

>> NEIL KELLEHER: Thank you very much for your interest and very much impressed by the crowd here today.

We all have one goal in mind and that is to move forward during this very sensitive period of time when there's a lot of different opinions.

Hopefully we are going to be able to come up with a product or products that satisfy 99 percent of the people in the local commissions and, of course,

in Albany and that's what our goal is and that's what we intend to accomplish before we leave.

So again, thank you very much.

What I'm going to do is, I'm going to pass the mic around.

I guess starting with my cochairman, Commissioner Kellner.

And go that way and have people identify themselves.

They can send it back this way.

>> DOUGLAS KELLNER: Douglas Kellner, Co-Chair.

>> STANLEY ZALEN: Stan Zalen.

>>: Paul Collins, lawyer.

>>: Anna Svizzero, election ops.

>>: Bob Brehm, Public Information.

>>: Liz Hogan, enforcement counsel.

>>: (inaudible)

>>: Helena O'Donohue, Commissioner.

>>: Todd Valentine.

>>: Allison Carr.

>>: Lee Daghlian.

>>: George Stanton, information technology director.

>>: Neil Sacbert, NYSTEC.

>>: Bob -- NYSTEC.

>>TODD VALENTINE: Just one thing before we start.

Commissioner Kellner wanted me to just ask and Commissioner Kelleher, too, the board got a lot of information this morning.

And I'm sure those people who gave us the information realize that we need time to address those issues.

>> TODD VALENTINE: Those are specifically related to the determination on the machines which we intend to make today.

So for purposes of our board meeting, we are going to change the agenda slightly in that we are going to start the board meeting and do the other items that we've listed on our agenda, but not address the machines until a little bit later.

At least two hours we'll need to look at that.

Once the other board meeting is concluded, or about two hours.

We'll pick a time certain and let everybody know.

But what we wanted to know was if we are just going to do the other stuff first which many people may not be interested in at this point,

we can actually get out of your way and go to the smaller room, but that's something we wanted to ask first so that you see what our position is.

>>: We're already here.

>> AUDIENCE MEMBER: As long as we're here

>> TODD VALENTINE: Well, the meeting would still be open.

It would just be in a smaller room and really cozy.

>> AUDIENCE MEMBER: You're asking outside counsel

>> AUDIENCE MEMBER: Let's go.

>> TODD VALENTINE: All right, let's roll.

I like that.

>> NEIL KELLEHER: The meeting has officially called to order.

We'll now begin with the agenda.

The minutes of the December 12, 2007.

Motion to approve?

>> DOUGLAS KELLNER: So moved.

>> NEIL KELLEHER: In favor?

>> HELENA MOSES DONOHUE: Aye.

>> NEIL KELLEHER: So moved and approved.

Unit Updates?

Legal?

Todd Valentine.

>> TODD VALENTINE: We have been busy on two main fronts.

Obviously everybody is aware of the Justice Department and our, the move to accept the plans that the State board had put forth, both for plan A and plan B.

We are in the midst of doing that.

We have weekly updates with them.

So we continue, we will continue to do that.

The other major development was on the lawsuit regarding the judicial convention case.

Some of you may have actually seen in the newspaper that we were successful in our appeal to the Supreme Court.

And so in the bottom line is, you'll have judicial conventions for awhile now, unless the legislature changes that.

Paul, do you have anything you want to add?

Pass that down to him.

>> PAUL: I think everybody--

>> DOUGLAS KELLNER: Paul, here, use the mic.

>> PAUL: I think everybody here is probably interested in the progress of our DOJ case we are on schedule with the time line that we filed.

After today we will be even more on schedule, which is always a good thing.

>> DOUGLAS KELLNER: Okay.

>> NEIL KELLEHER: Thank you, Todd.

>> TODD VALENTINE: I don't have anything.

Any questions?

>> NEIL KELLEHER: Any questions?

Thank you very much.

We'll move then to election operations.

Anna?

>> DOUGLAS KELLNER: Around the corner.

>> ANNA SVIZZERO: Thank you. Elections operations has been pretty busy, but it's easy to summarize the activity.

We have completed our negotiations with all of the vendors, negotiated those contracts and they are at the office of general services awaiting final signature.

They will be delivered to the comptroller, I expect either today or tomorrow.

We hosted a meeting of the citizens advisory commission so they can review the voting systems that have been submitted so far. Only with respect to them being valid marking devices.

We haven't moved on to--

We prepared our component, which was fairly significant.

Our component of the report that was submitted by counsel's office to the Court.

We have met with our independent testing lab Systest.

We had a three day session with them so that we could all explain our various opinions in the process they could share with us our methodology.

Our NYSTEC team is in constant consultation with us.

They participated in that meeting as well so SYSTEST is aware of the degree of testing we are interested in, the sorts of reports we want to see come out of the testing, et cetera.

We have worked with the Office of General Services, preparing a packet of information that will be shared with you tomorrow relative to how ordering will proceed for this round of ballot marking devices.

We're hoping it is a little less eventful than your initial round of ballot marking device purchasing.

We hope we've all learned from some those scenarios.

We have made arrangements for acceptance testing of ballot marking devices.

We are going to require that vendors deliver all of that equipment to one site in Albany where we can do acceptance testing.

We have some roles that our testing labs will play an also roles that the county boards can play. We continue to clean that project up.

We'll present it to our Commissioners at some point in the very near future and then be prepared to share those roles and responsibilities with you.

We are in the process of updating the annual report information.

We were waiting for new annual reports from the EAC so that we could amend ours to be sure that we could capture all of the information that the AC wants to see.

We haven't seen any revisions to the reporting process.

So we are going to send you some modified forms that you have seen in the past and a lot of the traditional forms, just to try to get that project moving.

But I suspect at this point we will have additional questions for you.

We will get that out to you, if not Friday, Monday morning.

Counsel, do we have anything else?

I think that's it for election operations.

Thank you.

>> NEIL KELLEHER: Thank you, Anna.

We will now move to NVRAIEIO, Lee Daghlian.

>> LEE DAGHLIAN: Thank you.

Good morning, everybody.

I'll make this quick.

We are doing a lot of things in the unit, particularly opening mail.

Like you all have for registrations.

I want to thank everybody in the agency for helping us so that we could transship reg forms to the counties.

Hopefully they all got there on time.

I want to mention one thing that basically we are ready to kick off and we'll present that along with our contractor today.

I'm sorry, tomorrow.

To the Commissioners.

That's our poll worker training and voter outreach program that we are developing and we will make available to the county boards in time for any machine that's available for purchase for 2008.

That means by the latest, June that these materials will be available.

We'll give you a full run down on that with SOE tomorrow.

So that you fully understand what it's about and how you can use it and that some of your HAVA funds that you have are dedicated to that kind of of purpose and get your contracts in, please, and we'll be ready to go.

To mention the HAVA fund situation for accessibility and with the counties for accessibility and poll worker training we have paid out almost \$100,000 to counties in reimbursement.

I'm sure there's more out there that has been spent already.

We may not have vouchers from you all, but if you have them, please send them in so we can get you paid.

I think the, after the fiscal start with this program that we're pretty much on track.

And our staff is doing a really good job right now to sharpen all of that up and get the remaining contracts out there for poll worker training in so we can spend that money.

We need to spend it because there's an end period to when you can use that money and before we know, it will be there.

So thanks again to our staff for getting that program done.

Just to let you know that we will be at the State fair again this year with a large booth and hopefully we will have some machines out there to show folks.

That's all I have.

>> NEIL KELLEHER: Thank you very much, Lee.

We'll move on with campaign finance.

Liz Hogan.

>> ELIZABETH HOGAN: Thank you, Commissioner.

I will update the Commissioners as to several ongoing projects that we have in campaign finance unit.

Starting with the RFP for process serving.

We have a meeting with OGS scheduled for this Friday.

They've proposed contract language, or RFP language to us which we will be reviewing with them.

That's proceeding on schedule.

The electronic filing of our documents project that we have had going on for the past several months is pretty much finalized.

We had our last meeting with the provider and they are now putting together a contract.

You know we're dealing with a preferred source.

So the contracting process is expedited and they will be starting that project in February.

On Friday, this coming Friday, also we'll, the campaign finance people will be participating with IT in a demonstration of the operating neutral system software that originally the development was to accommodate Mac users, but IT has actually put together a software package that addresses all operations.

So we are looking forward to that.

The filing handbook revision process is underway.

The scheduled mailing date for that is the middle of April.

The seminars that will be conducted in May and June are being scheduled at this time.

Bill is working on that project and probably will be talking to some of the Commissioners, the local Commissioners about scheduling in their areas.

The January 15th periodic filing, the five day letters for delinquent filers will actually be going out today to committees.

Tomorrow the follow up letters will be going out to candidates.

The enforcement calendar dates are the order to show cause will be signed on February 14th and the judgment return date is March 6th.

We are in the process of drafting or putting together the lists by county of delinquent filers and we'll talk to you further about that to the local Commissioners probably tomorrow when we make our presentation.

The 2006 Senate and Assembly over contribution process is underway.

Follow up letters will be going out today.

And the report from staff to counsel is due on February 29th.

The 2006 corporate over contribution project is in progress.

It's, we are working on drafting a time line for that, but it is underway and proceeding.

The HAVA administrative complaint process is ongoing.

We are meeting again with NYSTEC on February 6, but that is moving along nicely.

The positions that were approved by this board at the November board meeting are at civil service and we're awaiting civil service placing those positions on their agenda, hopefully for their February meeting for a determination as to the approval of those positions.

That's about it.

Thank you, Commissioners.

>> NEIL KELLEHER: Thank you, Liz.

Any questions?

We'll move on to ITU, George Stanton.

>> GEORGE: I'll keep it very brief because I know you have more exciting things to talk about than what is going on with computers, other than our dull day to day routine.

I think the things you're probably more interested in is what's going on with the statewide database obviously.

We monitor that on a daily basis.

For the last week or so we have been helping counties to make sure that their data is all synchronized with our data in preparation for printing poll books and cleaning up some of the party codes, things like that that crop up.

We check those regularly to make sure that the data coming to us is correct and when it's not, we notify the counties to make fixes where appropriate.

One of the issues that has come up as we have been monitoring the database and the steering committee is aware of it is that we are rapidly using up our storage space because of the size and amount of the transaction logs that are going on.

We are actually going to, we've started archiving some things off which helps, but we are actually going to have to increase the size of the storage.

So I'm in the process of getting some quotes for that that we will be bringing to the board for probably at the next meeting, I hope.

So that we can expand that.

As Liz mentioned, we are going to be demonstrating the operating system generic campaign finance filing software that is written in open source Java code so basically it should run on any operating system out there.

That's going to take place on Friday.

We also have been looking at the campaign finance database schema to see how we can make some modifications to it that will make it flexible to be able to correct some of the things we need to correct and move into the future

with all of the things that are coming on to us and improve the database not only functionality but make it available so that we can possibly move on to the web based filing that we have been talking about.

So unless you have any questions, that's about it in ITU.

>> DOUGLAS KELLNER: My first question is on the status of the voter lookup access to the database this we did the contract two months ago?

What is the time line when that system will go active?

>> GEORGE: That is actually ready to go now.

I sent the link to the steering committee probably a week, ten days ago.

It's actually ready to go live as soon as I get the word to put a link on our Web site to do it.

>> DOUGLAS KELLNER: Great.

I'm glad to hear that.

And as you know, I'm very happy to see that we're finally moving forward on doing an open platform or platform neutral for campaign finance filing.

And I encourage you to keep moving on that.

I am concerned about the progress of the procedures for auditing the voter database.

Can you report on that?

And in particular, I noticed this report that Dierdre Hammer prepared a few weeks ago just on her spot check of ten or 20 registrations that find that every single one of these flagged registrations on the spot check was erroneously flagged.

So of the 20 randomly selected registrations that have been flagged for ID required, all 20 of them are false, you know, erroneous requirements.

So if we project that out, that there isn't a single registration statewide that actually should be flagged for checking.

I'm sure that's not the case either.

But I think it's very important to get the audit procedures in place and to get that moving.

I would appreciate a report on where we stand now and what we can do in the next month to move that along better.

>> GEORGE: Sure.

We had kind of a partial steering committee meeting yesterday because we didn't have many members there.

We actually went through not all these 20 cases, but we went through some of those and followed them through and found out there were really logical explanations for that, ranging from user error to I don't really remember what all of them were.

One of them had registration dates and that kind of things..

Some of them have logical explanations.

But as far as the procedure of what we are going to be doing to audit, you know, we hesitate to use that word audit because it has such a negative connotation.

The steering committee has been meeting every week.

We worked through all of the functional requirements of the RFP, went through them and picked out, you know, this is something we need to look at, this is something we need to look at.

Now we are at the point where we are going to look at those and say this is what we need to look at and this is how we are going to do it.

That's the point that the steering committee is at right now with putting that procedure together.

I suspect it's going to take us another month.

>> DOUGLAS KELLNER: I urge you to keep moving forward.

When you say logical explanations, you're talking about the fact that there would be a hyphen in the name and the hyphen wasn't picked up?

>> GEORGE: That's one of them, yes.

>> DOUGLAS KELLNER: My point is, I understand all these logical explanations.

But the problem is that doing this spot check, we're coming up with the fact that, you know, at least on the basis of the spot check, 100 percent of the voters flagged for ID are flagged erroneously, even though there's a logical explanation.

I think we need to address that because we're unnecessarily requiring voter ID from obviously a substantial number of voters until we get that licked.

>> GEORGE: That's one of the things that the steering committee definitely is looking at, to see how we do that.

>> DOUGLAS KELLNER: Thank you.

>> NEIL KELLEHER: Thanks very much, George.

We'll now move on to old business.

First one is a resolution on fees for testing of open source software.

>> DOUGLAS KELLNER: All right.

Well, I know I sound like a broken record.

I still think it's a good public policy for New York to encourage vendors to use open source software and that setting out this program by which we would define when we would waive the fees for that testing of the open source software

is a good public policy and is in keeping with the appropriation that the legislature gave us this year with respect to subsidizing the testing process.

So Commissioner Donohue, you indicated that you would study it further and I hope we can get to that point soon where we will be able to vote on it.

>> HELENA MOSES DONOHUE: We are still looking at it, Doug.

We would like some reality in proposing it before we make a final decision, but we are looking at it.

>> NEIL KELLEHER: Okay, then.

Lay that aside?

>> DOUGLAS KELLNER: Yeah.

>> NEIL KELLEHER: Second item on old business, recommendation to legislature regarding vendor political contributions.

>> DOUGLAS KELLNER: All right.

Just to remind everyone, the background on this is in our last meeting we came to the conclusion that the ethics reform legislation preempted the State board's regulation that required voter with assisted vendors

to disclose their political contributions and the Commissioners put this on the agenda for this meeting and I look for the blank stares that staff hasn't had the chance and they have been working on other issues.

>>: You can ask Paul if he's seen it.

I haven't seen it.

>> DOUGLAS KELLNER: That relate the to the next one?

>>: I haven't seen it.

>> DOUGLAS KELLNER: Why don't we put that.

>> NEIL KELLEHER: Let's lay it aside.

Third item of old business, recommendation concerning filing deadlines for late documents.

>>: We just did that.

That's laid over as well.

>> NEIL KELLEHER: Motion?

>> DOUGLAS KELLNER: It's laid over.

>> NEIL KELLEHER: Lay it over.

Laid aside.

Okay.

Item four, new business.

>> DOUGLAS KELLNER: Than you want to do Peter first?

>> HELENA MOSES DONOHUE: Before we get into new business, I would like to make an announcement that Peter's position has been filled by Todd Valentine and we will proceed without interruption of the State board.

The second item that we have I would like to propose to the board that we appoint Allison Kerr as special counsel.

>> DOUGLAS KELLNER: That's the motion?

>> NEIL KELLEHER: I second the motion.

All those in favor aye?

Opposed?

Nay.

So ordered.

(Applause.)

(All members responded "aye.")

>> NEIL KELLEHER: All right, going on to new business.

Proposed amendment of regulation part 6200, filing of statements for campaign receipts and expenditures.

>> DOUGLAS KELLNER: Over there?

>> WOMAN: The memorandum in your packet

>> LISA: The memorandum that was in your packet, Commissioner, sets forth the proposed language for the amendment to the regulation that deals with duplicate filing for certain local filers.

The change to the regulation, rather than go into the body of the regulation and fool with the language that was in there, we created a new D and it's broken down into three parts.

The first part is conforming our regulation to the change in the statute that requires electronic filing with the State board.

The second part of the regulation change where there's a State board filing by a filer required to file with the State board, that will satisfy the duplicative local filing for that type of filer.

And number three in the proposal deals with electing to file with the State board.

We have made it clear that if you are required to file with the State board and you do so, that will satisfy your local filing.

However, if you're not required to file with the State board you may not elect to file with the board in lieu of filing with your locality.

We will be discussing this regulation, Bill and I actually tomorrow in the board presentation and we will also be including this in our filing handbook in terms of an educational aspect.

Now, there is a process

Oh, right.

I'm addressing the process.

What will happen is this has to go to the governor's office of regulatory form for the vetting process and the public comment period.

We are hoping that this process will result in an amended regulation and that it can be applicable for the July filing.

You want to add to that?

>> BILL: Yeah, I think the proposal as I understand it is to have the regulation be approved to go to Gore and it would come back from Gore.

Depending on what the modifications were, we would present it to the board to go forward to the Department of state for filing.

There is obviously depending on how long the process comes, I don't think there's any guarantee that we will be able to have it in place for the July filing.

It will depend on how fast the process goes, but we'll see how that comes.

That will be our goal.

>>: That change in the rules as mentioned by Liz, it will be part of our program for tomorrow and this will have considerable impact on your constituents.

You do want to be there to hear what this is all about.

>> DOUGLAS KELLNER: We can vote on it now?

>> NEIL KELLEHER: Thank you very much.

>> HELENA MOSES DONOHUE: Don't we have to wait for a determination?

>> DOUGLAS KELLNER: We have to vote to publish it, to start the public comment period.

>> HELENA MOSES DONOHUE: It doesn't have to go to

>> DOUGLAS KELLNER: It goes to Gore, but we have to do that.

We have to vote to send it off to them.

>> TODD VALENTINE: Not necessarily.

>> HELENA MOSES DONOHUE: We can vote to send it out.

>> TODD VALENTINE: Either way.

>> DOUGLAS KELLNER: Go to public comment.

>> NEIL KELLEHER: On the motion to send it up.

All those in favor

(All members responded "aye.")

>> NEIL KELLEHER: Nay?

(There is no response.)

>> NEIL KELLEHER: So ordered.

Now we'll move on to proposed amendment of regulations part 6204, designating an independent nominating petitions.

>> DOUGLAS KELLNER: Okay.

This is my draft of a proposed regulations to simply update the State board rules to conform to current legislation to respond to the Court cases that have said that the full board of Commissioners has to approve the, any determinations made in the petition process.

And just to make it clear that we provide for due process in ruling on the petitions.

I don't think we have had comments yet, right?

You haven't had a chance to go through it?

>> TODD VALENTINE: No.

So we are doing that, don't get me wrong.

We started that.

We haven't gotten any comments back.

We would need

>> DOUGLAS KELLNER: Two more weeks?

>> TODD VALENTINE: Until the next meeting.

>> HELEN MOSES DONOHUE: Until the next meeting.

>> NEIL KELLEHER: No objection?

So ordered.

Next item, response to inquiry from citizens union and other interested groups concerning campaign finance disclosure enforcement.

>> DOUGLAS KELLNER: Okay.

I put the item on the agenda and I'm really asking Liz and Bill whether they have the draft or can they go through issue by issue what was raised in that letter to indicate where we stand now so we can prepare a response to them?

The issues that were raised in this letter were a identification as had previously been done earlier this year in the early summer regarding the 2006 corporate contribution limit issue.

There had been an identification of certain over contributors.

That project is in process as I said in my report.

So I think from the campaign finance perspective that should adequately address that issue.

The second issue that was raised was that the board in, I believe it was in 1996 opinion, addressed LLCs and at the time, it certainly predated me so perhaps Stanley could talk about this also.

I guess we were, we had conformed our position at the statewide level to the FEC position.

Subsequent to our opinion the FEC changed its handling of LLCs and actually went to a check the box determination of how an LLC would be looked at in terms of political contributions

and I believe what they did was if the LLC elects to be treated as a partnership for IRS purposes, then that's the application that would apply to a determination regarding campaign contributions.

And if the LLC elects to be treated as a corporation for purposes of taxes, then that application and limitations on political contributions would apply.

The board, I believe, looked at this issue subsequent to the change in the FEC policy and actually I went and looked at the FEC.

I looked at the, what the FEC had set forth in the Federal Register back in 1999 for its justification for its changes and part of the justification that they made was that they were asked for increasing numbers of opinions regarding how to handle LLC political contributions

and the volume of issuing individual opinions by the FEC had gotten so cumbersome that the FEC decided to apply this new process.

The State has, the State board has not changed its opinion.

We still rely on the opinion that was issued in 1996.

And I believe also that there was a legal analysis of this as to whether or not the board needed to change its opinion policy to conform to the FEC and if my reading of the documents that I have in my file and perhaps Stan can speak to this, we are not out of sync with the FEC by applying our opinion from 1996 and that the statute, the election law actually

Actually, the limited liability law actually determined that LLCs were not partnerships or corporations so that did not mandate a change in the board's policy.

So that's as far as I know.

As I said, I'm looking at this issue fresh.

That's as far as I know what the board's history has been relative to this issue.

You want to,.

>> DOUGLAS KELLNER: Is that all the issues that they raised?

>> ELIZABETH HOGAN: No, they raised another issue.

The third issue had to do with when a political contribution is made, that contributors disclose their employer and occupation for individual contributions.

>> DOUGLAS KELLNER: Do we have the authority under the statute to do that?

>> ELIZABETH HOGAN: I think we do but

It's questionable.

We are not certain at this point.

>> DOUGLAS KELLNER: So if I can summarize what I think you're reporting to us is that at least on the first issue the over contributions, that the unit is aware of that.

You did do the over contributions investigation for 2005 which led to the referral of a dozen matters for prosecution by county D.A.s.

That you are now proceeding with the 2006 and of course you'll pick up 2007 when you finish 2006.

>> ELIZABETH HOGAN: Correct.

>> DOUGLAS KELLNER: On the other two issues, the LLCs and the scope of reporting, that it is your recommendation that statutory amendments are required.

And my understanding is that these are issues that are addressed in the legislation that the governor proposed and is subject of the issues in negotiation with the legislature now.

And that it's not clear that we have the statutory authority to proceed.

>> ELIZABETH HOGAN: That's my opinion.

>> DOUGLAS KELLNER: All right.

So could I ask that you at least draft a letter along those lines so that we give them a response?

>> ELIZABETH HOGAN: Of course.

>> DOUGLAS KELLNER: If that meets with the approval of the other Commissioners?

>> NEIL KELLEHER: Sounds fine.

Okay?

Now we'll move on to respond to inquiry from populex regarding recertification.

>> DOUGLAS KELLNER: All right.

I raised this on the agenda also because of the letter we received from populex last week that suggested to me that populex is not aware of the decision that this agency made in January of 2007 to decertify future purposes

Future purchases of the populex as a ballot marking device.

And I wanted to confirm that that is still our position and if so, to ask Anna to respond to the letter by reminding them of that decision.

Did you want to say anything?

>> NEIL KELLEHER: Allison?

>> ALLISON: I'm sorry.

I just wanted to clarify, what we did was we extended their authorization just like we did the ES&S and the Avante authorizations for the plan B ballot marking devices from 2006.

However, we did put a restriction on that authorization that counties who are still using the machines like, for example, Oswego, could continue to buy supplies for those machines

to keep them running through elections exempt if they were actually going to buy another system, they needed to come to us and ask permission first.

What the letter that they sent out was regarding was that they wanted to offer their system to the counties for use this year, to buy them for September.

But we explained to them that they needed to respond to lot 2 in order to do that because we had a new authorization program going on.

I don't think they were happy with that answer, but

>> DOUGLAS KELLNER: But you have already responded to them then?

>> ALLISON: Yeah.

Actually, in letter that you have they referred to the earlier letter.

We responded to them and explained everything that I just told to you. If they were interested in being a player for this September's elections, that they needed to respond to lot 2 and bring us systems.

They mentioned in this letter that they did in fact file an intent to bid on lot 2 but they never followed up on it.

They have never brought in a complete bid or system to us.

We would be more than happy to look at it if they had, but they didn't do it.

Now, counties who are using populex are still free to get their programming, get their ballots and all the supplies that they need for the February 5 Presidential election, but they simply will not be able to do that in 2005 use them.

This lot 2 will supersede what we already have been doing.

That's the whole intent of it.

>> NEIL KELLEHER: Thank you very much.

Now we

>> DOUGLAS KELLNER: Actually, I have another item on that.

We have the final report from NYSEC on the source code for the escrow requirements and if it is true that the Department of Justice is insisting that we provide that interpretation to resolve that issue, then I would move that the Commissioners adopt the NYSEC report.

>> TODD VALENTINE: Well, what I think, I would only change that slightly in that, you know, if, since it was the Justice Department was initially dissatisfied with our first interpretation, what I suggested late yesterday to Paul and raising here now is that we should actually send that to them now and see how they respond.

You know, be able to if they have

They may want changes to that, too.

I don't see why I would not send it to them.

There's a slight difference as to the finality.

>> DOUGLAS KELLNER: I hate to sound partisan over this, but since I thought the first three reports had been approved, I'm really asking the Republicans to say is this NYSTEC report acceptable and are they approving it as the agency policy subject to further discussions with the Department of Justice?

>> TODD VALENTINE: I think that's a, well

>> DOUGLAS KELLNER: That's why I'm making the motion.

>> TODD VALENTINE: I think that's a better way to say it.

>> DOUGLAS KELLNER: That's the purpose of my motion, to say that we are approving the report so that it's now a commitment by the agency so that later on somebody can't say, oh, well, yeah, we talked about it, but we never actually approved it.

>> TODD VALENTINE: No, I would agree with that and the only issue there is the caveat that you mentioned at the end is we have to get that approval for the Justice Department because it's ultimately they

In some respects they have to be satisfied with it.

If they don't approve it, if they demand changes that are not acceptable, we are back where we are.

But we have to go forward.

I agree with you, we have to take this step now, make the approval with that caveat that we send it to them.

We see what they say.

If they're fine, we're ready to go ahead or it's done.

If they are not, we will be prepared to come back and see what they say.

>> DOUGLAS KELLNER: Good.

Paul wants to

>> PAUL: No, I agree with Todd and like everything else in our implementation plan, it's subject to DOJ's attempting to veto change, et cetera.

But let's move forward so this is another milestone we have ticked off on our schedule.

Let's adopt it with the understanding that, of course, our having adopted it doesn't cast it in stone.

>> TODD VALENTINE: Right, that's right.

>> PAUL: Because the Department of Justice can petition the Court one way or another.

>> TODD VALENTINE: Who knows.

>> DOUGLAS KELLNER: Okay, so so moved.

>> NEIL KELLEHER: All those in favor.

(All members responded "aye.")

>> NEIL KELLEHER: Nay?

So moved.

Now we'll move on to new business.

>> DOUGLAS KELLNER: No, we're up to the

>> **NEIL KELLEHER: Executive session?**

>> DOUGLAS KELLNER: We should ask whether anybody wants to debate this.

We have these five items.

>> NEIL KELLEHER: We have these five items on the agenda, preliminary determinations and

final Determinations.

If anybody wants to ask any questions or have any observations?

Neil.

>> DOUGLAS KELLNER: You ready to vote on them?

>> HELENA MOSES DONOHUE: I have no problem with.

>> DOUGLAS KELLNER: Make that motion.

>> HELENA MOSES DONOHUE: I move that we accept the determination that was given to us on these cases.

>> DOUGLAS KELLNER: Aye.

>> NEIL KELLEHER: Chair votes aye.

So moved.

Now, do we do final determinations?

>> DOUGLAS KELLNER: Yeah, we did all five of them.

>> NEIL KELLEHER: We did all five.

We are concluded.

So moved, okay.

>> DOUGLAS KELLNER: We need to recess.

>> TODD VALENTINE: Recess until 1:00 p.m.

Is that good?

1?

>> DOUGLAS KELLNER: 1?

>> AUDIENCE MEMBER: Back here?

>> DOUGLAS KELLNER: 1:00 o'clock.

Well, where are the conference organizers?

Norm and the other people?

Bill?

>> AUDIENCE MEMBER: Norman!

>> DOUGLAS KELLNER: We should talk with them.

We don't want to be interrupt unnecessarily their

(Overlapping speakers).

>> DOUGLAS KELLNER: We want to talk with you about the agenda.

First of all, I take it that people do want to be here when we resume.

>> AUDIENCE MEMBER: When do you think you'll be resuming?

>> DOUGLAS KELLNER: We want to talk to you.

It's your conference.

We don't want to step on your conference.

>> NEIL KELLEHER: We are talking about 1:00 o'clock.

How does that fit with your

>> AUDIENCE MEMBER:

>> DOUGLAS KELLNER: So you want us to do it at 2?

>> AUDIENCE MEMBER: 2:00 o'clock will work better for us.

Is that a problem for you?

>> NEIL KELLEHER: 2:00 o'clock works for you?

>> AUDIENCE MEMBER: That's perfect.

>> NEIL KELLEHER: Any objections?

Okay, fine.

We'll recess until 2:00 o'clock this afternoon.

>> AUDIENCE MEMBER: What is the purpose of the recess between ... what's going on?

>> DOUGLAS KELLNER: Todd?

(Overlapping speakers).

>> TODD VALENTINE: No, we've recessed.

>> DOUGLAS KELLNER: We are in recess.

Okay.

Let's go.

>> NEIL KELLEHER: We are in recess.

We stand in recess.

(The meeting recessed.)