

# NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

## Minutes of the 193rd Meeting

Held on January 28, 2008

Pursuant to notice dated January 17, 2008, a Regular Meeting (the 193rd meeting) of the New York State Energy Research and Development Authority ("Authority") was convened on January 28, 2008, at 12:00 p.m. in the Authority's Albany Office at 17 Columbia Circle, Albany, New York; by video conference in the Authority's New York City Office at 485 Seventh Avenue, 10<sup>th</sup> floor, New York, New York; and by webcast.

The following Members of the Authority were present in Albany:

Vincent A. DeIorio, Esq., Chair

Garry A. Brown

Robert B. Catell

William F. Edwards

Jay L. Gottlieb

Astrid C. Glynn

Frank S. McCullough, Jr.

Parker D. Mathusa

Elizabeth W. Thorndike, Ph.D.

Members Akel and Grannis did not attend.

Also present were Paul D. Tonko, President and CEO; Robert G. Callender, Vice President for Programs; Jeffrey J. Pitkin, Treasurer; and Hal Brodie, Esq., General Counsel and Secretary of the Authority. In addition, John Osinski from the New York Power Authority; James Austin from the New York State Department of Public Service; John Zamurs and Lynn Weiskopf from the New York State Department of Transportation; John Cope from Tandberg; and various 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 were mailed to the Members and press on January 17, 2008.

Before beginning the formal agenda, the Chair welcomed the Authority's newest Member, Garry A. Brown. Mr. Brown was confirmed as Chairman of the Public Service Commission on January 2, 2008, and through that confirmation, becomes an *ex officio* Member of the Authority. Mr. Brown most recently served as the Vice President of External Affairs at the New York Independent System Operator, and previously worked for Sithe Energies, Inc., and the former New York State Energy Office. He brings a wealth of energy knowledge and experience. The Chair welcomed Mr. Brown on behalf of all the Members.

Mr. Brown thanked the Chair and the Members for welcoming him to the organization and stated that it was an honor to be part of the Authority.

Chair DeLorio then called upon Paul D. Tonko, President and CEO of the Authority, to address the Members. President Tonko began by welcoming Mr. Brown. He then reported that, in 2007, the Authority was repeatedly called upon to assist in developing several new energy and environmental initiatives. For 2008, the Authority expects to build upon this work. New initiatives for 2008 have the potential to result in expansions of existing programs and implementation of new programs that will benefit New York State's ("State") economy, energy, and environment for years to come.

As was discussed at prior meetings, in April 2007, Governor Spitzer launched his 15 by 15 plan ("15 by 15"). The goal of 15 by 15 is to reduce Statewide electricity use by 15 percent from the levels forecasted for the year 2015. This is to be accomplished primarily through the installation and implementation of new energy efficiency measures. Simultaneously, 15 by 15 will reduce both energy use and related pollution, spur economic opportunity, and address global climate change. In addition, 15 by 15 envisions a broad spectrum of activities that will dramatically accelerate the State's energy efficiency commitment, including instituting new appliance efficiency standards and requiring compliance with more energy-efficient building codes.

To date, efforts to implement 15 by 15 has been spearheaded through two focused activities: the State Agency Clean Energy Collaborative (“Collaborative”) and the Public Service Commission’s (“PSC”) Energy Efficiency Portfolio Standard (“EPS”) proceeding. The Authority has taken an active role in both activities. The Collaborative has created a “lead by example” approach – wherein Governor Spitzer has called upon State Agencies to serve as role models by increasing their energy efficiency activities. These activities would illustrate for other organizations and institutions how they might identify their own effective efficiency opportunities and contribute to the goal of 15 by 15. The Authority has been providing technical expertise as well as coordinating Collaborative efforts.

Meanwhile, the PSC’s EPS proceeding is well underway, and the Authority is fully engaged in the process. The proceeding is designed to further the 15 by 15 goals, through coordinated programs under the jurisdiction of the PSC. The Authority is poised to assist the PSC in its efforts to establish efficiency goals, implement and coordinate efficiency programs, measure progress, and evaluate results.

On January 24, 2008, the Administrative Law Judges (“ALJs”) in the proceeding issued a ruling requiring a single and expedited decision-making process. The ALJs have set an aggressive schedule, which could result in a recommendation being given to the PSC for their final determination in Summer 2008. The Authority will continue to actively participate in all aspects of this proceeding. With respect to the Authority’s expected role, expansions of current and implementation of new energy-efficiency programs are anticipated, but the final results of the proceeding will determine the level and scope of these activities.

On another topic, the New York State Department of Environmental Conservation (“DEC”) recently passed regulations to implement the Clean Air Interstate Rule (“CAIR”). These regulations cap nitrogen oxide (“NO<sub>x</sub>”) emissions and allocate the allowances among the various electric generators. They require generators to have one allowance for every ton of NO<sub>x</sub> that the generator emits. In addition, the regulations allocate 10% of the emission allowances to the Energy Efficiency

and Renewable Energy Technology Account (“Account”). The Authority is designated as the authorized administrator of the Account and may sell or distribute the allowances in support of programs that encourage and foster energy efficiency measures and renewable energy technologies. Additionally, the Authority may use funds in the Account to cover the costs associated with the administration and evaluation of the CAIR Program.

The Authority is currently establishing the mechanisms to sell these allowances. Staff has also begun to determine the types of programs that would be implemented with the proceeds from sales.

With respect to the Regional Greenhouse Gas Initiative (“RGGI”), staff continues to assist the State and its regional partners in proceeding from concept, to implementation, to operation. The comment period for DEC’s and NYSERDA’s proposed implementing regulations has concluded; staff is currently reviewing the substance of the comments and is in discussions with DEC on whether or not to amend the proposed regulations.

As part of the RGGI process, RGGI, Inc. has been established as the interstate entity that will conduct the auctions. DEC Commissioner Grannis is the Chair of the board of directors for RGGI, Inc. and the PSC has approved a total of \$3 million of SBC dollars to be used in the RGGI program start-up. In addition, requests for proposals (“RFP”) for two of the three main program activities have been issued. One RFP was for an auctioneer to conduct the auctions and the other was for a program administrator. Contractors under both these solicitations will be selected shortly.

Other State efforts are being guided by Lieutenant Governor Paterson’s Renewable Energy Task Force (“Task Force”). This Task Force is addressing energy efficiency, the Renewable Portfolio Standard, biofuels, and research and development, among other topics. The Authority is a member of the Task Force and it is anticipated that recommendations will be issued in the near future.

President and CEO Tonko concluded his presentation on these programs by indicating that

these are just some of the initiatives which, taken collectively, represent potential growth in Statewide energy efficiency, renewables, and clean air programs. These activities demonstrate that the Authority is well-positioned to take on an even greater role in meeting New York's energy, economic, and environmental challenges.

With regard to personnel, President and CEO Tonko announced that Karen E. Villeneuve has been named the new Residential Efficiency and Affordability Program Director, Janet L. Joseph has been named the new Energy Resources, Transportation and Power Systems, Environmental Research, and Renewable Portfolio Standard Program Director, and Paul Bembia has been named the West Valley Site Management Program Director. Each of their assignments reflects their expertise, outstanding work and steadfast commitment to NYSERDA, to its mission, and to the people of the State.

President and CEO Tonko concluded his presentation by stating that a search is underway to fill the positions created by the departure of Paul DeCotis, the former Director of Energy Analysis, who has taken on a new role with the Spitzer administration as Deputy Secretary for Energy and Brian Henderson, the former Director of Energy Efficiency Services, who has retired.

Chair DeLorio then turned to the first agenda item concerning a report on the Authority's proposed fiscal year 2008-09 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, advised that the Budget includes revenues totaling \$406.4 million and expenditures totaling \$456.7 million (a portion of expenditures will be made from revenues received in the prior fiscal year).

The **New York Energy Smart Program<sup>SM</sup>**, funded through the system benefits charge ("SBC") paid by electric ratepayers, is allocated administrative costs of approximately \$15.6 million or 8.5% of total SBC funding. The PSC-approved amount for program administration, however, is approximately \$13.7 million per year. The higher amount includes an additional \$1.3 million to cover retiree health insurance costs, pursuant to the new accounting standard known as GASB 45.

Since the increased cost was not quantified at the time the administrative budget was developed, staff will be seeking a modification to the administrative budget from the PSC to include these costs. In the meantime, there are sufficient funds available to cover these costs through the end of the current Budget period.

The Budget also includes funds which may be received to fund new energy efficiency and clean energy programs, including the RGGI and CAIR Programs. The Authority is expected to administer the proceeds resulting from the auction of the State's carbon dioxide allowances under RGGI. Auction proceeds are estimated to total about \$60 million annually and, based on the anticipated auction schedule for this year, the Budget includes \$30 million in expected revenues from RGGI.

The Authority has also been requested by DEC to administer proceeds from the sale of emission allowances under CAIR. The Budget estimates proceeds of \$5 million from the sale of the first year's allowances.

The Energy Analysis section of the Budget includes \$5 million in State appropriation funding. An additional \$2.4 million is included this year to cover additional costs anticipated to be incurred with respect to updating the State Energy Plan.

Additionally, the Authority's Budget includes an increase for salaries in the amount of \$3.9 million, primarily due to the expected hiring of 31 new staff members. This includes 20 additional employees to assist with the administration of the new RGGI and CAIR programs, as well as 5 additional employees for Energy Analysis.

As in previous years, the Authority pays to the State an annual fee assessed for general governmental services, which is allocated among program activities in proportion to each program's revenues. The Budget includes \$4.6 million for this payment, based upon the latest year's actual assessment.

Lastly, the Budget anticipates a balance of unrestricted net assets of \$3.5 million as of March 31, 2009, representing about .9% of total funding, which is 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.

The Chair then called upon Elizabeth W. Thorndike, Chair of the Waste and Facilities Management Committee ("W&FMC"). Dr. Thorndike stated that the W&FMC members discussed the proposed Budget for the West Valley Site Management Program and for radioactive waste policy and nuclear coordination activities.

The West Valley Site Management Program budget is the same as last year, \$13.5 million. This is comprised of \$7,825,000 for the State's required 10% share of the West Valley Demonstration Project (WVDP) costs, based upon the anticipated Federal funding level; \$1.45 million for costs associated with the Environmental Impact Statement ("EIS"), and \$4,225,000 for maintenance and monitoring activities at the State-licensed disposal area ("SDA") and other non-WVDP costs, including outside counsel support costs.

With respect to the Radioactive Waste Policy and Nuclear Coordination Program, the Budget includes \$150,000 in State appropriation funding.

Authority costs for coordinating State governmental activities on matters relating to nuclear materials and for serving as the State's liaison with the U.S. Nuclear Regulatory Commission ("NRC"), as in past years, will be paid using corporate funds; the Budget estimates these costs at \$158,000.

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

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

Resolution No. 1164

RESOLVED, that the proposed fiscal year 2008-09 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.

At the Chair's request, Mr. Mathusa then explained that the PPC received comprehensive presentations from program staff on the Authority's complex programs and the details are available in the PPC meeting's minutes. He then invited the Members to attend that the next scheduled PPC meeting on June 12, where each of the Program Directors will give presentations on the Authority's programs.

Mr. Mathusa continued by summarizing Vice President for Programs, Robert G. Callender's, update on activities at the Saratoga Technology + Energy Park ("STEP"). Construction of the first new building at STEP, which is a Leadership in Energy Efficiency Design (LEED)-rated building, is complete and 7 companies will begin moving into the facility in February 2008.

Currently, staff is working with Hudson Valley Community College ("HVCC") on the design of the "TEC SMART" facility, in which HVCC will teach a variety of degree and non-degree clean-energy courses, including courses on building construction, photovoltaics, geothermal, small wind, and semiconductor-industry-related topics. HVCC anticipates breaking ground on the building in 2008.

In regard to the DEC Alternative Fuel Vehicle Research Lab ("Lab"), a Cooperative Agreement has been executed by DEC and NYSERDA on the siting of the Lab at STEP and the DEC is working with the New York State Office of General Services on a solicitation to select a construction firm to build the Lab. In addition, DEC, HVCC, and the Authority also expect to sign

an agreement to have HVCC train students from its automotive program at the Lab soon.

With respect to infrastructure projects, the extension of water, sewer, gas, electric, and telecommunications facilities as well as needed roads to support the new building, the Lab, and the HVCC TEC SMART building have been completed.

Mr. Mathusa then explained that the next agenda item requests that the Members adopt a resolution approving a lease between the Authority and Verizon for cellular tower access. In response to a competitive solicitation seeking to improve the cellular service at STEP, Cellco Partnership d/b/a Verizon Wireless (“Verizon”) was the sole proposer. After a review of the proposal by a Technical Evaluation Panel, the Authority negotiated a Communications Site Lease Agreement (“Lease”) with Verizon. Under the Lease, Verizon would construct a cell tower in the southeast corner of STEP and pay annual rent of approximately \$31,000, for a potential 25-year term. Verizon would also allow access to the tower by other cellular companies which would result in additional revenue to the Authority of \$400 a month for each additional provider. Verizon is responsible for all costs associated with the project, including permitting, site work, construction, and maintenance.

The PPC unanimously recommends that the Members approve the proposed Lease.

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

#### Resolution No.1165

RESOLVED, that the Communications Site Lease Agreement between the Authority and the Cellco Partnership d/b/a Verizon Wireless for development and construction of cell tower at the Saratoga Technology + Energy Park (“STEP”) submitted to the Members for consideration at this Meeting is hereby approved with such changes as the President and CEO, in his discretion, may deem necessary or appropriate, provided such changes do not substantially increase the Authority’s financial obligations under the agreement.

The Chair said that the next agenda item concerns the conveyance of land at STEP. Mr.

Mathusa explained that, in developing the STEP Master Plan, a traffic impact study was conducted as part of the related EIS. The traffic impact study identified specific roadway improvements and enhancements at STEP to support the anticipated increases in vehicle traffic. A specifically recommended improvement was installation of either traditional traffic lights and exclusive turning lanes or a roundabout at the entrance to STEP, once new building space exceeded 150,000 square feet. The newly completed building is 105,000 square feet and the planned construction for HVCC and DEC will add another approximately 100,000 square feet. Accordingly, the Authority, in cooperation with Saratoga County, which owns a small piece of involved property, and the Town of Malta, which is responsible for undertaking the project, are proceeding with construction of the roundabout, which has been determined to be the better option.

The Town of Malta, to facilitate development at STEP as well as the adjoining Luther Forest, has secured approximately \$10.8 million in Federal funding to construct road improvements in and around the Town of Malta, including \$1.2 million to construct the roundabout. The completed design requires that the County use .12 acres of STEP property for stormwater improvements and that the Town of Malta be given .04 acres for completion of the roundabout itself.

This proposed transaction is consistent with the Public Authorities Accountability Act, since the recipients of the land are municipalities, Saratoga County and the Town of Malta, and the purpose and use of the property will be to further public health, safety, or the welfare of the public.

Construction is scheduled to begin in Spring 2008.

The PPC unanimously recommends that the Members approve the transfer of the two small parcels of land.

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

Resolution No.1166

RESOLVED, that the Deed and Permanent Easement between the Authority and the County of Saratoga for the transfer of approximately .12 acres and .28 acres, respectively, of land at the Saratoga Technology + Energy Park (“STEP”) for the purpose of construction and maintenance of a roundabout located at the intersections of Dunning Street, Plains Road, and Hermes Road submitted to the Members for consideration at this Meeting is hereby approved with such changes as the President and CEO, in his discretion, may deem necessary or appropriate, provided such changes do not substantially increase the Authority’s financial obligations under the agreement.

Chair DeIorio then asked Mr. Mathusa to discuss the proposed agreement with DEC, concerning the CAIR Program. Mr. Mathusa explained that this program establishes a NO<sub>x</sub> trading program. Under CAIR, electric generators are initially assigned a number of allowances by DEC, with the underlying standard requiring one allowance for every ton of NO<sub>x</sub> that the generator emits. An allocation of 10% of the State’s total allowances are to be provided to an energy efficiency and renewable technology account to be administered by the Authority. Under the Cooperative Agreement, the Authority will sell the allowances in the account and use the proceeds for energy efficiency and renewable energy technology projects. In addition, the Authority will provide to DEC a program plan describing how the Authority will use the money accruing from the sale of the allowances, including use of a portion of the proceeds to offset costs of administration. Staff has conservatively estimated in the Budget that during the coming fiscal year, the sale of these allowances will generate \$5 million.

The PPC unanimously recommends that the Members adopt the proposed resolution, approving the Authority’s participation in the CAIR Program in accordance with the general terms of the Cooperation Agreement with DEC.

Mr. Gottlieb added that this type of program is relatively new and it is likely to see price volatility. The PPC members agreed with staff rationale and management’s approach, but there are many variables and the value of the credits will change over time. An example of an influencing factor could be the creation of new, cost-effective technologies that significantly reduce NO<sub>x</sub> emissions which, in turn, would reduce the value of allowances.

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

Resolution No. 1167

RESOLVED, that the Cooperation Agreement between the Authority and the New York State Department of Environmental Conservation regarding the Authority's responsibilities and activities with respect to the administration of the energy efficiency and renewable energy technology account, as established under the Department of Environmental Conservation's Clean Air Interstate Rule Ozone Season and Annual Trading Program submitted to the Members for consideration at this Meeting is hereby approved with such changes as the President and CEO, in his discretion, may deem necessary or appropriate, provided such changes do not substantially increase the Authority's financial obligations under the agreement.

Chair DeIorio said that the next item on the agenda was approval of the renewal of a property lease between the Authority and the Town of Ashford. Dr. Thorndike explained that, the Authority has been leasing a parcel of land at the Western New York Nuclear Service Center ("Center") to the Town, since 1985. The land is being used for mining gravel which the Town uses to maintain Town roads. In return, the Town has been agreeing to deliver gravel to the Center, at the Authority's request. The proposed renewal would continue these terms for an additional 5 years.

Although it is difficult to estimate the market value of the lease, Authority staff have estimated the value of the gravel that will be removed over the 5-year period at approximately \$7,000. The Public Authorities Accountability Act allows negotiation of a lease for less than market value where the lease is "intended to further the public health, safety or welfare or an economic development interest of the State or a political subdivision." All of those interests would be furthered by this lease. The mining of gravel will allow the Town to rebuild and maintain its roads, which will improve safety and improve the transportation of goods through the Town.

Based on the reports and the discussions among the W&FMC members, the Committee unanimously recommends that the proposed lease 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. 1168

WHEREAS, the Town of Ashford (Lessee) has leased certain parcels of land at the Western New York Service Center at West Valley from the Authority since January 1, 1985; and

WHEREAS, the Authority and the Lessee wish to renew the lease under the same terms and conditions for a term expiring January 31, 2013 (the "Lease Agreement");

NOW, THEREFORE, BE IT RESOLVED, that the President, or his designee, be, and they hereby are, authorized to enter into the Lease Agreement with the Lessee to provide for the lease of a parcel of land at the Western New York Nuclear Service Center to the Lessee and to allow the Lessee to mine gravel from the parcel for use in rebuilding and maintaining the Lessee's roads in return for the Lessee's agreeing to deliver to the Authority such loads of gravel as may be needed for Authority operations.

The Chair then asked Dr. Thorndike to update the Members on the remainder of the W&FMC meeting. Dr. Thorndike explained that Paul J. Bembia updated the W&FMC on recent activities of the West Valley Site Management Program. Mr. Bembia explained that, with respect to the West Valley Demonstration Project ("WVDP"), in December 2007, the Federal government adopted a \$54 million budget for Federal Fiscal Year 2008. This is significantly less than the \$90 million that the WVDP received in 2007, but it is the amount that the U.S. Department of Energy ("DOE") requested. It is unclear why DOE requested only \$54 million, however, the budget request was prepared not long after the Authority filed its lawsuit against the U.S. Secretary of Energy and the United States. It is also much less than the U.S. House of Representatives' and the U.S. Senate's marked-up appropriation bills, which included funding levels between \$63 million and \$78 million. DOE West Valley staff is currently assessing the impact of this reduced funding level, including looking at unspent Federal funds from the 2007 budget, funds from other sites that might be reprogrammed, and activities that might be pushed out into future years without requiring layoffs and other available funds.

From the State's perspective, the Authority is concerned that a funding shortfall will mean that some important projects may not be funded this year. This includes potentially postponing work

that would stop the spread of the Sr-90 groundwater plume, and that would remove radioactive liquids from one of the underground high-level radioactive waste (“HLW”) storage tanks. Authority staff is discussing the funding cuts and potential State responses with the Governor’s Office.

With respect to the West Valley Decommissioning EIS, the Authority recently learned that DOE shortened the schedule for the completion of the EIS by almost a year. This shortening of the schedule heightens the Authority’s concerns about the quality of the EIS technical analyses. With respect to technical issues, DOE convened a Federal and State interagency discussion group, designated the “Core Team”, to try to resolve the technical issues. This group has been meeting since late 2006, but little progress has been made. As a result, the Authority is now assembling a broad-based group of independent experts to assess DOE’s updated EIS analyses. This review group will be assessing the revised environmental analyses, the transportation analyses, and the engineering approaches proposed to remove the HLW storage tanks and other facilities. It will also be looking at analyses concerning the NRC-licensed radioactive waste disposal area (“NDA”) and the State-licensed radioactive waste disposal area (“SDA”).

If the Authority does not ultimately agree with DOE’s EIS analyses, staff will use the input from the independent review experts to prepare a critical analysis based on the State’s interests, that will be submitted to DOE and become a part of the EIS documents.

The Authority also believes that having the independent experts conduct or direct an independent performance analysis for closure of the SDA would be prudent. Such analysis would be provided to DOE for inclusion in the EIS documents, too.

The Core Team’s preferred alternative for the Decommissioning EIS includes a “phased approach” for the remaining cleanup work. The first phase will focus on near-term removal actions for: (1) the Main Plant Process Building, (2) the lagoon system that was used to treat radioactive liquids, (3) a number of ancillary facilities, and (4) contaminated soil beneath the Main Plant Process Building (the source of the Sr-90 groundwater plume).

For the facilities where in-place closure is being considered (i.e., the four HLW tanks, the source of the Sr-90, and the NDA), decisions will be deferred due to disagreement on the validity of the long-term analyses among the Core Team. In the meantime, annual, routine assessments of facility condition, performance, and other factors, will be made and, every 5 years, more extensive assessments will be undertaken. At a later date, but within the next 30 years, a decision will be made on the disposition of the remainder of the contaminated materials.

Not all of the Citizens Task Force (“CTF”) and the public are expected to support this alternative, but it does have some benefits - - it results in the removal of a number of facilities and sources of contamination, while keeping open the possibility for removing other on-site facilities such as the HLW tanks.

In regard to the preferred alternative for the SDA, Authority staff continues to believe that the SDA can to be safely managed, in place, for an additional period of time with ongoing monitoring, maintenance, and institutional controls. Authority staff also believes that the EIS analysis will show that the costs and impacts from exhuming and transporting millions of cubic feet of SDA waste to another disposal facility are uncertain, and are likely to be very large, exceeding a billion dollars. By using active monitoring and maintenance, the facility could be managed in accordance with required permits for at least 30 years and this decision can be revisited periodically for possible modification.

Mr. Bembia concluded his presentation by stating that, on January 23, 2008, the preferred alternatives would be presented at a public meeting in the Town of Ashford and with the CTF.

Dr. Thorndike says that she believes it is important that DOE recognize the validity of the Authority’s newly formed independent review experts, give their recommendations serious consideration, and include the group’s recommendations in the final EIS. With respect to the SDA, the decision process must recognize that removal of the SDA waste will potentially expose additional populations to LLRW, in addition to costing over a billion dollars. Since the SDA is being maintained with an experienced, carefully monitored amount of effort and at a reasonable cost,

it seems appropriate to identify continued monitoring and maintenance for up to 30 years as the preferred alternative for the SDA.

Dr. Thorndike indicated that at the conclusion of Mr. Bembia's presentation, the W&FMC also met in executive session to receive a report regarding the litigation with respect to West Valley against the United States and DOE.

Chair Delorio stated that the next agenda item was a resolution to convene in executive session for the purpose of discussing the litigation with respect to West Valley against the United States and DOE.

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

#### Resolution No. 1169

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 receiving a report regarding the litigation with respect to West Valley against the United States and the Department of Energy.

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

In response to the requests of several Members, Mr. Bembia reported on the combined DOE/CTF meeting on January 23, 2008. He said that the meeting was positive and most attendees felt that activities proposed for the near-term were appropriate and welcome. While some expressed concern that certain facilities would not be removed immediately, the participants felt that consideration was given to their concerns as part of the decision making process.

The Chair then called on Cheryl Earley, Director of Contract Management, to address the next agenda item. Before discussing the periodic procurement contracts report, Ms. Earley provided

the Members with an update on the Authority's internal efforts for increasing participation by minority and women-owned business enterprises ("MWBEs"). Management has formed an internal group of Authority employees which first investigated the legal parameters of promoting diversity and then began drafting an initial Diversity Action Plan. The internal group has also been monitoring the Governor's new interagency council on MWBEs and the Authority has contacted the State's Office of Minority and Women Owned Business Enterprises to schedule a meeting to learn how to improve MWBEs participation in Authority contracting. Furthermore, the internal group is drafting a statement to be sent to all staff by Paul Tonko, encouraging staff to be aware of diversity and to increase recruitment efforts in this area.

In addition, staff recently matched all existing vendors with the Department of Economic Development's MWBE database and found a few vendors that the Authority had not identified in its system as certified MWBE firms.

With respect to the annual update of the internal control system in April, the Members will be asked to approve an amendment to the Procurement Contracts Guidelines waiving competitive bidding requirements for contracts to MWBEs in an amount less than or equal to \$50,000. While the State Finance Law authorizes the waiver of competitive bidding requirements by State agencies for all contracts equal to or less than \$50,000, the Authority previously determined that it would only allow a waiver for contracts equal to or less than \$25,000. This increase in the threshold for MWBEs will be consistent with the State Finance Law and is intended to attract a more diverse and available pool of qualified firms.

Moreover, for certain categories of competitive solicitations, the Authority is considering whether it should require as part of each proposal information on the company's diversity plan and related activities. Ms. Early concluded her discussion of MWBEs by stating that, hand in hand with these activities, Authority staff is reaching out to other State agencies and public authorities to gather information on their efforts to increase MWBE participation.

Ms. Earley then continued with her presentation by explaining that Public Authorities Law

Section 2879 and the Authority's Procurement Contracts Guidelines provide for the periodic review and approval of contracts with terms in excess of one year. The Periodic Procurement Contracts Report presently before the Members is the report covering the period August 16, 2007, through December 15, 2007. The report summarizes the 1,455 procurement contracts initiated or modified during the period. About 96% 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 216 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 \$25 million in potential funding. The Authority is in compliance with the guidelines.

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

Resolution No. 1170

RESOLVED, that the Periodic Procurement Contracts Report covering the period August 16, 2007 through December 15, 2007, 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).

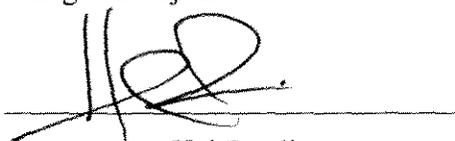
The Chair said that the next item on the agenda was other business and he called upon Mr. Pitkin. Mr. Pitkin explained that, beginning in the 1970's, the Authority began issuing tax-exempt bonds on behalf of the State's utilities. Currently, there are almost \$3.7 billion in bonds outstanding. Before these bonds were issued, both the Authority's Members and the Public Authorities Control Board, among others, approved the parameters of the Bond issues. Both the Authority's Members and the Public Authorities Control Board required that the bonds have a minimum "A" rating by one of the major rating agencies. This standard was intended to provide a reasonable level of security for bondholders who would hold the Authority's bonds. For most utilities, achieving an A (or better) rating was accomplished through either a bond insurance policy or a letter of credit from a bank, of their choosing. As a result, many issues have historically been rated "AAA" since their date of issuance.

As is generally known, the subprime mortgage industry is in turmoil and this has adversely affected a number of financial institutions, including various insurance companies and banks. As a result, some insurance companies have now been downgraded, but because of the breadth of the problem, it is expected that others will follow. At this time, we do not know the full extent that these events will have on the bond ratings and other terms, such as the applicable interest rate. Nonetheless, we think it likely that a number of bond issues will no longer be able to maintain their "AAA" rating and that the utilities with variable interest rate bonds will likely be paying higher interest rates because of the downgrades. Mr. Pitkin concluded by stating that the purpose of his presentation is to advise the Members that staff are monitoring the market and contacting each of the utilities to discuss the situation. Updates will be provided, as appropriate.

The Chair asked if there was any further business.

Dr. Thorndike added that the annual Authority meeting of environmental organizations was recently held. Dr. Thorndike commented that there are increasing concerns on the siting of wind facilities and that the siting process is becoming more complicated. The environmental community is responding to public concerns and is split on this difficult issue.

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 black ink, appearing to read 'H. Brodie', is written over a horizontal line.

Hal Brodie  
Secretary

- (a) to consider and act upon a resolution renewing the lease with the Town of Ashford with respect to a parcel of land at the Western New York Nuclear Service Center; and
- (b) to consider and act upon a motion to convene in executive session to receive a report regarding the litigation with respect to the West Valley against the United States and the Department of Energy
4. To consider and act upon a resolution approving a periodic procurement contracts report.
5. 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. The meeting is also available through webcast at <http://www.nyserda.org/governancemeetings.asp>



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Hal Brodie  
Secretary