

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

Minutes of the 185th Meeting

Held on April 3, 2006

Pursuant to notice dated March 23, 2006, a Regular Meeting (the 185th meeting) of the New York State Energy Research and Development Authority ("Authority") was convened on April 3, 2006, at 12:00 p.m. in the Authority's Albany Office at 17 Columbia Circle, Albany, New York, and by video conference in the Authority's New York City Office, 485 Seventh Avenue, 10th Floor, New York, New York, and by video conference in the Authority's Buffalo Office at 617 Main Street, Suite 105, Buffalo, New York.

The following Members of the Authority were present:

Vincent A. DeLorio, Esq., Chair
George Akel
Robert Catell (by video conference from New York City)
William Edwards
Jay Gottlieb (by video conference from New York City)
Parker D. Mathusa
Joseph J. Seymour
Denise Sheehan
Elizabeth W. Thorndike, Ph. D.

Members Flynn, Madison, and Marusak did not attend. Also present were Peter R. Smith, President; Robert G. Callender, Vice President for Programs; Wendy M. Shave, Vice President for Administration and Secretary; Jeffrey J. Pitkin, Treasurer; Roger D. Avent, Esq., General Counsel; Richard Albertin, New York State Department of Transportation; John Osinski, New York Power Authority; and various other members of the staff of the Authority.

The Chair called the meeting to order and noted the presence of a quorum. He stated that the meeting notice and agenda were mailed to the Members and press on March 23, 2006. He directed that a copy of the notice be annexed to the minutes of the meeting.

Before beginning the formal agenda, on behalf of the Members, Mr. DeLorio congratulated Jay Gottlieb on being honored by the Yeshiva Mesivtha Tiferes, Jerusalem's rabbinical school. The school was founded by Rabbi Moshe Feinstein to perpetuate his particular model of the highest

levels of scholarship, commitment to truth, and deep sensitivity to each individual through judgements expressed with extraordinary directness, simplicity, and kindness. Mr. Gottlieb is an example of this ideal and we congratulate him on this honor.

Next, the Chair congratulated Parker Mathusa who received the Citizen of the Year award from the Town of Bethlehem Chamber of Commerce in appreciation of his assistance in developing the Town of Bethlehem Comprehensive Plan. In his capacity as Chairman of the Town of Bethlehem Planning Board and as a member of the Bethlehem Advisory Committee, Mr. Mathusa was instrumental in the development of the Plan.

Finally, Mr. DeIorio congratulated Robert Catell on his efforts with respect to the sale of KeySpan Corporation to National Grid. This joining of the two firms will expand the service area of both companies and should provide all of their respective consumers with a stronger base of energy delivery. After completion, Mr. Catell is expected to serve as a member on the National Grid Board.

Mr. DeIorio also congratulated Mr. Catell who will receive the Reverend Theodore M. Hesburgh, C.S.C. Award for Business Ethics from the University of Notre Dame on April 5, 2006. Mr. Catell will be receiving the award with Kenny Moore, KeySpan Energy Corporation's Director of Human Resources and Corporate Ombudsman. In addition to the award, the pair will also give the Frank Cahill Lecture.

Mr. DeIorio also reported that the Members received a note from Governor Pataki thanking the Authority for sending flowers and get well wishes during his recent stay in the hospital.

The Chair then called upon Peter Smith, the Authority's President, to address the Members. Mr. Smith reviewed the accomplishments of the Authority for the last year noting that it was a good one for the Authority. The first solicitation under the Renewable Portfolio Standard ("RPS") was released and awards were made. As a result of those awards there is brand new renewable generation taking place in New York.

The Authority recently received approval of the third system benefits charge ("SBC III") operating plan from the Public Service Commission ("PSC"). The Authority also received approval to move forward on the Consolidated Edison ("Con Edison") service territory System Wide Demand Management Program. The PSC named the Authority as administrator of a System Wide Demand

Management Program with a goal of achieving 150 megawatts (“MW”) of demand reductions in the Con Edison service territory through Energy Efficiency, Distributed Generation, and Load Management initiatives. The System Wide Demand Management Program will be kicked off with a press event at the Con Ed headquarters on April 26, 2006.

The Authority has made steady and important progress on its Hydrogen initiatives that are the first steps in building the necessary infrastructure for New York’s hydrogen economy.

The Authority successfully completed nine SBC III Forums across the state to meet face to face with New York energy consumers to discuss the opportunities available under the New York Energy Smart program. More than 500 people attended the forums conducted by program staff. Throughout the year staff conducted numerous workshops, conferences, and forums in many different program areas, and with the recent addition of an event coordinator position, the Authority is able to better coordinate our public events.

The Authority received numerous national awards, including the Environmental Protection Agency’s ENERGY STAR® Corporate Commitment Award – the first in the nation to go to a public governmental agency for its ENERGY STAR® programs and the Environmental Protection Agency and Department of Energy ENERGY STAR® Sustained Excellence Partner-of-the-Year award.

Chair DeIorio then indicated that the first item on the agenda is a report on the recent activities of the Program Planning Committee. President Peter Smith began by updating the Members on SBC. In December 2005, the Public Service Commission (“PSC”) issued an order approving the continuation of the SBC Program for another five year period to run through June 30, 2011 (“SBC III”). The SBC III Program will be funded at \$175 million dollars annually, a \$25 million dollar increase per year from the previous SBC.

The Authority’s staff prepared the SBC III Operating Plan, which was shared with the Members, for submission to the PSC for approval. The Plan sets forth the goals and strategies of the SBC Program, describes the individual programs, and summarizes how the Authority will administer, evaluate, and report on the program. The Operating Plan was filed with the PSC and approved by the PSC by letter dated March 3, 2006. The SBC III Program will commence on July 1, 2006.

With respect to the SBC Program and the Renewable Portfolio Standard (“RPS”) Program,

Mr. Smith reported that the New York State Legislature, under its 2006-2007 budget, has included language to have the SBC and RPS program funds administered by the Authority appropriated through the state legislative process. Last year the Legislature made a similar attempt to appropriate these program funds, which the Governor vetoed and the veto was upheld. The Legislature passed the budget on Friday, March 31, 2006 and the Governor has 10 days to negotiate with the Legislature on changes to the budget.

For the same reasons as expressed last year, Authority Staff believes it would be detrimental to the programs to have the SBC and RPS program funds should not be appropriated by the Legislature. Staff will continue to work with the Governor's Office, as well as the Authority's customers and constituents to strongly advocate that the SBC and RPS funds not be subject to an annual appropriation by the Legislature.

With respect to the Consolidated Edison Electric Rate Case Program ("Con Edison Rate"), the Con Edison Rate Plan Order issued last Spring authorized the funding of a System Wide Demand Management program, to be implemented by the Authority in the Consolidated Edison ("Con Edison") service territory. The PSC issued an Order approving the collaborative Action Plan developed by the Authority in collaboration with a stakeholder group made up of approximately 50 representatives from all energy sectors, and authorizing the Authority to go forward with implementation of the program. The goal of the program is to achieve 150 megawatts ("MW") of demand reduction by the end of the rate plan in March 2008, through energy efficiency, distributed generation, and load management. The 150 MW goal is intended to be in addition to the Authority's other efforts under the SBC Program. Con Edison will fund this program at an amount up to \$112 million dollars, plus 9% for administration and evaluation activities. Staff is now negotiating an amendment to the funding agreement with Con Edison, which will allow the Authority to run the program continuously throughout the duration of the rate plan.

Chair DeIorio indicated that the remaining activities of the Program Planning Committee would be discussed by the Committee's Chair, Parker Mathusa. Mr. Mathusa reported that the Program Planning Committee met shortly before the Board meeting. Following the discussion on SBC and the Con Edison Rate Case, the Program Planning Committee discussed the Saratoga Technology + Energy Park ("STEP") ground lease with The United Group of Companies, Inc. ("United") for Site One at STEP. Previously, the Members adopted a resolution approving the Master Plan for STEP. The resolution provided that staff would seek the approval of the Members for any sale or long-term lease of property at STEP, with the understanding that the development

of STEP would be a market-driven public-private partnership with all future developers.

The Authority, along with its partners, attracted Starfire Systems, Inc. to STEP in 2002. As a small research and development (“R&D”) start-up company that grew out of the Rensselaer Polytechnic Institute (“RPI”) incubator, Starfire leased space from the Authority in the existing building to establish its silicon carbide R&D operation and its silicon carbide ceramic forming polymer and material systems manufacturing process. Four years later, Starfire Systems has grown from 2 people to 32 people and is ready to move into a new 60,000 square foot manufacturing, lab, and office space.

Idea Partnerships was competitively selected to develop, build, and manage Site One at STEP and the Members approved a ground lease with Idea at the September 2004 Board Meeting. Unfortunately, Idea was unable to develop sufficient financial resources to accomplish the project and, accordingly, the parties mutually agreed to part ways and terminate Idea’s participation. In February 2006, to help meet Starfire’s needs, the Authority issued a Request for Proposals (“RFP”) seeking proposals for the development of Site One at STEP. The Site One design currently envisions a Green Buildings Leadership in Energy and Environmental Design (“LEED”) rated, two-story building with office, laboratory, and production space constructed to Starfire’s specifications.

Staff received one proposal in response to the RFP. The proposal was evaluated by a Technical Evaluation Panel (“TEP”) consisting of Authority staff and outside members with relevant expertise. Based on its evaluation of the proposal, the TEP recommended that the Authority proceed to negotiate a ground lease with United. In order to assure that fair market value was being received, an independent appraisal was conducted which confirmed that United’s proposal exceeded fair market value.

The Ground Lease that was included in the meeting package is similar in structure and terms to the Ground Lease with United approved by the Members for Site Two. Under this Ground Lease, the Authority will lease approximately four acres at STEP to United for a 49-year term. United will obtain financing for, and will construct and manage a building of approximately 60,000 sq. ft. with Starfire as its primary tenant.

United will pay a base rent of \$21,000 annually, with escalations every five years ending with \$79,000 for years 46 to 49. Total rent payments will be in excess of \$2,000,000. United will also pay to the Authority 10% of the Net Proceeds from any Refinance and from any annual Net

Cash Flows achieved from leasing the building, as well as 10% of net proceeds for any sale of the building. The Ground Lease will also require United to pay a percentage of any common area expenses incurred by the Authority and will require payment of \$6 per square foot as a “hook-up” fee, upon commencement of construction, and require United to enter into an agreement with the appropriate municipalities to make payments in lieu of taxes.

Under the proposed agreement, the Authority will not be providing any guaranty or collateral. If the developer is unable to obtain financing, then the Authority may be asked to consider providing some financial assistance. Any such arrangement would be submitted to the Members for approval.

Mr. Mathusa reported that after discussion, the Program Planning Committee voted to recommend that the full Board adopt the resolution approving the Ground Lease at Site One with United.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Members present, the following resolution was adopted.

Resolution No. 1098

RESOLVED, that the ground lease between the Authority and The United Group of Companies, Inc. for Site One at the Saratoga Technology + Energy Park submitted to the Members for consideration at this meeting, be and they hereby are approved. The Chair or his designee is hereby authorized to make such changes to the lease as may be necessary and appropriate, provided such changes do not substantially increase the Authority’s financial obligations under the lease.

Chair DeLorio indicated that the next item on the agenda was revisions to the Authority’s fiscal year 2006-07 budget. Mr. Mathusa indicated that Jeffrey Pitkin, Treasurer of the Authority, reported on this item at the Program Planning Committee meeting. The preliminary budget was reviewed and approved by the Members at the September 2005 meeting. The revised Budget includes changes to comply with regulations recently announced by the State Comptroller concerning public authority budgeting and reporting practices. These changes include providing a certification regarding assumptions and methods of estimation, a description of the Authority’s budget process, including assumptions and a self-assessment of budgetary risks, a three year post budget Financial Plan, a detailed capital budget, a copy of the budget materials on the authority’s

website, and submitting a copy of the approved Budget to the State Comptroller upon approval by the Members

Overall, the revised Budget is estimated at approximately \$352 million in revenues and \$330.3 million in expenditures. Mr. Pitkin provided the Program Planning Committee with specific details of all of the changes that are listed on the schedule included on page 6 of his memorandum and the Program Planning Committee members were satisfied with all of them. The Program Planning Committee then voted to recommend that the full Board adopt the resolution approving the revised budget.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Members present, the following resolution was adopted.

Resolution No. 1099

RESOLVED, that the revisions to the fiscal year 2006-07 operating budget is approved as presented at the meeting of April 3, 2006.

Chair DeIorio then indicated that the next item on the agenda was a report on the recent meeting of the Audit and Finance Committee. Chair DeIorio asked Mr. Catell, Chair of the Audit and Finance Committee to report on the meeting. Mr. Catell indicated that the first item on the Audit and Finance Committee agenda was a report on the principles of governance by Mr. Pitkin, and consideration of four resolutions to effect the changes required by the Public Authorities Accountability Act, amendments to the lobbying laws, and new budget-related regulations issued by the State Comptroller.

All of the changes were explained in the meeting packet and Mr. Catell only highlighted the more important changes. First, the By-laws would be amended to separate the roles of the Chair and the chief executive officer as required by the Accountability Act. The President is now the designated chief executive officer of the Authority. In addition, the By-laws would be amended to name the Treasurer as the chief financial officer, which clarifies that he is the Officer charged with providing financial certification.

Second, a resolution was proposed establishing policies regarding the payment of salaries and rules for time and attendance of the Authority Officers and executive management in accordance with the Accountability Act.

Next, Mr. Catell reported on the new proposed written Defense and Indemnification Policy. The policy follows the provisions of Public Officers Law Section 17, which provides for indemnification of Authority Members.

Lastly, Mr. Catell discussed the Guidelines, Operative Policy and Instructions for the Disposal of Real and Personal Property. These Guidelines provide for accountability of property and establish specific written procedures for the disposal of real property and personal property disposition, as required by the Accountability Act.

Mr. Pitkin also reported to the Audit and Finance Committee that the Authority's governance website is up and running and includes information required to be provided to the public. A copy of the webpage was placed before the Members.

Mr. Catell reported that the Audit and Finance Committee unanimously recommended adoption of the proposed four resolutions.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Audit and Finance Committee members present, the following resolution was adopted.

Resolution No. 1100

RESOLVED, that the amendments to the Authority's By-laws, Internal Control Manual (April 2006), Financial Services Firms Guidelines, Operative Policy, and Instructions (April 2006), and Procurement Contract Guidelines, Operative Policy, and Instructions (April 2006), as presented at this meeting, are approved and adopted.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Members present, the following resolution was adopted.

Resolution No. 1101

RESOLVED, that the Members of the Authority do hereby approve the salary of the President, Vice President for Programs, Vice President for Administration and Secretary, Treasurer, and General Counsel for fiscal year 2005-06 and thereafter in the amount of \$143,888, \$136,693, \$86,783, \$136,693, and \$136,693, respectively, effective as of April 1, 2006, with an increase of \$800 for each, as is currently approved and established for Management/Confidential employees of the State of New York, effective April 1, 2007; and

BE IT FURTHER RESOLVED, that the Members do hereby approve the policies

regarding the payment of salary, compensation, and reimbursements, and the rules for time and attendance as described in the excerpts from the Personnel Handbook and the Accounting Manual set forth before this meeting.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Members present, the following resolution was adopted.

Resolution No. 1102

RESOLVED, that the Defense and Indemnification Policy, as presented at this meeting, is approved and adopted.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Members present, the following resolution was adopted.

Resolution No. 1103

RESOLVED, that the Guidelines, Operative Policy, and Instructions for the Disposal of Real and Personal Property (April 2006), as presented at this meeting, are approved and adopted.

The next item on the Audit and Finance Committee agenda was a report on the recent activities of the State Comptroller. Mr. Catell summarized the report given by Mr. Pitkin. Mr. Pitkin advised that the Authority is still awaiting receipt of the final audit report for the SBC audit completed in January 2006 and copies of the audit and the Authority's response will be provided as soon as they are available.

Staff has also been recently notified by the Office of the State Comptroller ("OSC") that OSC staff will be conducting two additional audits. The first audit will be a follow up to the internal controls audit completed in November 2004 (Report 2005-S-55). This review will investigate the extent to which the Authority implemented the recommendations contained in the final audit report. The Authority has implemented four of the five recommendations and is in the process of developing and testing the fifth recommendation, a disaster recovery plan.

The second audit will concern a review of the implementation of aspects of Executive Order No.111 ("EO 111"), specifically the purchase of energy efficient equipment. EO 111 requires state agencies and authorities to purchase ENERGY STAR[®] labeled equipment, when available, and

requires the Authority to adopt Guidelines for equipment that is not ENERGY STAR[®]-rated. The Comptroller's office has indicated that it expects to review whether the Authority's Guidelines are clear and effective, whether the Office of General Services ("OGS") equipment purchase contracts are in compliance with the EO 111, and to review a sample of state agency equipment purchases for compliance with the EO 111 and the Authority's Guidelines.

Mr. Catell reported that Mr. Pitkin also informed the Audit and Finance Committee of a report issued by the State Comptroller in February 2006 regarding procurements by state authorities and related legislation that was recently introduced by the State Comptroller. The report stated that the Comptroller's Office had conducted a number of audits of authorities where procurement "abuses" were identified. The Authority was cited as an authority "demonstrating poor quality procurements resulting in waste or inefficiency" because of two separate findings from the previous audit. One finding indicated that a payment was made without adequate documentation and the second finding stated that there was an instance of inadequate separation between procurement authorization and receipt verification for an administrative purchase.

The Comptroller recently proposed legislation that would require several changes, such as establishing a procurement policy committee; permitting the issuing of contracts on any non-competitive basis only upon approval of two-thirds majority of the Members; requiring the Comptroller's approval of any contract for the sale of real property; and permitting the Comptroller to designate Authority contracts which would require his pre-audit review prior to being signed by the Authority. Staff will be monitoring this proposed legislation.

Following his report, Mr. Catell asked Mr. Gottlieb to summarize the Committee's discussion of this agenda item. Mr. Gottlieb stated that the Committee felt that the Comptroller's statement citing the Authority as an Authority demonstrating poor quality was not a fair representation. The Audit and Finance Committee has asked Staff to put together a brief memorandum comparing the number of actually completed contracts versus the number of contracts reviewed by the OSC and the number of problems noted. This memorandum will demonstrate there was a very low rate of waste inefficiency compared and counter the Comptroller's unfair description of the Authority's procurement control.

In response to an inquiry from Ms. Sheehan, Mr. Avent indicated that the comments by the Comptroller were based on the 2004 audit, which is final. The Authority has submitted comments to the recently completed SBC audit a final draft version was released in January. However, the

OSC has not yet released a final version of that report.

Mr. Delorio then asked Mr. Catell to report on the next item on the Audit and Finance Committee agenda, which was a discussion on the independent audit of the Authority's financial statement for fiscal year 2005-06. The Public Authorities Accountability Act requires that the independent auditors report on a timely basis to the Audit and Finance Committee: (1) all critical accounting policies and practices to be used; (2) all alternative treatments of financial information discussed with management, the ramifications of the use of such alternative disclosures or treatment, and the treatment preferred by the independent auditors; and (3) material written communications between the independent auditor and the Authority.

At the June 2005 meeting the Members approved Lumsden & McCormick as independent auditors of the Authority for the fiscal year ending March 31, 2006 and were given a copy of the engagement letter setting forth the services to be performed. The Audit and Finance Committee received a report from the Authority's independent auditors.

John Schiavone, the lead audit partner with Lumsden & McCormick, explained that the Authority's financial statements are prepared in accordance with generally accepted accounting principles, which require a summary of significant accounting policies to be included in the footnotes to the financial statements. Mr. Schiavone mentioned that during the year, management had raised a question regarding its accounting treatment of certain funds received by the Authority in 2004. Both funds had been recorded as deferred revenue by management in a conservative effort to match revenues with expenditures. Management and the independent auditors concluded that this treatment was not consistent with relevant governmental accounting standards which require that funds received should be recorded as revenue when received unless there are any unmet eligibility requirements. These standards also require that unexpended funds should be reported as restricted net asset funds. As a result, the comparative financial statement amounts for the year ending March 31, 2005 included in the March 31, 2006 financial statements will be restated to reflect this change.

Management also consulted with the independent auditors on its accounting treatment of certain infrastructure costs being incurred at STEP that are expected to be funded in part from grant funds. It was agreed that these assets and revenues will be recorded and reported in the financial statements in accordance with generally accepted accounting principles.

The Audit and Finance Committee members were satisfied with the planned approach for the upcoming audit and the communication with the independent auditors.

Mr. Catell indicated that the next item on the Audit and Finance Committee agenda was a report on the activities of the Internal Control Officer. Mr. Catell stated that Mr. Pitkin updated the Audit and Finance Committee on the status of a matter he discussed at the January meeting. It was previously reported that the Authority recovered approximately \$54,625 from the contractor due to an overhead billing error. Approximately \$132,000 in expenses was in dispute. With respect to approximately \$50,000 in dispute, staff believes the funds were used in constructing the hydro-turbine technology and will address this as part of the analysis of determining whether to proceed with the project. Since January, the Authority negotiated a dispute resolution agreement with the one company that was primarily responsible for overseeing the joint venture. Under the agreement, the joint venture returned \$48,010 to the Authority and the one company agreed to an offset of \$34,454, which was payable under two other the Authority R&D contracts. In addition, the one company withdrew a fourth project proposal that had been submitted to the Authority. Staff believes that this resolution satisfies its dispute with this one company and provides for the accountability of program expenditures attributed to its participation in the joint venture. No evidence indicates that the second company was directly involved in over-billing under the joint venture.

Mr. Pitkin also advised the Audit and Finance Committee of a new matter. In February 2006 Director of Internal Audit Mark Mitchell received a phone call from an anonymous caller alleging improprieties against a R&D contractor who had been awarded an R&D contract to develop and commercialize two machines that could be used to reclaim materials from discarded computer equipment. The caller alleged that the contractor may have submitted fictitious invoices, inflated test results from the project, and inflated its in-kind contributions to the project.

Upon receipt of the allegation, Mr. Pitkin met with Mr. Mitchell, Program Staff, and Staff from Counsel's office, Finance, and Contract Management. The team recommended that Staff proceed with an audit of the contract. The Authority's Associate Contract Auditor has contacted the contractor, requested certain information, and will schedule an on-site review of this information.

Mr. DeLorio then stated that the next item on the Audit and Finance Committee agenda was a report on the activities of the Director of Internal Audit. Mr. Catell stated that Mark Mitchell, Director of Internal Audit, reported to the Audit and Finance Committee that an audit of the

accuracy of the Authority's contracting database system is in process, but was delayed to work on the Authority-wide risk assessment. No audit reports were issued since the last meeting.

The Authority is still in the process of developing a formally documented risk assessment. The process used to document the risk assessment required an identification of business functions for each program area and department. Each manager was then asked to complete a risk register for each business process identifying: risks that potentially or actually threaten the achievement of objectives; the impacts those risks might have to the Authority; what management techniques are in place to mitigate risks; and an opinion as to what residual risk remains with the existing controls in place. In all, more than 130 completed forms have been received by Internal Audit.

At this point in time, the Officers are actively reviewing the completed risk registers to ensure that the assessments are clear and consistent. Mr. Mitchell will then evaluate the risk profile and issue the results in the form of a report, in time for the June meeting.

Finally, the Audit and Finance Committee was asked to approve the proposed internal audit plan that was developed consistent with the information obtained from the most recent risk assessment activities. This year's plan places an emphasis on auditing procedures and controls over program operations. It will include audits of the Assisted Multifamily Program, the New Construction Program, and the photovoltaic installers. The plan also calls for audits of controls over project management and payment approvals, an audit of Communications, an audit of information technology controls, and a review of the Authority's solicitation process.

The results of each audit will be reported to the Members as they are completed.

The Audit and Finance Committee unanimously voted to approve the Internal Audit Plan for Fiscal Year 2006-07.

Chairman DeIorio indicated that the next item on the agenda was to consider and act upon the appointment of Jay Gottlieb as Vice-Chair of the Audit and Finance Committee. Mr. DeIorio indicated that he had spoken with Mr. Gottlieb who is willing and eager to serve in this capacity. His hard work and insight on the Committee continues to be an asset to the Authority.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Members present, Mr. Gottlieb was appointed as Vice-Chair of the Audit and Finance Committee.

The Chair stated that the next item on the agenda was a report on the Waste and Facilities Management Committee and called on its Chair, Dr. Thorndike. Dr. Thorndike stated that the Committee received a status report on West Valley Site Management activities. Paul Piciulo, Program Director for the West Valley Site Management Program, advised that John Swailes, who was appointed West Valley Demonstration Project (“WVDP”) Director last year, has left the Department of Energy (“DOE”), and that Robert Warther, the Ohio Field Office Manager, is now the Acting WVDP Director, the fifth individual to hold that position since 1999. Dr. Piciulo expects that Mr. Warther will leave his position as Ohio Field Office Manager in May, and that the Ohio Field Office will close by the end of this year. DOE is considering having the WVDP report, thereafter, directly to DOE headquarters.

Dr. Piciulo next reported that, as anticipated, DOE extended their contract with West Valley Nuclear Services Company (“WVNSCO”) through calendar year 2006. Authority staff had an opportunity to review an early draft of the scope of work and discussed our concerns with DOE site management. It is not clear that this scope of work will include much in the way of new decontamination work. President Smith wrote to Assistant Secretary James Rispoli recommending the resumption of decontamination and characterization work in the highly contaminated Main Process Building, and also recommending a renewed effort to mitigate the spread of the strontium-90 groundwater plume into uncontaminated areas of the site.

Dr. Piciulo advised the Committee that DOE distributed a preliminary draft of the Decommissioning Environmental Impact Statement (“EIS”) to the Authority and the other agencies, for comment. Under the current EIS schedule, the Draft EIS is to be issued for public review in January of 2007.

Dr. Piciulo advised the Committee that Staff, with DOE support, had convened a Peer Review Group composed of nationally recognized scientists with expertise in areas relevant to the performance estimates in the Draft EIS. The Peer Review Group submitted its draft report on March 10, 2006. The draft report validates many of the technical concerns the Authority has raised with DOE over the last several years. The draft report’s more significant concerns relate to the groundwater flow and contaminant transport analyses, modeling of erosion to predict landscape evolution over the long-term at the West Valley site, and the scenarios used in the decommissioning EIS to analyze exposures to the public.

Dr. Piciulo advised that these issues are critical for the analysis of whether the EIS alternatives can meet the NRC's license termination criteria. In Dr. Piciulo's opinion, considering the results of the Peer Review, and our own technical concerns with the EIS, it is questionable whether DOE can correct the problems in this document for release to the public by the January, 2007 date.

Dr. Piciulo next reported that the Citizen Task Force ("CTF") continues to raise with DOE its concerns about the ongoing spread of the groundwater plume. The CTF has also asked DOE to withdraw their Site Utilization Management Plan, which is DOE's three phase strategy for the completion of the WVDP, as was discussed at our last meeting. The CTF sent a letter to Mr. Warther which included a laundry list of objections to this plan.

With regard to the pending legislation, Dr. Piciulo reported that Congressman Kuhl held a town meeting in West Valley on February 3, 2006, at which he expressed his optimism about moving the bill during the next four or five months.

Finally, Dr. Piciulo reported that the President's fiscal year 2007 budget includes a request of \$73.4 million for the WVDP, which amount is nearly \$4 million less than the \$77.1 million in federal funding this year.

Upon a motion made at the conclusion of Dr. Piciulo's report, the Committee entered an Executive Session to confer with the Authority's legal counsel regarding proposed litigation concerning our relationship with the DOE and the situation at West Valley. Dr. Thorndike suggested it would be appropriate for the Board to enter executive session at this time.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Members present, except Ms. Sheehan, the following resolution was adopted. Ms. Sheehan abstained from the vote and did not participate in discussions or attend the executive session.

Resolution No. 1104

RESOLVED, that pursuant to Section 105 of the Public Officers Law the Members of the New York State Energy Research and Development Authority shall convene in executive session for the purpose of discussing proposed litigation in relation to the Wester New York Nuclear Service Center with its legal counsel.

The Members then met in executive session with the Officers, Mr. Avent, Mr. Brodie, and Dr. Piciulo. The Chair reconvened the meeting in open session. It was announced that no formal action was taken during the executive session.

Dr. Thorndike reported that the Waste and Facilities Management Committee voted unanimously to recommend that the Board adopt the resolution authorizing the filing and service of a complaint against the United States and the United States Department of Energy containing legal claims relating to the Western New York Nuclear Service Center at West Valley.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Members present, except Ms. Sheehan, the following resolution was adopted. Ms. Sheehan abstained from the vote and did not participate in the discussion.

Resolution No. 1105

RESOLVED, that the Members hereby authorize the serving and filing of a complaint against the United States and the United States Department of Energy, containing legal claims relating to the Western New York Nuclear Service Center at West Valley, as presented at the meeting of April 3, 2006.

Following the approval of the resolution, Mr. Catell left due to scheduling conflicts.

The Chair then asked Dr. Thorndike to report on the remaining items discussed by the Committee. Dr. Thorndike continued her report indicating that the Committee received a report from Jack Spath concerning radioactive waste policy and nuclear coordination activities. Mr. Spath advised that the owner of the Envirocare facility in Utah has agreed to merge with Duratek, the firm which owns the Barnwell, South Carolina waste management facility.

With regard to nuclear power plants, Mr. Spath reported that the Nuclear Regulatory Commission has completed its special investigation of the leakage that occurred at the Indian Point spent fuel pool, and that a public meeting was scheduled for March 28, 2006.

Mr. Spath further advised the Committee that the Energy Policy Act of 2005 requires emergency siren systems at nuclear plants to incorporate backup power systems. The entire 156 siren emergency system at Indian Point is being replaced, with an operational date of January, 2007.

Finally, Mr. Spath reported that Authority Staff is coordinating a review by the responsible New York agencies of the license renewal applications filed for Nine Mile Units 1 and 2. According to Mr. Spath, no major issues have yet been identified.

Chair DeIorio stated that the next item on the agenda actually fell under the heading of other business, but was being moved up in the agenda to accommodate the schedules of some of the Members who are under a time constraint. Mr. DeIorio stated that a resolution regarding the New York State Legislature's recent budgetary actions had been placed before the Members for their consideration. A bill passed by the Legislature would require all funds administered by the Authority for SBC and RPS to be appropriated by the legislature and overseen by the State Comptroller.

The Members discussed the problems that the bill would create for the Authority's programs. In response to an inquiry from Mr. Seymour, Mr. Smith indicated that the proposed budget amendment would set up an account under the joint custody of the State Comptroller and the Commissioner of Taxation and Finance. Every year, the funds for the account would have to be appropriated by the legislature. Currently, the Authority operates under a five year contract with each investor owned utility and the funds are deposited with the Commissioner of Taxation and Finance Department, which acts as the Authority's statutory fiscal agent.

Mr. Smith reported that at a recent press conference, the Governor stated that the appropriation of the Authority's funds was his greatest disappointment in the current budget. Mr.

Smith stated that Authority staff is working closely with the Governor's staff to address this issue.

Mr. Edwards added that if passed, the legislature would be involved in rate making.

Mr. Gottlieb suggested that the Authority contact papers with a national circulation, such as the Wall Street Journal, to boost public awareness of the issue.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Members present, the following resolution was adopted.

Resolution No. 1106

WHEREAS, the New York State Legislature approved a Budget which appropriates, commencing with the 2006-2007 fiscal year, currently non-appropriated monies received by the New York State Energy Research and Development Authority, under the direct oversight of the Department of Public Service, related to assessments collected by public utilities directly from their ratepayers for the purpose of public benefit energy programs; and

WHEREAS, the Legislature's Budget addresses monies received by the New York State Energy Research and Development Authority for the public benefit programs relating to energy efficiency, research and development, and low-income programs, including, but not limited to, the System Benefits Charge ("SBC") Program; the purchase of energy derived from renewable resources, including, but not limited to, the Renewable Portfolio Standard ("RPS") Program; and potentially other programs established through rate proceedings; and

WHEREAS, the New York State Energy Research and Development Authority, in cooperation with the Public Service Commission, established a SBC Public Advisory Committee, comprised of representatives from New York's investor-owned utilities, not-for-profit environmental organizations, the New York State Senate, the New York State Assembly, national and New York State business associations, trade and professional associations, community organizations, academia, New York State public benefit corporations and boards, and other interested stakeholders, who provide guidance on the direction of the SBC Program and the content of the SBC Program plan; and

WHEREAS, the New York State Energy Research and Development Authority developed plans for the operation of the SBC and RPS Programs and submitted them to the Public Service Commission; and

WHEREAS, the Public Service Commission reviewed and approved the SBC Operating Plan and, after public input through the procedures set forth in the State Administrative Procedures Act issued Orders concerning the SBC and RPS programs; and

WHEREAS, the New York State Energy Research and Development Authority, consistent with model principles of corporate governance, is audited annually by independent auditors as well as the Comptroller of the State of New York, prepares annual financial statements, issues an annual report, prepares an annual procurement contract report, and maintains a system of internal controls, which are reviewed and approved by the Members of the New York State Energy Research and Development Authority and are provided to the Governor and the Legislature; and

WHEREAS, the New York State Energy Research and Development Authority also utilizes external review advisory groups consisting of public and private sector stakeholders to guide it in developing programs and opportunities that are deemed needed or appropriate and has in place a process for review by both internal and external reviewers of contract proposals, a process that facilitates and promotes the selection of the best projects in the best interests of the New York State Energy Research and Development Authority and the State's ratepayers; and

WHEREAS, the New York State Energy Research and Development Authority has served as a national leader in the area of public benefit programs and its policies, procedures, and programs have been used as a resource and source of guidance for a number of other states including the states of California, Colorado, Florida, Idaho, Maryland, Massachusetts, New Jersey, Oregon, Texas, Vermont, Washington, and Wisconsin; and

WHEREAS, during the last approximately three fiscal years, the New York State Energy Research and Development Authority has received a significant number of awards, citations, and professional acknowledgments including, but not limited to, the 2005 ENERGY STAR® Corporate Commitment Award (the first in the nation to go to a public agency); the 2005 National Building Commissioning Benner Award; the 2005 Environmental Protection Agency and Department of Energy ENERGY STAR® partner-of-the-year award for Sustained Excellence; the 2005 CINE Golden Eagle for the "Super Powers" public service announcement produced in partnership with the Alliance to Save Energy; the 2004 Public Relations Society of America "Totem Award" for the "New Pet" television public service announcement; the 2004 Climate Protection Award from the United States Environmental Protection Agency (for environmentally economic and sound energy programs); the 2004 ENERGY STAR® Award for Outstanding Achievement for the Authority's New York ENERGY STAR® Homes Program; the 2004 Telly Award (an international competition honoring local, regional and cable TV commercial and programs, for "New Pet" (Silver award) and "Science Fair" (Bronze award) television advertisements; the 2004 "Best Practices Benchmarking for Energy Efficiency Programs" sponsored by the California Public Utilities Commission, California Energy Commission, and public utilities in the State of California, the 2003 Local Public Service Announcement Emmy Award for the "New Pet" television public service announcement; the Regional Invention of the Year Award (for environmental monitoring technology); "Field Test DELTA: Integrated Skylight Luminaire" distinguished award from the Society for Technical Communication's International Technical Publication Competition"; the 2003 "Certificate of Appreciation" from the New York Association of Public Transportation; the American Council for an Energy-Efficient Economy's "2003 Champion of Energy Efficiency Award"; the 2003 IdleAire Pioneer Award (for the advanced truck stop electrification project); and the 2003 Communicator Award for the Authority's Annual Report; and

WHEREAS, as part of its administration of these and other programs, the New York State Energy Research and Development Authority has competitively selected approximately 97% of its contractors and has competitively awarded 97% of the dollar amount committed

(with the remaining 3% of contracts and funds being awarded pursuant to procedures and rationales set forth in the Member-approved Procurement Contract Guidelines, Operative Policy and Instructions) and, with the approval of its Members, has provided to the Governor and the Legislature, among others, annual reports listing each contractor, the value of the contract, the method by which the contractor was selected, and whether the contract is anticipated to exceed a year in duration; and

WHEREAS, consistent with these transparent and open processes, the New York State Energy Research and Development Authority has been administering the SBC Program for approximately eight years and the RPS Program for about eighteen months; and

WHEREAS, the New York State Energy Research and Development Authority established programs to address the SBC Program goals of improving system-wide reliability and peak reduction through end-user efficiency action, improving energy efficiency and access to energy options for under-served customers, reducing environmental impacts of energy use, and facilitating competition to benefit end-users; and

WHEREAS, pursuant to those goals, the New York State Energy Research and Development Authority has facilitated approximately 1,000 megawatts ("MW") of potential demand reduction, reduced energy use by 1,700 GWh (the equivalent of meeting the energy needs of 240,000 homes annually) through the participation of 750 of New York's architectural and engineering firms, 180 energy services companies, and 7,744 completed commercial and industrial projects for customers participating in the SBC Program, and

WHEREAS, as a result of the SBC Program, the New York State Energy Research and Development Authority has facilitated 2,700 customers in conducting technical assistance audits, 12,937 meters being installed to provide building owners with information on energy use, and 497 projects installing more efficient lighting systems; and

WHEREAS, as a result of the SBC Program, the New York State Energy Research and Development Authority estimates that nitrogen oxide emissions have been reduced by about 1,500 tons per year, sulfur dioxide emissions have been reduced by 2,700 tons per year, and carbon dioxide emissions have been reduced by over 1.1 million tons per year (the equivalent of removing 237,000 cars from the road annually); and

WHEREAS, as a result of the SBC Program, there has been a significant increase in the market penetration of Energy Star® appliances and new homes and a significant increase in the familiarity of contractors and homeowners with energy efficiency issues and products; and

WHEREAS, the annual energy savings for participating SBC Program customers is estimated to be nearly \$230 million through year-end 2005 and the number of new jobs lasting an average of ten years having been created in New York is estimated to be 4,450; and

WHEREAS, as a result of the RPS Program, the New York State Energy Research and Development Authority, in cooperation with the Department of Public Service, has contracted to support the development of about 310 MW in renewable resource projects, including issuing a competitive solicitation, reviewing the proposals with a panel of external reviewers, and executing the necessary contracts within four months of receiving authorization from the Public Service Commission;

NOW, THEREFORE, BE IT RESOLVED that the Members reaffirm that the programs, procedures, guidelines, and policies of the New York State Energy Research and Development Authority, including, but not limited to, its program planning process, procurement contracts guidelines, operative policy and instructions, internal controls system including the accounting manual, operations and procedures manual, personnel handbook, and internal controls manual, and its accountability and transparency practices as set forth in its financial statements, its annual procurement contracts report, its annual program plan, its annual report, its annual financial services report, its annual prompt payment report, and its annual investment report, among others, are in furtherance of its mission of using innovation and technology to solve some of New York's most difficult energy and environmental problems in ways that improve the State's economy, and that the Public Service Commission's goals for the SBC Program, the RPS Program, and other programs should continue to be funded and administered using current procedures and processes; and

BE IT FURTHER RESOLVED, that the Members of the New York State Energy Research and Development Authority do hereby memorialize their unified confirmation that the Authority's existing policies, procedures, and programs are successful in their intended effect of using energy more efficiently and memorialize their opposition to the inclusion of funding for the SBC Program, the RPS Program, and other programs in the State Budget for fiscal year 2006-2007 as it will foster the creation of uncertainty for the institutional, industrial, and commercial sectors, State and local municipalities, school districts, renewable resource developers and others who participate in and benefit by the SBC Program, RPS Program and other programs in reducing their energy costs; adversely affect the timeliness for Authority support of the identification and approval of energy efficiency opportunities since their approval would become dependent on annual appropriations; adversely affect the efficiency of Authority operations which seek to maintain a stable and level offering of programs over the year; adversely affect efforts to maintain multi-year programs which assist customers in conducting initial technical audits that identify energy efficiency measures, shepherd them through the development of bids, identification and purchase of appropriate equipment, and then the implementation of those measures, which can take years for complex buildings and facilities; and adversely affect financial projections for and the timely development of renewable resources; and

BE IT FURTHER RESOLVED, that the Members of the New York State Energy Research and Development Authority, in unison for themselves as well as for the public utilities and citizen ratepayers who fund the SBC Program, RPS Program, and other programs and the hundreds of beneficiaries of these programs whom we serve, respectfully urge the Governor of the State of New York and the leadership and members of the New York State Senate and New York State Assembly to remove, revise, or otherwise eliminate from the proposed Budget the appropriation of these funds for fiscal year 2006-2007.

Following the approval of the resolution, Mr. Akel left due to scheduling conflicts. Chair DeLorío noted there continued to be the presence of a quorum.

Chair DeLorío stated that the next item on the agenda was a resolution approving a periodic procurement contracts report. He called upon Cheryl Earley, Director of Contract Management, to

address this item. Ms. Earley explained that Public Authorities Law Section 2879 and the Authority's Procurement Contracts Guidelines, Operative Policy and Instructions provide for the periodic review and approval of contracts in excess of one year. The periodic procurement contracts report presently before the Members is the report covering the period December 16, 2005, through March 15, 2006. The report summarizes the 677 procurement contracts initiated or modified during the period. About 95% of the procurement contracts were competitively selected and about 97% of the total dollar amounts committed were selected on a competitive basis. The report also summarizes an additional 219 procurement contracts that are expected to be executed by the Authority and that have a period of expected performance in excess of one year; they total approximately \$20 million. The Authority is in compliance with the guidelines in its selection of contractors.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Members present, the following resolution was adopted.

Resolution No. 1107

RESOLVED, that the Periodic Procurement Contracts Report, dated as of March 15, 2005, covering the period December 16, 2005 through March 15, 2006, as presented at this meeting, including but not limited to the contracts identified therein which have been, or are expected to be, executed and which do have, or are expected to have, a period of performance in excess of one year, is hereby approved in accordance with Public Authorities Law Section 2879(3)(b)(ii).

The Chair said that the last item was other business. The Chair asked if there were any other matters the Members wished to discuss. There being no other business, upon motion duly made and seconded, and by unanimous voice vote of the Members, the meeting was adjourned.



Wendy M. Shave
Secretary