

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

Minutes of the 188th Meeting

Held on January 29, 2007

Pursuant to notice dated January 16, 2007, and a revised notice dated January 29, 2007, a Regular Meeting (the 188th meeting) of the New York State Energy Research and Development Authority ("Authority") was convened on January 29, 2007, at 2:30 p.m. in the Authority's board room at 17 Columbia Circle, Albany, New York, and was available by video conference in the Authority's 10<sup>th</sup> floor conference room at 485 Seventh Avenue, New York, New York, and in the Authority's conference room at 617 Main Street, Suite 105, Buffalo, New York.

The following Members of the Authority were present in Albany, unless otherwise indicated:

Vincent A. DeIorio, Esq., Chair  
Patricia L. Acampora  
George F. Akel, Jr.  
Frank V. Bifera, Esq.  
Robert B. Catell (*by New York City video conference*)  
William F. Edwards  
Jay L. Gottlieb  
Frank S. McCullough, Jr.  
Parker D. Mathusa  
Elizabeth W. Thorndike, Ph.D.

Member Madison did not attend.

Also present were Peter R. Smith, President and CEO; Robert G. Callender, Vice President for Programs; Jeffrey J. Pitkin, Treasurer; and Roger D. Avent, Esq., General Counsel of the Authority. In addition, Steve A. Mitnick, the Governor's Assistant Secretary for Energy and Telecommunications; John Osinski from the New York Power Authority; Sigmund Peplowski and

Gary Davidson from the New York State Department of Public Service; John V. Connorton, Jr., Esq. from Hawkins Delafield & Wood, LLP; and various members of the staff of the Authority were present.

The Chair called the meeting to order and noted the presence of a quorum. He stated that the meeting notice and agenda was mailed to the Members and press on January 16, 2007, and a revised notice and agenda was placed before the Members.

Before beginning the formal agenda, the Chair reported that prior to the Board meeting, the Members received statutorily-required training on their duties and responsibilities as Members of the Authority. It was a good presentation that allowed the Members to ask questions on how business is conducted at the Authority, as well as give and receive suggestions on how to improve their oversight responsibilities.

Next, the Chair welcomed the Authority's newest Member, Frank V. Bifera, Esq. Mr. Bifera is a partner in the law firm of Hiscock and Barclay in Albany and has previously served as the New York State Department of Environmental Conservation's General Counsel. He brings a wealth of environmental and energy knowledge. The Chair welcomed Mr. Bifera on behalf of all the Members.

The Chair then congratulated Robert B. Catell on his reappointment to a new 6-year term as a Member of the Authority. The Authority has benefitted in the past from Mr. Catell's counsel and advice and looks forward to working with him over the next 6 years.

Thereafter, Chair Delorio introduced Patricia L. Acampora, who has been designated Chairwomen of the Public Service Commission, and is thereby an *ex officio* Member of the Authority.

The Chair also welcomed to the meeting Steve A. Mitnick, Governor Spitzer's Assistant Secretary for Energy and Telecommunications.

Mr. Delorio then updated the Members on the recent activities of the Conservation Coordination Task Force (“CCTF”). As with everything at the Authority, the Chair said, Authority staff has pursued its CCTF duties with diligence and attentiveness. The Authority has met all of its responsibilities. The Chair thanked Valerie Milonovich, Brian Henderson, Christopher Reohr, Peter Mahar, Miriam Pye, Carole Nemore, John Ahearn, Cindy Harrat, Rachel Winters, and Jacquelyn Jerry for their outstanding work on compiling the CCTF report. The report will be filed with the Governor and the Legislature by the end of the month, and a copy will be provided to the Members.

Chair Delorio then called upon Peter R. Smith, President and CEO of the Authority, to address the Members. President Smith announced that Mr. DeIorio has been reappointed to a new 6-year term as a Member of the Authority. He has also been reappointed as Chair of the Authority. On behalf of the all of the Members and staff, President Smith congratulated the Chair.

Chair Delorio then turned to the first agenda item concerning a report on the Authority’s proposed fiscal year 2007-08 Budget (“Budget”) and asked Parker Mathusa, Chair of the Program Planning Committee (“PPC”), to brief the Members on the portion of the Budget considered by the PPC. Mr. Mathusa reported that, at the PPC meeting, the Authority’s Treasurer, Jeffrey J. Pitkin, reported that the Budget includes revenues totaling about \$401 million and expenditures totaling about \$408 million; the \$7 million difference relates to expenditures to be made in this year from program funds received in previous years.

The Budget has been formatted in accordance with regulations issued by the State Comptroller in March 2006. Consistent with the regulations, the Authority is also posting the budgetary information in various public places, including its website, and is providing a copy to the State Comptroller.

With respect to the **New York Energy Smart Program<sup>SM</sup>**, beginning July 1, 2006, approximately \$13.7 million per year has been allocated for administrative purposes. Included in

this allocation is approximately \$5.6 million in unexpended administrative funds from previous years. For FY 2007-08, however, the Budget includes administrative costs totaling approximately \$14.0 million. Included in this increased cost is \$1,403,000 for retiree health insurance due to the adoption of a new accounting standard known as GASB 45. Since this cost was not quantified at the time the administrative budget for this year's **New York Energy Smart Program<sup>SM</sup>** was developed, staff will be seeking approval from the Public Service Commission ("PSC") for increased administrative funds to cover this unanticipated expense. There are sufficient administrative funds at this time to cover current expenses, however. Staff will report on the results of such a request at a future meeting.

The total Renewable Portfolio Standard ("RPS") Program is budgeted approximately \$47.9 million for incentive payments, Authority program administration expenses, and program evaluation costs.

For the energy Research, Development, and Demonstration ("RD&D") Program, an assessment on the intrastate sales of gas and electricity by the State's investor-owned utilities in the amount of \$13,411,000 is requested. Additional funding of approximately \$3.2 million is expected to be provided through annual contributions from the New York Power Authority ("NYPA") and the Long Island Power Authority.

The Budget also includes \$19.4 million in anticipated State reappropriations for the plug-in hybrid electric vehicle, advanced vehicle research and development, and hydrogen transportation research and development program initiatives.

With respect to the Energy Efficiency Services ("EES") Program, the Budget includes: \$28.9 million in State reappropriations for the E85 fueling station conversion program and for the Investment in Energy Conservation and Efficiency Pilot Program; \$51.6 million from Consolidated Edison Company of New York, Inc. ("Con Edison") for a System-Wide Demand Management Program in their territory pursuant to a PSC Order; and approximately \$8.7 million from certain energy efficiency program funds previously collected.

The Budget also includes revenue of \$138,000 from leases of the existing building and from annual ground lease payments for the new buildings to be constructed at the Saratoga Technology + Energy Park ("STEP") ; \$420,000 from a hookup fee from the New York State Department of Environmental Conservation ("DEC") with respect to the planned alternate fuel vehicle research laboratory; and \$7.75 million from an appropriation for the international nanotechnology photovoltaic center to be located at STEP.

The Energy Analysis ("EA") budget contains a \$1.4 million increase for general program activities.

There is an additional Budget item of \$1,788,000 for principal and interest payments on bonds issued by the Authority to fund the State's costs at the Western New York Nuclear Service Center ("West Valley").

Additionally, the Budget includes a 5.3% increase for staff salaries due to both a slight increase in the number of employees and general salary increases; a fringe benefit cost increase of \$3.3 million from the additional expenses to be recorded annually commencing in FY 2007-08 for retiree health insurance under accounting standard GASB 45; a non-personal service cost increase of 6.5% for increased computer system support costs; and a direct program charges increase of 3.7% for program-consulting support and program-monitoring travel costs.

Moreover, the Authority pays to the State an annual Cost Recovery Fee assessed for general governmental services and the Budget includes \$4,645,000 for this payment. In fiscal years 2004-05 through 2006-07, the Authority was also required to pay the State General Fund, annually, an additional payment of \$913,000 pursuant to Article VII budget bills.

Lastly, the Budget includes \$250,000 for routine computer and equipment purchases and replacements; \$815,000 for infrastructure costs anticipated at STEP; and \$800,000 for costs to assess, upgrade, and consolidate the Authority's financial management and program management and reporting systems.

The Budget anticipates a balance of unrestricted net assets of \$2,358,000 as of March 31, 2008, representing less than 0.6% of total funding, but consistent with historical and fiscally prudent balances.

The PPC unanimously recommends that the Authority adopt the proposed Budget with respect to the programs under the PPC's review.

Chair Delorio then called on Mr. Pitkin who explained a recent fiscal matter. In 1971, the Authority's predecessor constructed an outfall structure. The outfall structure was leased to Con Edison and was used in connection with the release of cooling water at the Indian Point Nuclear Generating Station. In August 2006, Entergy Corporation ("Entergy"), Con Edison's successor under the lease, notified the Authority that it intended to exercise its option to extend the lease term. Under the terms of the lease, Entergy may extend the lease for an additional ten years beginning April 1, 2007, at an annual payment equal to 7% of the appraised value of the property. The appraisal was determined to be \$14.28 million and the annual lease payments have been determined to be \$999,600.

The Budget reviewed by the PPC did not include these lease payments since staff were awaiting the appraisal results. Staff expects to present at the April meeting for consideration by the Members a revised Budget that will include this revenue. Mr. Pitkin concluded by stating that the revised Budget would also include any other changes that may be necessary as a result of the Governor's Executive Budget or the enacted State Budget.

The Chair then called upon Elizabeth Thorndike, Chair of the Waste and Facilities Management Committee ("W&FMC"). Dr. Thorndike stated that the W&FMC reviewed the portions of the proposed Budget relating to the West Valley Program and to Radioactive Waste Policy and Nuclear Coordination activities. The West Valley Program budget includes \$8.2 million for the State's 10% share of the West Valley Demonstration Project ("Project") costs and an additional \$600,000 for the Authority's 27% cost of the joint environmental impact statement.

In addition, \$4.65 million is included for State-licensed Disposal Area (“SDA”) maintenance and monitoring activities and other non-Project costs, including outside counsel support costs associated with the recent litigation initiated against the United States Department of Energy (“DOE”).

The Authority’s responsibilities relating to low-level radioactive waste are proposed to be funded through a State appropriation of \$150,000. The Authority is also responsible for coordination of nuclear materials matters, including serving as the State liaison with the Nuclear Regulatory Commission, but no State appropriation is requested for these activities.

The W&FMC unanimously recommends that the Members approve the proposed Budget for the West Valley Program and Radioactive Waste Policy and Nuclear Coordination activities.

Mr. McCullough stated that his vote in favor of the Budget in no way committed him to vote in any particular way with respect to NYPA and the voluntary research and development contributions to the Authority. Ms. Acampora stated that her vote in favor of the Budget in no way committed her to vote in any particular way with respect to the PSC and the **New York Energy Smart Program<sup>SM</sup>** funding.

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

#### Resolution No. 1125

RESOLVED, that the proposed fiscal year 2007-08 Budget submitted to the Members for consideration at this meeting, with such non-material, editorial changes and supplementary schedules as the President and Chief Executive Officer, in his discretion, may deem necessary or appropriate, be and it hereby is approved for submission to the persons designated in Sections 1867(4) and 2801 of the Public Authorities Law.

The Chair indicated that the next item on the agenda was the PPC Charter. Mr. Mathusa explained that, at the PPC meeting, Chair DeIorio explained that the Public Authorities

Accountability Act of 2005 (“Accountability Act”) established the State Authority Budget Office (“ABO”). The purpose of the ABO is to study, review, and report on the operations, practices, and finances of State and local public authorities; to promote the adoption of effective principles of model governance; and to provide the Governor and the Legislature with conclusions and opinions regarding the performance of those public authorities.

The ABO has developed model charters for governance and audit committees that incorporate current best practices and the requirements of the Accountability Act. However, staff is recommending that charters be adopted for all of the Authority’s standing committees.

The proposed PPC Charter lists the committee’s major responsibilities including: reviewing the annual updating of the Authority’s multi-year integrated program plan; and reviewing the Authority’s annual budget related to the energy RD&D Program; the EES Program; the EA Program; the Residential Energy Affordability Program (“REAP”); and the Economic Development Program, including STEP.

The PPC unanimously recommends that the Authority approve the proposed PPC Charter.

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

Resolution No.1126

RESOLVED, that the Authority’s Program Planning Committee Charter, as presented at this meeting, is hereby adopted and approved.

Next, the Chair asked Mr. Mathusa to report on STEP. Mr. Mathusa explained that the STEP developer for Site One, The United Group of Companies, Inc., has secured construction financing, entered into a PILOT agreement with the Saratoga Industrial Development Agency, and started construction. The site has been cleared and the foundation work started, and steel is expected to be erected by February 2007. The eight tenants for this 100,000 sq. ft., LEED-rated building are

Starfire Systems Inc., Electrovaya, Inc., Building Performance Institute, the Center for Economic and Environmental Partnership, Inc, North American Board of Certified Energy Practitioners, GroSolar, Lockheed Martin Information Technology Systems, Inc., and Hudson Valley Community College.

In accordance with the terms of the Authority's ground lease, the developer has paid a utility hook-up fee of \$632,000 and an initial ground lease payment of \$30,000. The Authority has also received approximately \$176,000 from the harvesting of trees. All of these funds will be used to fund STEP infrastructure.

With respect to DEC's alternative fuel vehicle research laboratory, final design and construction documents will be completed in Spring 2007.

For other possible tenants, a new STEP marketing solicitation invites businesses and developers to apply to construct owner-occupied buildings or multi-tenant buildings, if they meet the Authority's tenant-criteria. This approach provides further flexibility for purposes of meeting the business needs of the clean-energy companies that the Authority is trying to attract to STEP.

The PPC also considered the transfer of 8.64 acres of STEP land to the Luther Forest Technology Campus Economic Development Corporation ("LFTCEDC") in exchange for 8.64 acres of like-kind land located at its adjoining Luther Forest Technology Campus. In return for the LFTCEDC's providing 8.64 acres of land at the northern-most area bordering STEP, allowing the Authority to construct a curve in the STEP loop road, the Authority would provide LFTCEDC with 8.64 acres of land that is located in the southern area, allowing the Town of Malta and LFTCEDC to construct a road and provide space for electric utilities. Overall, this exchange of like-kind land would facilitate the construction of a new road and new utility services that would be used by both parks, as well as continue the coordination of infrastructure construction in both parks.

The PPC unanimously recommends that the Members adopt the proposed resolution.

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

Resolution No.1127

RESOLVED, that the Agreement by and between NYSERDA and Luther Forest Technology Campus Economic Development Corporation dated July 19, 2006 to transfer +/- 8.64 acres of land located at the Saratoga Technology + Energy Park to Luther Forest Technology Campus Economic Development Corporation (LFTCEDC) in exchange for +/- 8.64 acres of like-kind land located at Luther Forest Technology Campus is approved as presented at the meeting of January 29, 2007.

Mr. Mathusa then explained that, at the PPC meeting, President Smith gave an overview of various Authority programs and initiatives. With respect to the **New York Energy Smart Program<sup>SM</sup>**, in March 2006, the annual funding level was increased from \$150 million to \$175 million. Since then, the Authority has executed 1,250 contracts totaling \$112 million.

With respect to the RPS Program, staff is in the midst of conducting its second procurement. Bidders representing more than 34 facilities have submitted proposals.

The goal of the Authority-administered Con Edison System Wide Program is to yield demand reduction impacts in the Con Edison territory in addition to those of the current system benefits charge ("SBC") funded programs. As of October 31, 2006, NYSERDA has achieved over 126 megawatts ("MW") of load reduction. This equates to over 84% of the 3-year megawatt goal and it has been achieved using substantially less money than allotted.

Mr. Smith concluded his presentation to the PPC by explaining that a request for proposals for the Advanced Clean Coal Power Plant Initiative was issued in September 2006 by NYPA, which is offering the selected plants a long-term power purchase agreement. As NYPA's partner in this initiative, the Authority's primary role is to coordinate the carbon capture and carbon sequestration research at the selected facility. Additionally, as part of the overall initiative, the Authority is providing direct funding to the New York State Museum to complete a geological characterization for carbon sequestration and is also negotiating the State's role in the DOE-funded Midwestern

Regional Carbon Sequestration Partnership. Clean coal development will be included as part of next year's program plan.

At the PPC meeting, the Program Directors discussed major initiatives in their program areas. EA Program Director Paul DeCotis reported that his staff is finishing a number of reports including an annual report for the **New York Energy Smart Program<sup>SM</sup>**, quarterly reports for the Con Edison Natural Gas Efficiency Pilot Program, and an annual report for the Con Edison System Wide Program.

EES Program Director Brian Henderson reported that the Enhanced Commercial and Industrial Performance Program is one of the largest deployment programs at the Authority. The program is helping to build a service provider industry and has leveraged over \$650 million in energy-related capital improvements over 1,000 New York State businesses and institutional customers over the last 6 years.

REAP Program Director Richard Gerardi reported on the consolidation of various multifamily building initiatives into a single application portal. Additionally, the ENERGY STAR<sup>®</sup> Multifamily Program is being considered as the national pilot for promoting mortgages for ENERGY STAR<sup>®</sup> Labeled Homes and for collecting data to be used in evaluating the program, providing quality assurance, and improving marketing activities.

Energy Resources, Transportation, and Environment RD&D Program Director Joseph Visalli, then reported on RPS. The second solicitation has resulted in submission of a number of proposals that are competing for \$270 million in long-term contracts. Implementation of the proposed projects should result in a \$1 billion investment in New York for new renewable energy generation facilities that will have an estimated 700 MW in nameplate capacity.

Lastly, Building and Industry RD&D Program Director Gunnar Walmet stated that the Combined Heat and Power ("CHP") Program, has 140 MW under review. In addition, there are 22

MW of generating capacity that have come on-line from 44 projects. These projects will provide extensive data that can bolster technology transfer efforts.

Then, Mr. Mathusa commented from a personal perspective that, since April 1, 1972, when the Authority began operating with a \$500,000 budget, he has seen it grow exponentially to an Authority that is delivering a program that will approach \$2 billion in value to the State through the integration of public and private resources and the knowledge base of the Authority's staff along with other organizations. During this 35-year time period, Mr. Mathusa said that he has had the privilege of working with Dr. Thorndike and Mr. Catell and other Board Members, and that they have helped to support the Officers and staff of the Authority in making the Authority one of the best energy management and technology organization in the United States.

Chair DeLorio said that the next item on the agenda was approval of the Waste and Facilities Management Committee ("W&FMC") Charter. Dr. Thorndike explained that, at the W&FMC's meeting, Chair DeLorio discussed the rationale for adopting a W&FMC Charter. The proposed W&FMC Charter lists the powers of the W&FMC, describes the composition of the W&FMC, and continues the W&FMC's responsibilities with regard to the Authority's programs, plans, and budgets for the West Valley, including the West Valley Demonstration Project, and for Radioactive Waste Policy and Nuclear Coordination activities.

Based on Judge DeLorio's explanation and the discussions among the W&FMC members, the Committee unanimously recommends that the Charter be approved by the Members.

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

Resolution No. 1128

RESOLVED, that the Authority's Waste and Facilities Management Committee Charter, as presented at this meeting, is hereby adopted and approved.

The Chair then asked Dr. Thorndike to update the Members on the remainder of the W&FMC meeting. Dr. Thorndike explained that President Smith provided an overview of recent developments with respect to the Authority's efforts regarding West Valley. In December 2006, the Authority filed a complaint in the United States District Court for the Western District of New York against both the United States and DOE with respect to responsibilities for the cleanup at West Valley. In addition to the Authority, Plaintiffs in the lawsuit include the State of New York (by and through the Attorney General) and DEC.

The events preceding the decision to begin the litigation included numerous invitations to DOE to agree to a process that would address the over-arching issues of dispute, including agency responsibilities and appropriate closure of the site, which DOE refused to consider. As a specific example, DOE refused to respond to the proposal put forth by the United States Environmental Protection Agency, which called for exhumation of the high-level waste tanks and complete decommissioning of the north plateau facilities.

Over the last year, it became apparent that DOE had no intention of negotiating with the Authority on these and other important issues and, therefore, the decision was made to proceed with the litigation. The complaint describes in detail the active federal role in encouraging and facilitating operations at the site, and asks the court to determine federal responsibilities for decontamination activities and for costs at West Valley under three statutes: the West Valley Demonstration Project Act; the Comprehensive Environmental Response, Compensation and Liability Act; and the Nuclear Waste Policy Act. The federal government has 60 days to respond to the complaint, either by answering it or by moving to dismiss it.

The Authority's West Valley staff continue to implement the ongoing SDA management activities, safely and successfully. DEC and the New York State Department of Health both reported no significant issues following recent radiation permit inspections.

In addition, West Valley staff made a presentation at a Citizen Task Force ("CTF") meeting on future options for the SDA. The options are either: (1) exhumation, or (2) monitoring and

maintenance for 30 years, followed by reevaluation. Staff expressed their current support for the second option. The presentation was generally well received. Additional presentations are anticipated with respect to an evaluation of the second option, including potential radioactive decay benefits, the pros and cons of removing the leachate prior to the start of the option, and analysis of the prospects for effective erosion management.

Dr. Thorndike concluded her presentation by stating that the Authority is also involved in completing a Corrective Measures Study to identify technologies and alternatives that would be effective in addressing the chemical hazard at the SDA. Separately, the Authority is investigating the additional radiological studies that must be conducted in order to support a fully informed and integrated recommendation for the SDA.

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 Chair Delorio briefed the A&FC members on a proposed A&FC Charter. As with the charters previously discussed, this proposed charter sets forth more detailed descriptions of the role and responsibilities of the A&FC. It was developed after reviewing guidance provided by the ABO and the charters of various other public and private sector organizations. It incorporates the audit committee requirements set forth in the Accountability Act. Specifically, it continues the A&FC's role with respect to overseeing the independent auditors, the Authority's financial statements, and internal audit activities; and overseeing and reviewing the Authority financings, investments, and other historical activities.

The A&FC unanimously recommends approval of the A&FC Charter.

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

#### Resolution No. 1129

RESOLVED, that the Authority's Audit and Finance Committee Charter, as presented at this meeting, is hereby adopted and approved.

The Chair then indicated that the next agenda item concerned personnel issues and suggested that the Members convene in executive session.

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

Resolution No. 1130

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 matters leading to the discipline, suspension, dismissal or removal of a particular person.

The Members then met in executive session with the Officers, the General Counsel, the Director of Internal Audit, and the Assistant Secretary to the Authority. Thereafter, all Authority personnel were asked to leave and only the Members met in executive session.

Thereafter, Chair DeLorio reconvened the meeting in open session. The Chair announced that no formal action was taken during the executive session.

The Chair indicated that the next item on the A&FC's agenda was a report from the Internal Control Officer. Mr. Catell explained that Mr. Pitkin, the Authority's Internal Control Officer, provided the A&FC with a summary of internal control related activities that were undertaken over the last several months. Consistent with the revisions to the Internal Control Manual approved by the Members, the underlying Personnel Handbook, and Accounting, and Operations and Procedures, Manuals were updated. All of the Authority's manuals continue to be located on the Authority intranet and are readily accessible to all employees. In addition, over the past year, staff were periodically reminded of the need to comply with internal policies and procedures and were encouraged to report any instances of non-compliance. All employees were also required to take an anti-sexual harassment refresher course and a cyber-security test. Lastly, they were required to certify that they had reread the Public Officer's Law concerning the State Code of Ethics.

Next, Chair DeLorio asked Mr. Catell to address the status report provided by Mark Mitchell, Director of Internal Audit. Mr. Catell reported that the audit of the Communications Unit and the Legislative Affairs Unit has been completed. The draft report is being reviewed by the involved program directors, who will prepare a formal, written response for discussion with, and signature by, President Smith. Additionally, Mr. Mitchell has commenced an audit of the New Construction Program, managed by EES staff. Once completed, the results will be reported to the A&FC members.

The Chair indicated that the next item on the agenda is a report from the Governance Committee (“GC”) Chair, George F. Akel, Jr. Mr. Akel explained that the GC was first briefed by Chair DeLorio on a proposed GC Charter. Like audit committees, the Accountability Act requires governance committees to be responsible for certain oversight activities. The proposed GC Charter describes those activities and includes: identifying individuals qualified to become Members of the Authority, consistent with the qualifications established in its enabling statute and any other established criteria; developing, reviewing, monitoring, and reevaluating the Authority’s governance principles and practices and, when appropriate, recommending changes to such principles and practices; reviewing and establishing ethics standards and whistle blower protections; reviewing the compensation of Officers and senior management; and performing such other functions as may be assigned.

The GC determined that its role should be that of “rule maker” and “operational policy and procedure” developer. Such rules and operational policies and procedures would then be implemented by staff and more detailed review of the results of implementation would be the responsibility of the other standing committees.

By limiting its responsibilities to establishing the rules, the GC can then function as an overarching independent evaluator. It will regularly review, monitor, and re-evaluate governance principles and practices for addressing transparency, independence, accountability, fiduciary responsibilities, and management oversight, while avoiding any conflict as implementer.

The GC unanimously recommends that the GC Charter be approved.

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

Resolution No. 1131

RESOLVED, that the Authority's Governance Committee Charter, as presented at this meeting, is hereby adopted and approved.

The Chair said that the next item on the agenda is to consider and approve proposed amendments to the Internal Control Manual. Mr. Akel explained that the GC was also briefed on proposed changes to the Authority's Internal Control Manual, including its Code of Conduct. Governor Spitzer recently issued several Executive Orders that apply to all public authorities, including the Authority. The Executive Orders affect Authority operations in two noteworthy ways.

First, all Board and Committee meetings, and any other meetings that are subject to the Open Meetings Law, are now required to be broadcast on the Internet no later than July 1, 2007. Staff will be working with the State Office for Technology to effectuate this requirement.

Second, while the Authority is in compliance with most of the other subject matters referenced in the Executive Orders, a second proposed change includes amendments to the Authority's Internal Control Manual, including the Code of Conduct. With respect to these amendments, the most significant change being proposed is that the Members will now be specifically required to comply with the Code of Conduct.

Authority Members have always been subject to the State Code of Ethics found in the Public Officers Law, but they were not specifically mentioned in the Authority's Code of Conduct. One of the Executive Orders requires that a Code of Conduct applying to the Members be in place. Accordingly, in addition to incorporating some of the more detailed language of the Executive Orders, the Authority Code of Conduct which previously applied only to employees, would now apply to the Members, too. Essentially, the Code of Conduct mirrors many of the requirements

contained in the State Code of Ethics, but provides more details on what are considered acceptable behaviors and practices.

The GC unanimously recommends approval of the amendments.

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

Resolution No. 1132

RESOLVED, that the amendments to the Internal Control Manual, as submitted at this meeting, are hereby adopted and approved.

The Chair said that the next item on the agenda is to consider and act upon the reappointment of Robert B. Catell to the PPC. Mr. Catell is willing to serve and the Authority values his expertise, and his commitment of time and effort.

Whereafter, upon motion duly made and seconded, and upon unanimous voice vote, Mr. Catell was reappointed to the PPC for a 3-year term, expiring January 29, 2010.

Chair Delorio stated that the next item on the revised agenda is to consider and act upon the appointment of Frank V. Bifera to the PPC and the W&FMC. Mr. Bifera is willing to serve in these capacities, and has experience in many topics that fall within these committees' responsibilities.

Whereafter, upon motion duly made and seconded, and upon unanimous voice vote, Mr. Bifera was appointed to the PPC and the W&FMC for 3-year terms, expiring January 29, 2010.

Next, the Chair indicated that the Members are asked to consider approving amendments to the Authority's Minimum Energy Efficiency Standards. Roger Avent, the Authority's General Counsel, explained that Energy Law Section 5-108-a requires that the Authority, in consultation

with the New York State Office of General Services (“OGS”), promulgate energy efficiency standards for three specified sets of appliances and energy-using products.

Regulations for the first set of appliances and products were approved by the Members in September 2003 and the second set of regulations was approved in January 2005. This proposed action would amend the regulations to establish minimum energy efficiency standards for the third specified set of appliances and products: dishwashers, clothes washers, furnaces, boilers, and chillers. Clothes dryers were also identified in the list of energy-using products, but no standard is being set at this time, since mechanical changes are more likely to improve performance than setting an energy efficiency standard.

In developing the regulations, the Authority established an Advisory Committee to provide input and guidance. The Advisory Committee consists of OGS, the Association of Home Appliance Manufacturers, Air Conditioning and Refrigeration Institute, Consortium for Energy Efficiency, National Electrical Manufacturers Association, Gas Appliance Manufacturers Association, New York State Dormitory Authority, State University Construction Fund, Northeast Energy Efficiency Partnerships, Inc., Natural Resources Defense Council, and DOE.

The Advisory Committee reviewed the various sizes and types of appliances and products, their availability, and determined their life cycle costs and savings based upon equipment prices, annual operating hours, unit energy consumption, useful life, electric operating costs, and discount rates.

On October 4, 2006, the draft regulations were published in the State Register. No comments on the draft regulations were received.

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

Resolution No. 1133

RESOLVED, that the amendments to Part 506 of Chapter XI of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York as set forth in Exhibit A, annexed hereto, be, and the same hereby are, adopted as the amended rules and regulations of the Authority; and

BE IT FURTHER RESOLVED, that the Chair be, and is hereby , authorized and empowered on behalf of the Authority to execute, certify, and deliver all such documents, and to take all such other actions necessary or appropriate to promulgate the aforesaid amended rules and regulations.

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, 2006, through December 15, 2006. The report summarizes the 1077 procurement contracts initiated or modified during the period. About 97% of the procurement contracts were competitively selected and about 99% of the total dollar amounts committed were selected on a competitive basis. The report also summarizes an additional 250 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 \$36 million in potential funding. The Authority is in compliance with the guidelines.

Mr. Mathusa congratulated staff on their hard work in completing these contract actions.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Members, the following resolution was adopted. Mr. Bifera recused himself from voting.

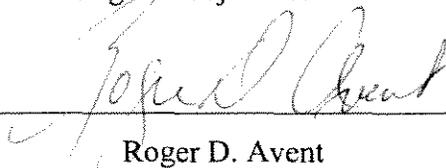
Resolution No. 1134

RESOLVED, that the Periodic Procurement Contracts Report covering the period August 16, 2006 through December 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 asked if there was any further business.

Dr. Thorndike stated that on November 13, 2006, there was an environmental stakeholder meeting and asked that a copy of the meeting materials developed by the Authority, which included good, energy-saving tips, be provided to the Members. Dr. Thorndike commended staff on their great work in compiling these materials.

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

A handwritten signature in cursive script, appearing to read "Roger D. Avent", is written over a horizontal line.

Roger D. Avent  
Acting Secretary