

CITY COUNCIL STANDING COMMITTEE  
**Special Budget & Finance Committee**  
Monday, December 12, 2011 – 9:00 p.m.  
1<sup>st</sup> Fl. Council Committee Rm. – City Hall  
-MINUTES-

**Present:** Chair, Councilor Steven Curcuro; Vice Chair, Councilor Paul McGeary; Councilor Jacqueline Hardy

**Absent:** None.

**Also Present:** Jim Duggan; Kenny Costa; Jeff Towne; Suzanne Egan; Gregg Cademartori; Mike Hale; Rick Noonan; Tom Balf; Linda Saunders; Candace Wheeler; John Moskal

**Representing Equity Industrial Partners:** W. Hunter Emerson and Richard Kleiman

The meeting was called to order at 9:03 p.m.

**1. *Power Purchase Agreement between City of Gloucester and Equity Industrial Partners (EIP) that will enable the City to purchase its electricity needs through EIP for the next 25 years***

**Jim Duggan**, CAO gave the Committee the “Gloucester Engineering Wind Project Projected Revenues to the City of Gloucester” which was placed on file. He noted that from year 17 to year 25 on the PILOT payment it should reflect the continued 2.5% increase which needs to be adjusted. He thanked the Committee for convening this meeting because of time sensitivity related to the issue for the developer. He lauded the work of the City team, General Counsel, Suzanne Egan; Jeff Towne, CFO; and Gregg Cademartori, Planning Director for their efforts working with Equity Industrial Partners during this negotiation on behalf of the City. He introduced Suzanne Egan to speak to the draft of the Power Purchase Agreement (PPA) and draft Escrow Agreement (EA) dated December 5, 2011 (on file).

**Overview:** **Suzanne Egan**, General Counsel stated the Committee has before them a PPA; Equity Industrial Partners wholly-owned subsidiary Equity Industrial Turbines (EIT) will be putting up the turbines. Equity Industrial Partners (EIP) was granted a Special Council Permit for two turbines. The City would be the host customer of the turbines. All of the electricity generated by the turbines will run through the City’s meter (a National Grid meter) to give the City credit for the kilowatt hours (kw/hrs.) generated through the turbines. That credit will go to the City accounts that are earmarked (Exhibit B) to all the National Grid (NG) accounts the City. Those credits will go to the City’s NG accounts. **EIT** will bill the City for the amount generated. The City will pay them for that amount generated at a discounted rate for the electricity. The City will have the kw/hrs. credited to their accounts. The City would get an NG bill if they use excess kw/hrs. as is generated from the turbines; the other bill they’d get in some instances there will be some charges that will not be credited; they won’t be able to use those kw/hrs. credited to the City which is in the regulations. In the second scenario, the turbines would generate more kw/hrs. than the City can use. That will go to the City’s NG accounts and credited for that; and that will be banked. They can continue to use it for the next billing cycle. They’ll continue to have this credit for the entire 25 years of this agreement. She spoke with National Grid (NG); and there some discussion as to whether the City can get cash vs. credits; and NG hasn’t made that determination yet and is an on-going discussion for the unused net metering credits. **Councilor Curcuro** asked could they sell those unused credits to another entity. **Ms. Egan** stated they can’t sell it. They could potentially come to an agreement with someone to include their accounts in the City’s Schedule Z (see Exhibit C). They’ll get the credit for it. It will be an additional agreement. **Councilor Curcuro** asked if they’re expecting a credit for excess of the City’s usage or not be expecting a credit. **Ms. Egan** clarified was the City expecting more kw/hrs. than the City uses, she stated, “No”. But they don’t know that. The City wants to be in a position of working towards energy conservation. They don’t know what they’re going to be doing with the City’s facilities. The Fuller School is potentially 15% less if they take that facility completely off line, for instance. **Councilor McGeary** stated they don’t want to be penalized for being poor stewards of the environment. **Ms. Egan** explained they don’t want to purchase something they can’t use. **Councilor Hardy** stated the PPA and Escrow Agreement (EA) say the seller will sell to the buyer all the electricity. **Ms. Egan** stated this is where this purchase arrangement comes in. The City is obligating itself to purchase it all. Then you look at the rates. There is a 20% discount rate on the first 9 million kw/hrs. produced and used with a discount rate of 20%. After that, their discount rate is 75%. **Mr. Towne** asked why they made the distinction between 9 million kw/hrs. purchased and used. **Councilor McGeary** stated they’re on the hook for the first 9 million kw/hrs. even if they don’t use it. **Ms. Egan** confirmed that to be the case. Thereafter, there is a 75% discount to the City’s consumption. She explained that 10.4 million

kw/hrs. has been the City's consumption over the last couple of years. Then anything that is generated they don't use is 100% discount. They're agreeing to purchase everything that is generated. That is what they have to do under the regulations in order to have this type of agreement. There is 100%. If the City is not going to use those kw/hrs. produced but they're purchasing them at 100% discount **Mr. Duggan** stated the excess (unused credits) must go to another entity which has to be a governmental entity. **Councilor McGeary** stated that is possible under the regulations. They could go to Rockport and sell them that excess. **Ms. Egan** stated under the regulations there is there is nothing specifically that allows it that is, nothing that says a municipality can do this; nor is there anything in the regulations that says they cannot. So they can. Because these are so new, they don't know what is going to happen. Because it's not in the regulations she didn't feel comfortable saying this is a definite avenue for the City to take because they really don't know. **Mr. Towne** stated it is a wash; it is in a way because they're not paying for anything above the City's consumption; but it is still to the City's credit. It does build up, which is important part. If it is above their consumption they don't want to pay anything for it. It comes to the City as a full benefit at 100% discount to which they can carry it forward to a future year or if the ability for NG, as an example, offers to buy the credits back from the City or it goes into the pool as maybe being able to be reallocated or redistributed to another community at however they sell it/assign it to another community. **Councilor McGeary** stated conceivably the laws could change but that's not in place right now. Presumably they'll be encouraging this kind of thing, but it is not delineated in the law right now; other than the governmental entity. **Councilor Curcuro** inquired if these are new agreements; were there precedents for these types of agreements between municipalities and private entities. **Ms. Egan** stated this isn't the first one. This is a new type of arrangement. There are others. There were three others they looked at the PPA's from Kingston, Hingham and Scituate, Massachusetts. They tried to mirror them to make sure they weren't coming into any issues they didn't know about. It's new in the sense that this hasn't been going on for very long. **Councilor Curcuro** asked what the benefit is for EIP/EIT. **Ms. Egan** stated they gain income and, she felt sure, a profit. They don't know exactly their financial situation is. She would assume this was a good business decision for them. They have been negotiating with them from the standpoint that they're entering into a good business agreement with the City, and that they are going to make sure it is profitable to them. They haven't had full disclosure. **Councilor Curcuro** asked if there was a reason for no full disclosure yet. **Ms. Egan** stated there hasn't been full disclosure in terms of the financing. The representation has been they're under a confidentiality agreement and can't disclose. **Ms. Egan**, on further inquiry from **Councilor Curcuro** stated they enter into contracts with a number of entities without full disclosure. They typically don't have full disclosure with the entity they're entering into a contract with in term of financing. **Councilors Hardy** and **Curcuro** pointed out this is a 25 year agreement without full disclosures. **Mr. Towne** stated it is with many caveats to get out of the agreement if something fails on their part. **Ms. Egan** stated they were concerned about the 25 year commitment. They wanted to make sure that any regulatory changes that would benefit the City, that the City would be able to take advantage of but for this agreement. One of the provisions in the PPA is once the financing is secured by the seller they will disclose what the terms of that financing is. If there is an instance throughout this agreement that they change the permanent financing (i.e. refinancing), then the parties will look at regulations in place at that time and if there are any regulatory changes that change the economic benefit to the City and the seller they'll be able to renegotiate the terms so they can take advantage of the regulations. They'll look at that at year 10, year 15 and year 20. **Councilor McGeary** added also if they refinance regardless if there is a year 10, year 15 or year 20 relook which **Ms. Egan** confirmed and went on to say that their position is they can't do that because they need the security for their lender to show that they have an agreement that has specific terms in order to get their financing. If there is a refinancing of their permanent debt, the City has then they have that 10, 15, 20 year look. **Councilor Curcuro** asked about the life expectancy of the turbines. **Richard Kleiman** stated it is least 25 years. They provided the information to the City from the manufacturer that says it's at least 25 years; and likely more like 30 to 35 years. The City could extend the agreement if they ever wanted to. **Ms. Egan** on further inquiry by **Councilor Curcuro** stated it is at the option of the City which is a clause in the PPA. They've typically seen when other companies have approached the City about wind turbines that it is about 20-25 years standard in the industry. In this process they retained SEA, an economist group to look at the agreement to make sure they had the right advice. It is new for everyone here. They retained Jason Gifford who was here for the workshop on wind turbines with the City Council. He helped them to look at the different scenarios and being able to negotiate for this agreement for the best interest and position of the City. He told them that it is 20-25 years is a typical agreement; and 20 years is the most typical. With the protections for the City with being able to look at this 10-15-20 time period, they believe it satisfies the City's financial position to enter into a 25 year agreement. **Councilor Hardy** asked related to contracts if under state law they are allowed to take a contract more than "X" years. What is the maximum amount of years that MA General Law will let a community pull a contract for? **Ms. Egan** stated in this instance, they can enter into this agreement for this length of time. The one issue is their ability to bind the City that they're going to purchase a

certain amount every year. They can enter into the contract to purchase, to be the host customer for 25 years; but to say they're going to purchase "X" amount and pay them "X" amount; they don't have that kind of an ability because it has to be subject to negotiation because they can't future City Councils and the City to this financial agreement for that many years. They have the authority to take the vote to say they want to enter into the agreement, to be the host customer for 25 years. They'll put in that it is subject to appropriation which she has raised with EIP/EIT's lawyer, Jonathan Klavens, over the weekend. **Mr. Kleiman** stated this is a major sticking point for them as it comes very late in the process. In order to get financing for this project they can't have that kind of clause in there. They understand there are certain rules that apply and their attorney wished to speak with General Counsel about it. They'll need to work through that as there is at least one part that is problematic. **Ms. Egan** was confident they can come up with language that is satisfactory. This is a PPA. The only way they can have this under the regulations is if it is with a municipality. In order to do it with the City, that particular language has to be there in order to comply with the law. The seller is entering into an agreement with a municipality and getting the financing on the basis of the agreement. This is an industry that exists; and they can get financing and comply with the law to continue this agreement out. It is a matter of coming up with the language. This has been done before. The City isn't the first to enter into such an agreement. **Councilor McGeary** asked how they enter into a long term bonding agreement. They are binding the City for 10, 15, 20 years to pay off a bonded debt. **Mr. Towne** stated the City isn't bonding this; EIP/EIT is as well as the financing. The City is purchasing the power. The City has no debt whatsoever associated with this. **Councilor McGeary** stated the City enters into an agreement; they issue a bond; they enter into an agreement with the bond buyers essentially that says the City will pay them for "X" number of years. They're committing the City for a period of time subject to appropriation or do they say that the City is going to pay us the interest on this debt. **Ms. Egan** stated the City is statutorily authorized to do that for a PPA. **Mr. Towne** stated they're not issuing any debt with this. **Councilor McGeary** clarified he was speaking of the concept of a long-term commitment of the City financing. **Mr. Towne** felt this will help them with Moody's rating agency where they're guaranteeing a reduction off of energy prices long into the future that they would have normally had to have paid without this agreement being in place. They're making a good long-term decision as a cost benefit long into the future to the community. **Councilor McGeary** hated to see it become a sticking point. He assumed there must be language as other municipalities have done this allowing the financing entity to be comfortable. **Ms. Egan** stated lenders enter into these agreements all the time. She expressed her confidence they could do it.

**PPA Agreement:** **Ms. Egan** explained the first page of the PPA sets out the recitals of what the agreement is (see prior statements above as "overview"). Then there are the defined terms which are a little technical. Page 6 notes a 25 year term. The second provision is the PILOT (payment in lieu of taxes) Agreement. They have agreed to pay \$40,000 a year with a 2.5% increase over the year. Entering into the agreement, ensuring that the terms are satisfactory to both parties is a condition precedent to this agreement becoming operative. This agreement isn't operative until it is signed. The PILOT is separate from this agreement which they have done in other instances where it is a non-profit, where an entity is exempt, and they agree to a payment. **Councilor Curcuro** asked how this figures to the City with the taxes coming off the tax base. **Mr. Towne** stated there is nothing on the tax base on this project now. They'll estimate it as annual revenue for each year to offset taxes and add to their base of available resources to the City to appropriate, like they do with Varian EDIC payment that comes in. **Councilor Hardy** asked if they find later rather than accumulating credits, NG will pay the City back would that then be considered revenue; and how would it appear on the City's books. **Mr. Towne** stated in his opinion they'd have to regard it as revenue because it would be money coming to the City. They would have to work that out. It will be hard to estimate. They'll do an annual reconciliation at the end of the year; and subsequent to year end they may end up paying the City off. That may always be outside of the budget year and could fall to the bottom line each year and can be appropriated the following year like free cash. It will always be after the City's budget cycle because the contract is tied to the City's fiscal year in terms of the reconciliation and the language. **Ms. Egan** continued there is an early termination clause that if the seller doesn't build the project by a certain date the City can abandon the agreement. **Councilor Hardy** asked what the date was; did it link directly with the Special Council Permit. **Ms. Egan** explained it is according to this agreement which is one year from the end of 2013. **Mr. Emerson** thought it was one year from the date execution of the agreement (from the date the Mayor signs it). **Councilor Hardy** stated that would be within the Special Council Permit two year performance timeframe. **Councilor Curcuro** asked what did Gloucester Engineering have to do with this agreement. **Ms. Egan** stated Gloucester Engineering is not a party to this contract at all. The seller provides some information because there had been some representation that there is a benefit to Gloucester Engineering; and that they have the CFO of Gloucester Engineering has provided them with some information. **Mr. Kleiman** stated Mark Steele, CEO of Gloucester Engineering appeared at the Council meeting at the time of the Special Council Permit public hearing and spoke to that issues verifying they are getting a financial benefit as well as an energy reliability. He made those statements which are in the Council minutes (on file). **Mr.**

Steele also sent an email to back that up. The project will share revenues with Gloucester Engineering. Councilor McGeary stated it falls to Gloucester Engineering's bottom line; and therefore cuts their costs. **Mr. Kleiman** confirmed they do get a financial benefit. **Councilor Curcuru** stated if Gloucester Engineering no longer occupies that space, the next company that goes there [would enjoy the same benefits]. **Mr. Kleiman** assumed that to be the case; and stated the name of the project does say Gloucester Engineering which is because it is known as the Gloucester Engineering site and have been there a long time. They are a participant in the project. The landowner, EIP, is the responsible party for development and ownership. The revenue allocation will be done with Gloucester Engineering. **Councilor Curcuru** clarified that if Gloucester Engineering left, it would be up to EIP to work a new agreement with the new corporate entity who took over the building as far as what they gain. **Mr. Emerson** confirmed it would then be negotiated with the new tenant. **Ms. Egan** stated it was important to understand that with agreement the City is not entering into any agreement with Gloucester Engineering. They are not a third-party beneficiary of this agreement. Any relationship they have with EIP is completely separate from the City. **Councilor McGeary** stated Mr. Kleiman and EIP have in the past represented that Gloucester Engineering will be getting solar installations as well. **Mr. Kleiman** stated they are still evaluating it and believe it will still happen. It is more complicated and is still trying to make it work and is definitely on the table. They're working hard to get the solar to work. **Councilor McGeary** confirmed with **Mr. Kleiman** that it is a separate project and timeframe. **Ms. Egan** noted Article 3 discusses the development of the facility, that is the seller's obligations to develop the facility and the seller's obligation to execute an interconnection of service agreements with NG (See Page 7). **Councilor McGeary** asked if they get all electricity for the City from NG. **Mr. Towne** stated the City pays the transmission charges to NG; and then the supply charge they pay presently to Suez. With this agreement there will be a combine their bill; and the City will pay all of their energy through one bill and it would go all through NG. Otherwise it would not work. The DPW Director negotiates from whom the supply of electricity is from. They still have the ability to negotiate that supply expense through contract with an outside supplier. The City still has the ability to negotiate the best possible rate they can get for that supply. No matter what they do with EIP/EIT, the City can still negotiate the costs as low as they can for a term that makes sense for the City. They can also, in addition to the PPA, try to reduce the City's costs as much as possible. **Councilor McGeary** questioned if their 20% rate comes off the negotiated rate; there is a base rate. **Mr. Cademartori** stated a lot of this discount, 20%, 75%, 100% is the discount at which they'd pay the project entity for energy. That is different than the rate the City is paying to a competitive supplier. It is locked into what the utility determines as the net metering rate they're reimbursed at. If that remains fairly high compared to what they competitively negotiate for their agreements with NG it is dollars coming in, not kw to kw. They could see a greater benefit as they negotiate those agreements because the rate is around 15 cents now. Each kw that is being generated is gaining them more on a balance sheet side of things. **Councilor McGeary** clarified the City would be getting 20% off of the 15 cents even though they're only paying 9 cents. **Councilor Curcuru** asked how often they negotiate those agreements with the utilities. **Mr. Towne** stated the last agreement before the current one was 30 months and the most recent is 18 months. It depends on what information their experts provide them with. **Councilor Hardy** asked if they have a good expert on board as to what the market is doing. **Mr. Towne** related they got a lower price than they did before. **Mr. Hale** stated they have a good broker helping them with pricing. The terms of the contract drive the pricing, and the pricing drives the terms of the contract. The 30 month contract was a bit long due to the vulnerability of the market. The 18 month contract is a better term which he prefers. They're saving 2.5 cents per kw/hr. **Tom Balf**, Clean Energy Commission stated since the discount rate being applied the base by DPU (Department of Public Utilities), they are protected since the discount rate applies to the rate set by the DPU. They won't find themselves in a situation of paying a rate that's higher in the future than on the open market. **Mr. Towne** stated that's why they designed the language to specifically accomplish that. He asked that if they the City team says anything wrong during this process; they're expecting that Mr. Kleiman and Mr. Emerson will correct them. If they say something they disagree with he asked that they speak up now on the record to correct that which **Mr. Kleiman** agreed they would. **Ms. Egan** continued Article 4 says the City is agreeing to purchase all the electricity generated by the facility. This goes to the fact that there will be a meter at the site; and that kw hours will be determined by NG and that will be the amount, the quantity the City purchases. The price of the electricity is in Exhibit B. Invoicing and invoicing disputes is also enumerated in rather standard language. Any other additional governmental charges that arise, the seller pays. The City is not responsible for that. Once the electricity is delivered to the meter (the delivery point) it becomes the City's. The meter is at the facility (at the turbine). **Ms. Egan** clarified for **Councilor Hardy** that on Exhibit A there is a description of the land which is the delivery point; and a site plan is attached to it which shows where the proposed turbines are. **Councilor Hardy** confirmed the meters will be at the locations of turbines and be secured. **Mr. Kleiman** stated the meters will be secure. There will be a connection to the NG power lines with an easement from the power lines to the wind turbines; and the meters will be within that easement. **Councilor**

**McGeary** stated the actual land the turbines sit is actually on the Gloucester Engineering land; they're not subdividing it. **Mr. Kleiman** confirmed they're not subdividing it; it is part of the same property. **Ms. Egan** continued Article 5 is the environmental attributes. Any additional revenue generated stays with the seller. All this agreement is, is the purchase of the kw/hrs. that is generated. Any other benefits remain with the seller. **Councilor McGeary** thought if there were additional tax incentives or other governmental incentives they'd accrue to EIT over the course of the agreement which **Ms. Egan** confirmed. Article 6 is the metering equipment where it would be located. If it is an issue, EIT must notice the City; and they want to be sure if there is a problem with the meter the City's DPW is out there with NG looking at it. **Mr. Towne** asked if there was a response time if a meter is broken when it has to be replaced by because it would negatively impact the City if it is a long period of time. **Mr. Kleiman** stated if there is an issue they put in a request to NG who has to respond to that request. He didn't know if they have a specific timeframe. He thought they'd want to get that accurate as well. He didn't know the answer to the question. **Linda Saunders**, Clean Energy Commission asked about who owns the meter. **Mr. Kleiman** responded that the meter is an NG a customer retail meter, and NG owns it. **Ms. Egan** continued Sec. 6.3 on Page 9 discusses billing adjustments. Article 7 is Representations of the Parties. Each party warrants and represents they have the right to enter into this agreement; and that they're separate entities. On Page 10 is Covenants of the Buyer: The City is agreeing they will be the first customer. They'll supply (in Exhibit C) all their target buyer accounts they want NG to provide the credit to. Exhibit C (which is the City's Schedule Z) shows the list they've provided their new supplier, Next Air Energy, showing all the NG accounts. She included the ones from the Waterways Board. They have three more to add, the wastewater treatment plant and the water treatment plant. **Ms. Saunders** asked over the term of the agreement, what happens on Exhibit C if they want to add or delete certain accounts. **Ms. Egan** stated it is the City's NG accounts that they can amend the Schedule Z with NG. It is covered in the agreement and is in the regulations. **Councilor Hardy** asked about invoicing with regard to whether this creates a great deal more work for the DPW for verifying invoices; would they need special software for Ms. Hendrickson to use. **Mr. Hale** did not expect it would. They pay two bills per account now for delivery and transmission and supply. This should be a reduction actually in the number of warrant articles they have each month. **Ms. Egan** stated it could reduce significantly. In the best case scenario, the amount of electricity covers the use. **Mr. Towne** stated that would be NG. They'll still get a NG bill per account with kw/hrs of usage; NG verifies usage as they do now. **Councilor Hardy** asked who verifies this on a monthly basis of kw hours. **Mr. Cademartori** stated it becomes an issue to NG. That's where the provisions of whether they want credit accounts vs. potentially reimburse via cash. They can elect to do that. It was his understanding they have to physically go back on those accounts and make those comparisons themselves. They'll still issue a bill to the City, and the City will have to see if there is a positive balance or not and pay those bills. It is a management issue for the utility. **Councilor McGeary** stated there'd be a line for charges and a line for credits on the bill; and hopefully the credits are bigger than the charge. **Mr. Towne** stated Mr. Hale may only pay EIT, not all the individual accounts for NG. If the City purchases more than it consumes, the City will have a zero bill for NG. If they purchase less than the City consumes, the City will owe NG money. Then at year end, with the reconciliation process they'll work that out which would be a process he'd be involved with along side of the DPW clerk. He felt this would save Ms. Hendrickson time and effort. It may be confusing at first, but he anticipated they will smooth it out fairly quickly. They will investigate software if it is necessary to help with the process. He assured they'd make sure it is not more complicated. Shirley Hendrickson handles the electric bills, and don't wish to make that job more complicated. **Ms. Egan** pointed out page 11 which sets out the logistics of how the City will be billed. They'll work with the seller to make sure the City continues to comply with the regulations and that each has the eligibility to enter into this agreement under the regulations. Page 12 shows that they'll comply with the Uniform Procurement Act. They are not going to resell their electricity. That doesn't, however, prohibit the City from doing so, including another target buyer account into the City's Schedule Z. **Councilor McGeary** asked if in future resale were to be permitted, what would the effect of the Procurement Act. **Mr. Towne** stated they'd have to sell the credits at a discount. He preferred the City be paid dollar for dollar or whatever the credit is; whatever the best deal is. **Councilor McGeary** stated the no electricity resell clause doesn't forbid them from doing it if the law changes. **Ms. Egan** stated it says that the electricity purchase will not be resold to any other person or signed or transferred to any other person other than the LEC pursuant to net metering rules. That means they have to comply with net metering rules at all times. One of the ways they wouldn't be complying if they entered into an agreement that all the electricity generated was going directly to another customer without going through the net metering process. **Councilor Hardy** asked why it says "person". That prohibits from selling from a person but not to a municipality, another governmental agency. **Ms. Egan** stated net metering rules states it must be with a governmental entity; it has to be a municipality. **Ms. Egan** stated they could include the GHA on their Schedule Z. This really pertains to is selling the electricity outside of the net metering agreement. Everyone acknowledges they're doing this within the net metering agreement under those

regulations and want to be sure they're not in breach of any of those regulations. **Mr. Towne** asked if they need EIT's approval to sell to someone else. **Ms. Egan** stated they would. That is, because what they're doing is both are saying they're complying with the net metering rules. Selling is different than listing an account on their Schedule Z. That's selling electricity as opposed to saying Gloucester Housing Authority and list one of their NG accounts on the City's Schedule Z. They're not selling them electricity. Then the City has the same type of agreement with them where they have to pay the City for the net metering credit. It is making the distinction between the electricity and the net metering credits; and that they're not saying the seller is a utility and are not under the same rules and regulations as a utility. Covenants of the Seller: once they get the commitment letter from the lender the seller will disclose that to the City. They will then have that information so that at that point the City will know; then the next provision goes to that if there is any change to that financing and that is when the City has the 10, 15, 20 year relook. **Councilor Hardy** added they need to know what the base is for a comparative analysis, to which **Ms. Egan** agreed because otherwise the other provision would have no meaning. **Ms. Egan** continued the seller has an obligation to operate the turbines at full capacity under the Special Council Permit which does have restrictions. **Councilor Curcuro** asked if the turbines go down what happens. **Mr. Towne** stated there is a requirement to bring them back up. **Mr. Kleiman** stated the contract with the turbine manufacturer has an availability guarantee of 95%. The turbines have to be available and on line running 95% of the time or the manufacturer is on the hook for making up the revenue difference and is a 10 year warranty that is attached to the turbines that covers that in addition to insurance beyond that. They have to make sure those machines are running 95 % of the time which is factored into the seller's production calculations for the energy produced. Their interests are aligned on that issue. If the turbines go down for any period of time, they both lose. **Ms. Egan** stated the City loses but they don't lose their electricity. What happens is that the amount of electricity generated is zero; and they pay NG then. **Mr. Towne** stated that would throw the budget out of whack if it was down for a brief or extended period of time for any reason. They City don't have any stake in the seller's insurance. They won't get any percentage back for what they get for loss of business revenue. **Mr. Kleiman** stated they don't have a stake in their insurance. **Councilor Hardy** asked if they could be listed as a third party. **Mr. Kleiman** didn't believe they could. He reiterated the manufacturer stated they must have the turbines running 95% of the time. **Mr. Towne** stated the City may wish to consider loss insurance for a situation such as this. It will necessitate them putting in some leeway to do a cost benefit analysis. They may insure the first several years and then see whether it is necessary. **Ms. Egan** stated they'd have to do a cost/benefit analysis of the insurance to see if it would be worth it. She continued that Article 9 goes to default on either party's account. The remedies are the same. Article 10 discusses rights and obligations following termination. Article 11 is limitations. There is no obligation to any other party. They've agreed to limit damages. Article 12 is Governing Law and Dispute Resolution. They negotiate, mediate and then litigate. Article 13 is assignment. They know that this agreement will be assigned. Any future assignments, the City will be provided the information to determine the entity to be assigned is competent to run the facility and then they can assign it. **Ms. Saunders** asked if this agreement is not part of the collateral for the financing. **Mr. Kleiman** stated this agreement is fundamental to the financing. **Ms. Saunders** stated there is no City obligation. **Mr. Kleiman** clarified the City has no collateral obligation. **Mr. Emerson** stated financing is based on the revenue stream over the 25 year period. **Ms. Saunders** commented Gloucester has no obligation to the lender. **Mr. Towne** confirmed that was correct. **Ms. Egan** explained Article 14 goes to the remedies. Everyone has the ability to cure a defect and a remedy if it is not cured. Article 15 goes to the regulatory changes. If some changes make this agreement no longer commercially reasonable they will renegotiate. With regard to the refinancing, Sec. 15.2 states they have their 10, 15, and 20 anniversary relook. **Councilor McGeary** stated if changes occur in year 11 they can't relook until year 15. **Ms. Egan** stated extraordinary circumstances are in Sec. 15.1. They can then renegotiate. Articles 16 and 17 are the mechanics. 17.4 press releases the City has to be advised before any are issued. **Mr. Cademartori** stated the numbering of Sec. 17 is incorrect. **Ms. Egan** would have that numbering corrected. She continued that Exhibit B lays out the summary of the pricing. The first 9 million kw hours results in a 20% discount. In excess it is 75% discount. For any delivered in excess of 9 million that they do not use to the City's consumption the purchase price is 100%. **Mr. Towne** stated they should put in "annually" in #3 in the summary of Pricing Framework. **Ms. Egan** agreed. **Mr. Cademartori** suggested it should also be in #2 also. **Mr. Towne** and **Mr. Emerson** discussed the use of the word "annually" in the consumption. In particular there was a discussion of the fiscal year versus the calendar year. **Mr. Towne** didn't see this tying to the annual consumption. Every year is a new year. They can't roll them. The carried forward credit is just that. **Councilor Hardy** stated they can carry the credits through the 25 years. **Ms. Egan** explained the credits are generated to the City and goes to their NG account. They tell NG to credit the particular accounts. **Councilor Hardy** postulated they have credits; the contract is no longer good, then the credits will still be applied by NG. **Mr. Towne** responded those credits could be used towards NG bills if the agreement did fall apart.

**Electricity Price:** There is a provision that the seller asked to put in for a minimum purchase price of \$0.13 per kw/hr before discount. They get a 20% discount off of the net metering account. There is a provision for a minimum credit and get a discount off those 13 cents. They are now paying 15.06 cents minus 1.5 cents, about 14.56 cents. These values fluctuate. The DPU sets the net metering credit annually. **Councilor McGeary** stated this protects the City and the seller. That is part of the Escrow Agreement (EA). **Mr. Towne** added this is the most important part. **Councilor Hardy** asked about how long the 13 cents would apply. **Ms. Egan** stated that the net metering credit drops below the 13 cents, they've still have agreed to pay that minimum price. But they've also agreed if that happens they have their escrow agreement which says that EIT will establish an escrow account with \$100,000; and they would pay the 10 cents, and the escrow account would pay the 3 cents. They have the obligation to replenish that account. They will pay the different. **Mr. Emerson** stated from a historical perspective over any 12 month period the price hasn't been below 13 cents over the last five years, on average 2.3% per year. This is a historic low. **Councilor McGeary** stated projections showed 25 cents. The chances of the price falling are low. **Mr. Kleiman** explained as the rates inflate, the risk diminishes over time. **Mr. Towne** hoped they didn't get into the escrow account. They did put it into place to be sure if this did happen; there was some provision that they are guaranteed a 20% reduction of the net metering credit. They'll pay them on a 20% discount on 12 cents about. They'll do on the first 9 million kw. Once it goes above that they're on the 75% discount on the 15.06 cents. Once they do the reconciliation annually, on Schedule Z, then they'll know the credits they're getting; and, however that would work as part of that process. They key is making sure they're always accruing at a better rate than what they'd pay without this agreement. **Councilor McGeary** stated the percentage stays the same. **Mr. Towne** stated they'd have paid more in the open market. **Councilor Hardy** asked if they're consuming approximately over 10 million kw; and if they did much energy conservation, they still have a 9 million kw hours. Did that still give them enough savings to be green and conserve energy? **Mr. Towne** stated they can't do another net metering agreement like this, but they can do it to reduce their energy costs. **Ms. Egan** restated it is what they were concerned with that they are bound to purchase more kilowatt hours than they use. If the City gives up some of their facilities, the consumption goes down. They wanted flexibility. The 9 million to the 10.4 million kw/hrs, there is enough room in there to give the City a comfort zone. **Councilor Hardy** asked if the street lights are considered part of this, which was confirmed to her. If they went to solar street lights that would be substantial. The Councilor asked what the biggest consumption of the City facilities is. **Mr. Hale** responded it is the waste water and the water treatment plants. **Mr. Cademartori** stated other communities have had projects more than their consumption; this gets into assigning the credits or it relates to the relationship to the utility that serves the region being compensated via a cash situation. They're taking advantage of the structure through in this agreement. **Mr. Balf** noted use of solar at a water treatment facility. Even if that account was identified, they could put a solar array behind the meter and reverse it, and could do certain renewable energy projects assuming they were behind the meter. **Councilor McGeary** stated there is nothing to prohibit it. **Mr. Balf** wondered if there is great conservation activity in the City and they get down to 7 million kw hours, say, are they on the hook for that 2 million. He was informed the City is not obligated to pay for energy they don't use. It is what the discount is and what that threshold number is. **Ms. Egan** agreed. **Councilor McGeary** stated they are obligated to buy that 9 million. **Mr. Balf** stated then there is no incentive to go below that 9 million kw/hrs. **Ms. Egan** stated because they can add governmental entities to Schedule Z, they can add other accounts and use those credits and have the ability to be compensated. **Councilor McGeary** felt the City would get the benefit, and the power would be used. **Mr. Duggan** asked what is the likelihood they'd get down to 7 million kw/hrs. **Mr. Balf** stated new facilities are much more energy efficient. It is possible. They're also at some point in time talking of a secondary treatment plant. **Mr. Towne** stated say they close the court house and put in a combined emergency services facility, they could see a lowering. The City is at 10.4 million kw/hrs which is an estimate from a year and a half ago. They could be higher than that because they haven't closed any buildings. 9 million kw/hrs. is the key. The rest above 9 million kw/hrs "is gravy". If they do drop below they'd want the flexibility to add the Gloucester Housing Authority, a public hospital perhaps; the towns of Rockport and Manchester. The Schedule Z they do twice annually and can add more accounts. It is allowed. **Ms. Egan** stated that is not prohibited under the regulations as long as it is a municipal entity. **Councilor McGeary** stated it would be a 20% reduction in usage which is substantial. **Mr. Towne** the City's consumption and what the agreement says is the City's consumption. **Councilor Curcuru** commented that under this agreement they don't know what the City's savings would be under conservation. **Mr. Towne** stated if they take a building off the City's facilities role, and still conserve 100%, they're still better off. If they can do energy efficiencies with 100% savings, they want to conserve energy. The 9 million kw/hr. is the key determining factor. That's what make their numbers work; and without it there is no agreement. They either take the chance with that threshold and make modifications to their Schedule Z, or they don't do it. **Ms. Egan** stated if some event occurred, they'd know if their consumption would go down. **Mr. Kleiman** stated they used some of the Clean Energy Commission information

and Ms. Hendrickson's and compiled a list that came out to 10.8 million kw/hrs. The City may be well above where they think they are. **Mr. Towne** stated that is why they had it "up to consumption". **Mr. Costa** asked about the EIT invoices which will be based on consumption. **Mr. Towne** stated it is tied to the NG invoices they receive. **Mr. Costa** asked if there would be any charges on their invoice other than the electricity. EIT will assume its own administrative costs, according to **Mr. Kleiman**. **Mr. Costa** asked if there was no other overhead costs which **Mr. Kleiman** confirmed there were not to the City. **Mr. Towne** stated the sellers are responsible for the maintenance and investment in the equipment. If there are legal disputes between the two, both parties pay their own legal expenses. Exhibit C lists current accounts.

**Escrow Agreement:** Page 2 shows the Escrow deposits and replenishment. There will be a surety. **Ms. Egan** stated in 1(c) is if that any portion above the price to 13 cents has a surety. EIT will pay. The surety and escrow account fails, the escrow account will be replenished through any of the revenue in excess of the 9 million kw/hrs. It is coming from them to a third party account. **Councilor Hardy** asked who handles the third party account. **Ms. Egan** stated it has to be an independent agreed to outside agent. They pay for it. **Mr. Towne** stated the Escrow agent fee is not enumerated who pays for it. There is no where it states that. **Mr. Kleiman** stated that gets paid out of their operating expenses in 5(j). **Ms. Egan**, on inquiry by **Councilor Curcuro**, explained they need to show a minimum revenue stream. If the value of the net metering drops below 13 cents, they'll pay them the below and the seller is paying the difference to make up the 13 cents. **Mr. Kleiman** stated the base price as defined in the agreement is the greater of the prevailing net metering rate or 13 cents. But they're still getting the discount off of that base price. If the prevailing net metering rate falls to 12.9 cents, then the escrow would be triggered and the number of kw/hrs. in that month are times the difference in the 13.0 to 12.9; and that would be paid to the seller. The buyer would be required to replenish that amount into the account. If they failed to do that even though legally obligated, the surety bond would kick in and the City could make sure the replenishment was fulfilled. If they blew through the surety, there is a further level; the City has the right to project revenues. **Ms. Egan** stated that the provision is up to their debt service, if they don't know what that is, they can't make a business decision. They have to know what they're obligating the City to do. **Councilor Curcuro** didn't see how the Committee can make a motion on this escrow account. **Ms. Egan** stated they've been going back and forth on this. **Mr. Towne** stated then if it is 15.06 cents now and 20% off, they end up paying 12 cents for the first 9 million kw/hrs. If the rate set annually is 12.9 cents, they get a discount off of 12.9 at 20% and the difference between the 12.9 to the 13 goes into the escrow account. **Mr. Kleiman** agreed with **Mr. Towne's** statement. It is 20% off of 12.9 and the escrow is the difference between the 12.9 and 13 cents. **Mr. Kleiman** stated at 10.4 cents after the discount, say, of the effective rate is 10.3 cents instead, escrow would kick in to make the difference. They're considering the minimum after the discount is applied. **Mr. Towne** explained if it is 12 cents, they'll pay 20% off of 12 cents; and it is the kw hours for that month, 1 cent comes out of the escrow, the difference between the 12 and 13. Are they doing this monthly? **Mr. Kleiman** stated it is monthly. **Mr. Duggan** stated the minimum price is not 13cents. A discount is always being applied of 20%. **Councilor McGeary** stated the target price is 13 cents; and if it falls, the escrow would pay the difference; what they would pay at 10 cents and pay against the escrow at 10.4. **Mr. Kleiman** stated it is 20% off of 13 cents and is how they looked at this from a financing perspective. **Councilor Hardy** asked for this in writing. **Mr. Kleiman** stated it defines the minimum price accurately in the PPA. They need to tighten the definition in the Escrow Agreement. **Councilor McGeary** stated when they went to their financiers; they stated this is the revenue stream they held up to them. **Mr. Kleiman** responded they always had to consider the City's discount. **Councilor McGeary** asked to the extent that the City obligation is less than 10.4 cents so that the escrow would kick in so that the City is not penalized. **Ms. Egan** pointed to Item D in Escrow Agreement, Sec. 1 (Page 1) It says the escrow agreement when the value of the net metering credit drops below the 13 cents and that's when the escrow account kicks in. **Mr. Towne** when looking at it going to 34 cents, he didn't think it would in year 25 but they're still saving. **Mr. Kleiman** stated the up side is prices go up higher than expected there is more upside in savings. They've tried their best to protect the downside. **Mr. Towne** asked if there was a need to replace the surety bond or would they ever replace it. They don't refill it for some reason, the surety bond kicks in. **Mr. Kleiman** stated they're obligated to replenish the escrow account. They would take net revenue from the project to replenish the escrow account. They're trying to protect the sanctity of the debt service. **Ms. Egan** stated 1D says the City isn't obligating itself to pay for its debt service within this agreement. EIT wants them to be obligated; but the City stated they can't put that risk in. They've not getting disclosure. Until they get that they can't add that provision. **Councilor Curcuro** stated they can't vote on it as it is not complete. **Mr. Kleiman** stated they won't get a loan commitment letter with the final numbers until they have an executed agreement. They're trying to say if you want this third level of protection, they first have to consider their debt service and make sure that they're not violating a covenant with the lender. The net revenue above that is to further backstop the escrow account, provided it reduces under the PPA amount below the seller's debt service. **Ms. Egan** had struck that. They suggested keeping

it. They have felt they have fully disclosing the financials. They can't know until they lock in the final rate with the lender. Councilor Curcuru stated they must have an idea. **Mr. Kleiman** stated they've provided an estimate. **Ms. Egan** stated the issue becomes what it will not drop below or exceed. If this creates the City always paying a 13 cent minimum price that is why they need the amount. They're only concerned with that provision if it is operative; because they're obligated to pay a certain amount for the electricity. The escrow has kicked in, and they're trying to build in a safety if it isn't completed. If it is a matter of their debt service being paid and are in a problem, they can't replenish it; **Ms. Egan** stated if they can't replenish the escrow to make the minimum price, then the City can't pay the minimum price. **Mr. Kleiman** stated they need the loan; and the basis is the minimum price. They've tried to come up with scenario to put a minimum price in place; the escrow with the replenishment and surety and first right to net revenue after debt service. **Councilor Curcuru** stated the escrow agreement is protection to the City. They need the PPA to get their loan. **Mr. Kleiman** stated they can't have anything in the Escrow Agreement (EA) that would jeopardize the financing agreement. If they do something in the EA; if they blow through all the backstops and violate the agreement and get to the last one where they have first rights to project revenues, they don't care if you pay the debt service requirement; that would violate the debt covenant. They can't finance and do a project without having that. **Councilor McGeary** stated there is an approximate number. **Mr. Kleiman** stated they'll have to ask their attorney. **Mr. Towne** stated if they're at that level to put in the debt payment then the project is in greater trouble. They're not guaranteeing projection the City is the only giving a guarantee to purchase 9 million kw/hrs. If they can't replenish then the project is in a lot of trouble. **Mr. Kleiman** thought that it extremely remote. **Ms. Egan** stated they have to deal with the effect of that term when it is in effect and deal with that instance. **Mr. Kleiman** stated previously they had agreed in concept. **Ms. Egan** expressed the new language that she struck out their lawyer put in a few days ago. **Mr. Kleiman** couldn't imagine this ever getting to that level. **Mr. Emerson** stated if the price drops to 2 cents, they won't be able to pay their debt, they'll default and the City will buy their electricity. **Mr. Kleiman** stated they can't go any further with this. **Councilor Hardy** asked if there is such a thing as a separate MOU that would address this until they got their loan. **Mr. Kleiman** stated it all has to be represented to the Lender. **Mr. Towne** stated what if they make the initial deposit higher and then say after three years look at it and if prices escalate with a floor of \$100,000 they could then be covered. It doesn't keep the extra \$100,000. **Ms. Egan** thought the concept good; say \$300,000 the first five years then 100,000 after five years. **Mr. Towne** stated that once they've had there to five years they could reexamine it. **Mr. Kleiman** stated they could do that. **Councilor Curcuru** stated they are ready to vote the PPA but not the Escrow Agreement. **Mr. Kleiman** asked if they could meet tomorrow before the City Council to consider it. **Councilor Curcuru** stated they would continue the meeting to 5 p.m. Tuesday, December 13th here to take this up again.

**A motion was made, seconded and voted unanimously to continue the meeting at 11:12 a.m. to 5:00 p.m. Tuesday, December 13, 2011 meeting in the first floor Council Committee Room.**

**Respectfully submitted,**

**Dana C. Jorgenson**  
**Clerk of Committees**

**DOCUMENTS/ITEMS SUBMITTED AT MEETING:**

- **Timeline of Gloucester Engineering Wind Project Projected Revenues to City of Gloucester**