

September 11, 2012

Hon. Peter F. Kilmartin  
Attorney General  
State of Rhode Island  
150 South Main Street  
Providence, RI 02903

Re: Complaint of Public Corruption and Fraud in the case of the East Bay Energy Consortium, Rhode Island Economic Development Corporation, and Town of Bristol

Dear Attorney General Kilmartin:

I am writing to request an investigation into whether certain participants in the East Bay Energy Consortium (“EBEC”), the Town of Bristol, and the Director of the Rhode Island Economic Development Corporation (“EDC”) engaged in fraud and misrepresentation in connection with the funding and expenditures associated with EBEC that approximate \$435,000 to date. In addition, I am requesting an investigation into whether the same participants engaged in an unlawful scheme designed to surreptitiously tax all residents of the State of Rhode Island without their consent for excess utility costs, the profits from which would then be used to the exclusive revenue benefit of EBEC members.

Background:

Some of the history of EBEC can be found in the public record. Other facts have been concealed from the public. From the information available, the chronology is:

1. 9 municipalities agreed in early 2009 to a Memorandum of Agreement (see sample as **Exhibit A**) stating, in part, that:
  - a) Bristol would file grant requests to fund a wind power feasibility study with the EDC and RI Renewable Energy Fund (“RIREF”).
  - b) The grant would be used for a feasibility study, to include legal and regulatory framework to support EBEC.
  - c) The municipalities’ participation would be limited to the feasibility study.  
(See **Exhibit B**, 1<sup>st</sup> page of By-Laws, Article III.)
2. The EDC grant application included an Executive Summary (**Exhibit C**) which confirmed the mandate of the 9 member municipalities. The ultimate stated intent, as confirmed by the founding Vice Chair at the time, Andy Shapiro, was to lay the groundwork, if the feasibility study supported it, to encourage interest in commercial investment in a wind turbine facility in a location like Tiverton. This was reaffirmed as late as July 18, 2012 by Council President Ken Marshall at the Bristol Town Council Meeting, who said they were hoping to attract a private developer.
3. However, a subsequent grant application to the RIREF revealed (see **Exhibit D**) that EBEC really intended to construct and operate the facility itself. Yet

- throughout the entire period, EBEC never had any business plan or site control of any kind.
4. And yet in spite of the above, and in spite of EBEC not being a legal entity of any sort, with any form of oversight other than its members, it proceeded to seek funding from the taxpayers.
  5. EBEC and the Town of Bristol then engaged counsel, attorney Andrew Teitz, of Ursillo, Teitz & Ritch, LTD, by the sole signature of Diane Mederos, Bristol Town Administrator.
  6. And because EBEC was not a legal entity and could not open a bank account, and because the EDC grant was applied for by the Town of Bristol, Bristol became the “banker” for EBEC, with funds being disbursed at the sole direction of EBEC, not the Town, which was the entity that applied for and received the grant money. And later on, EBEC altered the authority to approve disbursement of funds to consist of 2 of the 9 members. (See **Exhibit E**.)
  7. EBEC then engaged both a lobbyist and an attorney to attempt to pass several forms of legislation that would turn them into a quasi-governmental agency. (See **Exhibit F**.) The expenditures under Legal Services and Miscellaneous (public relations) were for these purposes. After several unsuccessful attempts to pass Senate bills establishing EBEC as either a quasi-governmental agency or alternatively as a subsidiary of the EDC, the effort was put off until the General Assembly returns in January 2013.
  8. The Feasibility Study was released in October, 2010. (See **Exhibit G**.) It noted “significant risks” and said the viability of the project depended on a successful wind resource (meteorological tower) test. The test began on August 18, 2011. In its meeting of December 5, 2011, EBEC voted to keep the (presumably) unfavorable results of the wind tower tests from the public. (See item 5, **Exhibit H**.) The concealment was reaffirmed at the Bristol Town Council meeting of August 8, 2012 (see paragraph 8 below).
  9. EBEC also made a habit of not giving proper meeting notices (see sample e-mail, **Exhibit I**) and not sharing documents with the public, or even its members.
  10. In the meantime, the majority of the municipalities either reversed or suspended their support of EBEC or refused to support the proposed enabling legislation. (Portsmouth, Tiverton, Bristol, Barrington, and Newport.)
  11. Finally, at a Town Council meeting on August 8, 2012, the problems that had surfaced were debated in a public forum. This record is a good summary, and is available at <http://www.bristolri.us/videos/brtc08-08-12.wmv> . The related discussion begins at 22 minutes into the meeting. One of the original EBEC members and Vice Chair, Andy Shapiro, testifies that EBEC had departed from its members’ mandate, and the legality of this departure so concerned legal counsel at the time that they withdrew their representation. Further in the meeting, the Bristol Town Administrator, Diane Mederos, refused to allow the members of the Council or public to see the results of the wind tower tests, claiming the information was probably “proprietary”. This refusal was in spite of the Town of Bristol having applied for the EDC grant and having taken fiduciary responsibility for the funds.

Essentially, the EBEC group, without any legal authorization, had obtained funds from the EDC and RIREF for purposes far beyond their mandate from the member municipalities, and further spent those funds in a way that far exceeded the limits of the granted funds, all without the legal standing to engage in any of these activities.

Violations of law and public policy:

It is apparent that several of the key players in all this may have violated both the ethics constraints under which they worked in their governmental capacities as well as Rhode Island fraud, conversion, open meeting, and access to public documents statutes, including but not limited to R.I.G.L.s 11-18-1& 6, 11-41-11.1, 11-41-3 & 4, 11-41-27, 38-2 et seq., 42-46 et seq., and the provisions of Title 19, as follows:

1. Keith Stokes, EDC: Approval of a grant in behalf of a non-legal entity, and for expenditure of public funds on lobbying and public affairs efforts. In addition, permitting the Town of Bristol to act as banker for an enterprise that did not legally exist, without any accountability or oversight. He held numerous meetings with EBEC members out of sight of the public. Finally, in direct conflict with the stated purpose of the EDC, Mr. Stokes (assisted by his staff member, Julian Dash) deliberately excluded the participation and investment of private developers. The following e-mail chain confirms this position:

*Katharine Flynn, EDC Director of Business Development wrote to Keith Stokes & Julian Dash. She told them she had met with Andy Shapiro who told her that his company (Apex Wind) was working on an agreement with Tiverton to do a \$55M investment.*

*Flynn wrote, "my guess is that they ("other 8 cities") aren't going to be happy".*

*Keith Stokes wrote to Katharine Flynn: "I do not believe this. I will reach out this weekend to Tiverton Town Solicitor who is a personal friend".*

*Julian Dash wrote to Katharine Flynn & Stokes: "Disaster. It will destroy the EBEC project"...*

2. Ken Marshall, President of the Bristol Town Council: The authorizing of grant applications to the EDC and RIREF that contained fraudulent statements as to their intent, and did not conform to the limited mandate in the Memorandum of Understanding (Exhibit A). In addition, Mr. Marshall caused the funds of EBEC to be co-mingled with municipal funds. He then, while admitting the Town was a "fiduciary", authorized payments to be made at the sole discretion of EBEC, then later by only 2 members of EBEC. This transformed the role of Bristol into that of a bank. Bristol is not licensed or chartered as a bank in this state or any other. Bristol also admits it did not perform any fiduciary functions whatsoever (such as oversight of expenditures), in spite of having applied for the grant funds and receiving them in its own name. To the extent the actions of Bristol were

unlawful, they would be outside the authority of the President of the Town Council, and consequently he, (and others) could be personally liable for his actions (to include carrying out his instructions) under the criminal code as well as for the return of all the funds expended. In addition, he and employees of Bristol engaged in meetings and discussions not open to or reported to the public.

3. Diane Williamson and Diane Mederos, of the Town of Bristol: Both were directly involved in making the fraudulent grant applications to the EDC and RIREF. Diane Mederos was also apparently the one responsible for repeatedly releasing funds without any legal authorization, and checks are believed to have been signed by Julie Goucher, Bristol Treasurer.
4. Members of EBEC exercising executive authority: Depending on who did what, various individual members exercising management control could be held personally liable for any unlawful expenditures made at their direction, as well as any fraudulent statements made to the EDC and RIREF to obtain funding, even if those statements were made by proxy (Town of Bristol). The Chair of EBEC throughout has been Jeanne Napolitano from the Newport City Council. It is well known that Ms. Napolitano had a close and long standing working relationship with Keith Stokes, and stood to gain lucrative employment in the proposed quasi-public entity.

**Exhibits A through I** are true copies of the documents they purport to represent. If further information is required, please let me know.

Respectfully submitted,

*SS//Benjamin C. Riggs*

Benjamin C. Riggs

Enclosures

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