

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

Minutes of the 184th Meeting

Held on January 23, 2006

Pursuant to notice dated January 11, 2006, a Regular Meeting (the 184th meeting) of the New York State Energy Research and Development Authority ("Authority") was convened on January 23, 2006, at 11:00 a.m. in the Authority's 10<sup>th</sup> floor conference room at 485 Seventh Avenue, New York, New York, and was available by video conference in the Authority's board room at 17 Columbia Circle, Albany, New York, and by video conference in the Authority's conference room at 617 Main Street, Suite 105, Buffalo, New York.

The following Members of the Authority were present in New York City, unless otherwise indicated:

Vincent A. DeIorio, Esq., Chair  
Robert B. Catell  
William F. Edwards (by Albany video conference)  
William M. Flynn, Esq. (by Albany video conference)  
Jay L. Gottlieb  
Parker D. Mathusa  
Denise M. Sheehan (by Albany video conference)  
Elizabeth W. Thorndike, Ph.D.

Members Akel, Madison, Marusak, and Seymour 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; and Roger D. Avent, Esq., General Counsel of the Authority. In addition, Richard Albertin from the New York State Department of Transportation; John Osinski from the New York Power Authority; and various members of the staff of the Authority were in attendance.

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 January 11, 2006.

Before beginning the formal agenda, the Chair recognized several Members for their latest achievements. Ms. Sheehan and Mr. Madison were recently confirmed by the Senate. Ms. Sheehan is now the Commissioner of the Department of Environmental Conservation (“DEC”) and Mr. Madison is now the Commissioner of the Department of Transportation. The Chair noted that the citizens of the State of New York will be the ultimate beneficiaries of these good appointments.

The Chair also congratulated Ms. Sheehan for receiving the Distinguished Alumni Award in Public Administration and Policy from Rockefeller College. Lastly, the Chair acknowledged former Member Timothy S. Carey, who was honored by the United States Green Building Council for his contribution to sustainable design and implementing green building construction guidelines while he was President of the Battery Park City Authority.

The Chair then thanked Public Service Commission (“PSC”) Chairman William Flynn. The PSC approved the extension of the system benefits charge (“SBC”) program for five more years and increased the funding to \$175 million per year. The Chair, on behalf of the Members and staff, thanked both the PSC for this vote of confidence and Mr. Flynn for his help and guidance. The Chair said that the action reflects positively on Authority staff, Authority Officers, and Authority Members. The Chair said that all should be proud of their efforts and that the PSC’s extension of the SBC program validates the importance of the Authority’s contribution to the energy well-being and security of New York State.

The Chair then read into the record a letter from Authority Member Thomas J. Marusak, who indicated that he would not be seeking a second term. In his letter, Mr. Marusak expressed appreciation for the opportunity to serve, indicated his hope that he had provided meaningful input into Authority deliberations over the past eight years, and wished the Authority well in its future challenges.

Chair DeIorio then called upon Peter R. Smith, President of the Authority, to address the Members. President Smith first expressed his appreciation to PSC Chairman Flynn for the PSC's renewal of the SBC program and for continuing the Authority's role as Administrator.

President Smith then explained that, last week, Governor Pataki issued his fiscal year 2006-07 Executive Budget ("Budget"). The Budget proposes funding for the Authority's Research, Development, and Demonstration; Energy Analysis; and West Valley Site Management programs consistent with the State Appropriation Request approved by the Members at the September 2005 meeting.

The Budget also includes a proposed appropriation of \$700,000 of Petroleum Overcharge Restitutionary ("POCR") funds. These funds, which the State received from the United States Department of Energy ("DOE") under the 1986 Kansas Stripper Well Settlement Agreement, must be used for certain energy efficiency and conservation programs approved by DOE. Staff expects to use the funds to provide technical assistance to commercial, industrial, and residential customers, particularly those that are not eligible to receive benefits through the SBC program. The funds would also be used to help offset anticipated reductions in DOE's State Energy Program grant funding. Staff expects that the DOE award to the State will be reduced by about \$400,000, annually, from \$2.4 million to about \$2 million.

In addition, the Budget proposes \$10 million to support companies in New York State that are working to develop alternative fuel and plug-in hybrid components and vehicles and \$5 million in competitive grants for gas stations to install pumps that can dispense ethanol (E85), biodiesel (B20) fuel, or compressed natural gas ("CNG"). The Budget further proposes the use of \$5 million for continuing the development of a hydrogen vehicle infrastructure and for conducting research to convert internal combustion vehicles to hydrogen-fueled vehicles. Lastly, with respect to the existing hydrogen program, the Budget proposes \$10 million to fund a new program to support the research and manufacturing of lightweight car and vehicle parts.

Also of interest to the Authority is the official announcement, within the Budget, that the

Authority and DEC have entered into a memorandum of understanding to locate a new state-of-the-art testing laboratory at the Saratoga Technology + Energy Park ("STEP"). Mr. Smith then asked Ms. Sheehan, Commissioner of DEC, to comment on this announcement. Ms. Sheehan said that DEC was pleased to have found the right partner and a great home for the new DEC emissions testing laboratory. This laboratory will provide DEC with the ability to increase its work in alternative fuel engines and fuels analysis. Ms. Sheehan concluded by stating that there is currently a lack of testing facilities in New York; the new facility will advance the use of new types of engines and fuels, while ensuring that such products are consistent with air quality standards, including those relating to ozone and particulate matter emissions.

In conclusion, Mr. Smith reported that, although not directly related to the Authority, the Budget also proposes various tax incentives and other tax relief relating to a variety of energy-consuming products. It includes tax credits for the purchase and use of alternate fuel vehicles, including hybrid vehicles; two weeks of no sales tax on the purchase of Energy Star® appliances; and tax credits for the upgrading of home heating systems. It also includes a clean coal initiative. Many of these initiatives originated from ideas generated by Authority staff and serve to highlight the insightful and critical thinking the State has come to expect from Authority staff.

In response to an inquiry by Mr. Gottlieb, Mr. Smith explained that, under the Governor's Budget, the Authority, the New York Power Authority ("NYPA"), and the PSC are to identify "shovel ready" sites for clean coal gasification power plants. Mr. Gottlieb added that coal is an abundant indigenous natural resource, General Electric is a New York State company involved in producing coal-related technology, and that environmental groups have recently recognized that coal will need to be a part of the nation's energy policy.

Chair DeIorio then turned to the first agenda item concerning a resolution commending Timothy S. Carey for his service to the Board. Mr. Carey resigned as a Member of the Authority and has recently been named Chief Operating Officer at NYPA. He is to be congratulated on this new position. It is also fitting that the Members memorialize Mr. Carey's past dedication and commitment to the Authority and let him know how much the Authority appreciated his counsel.

Therefore, the first action item before the Members was a resolution commending Mr. Carey for his services to the Authority.

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

Resolution No. 1096

WHEREAS, the Honorable Timothy S. Carey, served with distinction as a Member of the New York State Energy Research and Development Authority for over five years, including over five years as a member of the Program Planning Committee and over five years on the Waste and Facilities Management Committee; and

WHEREAS, Mr. Carey's participation in the affairs of the New York State Energy Research and Development Authority has been marked by vigilance and wise counsel and has demonstrated his dedication to promoting the mission of the New York State Energy Research and Development Authority in harmony with the best interests of the People, the environment, and the economy of the State of New York; and

WHEREAS, the Members wish to recognize Timothy S. Carey for his distinguished service to the People of the State of New York as a Member of the New York State Energy Research and Development Authority and for his insight and dedication in contributing to its mission, and to memorialize that recognition;

NOW, THEREFORE, BE IT RESOLVED THAT, the Members of the New York State Energy Research and Development Authority, assembled on this 23<sup>rd</sup> day of January, 2006, commend the Honorable Timothy S. Carey, and express their appreciation, for his dedicated and distinguished service as a Member of the New York State Energy Research and Development Authority.

The Chair indicated that the next agenda item was a report from the Program Planning Committee ("PPC"). Parker Mathusa, Chair of the PPC, stated that the PPC met and received reports on the status of Authority programs that currently exist and on a series of new initiatives that are expected to be implemented in the coming year. In addition, it was reported that a recent PSC Order extended the SBC program for another five-year period to run through June 30, 2011, and to be funded at the level of \$175 million, annually. Authority staff is in the process of preparing the SBC Operating Plan ("Plan") to be filed with the PSC on or before February 15, 2006. The Plan is

expected to combine some programs, create new initiatives, streamline customer access to programs, and offer certain existing programs as subscription services instead of using a competitively-procured solicitation process. A draft of the Plan will be submitted to the Members for comment prior to filing with the PSC.

The PSC issued a separate Order adopting an electric rate plan (“Rate Plan”) for Consolidated Edison Company of New York, Inc. (“Con Edison”). The Rate Plan authorizes funds for implementation of two demand-side management programs. One program, the system-wide program (“SWP”), is to be administered by the Authority. The goal of the SWP is to reduce demand in Con Edison’s service territory through energy efficiency, distributed generation, and load management programs. The funds provided for SWP are to supplement, not supplant, SBC monies in the Con Edison territory. The other program is to be administered initially by Con Edison, but if Con Edison fails to meet prescribed goals, then the Authority may have unencumbered funds transferred to it to fund additional Authority demand reduction efforts.

With respect to the Renewable Portfolio Standard program (“RPS”) update, the PPC was advised that this program essentially provides financial incentives, on a competitive basis, to encourage the development of renewable energy sources, such as wind, solar, hydropower, and biomass. The goal of the program is to raise the “renewable” percentage of New York State’s electricity supply by about 6%, from the current 19% to 25%, before the year 2013.

With respect to progress made with the Renewable Greenhouse Gas Initiative (“RGGI”), the PPC was advised that RGGI is an agreement among seven Northeast states to implement a cap-and-trade program to lower carbon dioxide (“CO<sub>2</sub>”) emissions from power plants. Such CO<sub>2</sub> emissions are a major contributor to global warming. This is the first mandatory cap-and-trade program for CO<sub>2</sub> emissions in the United States. Under RGGI, emissions of CO<sub>2</sub> in the region would be capped at current levels beginning in 2009, with the cap remaining in place until 2015. The Northeast states would then begin reducing emissions incrementally over a four-year period to achieve a 10% reduction by 2019.

President Smith concluded his presentation to the PPC by stating that a solar awning had been installed at the Authority's Albany Office. The awning, consisting of 3.6 Kw of photovoltaic cells, once again demonstrates the Authority's commitment to renewable technologies not only in words, but in actions.

Mr. Mathusa then highlighted some of the important issues reported to the PPC by each of the Program Directors. Paul DeCotis, Program Director for the Energy Analysis Program, described the Authority's SBC program evaluation activities and the results of assessments of alternative fuel vehicle ("AFV") technologies. The cost of the AFV assessments were funded in part by various organizations including the Authority, KeySpan Corporation, and other entities. The assessments covered 13 vehicle types and described the advantages and disadvantages of each technology compared to conventionally-fueled vehicles. The assessments indicate that the advantages of AFVs include operating on domestically-produced fuels, reducing dependence on foreign oil, and potentially reducing harmful environmental emissions. The assessments indicate that conventionally-fueled vehicles have a competitive edge over AFV's due to lower vehicle and fuel costs and more extensive fueling and repair infrastructures. In addition, the assessments indicated that the New York State vehicle fleet includes more than 4,600 AFVs. The Authority has invested over \$25 million in transportation research and development in this area, including \$16 million for CNG-fueled vehicle projects, \$6.8 million for hybrid-electric vehicle projects, and \$3.6 million for fuel cell development. In addition, through its deployment programs, the Authority has invested \$27 million in 66 AFV projects, which resulted in the installation of over 800 CNG-fueled vehicles and 16 CNG refueling stations in the State. Moreover, the State has leased two hydrogen-powered fuel cell vehicles as part of an Authority project with Honda, Plug Power, and Air Products.

Joseph Visalli, Program Director of the Energy Resources, Transportation, Power Systems, and Environmental Research Program, highlighted this program's current activities and initiatives. Mr. Visalli advised that the Authority is managing a clean diesel portfolio. The portfolio addresses all of the various vehicle segments including on-road vehicles (e.g., diesel buses and truck-stop electrification), off-road vehicles (e.g., construction-related vehicles), and marine vehicles (e.g., ferries). It includes deployment, demonstration, and evaluation in the field as well as product

development.

The Industry and Buildings Research and Development Program, led by Program Director Gunnar Walmet, released its plan for a hydrogen program and issued a solicitation seeking related projects. Responses to the solicitation are due January 30, 2005. In addition, the combined heat and power (“CHP”) program is on track and will be continued under the new SBC program. The Authority has partnered with the Association of State Energy Research and Technology Transfer Institutions (“ASERTTI”) to use its protocol for monitoring CHP field performance, and this should serve as an important mechanism in promoting technology transfer of CHP.

Richard Gerardi, Program Director of the Residential Energy Affordability Program (“REAP”), reported that REAP implemented a low-income heating initiative to mitigate the high cost of heating homes this winter. An additional \$7 million of SBC funding was recently approved by the PSC for use in an enhanced initiative. The enhanced initiative includes a community-based Consumer Outreach and Intake Campaign; a comprehensive recruiting, training and certification promotion to expand the current program’s contractor infrastructure; and additional incentives for the Assisted Home Performance with ENERGY STAR® Program. This initiative will also expand the “all fuels” EmPower New York pilot program to the entire SBC-eligible service territory.

Brian Henderson, Program Director of the Energy Efficiency Services Program (“EES”), reported that EES is currently working on a mainstream energy efficiency design for green buildings. EES recently achieved a major milestone at which 500 architectural and engineering firms are participating in the Green Buildings Program. The New Construction Program has funded over 1200 projects (with 200 of them including both energy and green materials attributes) and has influenced almost 15% of new construction in the State. The Authority also received the United States Green Building Council’s “Leadership Award”.

Lastly, Robert G. Callender, Vice President for Programs, updated the PPC on the status of development at the Saratoga Technology + Energy Park (“STEP”). With respect to the Authority’s infrastructure projects at STEP, water, sewer, electric, gas, and high-speed telecommunications are

in place to support the existing building as well as the initial build out. The Authority also obtained a Small Cities Grant of \$735,000 to support the future costs at STEP for infrastructure and other improvements. Staff are also working to finalize an agreement with Hudson Valley Community College (“HVCC”) through which HVCC would lease space and conduct energy-related training courses.

As previously mentioned, it was also reported at PPC that a memorandum of understanding has also been signed with DEC to select a developer to construct, finance, and manage a 50,000 square foot state-of-the-art DEC testing laboratory at STEP. DEC has hired a design firm to support this effort.

Before discussing the resolution before the Members on the proposed ground lease with the United Group of Companies, Inc. (“United”) for the development and management of Site Two at STEP, Mr. Mathusa called on Mr. Callender to update the Members on activities at the site. Mr. Callender explained that the Members had previously approved a ground lease with Idea Partnership (“Idea”) to develop, finance, and construct a building on Site One. Idea had been negotiating with HSBC Bank, National Association, over the last several months to obtain financing. However, Idea was unable to obtain the financing needed for constructing the building without obtaining significant financial guaranties from the Authority. The Authority was not comfortable providing the required guaranties and, therefore, the parties have mutually agreed to part ways. The Authority will be issuing a request for proposals to obtain a new developer.

Site Two, which is before the Members today, would build a facility for Daystar Technologies Inc. (“DayStar”). The selected developer is United and an article from the newspaper which refers to United was placed before the Members. This article makes allegations concerning the relationship between United and the former President of the State University of New York at Albany. Both principals cited in the article deny the allegations and the State’s Attorney General reviewed the allegations and determined that an action would not be brought. This information was brought to the Members attention in order to provide full disclosure with respect to the proposed transaction. Staff nonetheless supports the proposed resolution based on the qualifications of the

developer.

The Chair added that in-between meetings of the Members, he has had numerous conversations with Authority staff to discuss evolving developments, to consider possible options, and to plan a course of action. In order to meet Starfire's schedule and to keep Daystar at STEP, there is a need to keep moving forward. Governor Pataki's announcement about locating the DEC testing laboratory at STEP is providing additional momentum for the site. To build on this momentum, the Authority needs to focus its efforts on going forward in a responsible and deliberate manner, and he believes staff have presented a proposal that would accomplish this.

The Chair then asked Mr. Mathusa to continue with his presentation. Mr. Mathusa explained that, at the January 2004 Meeting, 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 STEP property, with the understanding that the development of STEP would be a market-driven, public-private partnership using private developers.

Daystar, the Site Two tenant, is a photovoltaic manufacturing company, which relocated to STEP from California. The Site Two 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 DayStar's specifications.

In September 2005, the Authority issued a Request for Proposals ("RFP") seeking responses for development of Site Two at STEP for DayStar. Two proposals were received in response to the RFP. The proposals were first evaluated by a Technical Evaluation Panel ("TEP") consisting of staff and outside reviewers with relevant expertise. The TEP then conducted an interview with each proposer in order to clarify certain elements of each of their respective proposals, and then unanimously recommended that the Authority proceed to negotiate a ground lease with United. United was selected because it provided the strongest development team and the best proposal for payments to the Authority. United is located in Troy, New York, and is experienced in real estate development, financing, acquisitions, and property management. United's development team

includes: Turner Construction (construction); Einhorn, Yaffee, Prescott (architectural and engineering); Saratoga Associates (site planning and engineering); Millennium Credit Markets (financing); and United Realty Management Corp. (property management).

The proposed ground lease is similar in structure and terms to the ground lease approved by the Members for Site One, except for the amount of rent payable to the Authority, which is based upon United's development proposal. Under the proposed ground lease, the Authority would lease Site Two to United for a 49-year term. United would obtain financing for, and would construct and manage, a building of approximately 100,000 sq. ft. with DayStar as its sole tenant. In return, United would pay to the Authority base rent of \$30,000 annually, with escalations every five years, ending with a base rent of \$107,000 for years 45 through 49. The total base rent would total over \$3 million over the life of the proposed ground lease. United would also pay to the Authority a percentage, ranging from 5% to 10%, of the annual net cash flows from the building and would pay upon completion of construction \$6 per square foot for the building's allocable share of infrastructure costs incurred by the Authority at STEP.

Under the proposed ground lease, the Authority would not be providing any guaranty or collateral to support the development. If the developer is unable to obtain financing for Site Two, and if the developer asks the Authority to consider providing some financial assistance or guaranty, the proposed transaction would be submitted to the Members for review and approval.

A lengthy discussion, which included a question and answer period among the Members and the Officers, then ensued. The points covered were that: the TEP considering the proposals was comprised of two staff from the Authority and staff from the Empire State Development Corporation, the Town of Malta, and the Dormitory Authority; the RFP did not request details on the proposed financing, since the developer was to be responsible for providing its own financing; and the initial developer for Site One was unable to provide the internal funds necessary to cover the costs for site investigation prior to securing construction financing. Also discussed was that: STEP is unique; the companies to be served would not likely be creditworthy since they would be in the nature of incubator firms; and that extensive internal discussion among staff, the Officers, and

the Chair resulted in a collective determination that it was inappropriate for the Authority to take on the proposed financial guaranties for Site One. Staff described to the Members the process for attracting developers for Site Two; that two responsive bids were received after following the same procedure that was used for Site One, where four bids were received; and that it was doubtful that re-bidding the contract would produce additional bids. In addition, any financial support for Site Two would be brought to the Members for their consideration, but staff are hopeful that United will be able to secure the financing that is necessary to get the project off the ground. Furthermore, since this is the first such park in the nation, there is no ability to use a "cookie cutter" approach to development. In addition, Staff success in securing co-funding from other governmental sources for STEP underscores their commitment to support the effort and their dedication to using their skills to make the park a success.

The discussion concluded with Dr. Thorndike thanking Authority staff for their efforts in facilitating full disclosure of the influencing factors and for fostering the in-depth discussion among the Members. She said that she appreciated the Members' and staff's detailed and thorough discussion of the issues and risks.

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

#### Resolution No.1097

RESOLVED, that the ground lease between the Authority and The United Group of Companies, Inc. for Site Two at the Saratoga Technology + Energy Park is approved as presented at the meeting of January 23, 2006. 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 said that the next item on the agenda was a report from the Audit and Finance Committee (A&FC"). Mr. Catell, Chair of the A&FC, reported that the A&FC first received a report regarding the audit being conducted by the Office of the State Comptroller ("OSC") on the administration of the SBC program. The Authority's Treasurer, Jeffrey J. Pitkin, reported that the

draft audit report on the SBC program was delivered by OSC late Friday. As expected, OSC recommends that the Authority increase its monitoring of indirect cost rates and staff have already increased their efforts in this area. As expected, OSC also discussed one instance where program staff miscalculated an incentive payment on one project and two instances where the Finance Department's review of compliance with contract terms was not adequate. As a result of the first instance, an overpayment of about \$21,000 was made. As expected, the draft audit report recommends that the overpayment be recovered and this was already done prior to completion of the audit.

Staff will be reviewing the draft audit report in more detail and will provide the Members with a copy of the draft audit report and the Authority's response.

Mr. Catell then continued his presentation by stating that Mr. Smith informed the A&FC that the Public Authority Accountability Act of 2005 ("Act") passed by the Legislature in June 2005 was signed by Governor Pataki last week. In accordance with the language previously approved by the Members, one of the sections of the Act re-designates the position of President as the Chief Executive Officer of the Authority. In addition, the Act requires that a governance committee be established. The purposes of the governance committee would be to keep the Authority informed of best governance practices, review corporate governance trends, update the Authority's corporate governance principles, and advise appointing authorities on the skills and experiences required of potential Members.

These provisions, among others, will necessitate changes to the Authority's By-laws, policies, and operating manuals. A complete set of changes will be provided for consideration at the April meeting.

An administrative requirement of the Act is that all Members are to attend "state approved training," and that this training is to address the legal, fiduciary, financial, and ethical responsibilities of being a Member. Staff are investigating the potential for having an Authority-specific training session that would be tailored to the Authority's specific needs. The tailored

program would provide a balance between the Members collective need to comply with the Act and their already busy schedules. Further information will be provided as soon as it is available.

Mr. Catell continued his report by stating that Mr. Pitkin reported on proposed regulations recently issued by OSC. In December 2005, OSC issued proposed regulations relating to budgeting, management, and reporting practices of the State's public authorities. The last day for submitting comments on the draft regulations is today. Staff have reviewed the draft regulations and found that, if enacted in their current form, they would have some impact on current practices. In particular, they would require the preparation of both accrual and cash basis budgets, the inclusion in the budget of multi-year financial projections, the inclusion in the budget of the significant assumptions used in preparing the budget, and the inclusion in the budget of a certification from the President on the budget's accuracy. The regulations would also require additional contractor information to be included in the Annual Procurement Contracts Report.

Staff have submitted comments on the draft regulations, primarily seeking additional guidance on implementation strategies. An update will be provided once the regulations are final.

In response to an inquiry by Mr. Gottlieb, Mr. Pitkin responded that the Authority could comply with the requirements of the proposed regulations without incurring significant additional burdens.

At the Chair's request, Mr. Catell then addressed the next agenda item, a report on internal controls. Mr. Smith began by explaining that a discrimination action against the Authority is pending before the New York State Division of Human Rights ("DHR"). In 1989, a male job applicant filed a claim alleging that the Authority discriminated against him on the basis of gender because it hired a female to fill a project manager position, instead of him. An initial hearing was held in 2001, and a rehearing on additional matters was held in 2004. Since 1989, the Authority has consistently maintained that there was no discrimination on the basis of gender and that the Authority selected the better candidate based upon the candidate's resume, references, and background.

Last month, the DHR Administrative Law Judge issued a Recommended Decision. The Recommended Decision found that the Authority discriminated on the basis of gender and recommended an award of damages of approximately \$80,000, including interest. The Authority will be filing objections to the finding.

Mr. Pitkin, in his capacity as the Internal Control Officer, then reported on the activities that were undertaken over the last year. These included implementing updates to the Internal Control Manual that were approved by the Members, consistent with the model governance principles set forth by the Secretary to the Governor and the Public Authority Governance Advisory Committee; implementing recommendations to further strengthen the Authority's system of internal controls that were made by the Comptroller as a result of his internal controls of audit in early 2005; and conducting training activities on solicitation and contract development and contract invoice approval procedures, sexual harassment prevention training, and business writing, among other professional development activities.

Mr. Pitkin reported that, going forward, he expects to continue reviewing and monitoring internal controls, making improvements when appropriate, and as previously discussed, implementing the requirements of the Public Authority Accountability Act. Relevant training for staff will also be continued.

As has been explained in the past, a system of internal controls cannot provide absolute assurance on the accomplishment of objectives and prevention or detection of risks, but can only provide reasonable assurance. From this premise, Mr. Pitkin advised the A&FC of a few pending issues.

At the January 2005 meeting, the Members were advised that, based upon an internal investigation by an energy service company, the company discovered that it was not meeting a metering program requirement of obtaining one-half cost sharing from its customers. Using the correct cost-sharing requirement, the Authority found that the contractor had been overpaid by \$23,561. The contractor agreed with this determination and entered into an agreement with the

Authority to repay the funds in eight quarterly installments. The contractor is up-to-date on the payment of these installments.

Staff also reported at the January 2005 meeting that they were looking at another energy service company's participation with respect to two metering solicitations. At the conclusion of the review, staff found that this company had not met the cost-sharing requirement under one solicitation and, under another solicitation, was not billing for incentives based on actual costs. Staff compared the amounts paid against the corrected cost-sharing requirement in the one program plus the contractor's actually incurred costs in the other program and adjusted the total incentive amount accordingly. Once the company finishes monitoring the meters for the required two-year post installation period on several projects, it is expected that the Authority will owe additional incentive payments. In addition, three of the program participants associated with the company were found to have received incentive payments in excess of the contractor's costs. The excess payments totaled about \$10,000. The Authority has received about \$8,000 from two of the three clients and staff are working with the contractor and the remaining client to obtain the last repayment.

As previously mentioned, as part of OSC's internal controls audit, it was suggested that the Authority increase the frequency of its review of overdue account receivables and staff agreed with this recommendation. As a result, Finance Department staff are reviewing accounts receivable every week and Mr. Pitkin is reviewing outstanding billings in detail on a monthly basis. After a number of unsuccessful attempts to obtain payment for 21 of the past due invoices, staff referred the invoices to the State's Attorney General for collection. To date, using this process, the Authority has collected on 16 past due invoices totaling about \$124,000.

With respect to new matters, staff recently discovered some billing irregularities on an on-going research and development program contract for the development and demonstration of kinetic hydro-turbine technology. Some irregularities with respect to the contractor's billings were noted by Authority staff, so the Authority sent its Associate Contract Auditor to audit the contract. Based upon the audit, the Authority was reimbursed \$54,625, which was due to an error in labor overhead costs. In addition, staff and the contractor disagree on the appropriateness of the documentation

submitted to justify \$132,000 billed to and paid by the Authority. The Authority has sent a letter to the contractor demanding repayment of this amount, but negotiations among the Authority, the contractor, and the contractor's counsel are underway to resolve this disagreement in a mutually acceptable manner.

Next, Chair DeIorio asked Mr. Catell to address the next agenda item which included a status report by Mark Mitchell, Director of Internal Audit. Mr. Catell reported that an audit of electronic invoice processing had been completed and that no significant issues were identified by Mr. Mitchell. The new process resulted in a reduction in the number of days it takes to approve invoices. It also has made it easier for the Finance Department to track invoice status and location, and to assure that the Authority is in compliance with its Prompt Payment Policy Statement.

Mr. Catell went on to state that Mr. Mitchell is in the process of conducting an audit of the Authority's Projects Database System.

Mr. Catell concluded his presentation by stating that Mr. Mitchell has also been participating in the working group that is reviewing and documenting an assessment of the Authority's financial reporting controls.

The Chair said that the next item on the agenda is to consider and act upon the reappointment of Parker Mathusa to the Program Planning Committee and to reappoint Mr. Mathusa as its Chair, to reappoint Parker Mathusa and William Edwards to the Waste and Facilities Management Committee, and to reappoint Jay Gottlieb and George Akel, Jr., to the Audit and Finance Committee. Each of these Members is willing to serve. The Authority values their expertise and is most appreciative of their commitment of time and effort to make this organization one of the most productive public authorities in the State. The Governor's budget proposal makes clear his confidence in the Authority's abilities and the value it provides to the citizens of New York.

Whereafter, upon motion duly made and seconded, and upon unanimous voice vote, Mr. Mathusa was appointed to the PPC and was reappointed as its Chair, Mr. Mathusa and Mr. Edwards

were reappointed to the Waste and Facilities Management Committee, and Mr. Gottlieb and Mr. Akel were reappointed to the Waste and Facilities Committee for three year terms expiring January 23, 2009.

The Chair then called on Cheryl Earley, Director of Contract Management, to address the next agenda item. Ms. Earley explained that Public Authorities Law Section 2879 and the Authority's Procurement Contracts Guidelines 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 August 16, 2005, through December 15, 2005. The report summarizes the 774 procurement contracts initiated or modified during the period. About 97% of the procurement contracts were competitively selected and about 95% of the total dollar amounts committed were selected on a competitive basis. The report also summarizes an additional 258 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 \$22 million. The Authority is in compliance with the guidelines.

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

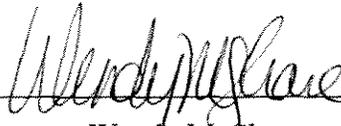
Resolution No. 1090

RESOLVED, that the Periodic Procurement Contracts Report covering the period August 16, 2005 through December 15, 2005, 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 asked if there was any further business. Dr. Thorndike then commended staff on the Bi-Annual Research Conference and the world-class caliber of projects being sponsored, reported that the environmental communities had recently endorsement wind power as an appropriate option for meeting New York's energy requirements, and commended Authority staff on the presentation made at the International Climate Change Conference in Montreal, Canada.

The Chair then asked all the Members to reach out to their constituencies, their legislative representations, and other appropriate persons and organizations to support the Authority's continued administration of SBC.

Afterwards, being no further business, upon motion duly made and seconded, and by unanimous voice vote of the Members, the meeting was adjourned.

  
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Wendy M. Shave  
Secretary



**New York State Energy Research and Development Authority**

Vincent A. Delorio, Esq., *Chairman*

Peter R. Smith, *President*

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January 11, 2006

NOTICE AND AGENDA

TO THE MEMBERS OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY:

PLEASE TAKE NOTICE that a regular meeting (the 184<sup>th</sup> meeting) of the New York State Energy Research and Development Authority will be held in the Authority's New York Office at 485 Seventh Avenue, 10<sup>th</sup> floor, New York, New York, by video conference in the Authority's Albany Office at 17 Columbia Circle, Albany, New York, and by video conference in the Authority's Buffalo Office at 617 Main Street on Monday, January 23, 2006 commencing at 11:30 a.m. for the following purpose:

1. To consider and act upon a resolution commending Timothy S. Carey for services on behalf of the Authority.
2. To consider matters referred to the Program Planning Committee:
  - (a) to receive a report on the continuation of the system benefits charge programs; and
  - (b) to consider and act upon a resolution approving a ground lease with The United Group of Companies, Inc. for Site Two at the Saratoga Technology + Energy Park.
3. To consider matters referred to the Audit and Finance Committee:
  - (a) to receive a report on the Office of the State Comptroller's audit of system benefits charge programs;
  - (b) to receive a report on principles of governance;
  - (c) to receive a report from the Internal Control Officer; and

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- (d) to receive a report from the Director of Internal Audit.
4. To reappoint Parker Mathusa to the Program Planning Committee and to reappoint him as its Chair, to reappoint Parker Mathusa and William Edwards to the Waste and Facilities Management Committee, and to reappoint Jay Gottlieb and George Akel, Jr., to the Audit and Finance Committee.
  5. To consider and act upon a resolution approving a periodic procurement contracts report.
  6. To transact such other business as may properly come before the meeting.

Members of the public may attend the meeting at any of the above locations.

  
Wendy M. Shave  
Secretary