Welch said he does not know precisely what changes have been done in CMS, but he can get back to the Committee and will provide a list of the exact changes.

**3. PUC Should Clarify How Different Types of Consumer Input Can Be Used in the Commission's Decision Making**



Mr. Welch said they are still working on this agency action item. It is not on the website yet.

**4. PUC Should Take Steps to Address the Need for Time Extensions for Ten-Person Complaints**

Mr. Welch said the PUC has not yet had a time extension request because that only comes into play where they think it is going to take them more than the statutory time period to resolve a ten-person complaint, and this action item is easily done by documenting something that already occurs in practice.

**5. PUC Should Establish a More Structured Approach for Identifying and Addressing Issues Potentially Affecting Multiple Consumers**

Mr. Welch said they have already directed CAD to set up a process where they start collecting issues that come to them that the PUC does not already keep track of. So if there is a same issue of general concern that specialists are seeing, that will be brought to the Commissioners. The CAD Director is already setting up the protocol for exactly how it is going to be brought to the Commissioners, and it will probably be on a bi-monthly basis to see if there is some particular issue that has arisen.

**6. PUC Should Take Additional Steps to Minimize Risk of Actual or Perceived Bias in Its Regulatory Activities**

Mr. Welch said aside from the fact that they will extend ethics training to the entire staff, he is not sure what other steps are being taken.

Sen. Burns asked if the PUC had always maintained internal documentation of recusals. Mr. Welch said they always kept documents reflecting recusals, although typically, it could have been as little as the transcript of a record. What the PUC is going to do, if and when OPEGA's Report is adopted, is set up a more formal process within the Commission, but are waiting to do that to make sure there are no further directions coming out of the Report. A form will be drafted for when a case comes in and it appears that there may be a conflict, or a Commissioner decides it is a case that recusal is appropriate. There will be a process for documenting the reasons and notifying staff so there will be no confusion.

Sen. Burns referred back to Agency response three regarding the different types of input received from consumers and interveners and asked if it was going to require a statutory change in order for the Commission to be able to take into account information that comes in apart from that which is cross-examined. Mr. Welch does not think a statutory change could achieve that. He said they are used in the decision process even if they are not sworn in, and the Commissioners are aware of expressions of interests or expression of views. Because of due process, Commissioners cannot have a judicatory proceeding and take into account material when the adverse interest has not had opportunity for cross-examination. Typically at the public input sessions all the people there are sworn in, and the Commissioners can therefore take their information into account. Where it gets more complicated is if someone sends PUC an email and says here is my view. PUC puts that email into a public comments section of the case and the Commissioners have access to the information, but are not permitted to rely on facts that are represented there in the final decision. Mr. Welch said he supposed a legislative change is possible, but would be very nervous making one because it would raise a host of due process issues.

Sen. Burns asked how the PUC was going to inform the public that there are varying weights given to information they provide. Mr. Welch said the public is informed at public input sessions. Because they are now receiving more letters and emails, PUC will be changing their website to make it clearer the weight a person's information will be given. Those changes will be done by the end of the year.

Rep. Cotta asked if the PUC had internal resources to research information received by Commissioners when they wanted more information. Mr. Welch said PUC has staff that Commissioners turn to first to do that work.

Rep. Boland was confused about the sworn and unsworn testimony and that derives from her current participation in the study that the PUC staff is doing on LD 131. Some of the experts that came to Maine to testify from all over the country on that issue, and subsequently submitted testimony, should not be thought of as comments that don't need to be taken into account. She asked if there was a way for someone to be electronically sworn in so they do not necessarily have to appear in person and to make it less burdensome for an expert witness to testify and have that testimony be considered by the PUC as credible. Mr. Welch thinks the PUC explores that in some way, but would be hesitant to say that a person can send an email saying he/she is promising to tell the truth. The thing about being sworn in is that a person goes to jail for perjury if he/she is not telling the truth and he does not think any email is going to satisfy that. In terms of experts who are being subject to cross-examination and making it easy, he thinks the PUC makes as many accommodations as they can in terms of making the process flexible so people don't have to fly in if their testimony is warranted.

Sen. Burns thinks there is validity to the public's concern that an individual or intervener citizen cannot afford expert witnesses, but other entities can to no limit. He asked how that discrepancy could be overcome. Mr. Welch agreed and said he thinks OPA was created, in part, to do that and the Commission itself was created, in part, to do that. The basic problem is that a dollar a month increase in electric rates makes very little difference to any single consumer, but can make a big difference to the utility so who do you think is going to invest the money in making sure that dollar happens. All Commissioners understand that perfectly. There is already an institutional skepticism of utility requests because they know the utilities' interests are to make more money. The whole point of the regulatory system is to provide a counter balance, and OPA is to provide an additional balance because the Commission's role is not just to take the side of the consumer. The Commission's role is to balance the interest. The whole point of the regulatory structure for utilities is, in part, to be sure the utilities are actually able to provide the services they are supposed to provide. The PUC has a statutory responsibility to shareholders, as well as the public, and it is their job to make sure there is an appropriate balance. OPA was brought in to the mix on the assumption that the big customers are going to find their own legal counsel, which they typically do, but the little ones can't. Everyone recognizes that issue and he thinks it is a perfectly appropriate role for OPA. Mr. Welch thinks what is interesting about the public comment session is that these are circumstances where the Public Advocate's role isn't obviously aligned with the people who brought the concerns forward. If you are looking at it from an economic perspective, you might come up with a different answer than looking at it from some other perspective. The basic economic task of the Commission is structured to provide the counter balance, but that becomes more difficult when the institution that has already been created to represent consumer interest is not of the same view as on a specific group of consumers. Some have gotten assistance from national organizations who share their views so some are funded, but not all. There is a provision in the statute that permits some degree of intervener funding which has not been taken advantage of very much. The PUC is acutely aware of the problem of imbalance of economic influence and will not deny that it is a pervasive problem.

Rep. Boland asked if there could have been a more public, activist friendly way to get to something on the Smart Meter health and safety issues rather than causing it to go to the Law Court. Health organizations said there were questions and there was information to show they could be a problem. Mr. Welch said he would not comment on Rep. Boland's question. Chair Cain said she did not know the GOC was the right venue for that discussion because the scope of the Report was ways to improve the structure and responsiveness to the public of the PUC rather than a specific case. OPEGA's Report did not review any specific cases, and it seemed the GOC was getting too deep into one that is not the work before the GOC. They do not have the benefit of that information as a Committee. Rep. Boland said her question was more about process and Smart Meters is an example of how it is cumbersome, expensive and awkward for the public to be active in trying to get an opinion or decision decided. The question is really not meant to retry the case, but to say are there

simpler routes to go. Mr. Welch said the Commission in its first decision on Smart Meters, which was reversed by the Law Court, said that it did not have to do investigation beyond what it did in order to reach the conclusion that it reached generally and, therefore, it did not end up articulating the conclusion about health and safety. Had the Commission reached a different decision in the case, everything that is going on now would have gone on earlier. The burden is there, but the burden was not created by the Law Court decision, the burden was created by what the Law Court said the law was. Mr. Welch wanted to make that clarification.

**William Black**, Deputy Public Advocate, Public Advocate Office – he did not provide a copy of his testimony.

Mr. Black said OPEGA's Report recommends that there be an ombudsperson and the OPA agrees with that. The position should be in OPA, but he does not think they can do it with their current resources. There has been some criticism at the meeting of CMS and said those in his Office also find it difficult to work with. Mr. Black thinks some of that is driven by the increase of information in PUC hearings that is confidential, and must remain confidential to protect the business interest of the parties that are before the Commission. To some extent, therefore, it is difficult to get into CMS because it is set up to protect confidential interests. Perhaps the PUC should look at setting up CMS, or a system, that is not burdened with all of the complexities of protecting confidential information.

Sen. Katz asked for clarification from Mr. Black on who decides information is confidential and when is that decision made in the process. Mr. Black said a protective order is sought by the parties seeking confidentiality. That information is then submitted on CMS and is available to only confidential parties. As somebody who has no experience with the System, it seemed to him that setup seems to drive some of the difficulties of getting the information.

Sen. Katz asked about the role of the Public Advocate. Mr. Black said the statute requires the Public Advocate to represent the needs of the using and consuming public. They generally interpret that as being pocketbook needs of the consumers and are trying to keep the utility rates down. When you get into a more complicated situation, such as in the Nestle case of what is public water and who has the right to public water versus economic interests and the rate interest of customers, it is not so clear what their job is. In that case they interpret their job as representing the pocketbook interest of the customer. Mr. Black said the statute lets OPA look at the economic interest of parties and tells them that when the parties' interests differ and when the consumers' interests differ, they have to represent first the residential low-income customers and small business customers before large industrial customers. Sen. Katz referred to comments regarding the safety of transmission lines and electromagnetic concerns and asked if exploration of those issues is within the purview of the Public Advocate's Office under the current statute. Mr. Black thinks it is, but does not think the statute gives them clear direction as to how to handle them.

Chair Cain closed the public comment period.

## **RECESS**

The Government Oversight Committee was recessed at 12:12 p.m. by Chair Cain.

## **RECONVENED**

Chair Cain reconvened the meeting at 1:06 p.m.

### **- Committee Work Session**

Chair Cain asked Director Ashcroft if she had comments regarding OPEGA's PUC Report.

Director Ashcroft said she would like to have on the record the concerns about conflict of interest or bias on her part with regard to the PUC review. She had publicly disclosed to the 125<sup>th</sup> GOC that she in fact had previous employment with Central Maine Power that ended in 2004 and had asked the Committee whether there was any discomfort with her working on the PUC review given that it was not a review of CMP. The GOC did not feel that was going to create a potential conflict. Director Ashcroft said there was also reference during the public comment period that OPEGA staff had worked for the Pierce Atwood Law Firm and said that no OPEGA employee has ever been employed by Pierce Atwood.

The Director said, although OPEGA did not state them as emphatically and emotionally as was heard during the public comment period, she feels confident that all of the issues laid before the Committee today regarding PUC's process that were within the scope of OPEGA's review have been brought forward in the Report.

Rep. Boland said it seemed that input from people who had complaints and problems dealing with the PUC was what drove the review in the first place. A lot of the complaints had been related to the Smart Meters and she asked why that was not looked at more. She said it did not come up at all in the Report as a means of describing what the concerns were regarding being a process that was friendly to the public and she did not understand why those pieces were not considered significant in deciding how to approach the review. Director Ashcroft believed they were all considered. The difficulties that folks were having with that case and other cases that people specifically wrote to OPEGA about were noted and OPEGA gleaned out the themes that were seen around the different types of problems people were having with the process. That is what led to the recommendations and findings OPEGA had regarding the adjudicatory process and the difficulties with it. While OPEGA did not describe the specific difficulties that people had relayed to them about those cases, the Report includes what OPEGA saw surfacing as root causes for concerns and the difficulties that citizens were facing. Because they are not described in detail in the Report, does not mean that OPEGA did not consider them in their work.

Rep. Boland said the fact that the process is costly, time consuming, burdensome and is costing the taxpayers a lot of money to have issues go forward, was really very key to driving the concerns about whether or not the process is reasonable. If the Law Court found that PUC was supposed to deal with health and safety and didn't, she did not understand why that was not looked into more as to why they did not do the health and safety when it was in the statute. She feels those are questions that should have been looked at and asked why they weren't. Director Ashcroft said OPEGA did reference in the Report the fact that taxpayers were burdened by costs and if they had to retain an attorney it was costly, or if they choose to go it on their own, that was challenging. While it was not emphasized to the degree that it stands out in the Report, it is discussed as part of the issue about the PUC's process and the adjudicatory proceedings and what transpires for folks. As far as the Smart Meter case, Director Ashcroft said there is a sentence or two in the Report describing what happened with that issue getting remanded back from the Court. She does not believe it was in the scope of the questions that OPEGA had been asked to try to figure out, or try to expound on, why the PUC made the decision it did in any particular case. OPEGA took the approach that it was not their role to second guess the decisions that the PUC had made, but more to see if the process in place allows them to make good decisions. Director Ashcroft was not sure, even in retrospect, if OPEGA would have tried to get into that case in particular given the nature of the scope questions being addressed.

Rep. Boland said she knows a lot of information was shared with OPEGA, and that members of the public had to pay a lot of money to get the PUC to do what they should have done. She was at the Court proceeding herself and said the Court was appalled that the PUC attorney said they didn't think they needed to do that and they were not going to. The Smart Meter case cost citizens over \$100,000 to have it looked at and that is a huge burden. She asked why the GOC would not look at that case as being part of the problem of responsiveness and public access at the PUC. Sen. Katz said looking at the task of work OPEGA was assigned to do, he thought this was not intended to be a review of the Smart Meter case. Secondly, the Law Court's decision in that case saying that the PUC had not considered some things it needed to consider is evidence that the system works.

There are procedures in place for review of agency decisions and the Law Court is not a rubber stamp for those decisions. He also said the issue may be that there is some ambiguity in the statute itself.

Chair Cain said that from the public comments she was struck by the question of what is the GOC's role. Whether the comments people made were about Smart Meters, water or transmission lines, she wants to make sure that the GOC's recommendations make the work of the PUC more accountable, accessible, and transparent to the public so that it is an easier system to access. The second track is the question of what legislative action needs to be taken, either to do the above things she just talked about, or to address specific things that have come forward that may be beyond the three scope questions posed in the Report. There is not a definition of what health and safety means, what triggers the role of the Public Advocate, is it simply the pocketbook or is there a bigger question around health and safety. Chair Cain thinks there is an opportunity to work with the PUC on the administrative internal things that need to be adjusted for the sake of the public and public's interaction, a list of them was well identified. Secondly, what are the legislative pieces that need to be considered that are beyond the purview of the GOC, but may need to be put in as legislation for the Second Session, if it is not already there, at the recommendation of the GOC. Legislative pieces might include the number of commissioners, should there be diversity of backgrounds on the Commission, and questions of video or phone swearing in and how accessible that is, or is it allowed. There is also the money piece around hiring experts and there are questions about whether there is money available to help with the public's costs, who accesses that and under what terms that money is available. Also the questions regarding CMS concerning confidentiality and the question regarding how the Public Advocate's role is defined, whether the role is limited to pocketbook issues and what role an ombudsperson in that office could play to increase public accountability and transparency. Whether talking about Smart Meters, water or transmission lines, the GOC needs to use those specific cases to gather the information of the difficulties the public is having.

Rep. Boland said the Chair was describing things that could happen. When the PUC topic originally came up, a number of the GOC members were expressing their concerns around the Smart Meter case, and the issues they were hearing from their constituents about how they were being treated, access and ability to deal with it and PUC dismissing the issue of health and safety. The GOC heard a woman testify about the transmission lines and how she could not get a hearing. Rep. Boland referred to Title 35A, section 3132 Construction of Transmission Lines prohibited without prior order of the Commission where it says "petition for approval of proposed transmission line. The petition for approval of a proposed transmission line must contain such information as the Commission by rule prescribes, including, but not limited to, a description of the effect of the proposed transmission line on public health and safety." She does not think that fact was specifically brought out in OPEGA's Report and it needs to be. Some people have suffered trying to prove they had issues to present and they were stonewalled. Rep. Boland's concern is not that people on the Committee don't see what some of the issues are as presented, but that they didn't see in the Report much evidence that the public did indeed have the law on their side. That is a concern for her and she wants to make sure that are getting what they need out of OPEGA's reports.

Chair Cain said she was not on the prior Committee, but it did seem the specific questions that were determined by the previous GOC referenced getting to that level of detail.

Sen. Johnson agreed that was not one of the questions asked. What was heard at this meeting, however, obviously raises concern. He asked what opportunity the GOC had to go back and ask for follow-up in a couple of other areas and add that information to this Report. One of the things this raises questions about is to what extent does the PUC have advocacy by OPA on the public interest and does it seriously consider questions raised by OPA. The GOC heard today that OPA had recommended that we study leukemia in this State and that levels above 3 or 4 miligal needed mitigation and it doesn't sound like that ended up being dealt with appropriately by the PUC. He said it would be good to know to what extent the OPA did get involved in various dockets, and on those they did, how often there was some accommodation, or a serious consideration, in response to the issues raised by OPA in the process or proceedings. That would give an idea of whether there is in fact a problem with the PUC listening to the interest of the people as represented by the OPA.

Rep. Cotta said it was clear from what the Committee heard today it was the inability, perceived or actual, of the PUC to interact with the public. Some of the problems brought forward at this meeting were that documents filed in PUC cases were filed numerically with not a clue to what they represented. He did not understand why there was not an alpha-numeric index and documents assigned to a subject matter of interest. Rep. Cotta heard the frustration from individuals testifying, and didn't want to say it was intentional by the PUC, as much as it is a product of the current system. He thinks the definition of health and safety should be very explicit so that the agency or commission and the public feels they are standing on solid ground and it will not be open to debate every time a new technology reveals either a benefit or a hazard.

Sen. Katz suggested Committee members be given some time to think about all the information the GOC received at the meeting and then discuss ideas at a future GOC meeting. Chair Cain agreed and said there are still a lot of questions and issues hanging out there that will need addressing in one form or another.

Director Ashcroft agreed and said it might be similar to the Maine Turnpike Authority Report where the Committee saw a larger issue around quasias.

In terms of additional work the GOC may want done, her preference would be to handle that as a different project or follow-up work rather than to leave this Report open. Director Ashcroft said she stands by OPEGA's work. OPEGA choose not to describe specific case examples in the Report and some of the difficulty comes from synthesizing the details of people's individual stories. OPEGA carried the themes forward in a general way and did not drill down into all of the specific difficulties or express the level of frustration that was going on to everyone's satisfaction, but OPEGA did conclude that the process was not responsive and accessible to folks. OPEGA may not have laid out all the individual pieces that lead them to that conclusion and did not describe problems on a case-by-case basis, but the primary issues are included in the Report. If there are additional questions the GOC wants answers to, the agency can be asked to respond to the degree that they can. If there is particular work the GOC would like to see OPEGA do, she would like to handle that as a separate project and be able to dive into it more deeply.

Sen. Burns said another concern he had is that the Report does point out several areas in the process that are not responsive, but actions to improve that are not complete and he would like to have an update as to the progress. He thinks Mr. Welch has already indicated at least one piece of information he is going to bring back, but he would like a report back on the gains that have been made on the agency response to the Report's six recommendations.

Rep. Boland said there is a problem, apart from the sworn and unsworn testimony, about how it is decided what evidence will be let in or not. It is up to the hearing examiner to decide what studies, etc. are allowed and it is her understanding that it is a confusing process, even to the attorneys representing people, because they don't know what the guidelines are so that they don't spend too much time getting studies. She thought it would be important to establish a process so people could know ahead of time what was admissible so they are not disappointed when a lot of things get thrown out by one hearing examiner when another hearing examiner might go a different way. That seems to be an issue that was raised.

Rep. Boland shared an example she received from Mr. Friedman and Ms. McGee during the lunch break that illustrated the idea of subtle bias they referred to. She said there was a two day technical conference back in March at which witnesses on both sides could be questioned by CMP, PUC, etc. The complainants weren't told ahead of time that their witnesses would not be asked any questions and they had them on phones waiting. CMP, however, was asked a lot questions and Mr. Friedman and Ms. McGee suggested that could be considered kind of a subtle bias because obviously their witnesses did not get to be heard at all while CMP's did. Rep. Boland said she does not know how you deal with that, but thought it was something she found a rather serious observation. She offered that example as a way of viewing what you may not be able to put a finger on, but describes some of the angst over dealing with things. Director Ashcroft said what Rep. Boland

was describing as subtle bias is exactly the kind of thing that OPEGA was trying to get at in Recommendation 6 of the Report. It is not like OPEGA did not hear those things, but there is a difference between looking at what the issue is and the problem of how to address it. OPEGA was not in a position, nor would they be in a position, to opine necessarily on whether that particular instance represented actual bias or not, but it is an issue that needs to be addressed. Rep. Boland said OPEGA's Report did not bring that message home to her as clearly as the one anecdote.

Sen. Johnson thinks something in the follow-up scope would be the funding that is available for interveners to help address the cost that was identified as an issue. To know what the particulars are about the policy, the procedure for those funds to be utilized, to what extent it has, or has not been used, and find out why it has fallen into disuse, if indeed it has. The funds could help members of the public trying to get involved in cases and not having legal assistance to do so.

Chair Cain said the GOC was not in a position to close the work session because there were a number of items to address.

Director Ashcroft wanted to clarify if the Committee members' questions were to be posed to the PUC to get responses to or did the Committee want OPEGA to do its own research on the questions. Chair Cain said the budget question should be one that is posed generally because PUC's budget generally is an Other Special Revenue Account with dedicated revenues that has very little General Fund money. She thought that was a question to pose to get an answer back to the GOC about what is that fund, who houses that fund, what is it funded with, what are the terms to access that money, and how much is in the fund. Sen. Johnson said understanding historically how that fund has been used, and if indeed it has not been used recently, why. He is trying to understand why it has not been used.

Chair Cain repeated the list of questions of the Committee members.

1. The questions on the number of commissioners might be one that the Committee can decide whether they want to suggest legislation and she did not think they needed more information.
2. There was Committee agreement regarding an ombudsperson. Sen. Craven would like to know the fiscal note and the possibility of funding it. Sen. Katz would like to check with other States to see if there is a model where they are doing the very same thing.
3. The question of increasing the accessibility for those who wish to provide sworn testimony and if there was a way to do that remotely by video or phone may be a technical question. Director Ashcroft said the PUC, as part of its action items, was going to be examining steps in the process that could be taken so that is one that the PUC could consider as part of their action items. Chair Cain said the GOC can make sure that is part of the follow-up to Sen. Burns' point regarding a report back on action taken.
4. The question of what the current standards or policy is for filing confidential documents and information in a case so the GOC can understand that better and review it before jumping to conclusions. Is the PUC making available to the public as much information as is practicable in the course of a case? Rep. Boland said even if a document is considered confidential couldn't there be at least a description of what it deals with so the public is not totally blind to what is considered confidential.
5. The Committee had a question regarding the role of the Public Advocate, whether OPA is limited to economic issues and is there anything in their mission that would prevent them in engaging in a question of health and safety. Is there adequate guidance for OPA on non-economic matters? Sen. Katz agreed and said it is a policy question – what considerations should the PUC have to take into account in deciding a case. Should public health be one of them? And the correlate of those questions is as a policy matter of

what considerations they want the Public Advocate to be weighing in on so the GOC should review both parts of the statute.

Chair Cain recognized Mr. Black. He said earlier in the meeting he had expressed concern about the fact that confidentiality was possibly driving the design of CMS and his major concern was that CMS be more easily accessible. It should be designed to protect confidential documents, he is not suggesting that it is not. One thing the PUC could do that may solve the problem is simply have a rule that if a person is a party to a case that electronic copies of all non-confidential documents be served electronically on all parties. You could then avoid CMS. He said it is not that confidentiality is a problem, it is that the design is a problem.

The work session on OPEGA's Public Utilities Commission will be continued at the next GOC meeting.

- **Committee Vote**

Not discussed.

Chair Cain asked if there was objection to taking items out of order. Hearing none she moved to **Unfinished Business, Consideration of Additional Scope Questions for Maine Economic Improvement Fund Review.**

## **UNFINISHED BUSINESS**

- **Consideration of Additional Scope Questions for Maine Economic Improvement Fund Review**

Director Ashcroft said at the last GOC meeting the Committee approved the scope questions for the Review, but there was an open question with regard to further exploration of statutory intent in regard to distribution of the fund among the campuses. She felt OPEGA had reviewed all the legislative history they could and did not see any foundation to be able to tell the GOC if there was any specific intent. If the Committee was still interested in that, they might pose a question to the Attorney General for an opinion on the reading of the language in the statute. Director Ashcroft said that OPEGA also had not received the information they were expecting, or had an opportunity to speak with folks at UMaine. She would like to hold open the possibility that OPEGA may bring back additional questions that would be part of the review for the GOC once they complete that work. At this meeting Director Ashcroft wanted to know if the GOC had a decision about whether they wanted her, on their behalf, to be seeking an opinion from the Attorney General.

Sen. Burns said his concern comes out of the initial statute which essentially says that the MEIF was to provide funding for applied research and development for the University of Maine System, its members, member institutions, employees and students in the five targeted areas. He interprets this to mean all campuses should get funds but others do not. He asked the AG's Office to look at this and has heard back from Attorney Linda Pistner that she has taken an initial look and will do a little more research, but he would prefer that the request come from the GOC itself because it is a fundamental question that needs to be resolved. If the intent of the statute was different than the way it has been implemented, he would want to know why. He has more questions about the financial data and also noted that the Report from the Task Force has not been forthcoming yet. He understands that they have not met since April. The GOC needs to know what the Task Force is doing, and what their findings are. Sen. Burns also requested that Director Ashcroft speak with Dr. Beal, Director of the Down East Institute and a member of the Task Force.

Chair Cain recapped what the GOC had done on this topic at the last meeting. The Committee agreed to the three scope questions in the Project Direction Recommendation, requested a breakdown for the distribution small campus initiative dollar by target areas. She was happy to ask the question to the AG's Office, but is not clear on exactly what that question is so before the Committee Chairs were to sign off on a letter she would like to have a draft letter circulated to the Committee by email before it gets sent. Sen. Burns said he would be happy to send Chair Cain a copy of the email he sent to the AG's Office. He said the question is what did the Legislature intend



for the University of Maine System to do as far as proportioning the annual funding that comes in, approximately \$14 to \$15 million, for the main campuses and the satellite campuses.

Sen. Johnson noted that in regard to reporting on projects across the different campuses he thought it was important to clarify whether they are talking about which campus is administering the grant and the location of the campus versus the location where a program work is being funded by that grant. It may well be funded on another campus or location while the address associated with the grant is the administering campus.

Rep. Cotta said initially the money was out there as a pool and you applied for a grant, a portion thereof, that would have to fall within one of the six targeted areas. As Sen. Johnson said, Rep. Cotta would be interested in who applied for it and where was it done. It is a great question and if the program was applied for by an organization in Bristol, the University of Machias, but was administered by Orono then saying that Orono got “x” amount of dollars does not truly represent the work. The intent of the MEIF was public/private funding exploiting the resources and assets the University of Maine System has. It was not just University, it was public/private.

Director Ashcroft will draft a letter to the AG for the GOC to review and when approved will send the letter to the AG on behalf of the Committee.

Rep. Cotta will send Director Ashcroft or Etta the link he received from Ryan Low that goes directly to all the MEIF Annual Reports and that can be forwarded to other Committee members.

Director Ashcroft clarified what the Committee had decided for action on MEIF. She will draft a letter from the GOC to the AG asking about original legislative intent with regard to disbursement of the funds. She asked whether the other Committee questions should be brought back as additional scope questions for members to vote on whether to add them to the review, or is the Committee just talking about them. Chair Cain thought the Committee was not at a stage where they are ready to approve questions, so at this point, if they were added to the list of potential questions for approval, by the next meeting the members will have the information from the University System. They will make that a priority for the next meeting. Other Committee members agreed.

• **Update on OPEGA Special Project on Tax Expenditure Programs**

Director Ashcroft referred members to the documents in their notebooks that had been provided to the Tax Expenditure Task Force. The information contains an analysis of the tax expenditure programs that were business related and she had suggested to the Task Force several possible approaches they might take in getting started on their task of finding \$40 million in adjustment to tax expenditure programs.

Director Ashcroft was also looking for the GOC’s input at this meeting on how the process for on-going legislative review of tax expenditure programs should be designed. She was looking to get the GOC’s thoughts before moving forward in designing a process.

The key piece is to what degree should OPEGA and/or the GOC fill the roles of one or more of the entities in the process. One of the roles in the ongoing legislative review process is the oversight entity which would be a body that oversees:

- that there is a review being done of the tax expenditure programs;
- that there is a schedule in place that is approved for how often they will get reviewed;
- that approves goals and metrics for the programs being reviewed that are suggested or proposed by the staffing entity;
- that would receive the results of the tax expenditure reviews and would do similar to what the GOC does with OPEGA reports in determining if the report is credible. The oversight entity could call on experts, if needed, to assess that and then be in a position of forwarding the results, with any comments the oversight entity has, to another entity called the action entity.

The Director reviewed the options for entities for the various roles with the Task Force. The Task Force made their decision clear that they thought the action entity role was with the Taxation Committee. There was unanimous consent that was the body that should be the final considerer of whatever recommendations are coming out of the tax expenditure review for any particular program. For the oversight entity role, one of the options is the Government Oversight Committee. Another option was a special committee, or possibly the Taxation Committee could fill that role as well. A representative from the PEW Center has been working with OPEGA and the Task Force helping to set up processes. Director Ashcroft said it was the PEW Center representative's opinion that the GOC would be one of the best possibilities for an entity to fill the role because of its being bipartisan and also because his other preference is that OPEGA fill the role of the review entity, so the GOC seemed natural to be the oversight entity. The Task Force also discussed whether it would be most appropriate for OPEGA to fill the role of review entity or whether there was another entity that could do that. She thought the idea of OPEGA being the review entity seemed like one that everybody was talking about, but Task Force members wanted there to be an opportunity for citizen input or technical expert input into the process in terms of the roles for the staffing entity, the review entity and the oversight entity.

Director Ashcroft asked for the GOC's thoughts regarding what the impact would be to the GOC and OPEGA if either were to be involved as major players in the ongoing legislative review process. She said OPEGA would probably have to have some dedicated resources to review tax expenditures.

Chair Kruger, responding as a legislator and not a GOC member, thinks the work done so far on the process is the right direction to be going and hopes it continues. However, as a legislator being asked to vote on a bill that grants a tax break, what he wants for himself and his colleagues is the perspective that they don't have now, which is, if legislators grant a tax break what are the consequences going to be on the other side. He is worried that it will take too long for OPEGA to conduct a review while a bill is pending to provide that context. Director Ashcroft said the process being designed is for review of existing tax expenditures regarding what kind of impact they had, had they met their purpose, etc. Chair Kruger said, as part of the decision process for a legislator to vote on a new one, you want the background information on what is already out there and what is lacking now. He is worried that this evaluation process won't provide that kind of background any time soon.

Sen. Burns asked how much OPEGA staff time would be involved. Director Ashcroft said that was unknown and is working with PEW to narrow down out of the 197 existing programs, how many would require a full review or an evaluation. They think about 50 programs would require a full review, but what the specific scope was to be for a tax review has not been worked out yet. She would guess staff wise it would take at least a person or two.

Sen. Craven asked if the GOC would have to make decisions or recommendations about whether or not the tax break is being useful. Director Ashcroft said on the front end the Committee would review and approve, or change, the proposed goals and measures of success relevant to the program, and then the review would opine on whether those metrics and goals have been met. If it was the GOC getting that report from OPEGA, the GOC would hear the report but would not make the decision about what action to take on it. Instead the GOC would forward it to the Taxation Committee with any comments or input that the GOC might have as a body about the recommendations made. The GOC would not be the deciding body on what action to take. Sen. Craven worries about the GOC trying to make any decisions on action without having the level of knowledge that a committee that is entrenched in it all the time has. She would also be worried about people beginning to perceive the GOC as something other than an objective body.

Sen. Katz, a member of the Tax Expenditure Task Force, said one of the things the Task Force has to do is find \$40 million in tax expenditure savings to help balance the biennial budget that was recently passed. There is hundreds of millions of dollars in tax expenditures built into the tax code attempting to affect certain behavior, or make Maine more business friendly, but there has never been a system set up to measure how well those programs are doing. Any business set up this way would want to review those expenditures periodically and

that is what this gets at. He said they are trying to figure out a system of review of the expenditures, whether it is a periodic review, or it is an automatic sun setting after so many years, and what is the best way to do that. The core is the review entity, who is going to periodically review the programs and the Office of Program Evaluation and Government Accountability seems a perfect fit. Sen. Katz said he is sure it will take additional staff, but no matter where the task is cited, it is going to take additional staff to do it, but OPEGA seems uniquely qualified to do that work. It has the advantages of having built in a few things for credibility with the Legislature – competence of the staff; a nonpartisan approach that is respected as that by everyone in the Legislature; and is being overseen by a group that is also seen as bipartisan. It seemed that OPEGA would be the appropriate review entity. The oversight entity develops the matrix of how to measure the effectiveness and seems like the kinds of things done by OPEGA. He admitted he was an advocate for OPEGA’s active role going forward because you do not need to construct a new agency to do the work. OPEGA also has the competent, nonpartisan organization to do it and that is the only way it is going to work.

Chair Cain said she liked the model of an entity doing the analysis, putting together the information for review, and that information being forwarded to the Taxation Committee to decide and vote whether changes should be made, and then would go to the Appropriation’s Table. The GOC cannot say in good faith that, with the present OPEGA staff, they have the capacity to take this on unless they do nothing else. The GOC needs to think about what that staffing structure should be and how it functions in a way that does not distract from the work OPEGA already does. The Committee would have to make sure that the schedule of the GOC reflects the work that the office is doing. Chair Cain’s biggest concern would be OPEGA’s staffing.

Rep. Cotta said tax programs can go back more than 40 years and reviews have never been done. If he were on the Taxation Committee, and was petitioned for a tax break, the Committee should insist on getting the goals, objectives and their measure of success so it can be determined whether the goals were met or not.

Sen. Cain said everyone wants the structure to out exist all of them and what she likes about OPEGA doing the work is that it is the Legislature’s review and does not rely on other entities to accomplish the goal. She wants to make sure it be crafted in the purview of the Legislature so it does outlast future Legislatures and Administrations.

Sen. Katz noted that the Tax Expenditure Tax Force is looking for ideas about how to find \$40 million dollars in tax expenditures, “tax breaks” that they can eliminate. He would welcome GOC members’ suggestions.

• **Update on Blue Ribbon Unemployment Commission and Federal Review of Unemployment Compensation**

Director Ashcroft said the GOC had asked that she check in with the Blue Ribbon Unemployment Commission and the efforts at the federal level to try to assess to what degree they were going to address the question that Chair Kruger had poised about whether there was improper influence exerted by the Governor at the meeting on March 21<sup>st</sup> that he had with the hearing officers.

Director Ashcroft said the federal effort is in its final stages and understands they have a written memo or report circulating within its ranks for review. Because of that, they were not willing to comment on what the scope of that would be. She did know that as part of their process they interviewed anybody who would have been there. OPEGA is expecting to get a copy of that report or memo when it is released, but they did not give a timeframe on when to expect that.

Director Ashcroft talked with Dan Wathen, Co-chair of the Blue Ribbon Commission who said they are on track to complete their effort in December and are presently talking about what they are going to recommend for changes to the process. She does not expect, based on her conversation with him, to see anything specific in their report that directly addresses the question around the Governor. The approach they took for their work, that issue was a little outside their scope, but if they saw anything that looked like political influence from any quarter in their review, they explored it. They were not going to specifically ask questions about it. While they

have also talked with and interviewed everybody that was at the Governor's meeting, she does not think the GOC will see anything in their report that specifically answers that question. Mr. Wathen said he would be happy to come and talk with the Committee once the report is issued.

Chair Kruger wanted to extend the invitation to one of the Co-Chairs of the Commission.

- **Update on OPEGA Follow-Up on Past Reports**

Not discussed.

## **REPORT FROM OPEGA DIRECTOR**

- **NLPES Award on OPEGA's Report on Child Development Services**

Director Ashcroft reported that OPEGA received an award from the National Legislative Program Evaluation Society. OPEGA applied for the impact award on the Child Development Services Report and did receive the award. It is an indication that OPEGA demonstrated that its work has had impact, either in the legislative arena, or major action taken by the agency in the change of their programs and practices. OPEGA had a little of both in that Report.

- **Status of Projects In Progress**

OPEGA is in stall mode in **MEIF** waiting for information from UMaine. OPEGA had an entrance conference with them and they are aware that OPEGA is waiting for information from them. OPEGA is drafting the report for the **Healthy Maine Partnerships Contracts** review and expects to be in a position to issue it to the GOC in late November. The **State Lottery** review is in progress. The **Special Project of the Education Committee's Independent Review of the Education Funding Formula** is drawing to a close and Wendy Cherubini, OPEGA Senior Analyst, has been working closely on the project with OPLA. The final report is to be issued the first of December.

- **OPEGA Staffing**

Director Ashcroft said OPEGA had a vacant analyst position that she had been seeking to fill. She has been going through the hiring process and the two candidates who had the most relevant experience have both dropped out for different reasons so OPEGA is re-evaluating the applicants. She also noted that two weeks ago Sr. Analyst Kristen McAuley decided to go back to the Maine CDC.

Director Ashcroft will be going to the Legislative Council's Personnel Committee on October 30<sup>th</sup> to request a part-time limited period analyst position through the end of FY15 to be funded with unencumbered balance that OPEGA has.

## **NEXT GOC MEETING DATE**

The Chairs will suggest meeting dates for November and December and Etta will poll Committee members regarding their availability.

## **ADJOURNMENT**

The Government Oversight Committee meeting was adjourned at 2:53 p.m.

