

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

Minutes of the 214<sup>th</sup> Meeting

Held on June 18, 2012

Pursuant to notice and an agenda dated June 6, 2012, the Annual Meeting (214<sup>th</sup> meeting) of the New York State Energy Research and Development Authority (“Authority” or “NYSERDA”) was convened on June 18, 2012, at 12:30 p.m., in the Authority’s Albany Office at 17 Columbia Circle, Albany, New York; and by video conference in the Authority’s New York City Office at 485 Seventh Avenue, 10<sup>th</sup> floor, New York, New York.

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

Francis J. Murray, Jr., President and CEO (acting as Chair for this meeting)

George F. Akel, Jr.

Garry A. Brown

Kevin Burke

Robert B. Catell

David Elliman (NYC)

Joe Martens

Elizabeth W. Thorndike, Ph. D.

Mark A. Willis (NYC)

Members Joan McDonald and Michael Townsend were unable to attend.

Also present were Jeffrey J. Pitkin, Treasurer; David A. Munro, Deputy Counsel; Cheryl L. Earley, Director of Contract Management; and various other members of the staff of the Authority. In addition, Michael Bailey from the Village of Malverne in Nassau County was in attendance at the New York City location.

Mr. Murray explained that as President and CEO, he is authorized by NYSERDA's By-laws to exercise the powers of the Authority's Chair when that position is vacant, as it is now. He stated that he was chairing the Board meeting and participating as a voting Member of the Authority. Mr. Murray then 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 June 6, 2012. Mr. Murray directed that a copy of the notice and agenda be annexed to the minutes of the meeting.

Mr. Murray noted that Bob Callender, who served NYSERDA for two dozen years and who was honored by the members at the April 2012 meeting, is missed very much by Authority staff. Mr. Murray stated that there is a tribute to Bob in the Annual Report. Mr. Murray then updated the Members on various activities of the Authority since the previous Board meeting.

- NYSERDA has created a new Office of Performance Management and Evaluation Services, to be headed by Patrick O'Shei, who currently works in Residential Energy Services. This new office will focus on metrics, a topic that the Board has urged NYSERDA staff to address more comprehensively.
- The Public Service Commission (PSC) recently approved NYSERDA's request for funding in support of the Governor's NY-Sun initiative, which calls for the doubling of 2011 customer-sited PV installations during 2012 and for quadrupling the 2011 installations during 2013. The PSC provided \$432 million in funding over a four year period.
- The Energy Highway Task Force has received over one hundred responses to a Request for Information seeking to learn from interested parties what suggestions and specific solutions they recommend regarding investments in the State's energy infrastructure. The Task Force must deliver an Energy Highway Action Plan to the Governor by the end of the summer.
- The State Energy Planning Board must issue a draft report by September 1, 2012. Mr. Murray noted that since the Energy Highway Task Force and the Energy Planning Board must file reports at approximately the same time, the two entities will be able to coordinate the development of policy recommendations.

- NYSERDA has filed several petitions with the PSC seeking modifications of existing efficiency budgets or reprogramming of existing funds in order to implement various PSC-approved efficiency programs as well as several initiatives that the Governor has articulated.
- New York State Supreme Court (the trial level court in New York) dismissed a lawsuit seeking to invalidate the Regional Greenhouse Gas Initiative (RGGI) program in a decision dated June 12, 2012. The court ruled that plaintiffs (1) did not have legal standing to sue, and (2) waited too long to sue, so the suit was barred by the legal doctrine of laches.
- With regard to the West Valley site, the House Appropriations Committee's draft federal fiscal year 2013 Energy and Water Appropriations Bill, released April 18, identified a funding level of \$48 million for the West Valley Demonstration Project, which represents a 25 percent cut in funding for the Project from FFY 2012. On June 6, the House of Representatives approved an amendment introduced by Western New York Congressmen Tom Reed and Brian Higgins that would increase funding for clean-up efforts at the West Valley site. The Reed-Higgins amendment added \$36 million to the Non-Defense Environmental Management Clean-up account, which funds the cleanup for several sites. It is not known how much of the \$36 million is intended for the West Valley Demonstration Project. The Senate is expected to take up this matter soon.

Mr. Murray stated that the first several items on the agenda pertained to the Program Planning Committee ("PPC"). George Akel, Chair of the PPC, reported that the PPC met on May 31, at the Authority's Albany office. He thanked the PPC members for the commitment, time, and input that they have provided to the NYSERDA team throughout the strategic planning process. Mr. Akel stated that the PPC reviewed three of the Authority's program plans. For two plans, the RGGI and the Clean Air Interstate Rule/New York Battery and Energy Storage Technology Plans, the Committee considered plan modifications. The third plan considered was this year's proposed multi-year Strategic Program Plan entitled *Toward a Clean Energy Future - A Three-Year Strategic Outlook 2012-2015*.

Mr. Akel stated that NYSERDA's Vice President for Technology and Strategic Planning, Janet Joseph, presented more specific details to the PPC on the program priorities and initiatives for the three-year period 2012 through 2015. The Strategic Plan is informed by discussions at quarterly meetings of the PPC, and it reflects a range of inputs and planning activities conducted throughout the year. The Strategic Plan highlights NYSERDA's Mission, Vision and Target Outcomes and presents a comprehensive set of clean energy programs that work in an integrated fashion to achieve the Authority's mission. As in the past, Ms. Joseph explained that the Plan is organized around NYSERDA's five program portfolios and clearly articulates NYSERDA's value proposition, reflecting both current accomplishments and expectations of future benefits associated with the investments presented in the Plan. The Plan also includes an expanded treatment of NYSERDA's varied funding sources and how they work together to advance State energy goals. Ms. Joseph presented information on the economic sectors and program areas that are to be targeted with the available funding. She also presented projections for the future benefits that are expected from the investments in each of the different program areas.

Mr. Akel stated that NYSERDA's Directors and other program staff provided brief presentations on program vision, strategies, initiatives and implementation in their respective areas. The PPC heard reports on NYSERDA's efforts from the following programs and areas: Energy Efficiency and Renewable Energy; Energy Technology Innovation and Business Development; the Saratoga Technology and Energy Park; Energy Education and Workforce Development; Energy and the Environment; and Planning and Analysis. A luncheon presentation featured a more in-depth look at the NY-Sun photovoltaic (PV) initiative that was announced by Governor Cuomo in his 2012 State of the State Address. Sarah Osgood, Program Manager in the Authority's Energy Analysis Program, explained that the goal is to double the estimated annual customer-sited tier PV capacity installed during 2011 (to about 60 MW) and quadruple it in 2013 (to nearly 120 MW) by increasing competitive procurement of large solar projects and expanding rebate programs for smaller solar projects.

Mr. Akel stated that overall, the presentations provided a good perspective on the breadth of the activities in which NYSERDA is engaged. He noted that the Committee's meeting minutes will set forth these presentations in detail. PPC members were very supportive of the

direction presented in the Strategic Plan and the focus on mission, vision and outcomes. Program staff were helpful in clarifying many questions regarding the program portfolios and PPC members discussed some important issues. Mr. Akel highlighted a few, as follows:

- The program implementation challenges associated with the current lower prices in the natural gas markets and the uncertainty this presents in not knowing how long the situation may continue;
- Whether there are likely to be potential opportunities for compressed natural gas and liquefied natural gas technologies in the near future;
- The implications of instituting an environmental performance threshold, rather than an output-based threshold, for certain eligible Renewable Portfolio Standard (RPS) technologies; and
- The need for future Strategic Plans to reflect on program opportunities not pursued, as well as lessons learned from past metrics, and how these factors influence future program portfolios.

Mr. Akel stated that the final version of the Strategic Plan will address the comments and suggestions of the PPC, including: clarifications in Chapter 6 that the energy-related environmental impacts are not limited to air resources, but also include water and land-based resources; and minor editorial changes including clarifying footnotes in Chapter 9. Mr. Akel stated that at the conclusion of all the presentations and discussions, the PPC voted unanimously to recommend that the Board approve the multi-year Strategic Program Plan for the years 2012-2015.

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

#### Resolution No. 1327

RESOLVED, that the multi-year strategic plan for the Authority's energy, economic, environmental program priorities and strategic vision entitled "Toward a Clean Energy Future: A Three Year Strategic Outlook (2012-15)," submitted to the Members for consideration at this meeting with such non-substantive, editorial changes

and supplementary schedules as the President, in his discretion, may deem necessary or appropriate, is adopted and approved as the Authority's updated multi-year strategic plan;

BE IT FURTHER RESOLVED, that the Authority's Mission Statement and Performance Measurements for the year ended March 31, 2012, as contained in the multi-year strategic plan, are approved for submission as required by Section 2800 of the Public Authorities Law.

Mr. Murray stated that the next agenda item was for the Members to consider a resolution approving revisions to the RGGI Operating Plan. Mr. Murray asked George Akel to discuss the proposed resolution. Mr. Akel reported that David Coup, Assistant Director of the Energy Analysis Program, described proposed modifications to the RGGI Operating Plan at the May PPC meeting. It is estimated that approximately \$67 million per year in proceeds will be available during the three-year planning horizon, which represents about a 16% decrease in auction proceeds compared to the 2011 Operating Plan. Mr. Coup explained that the proposed allocation of estimated proceeds over the three-year period will be directed toward the following program efforts: Cleaner, Greener Communities (\$79 million); residential energy services (\$27.7 million); regional economic development and greenhouse gas (GHG) reduction efforts (\$15.5 million); competitive GHG reduction efforts (\$14.5 million); industrial process improvements (\$14.1 million); clean technology industrial development (\$14 million); and climate research and analysis (\$3.4 million). Mr. Coup also mentioned that while the Green Jobs/Green New York efforts will receive no new funds, previously funded efforts are ongoing. These funding amounts are equal to about \$168.2 million in new three-year program funding, net of administration and evaluation expenses.

Mr. Akel stated that at the conclusion of Mr. Coup's presentation and discussions, the PPC voted unanimously to recommend that the Board approve the modifications to the RGGI Operating Plan.

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

Resolution No. 1328

RESOLVED, that revisions to the “Operating Plan for Investments in New York Under the CO<sub>2</sub> Budget Trading Program and the CO<sub>2</sub> Allowance Auction Program” as presented to the Members for consideration at this meeting, with such non-substantive, editorial changes and supplementary schedules as the President and Chief Executive Officer, in his discretion, may deem necessary or appropriate, are adopted and approved;

AND BE IT FURTHER RESOLVED, that the Members direct the President and Chief Executive Officer to develop a revised operating plan incorporating such revisions as soon as reasonably possible.

Mr. Murray stated that the next agenda item was for the Members to consider a resolution approving revisions to the Clean Air Interstate Rule (CAIR)/New York Battery and Energy Storage Technology Consortium™ (NY-BEST) Program Plan. Mr. Murray asked George Akel to discuss the proposed resolution. Mr. Akel stated that Jason Doling, Project Manager in the Authority’s Clean Energy Research and Market Development Program, provided a brief update to the PPC on the NY-BEST Consortium activities that were first funded in 2009 with a budget of about \$25 million. Of that funding, \$22.8 million (89%) has been expended, contracted, or committed to specific activities. Mr. Doling stated that NY-BEST membership has grown 39% in the past year to 108 members; and 195 participants attended the NY-BEST Annual Meeting and Conference held in March 2012. He described the NY-BEST priorities for the next year, which include: working toward a self-sustaining organization that contributes to a thriving energy storage sector in New York; continuing on a path of product development and commercialization opportunities between members; and leveraging the State’s \$7 million commitment to achieve the \$20 million in public and private funding necessary to establish the NY-BEST Product Commercialization Center (located in Rochester). Mr. Doling then explained that the proposed amendment would increase three program categories to reflect cumulative interest earnings on CAIR funds of \$1,057,000 through March 31, 2012. Those changes are:

- to increase the R&D category by \$530,000 to \$13,585,000, to meet the increased demand for commercially-focused research and product development;
- to increase the NYSERDA Administration category by \$500,000 to \$2,211,000 to cover the expenses of the executive search process, the development of by-laws, the formation of working groups, membership criteria, to form a Board of Directors, and other

administrative activities. This additional funding will also ensure adequate program oversight and administration through the balance of the NYSERDA funding, which is expected to last four to five additional years;

- to increase the New York State Cost Recovery Fee category by \$27,000 to \$443,000. This is a shared services fee assessed by the New York State Division of the Budget and billed to NYSERDA. The increase represents the assessment on the \$1,057,000 in cumulative interest earnings; and
- one additional change will reclassify the “Testing and Characterization” budget category as “Testing and Characterization Capabilities” to better reflect that these activities could include both capital equipment and operating costs.

Mr. Akel stated that the PPC voted unanimously to recommend that the Board approve the modifications to the CAIR/NY-BEST Operating Plan.

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

Resolution No. 1329

RESOLVED, that revisions to the “Clean Air Interstate Rule (CAIR)/New York Battery and Energy Storage Technology Consortium™ (NY-BEST) Program Plan” presented to the Members for consideration at this meeting, with such non-substantive, editorial changes and supplementary schedules as the President and Chief Executive Officer, in his discretion, may deem necessary or appropriate, are adopted and approved;

AND BE IT FURTHER RESOLVED, that the Members direct the President and Chief Executive Officer to develop a revised program plan incorporating such revisions as soon as reasonably possible.

Mr. Murray then turned to the next agenda item, a report from the Governance Committee (“GC”). GC Chair David Elliman reported that the first item considered by the GC was the Authority’s compensation schedule. He stated that Mr. Murray explained to the GC that the Authority is required to submit a compensation schedule listing all employees in decision-making or management positions with salaries in excess of \$100,000 as part of its Annual Report pursuant to Section 2800 of the Public Authorities Law. In addition, pursuant to the Public

Authorities Reform Act of 2009, the Section 2800 Annual Report must now include biographical information on each employee included on the list. Mr. Elliman reported that the GC unanimously recommended approval by the Members of the compensation schedule and submission of the biographical information.

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

Resolution No. 1330

RESOLVED, that the Authority's compensation schedule presented at this June 18, 2012 meeting, is adopted and approved as the compensation schedule to be submitted pursuant to Section 2800 of the Public Authorities Law; and

BE IT FURTHER RESOLVED that the attached vitae are approved for submission under Section 2800 of the Public Authorities Law.

Mr. Murray stated that the next agenda item concerned an evaluation by the Members of the Board's performance over the past year. Section 108 of the Public Officers Law authorizes the Members to convene in private session in order to review a matter made confidential by State law. Since Section 2800 of the Public Authorities Law states that the annual Board Member Performance Evaluation is confidential, it may be discussed by the Members in private session.

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

Resolution No. 1331

RESOLVED, that pursuant to Section 108 of the Public Officers Law and Section 2800 of the Public Authorities Law, the Members of the New York State Energy Research and Development Authority shall convene in private session on June 18, 2012 for the purpose of reviewing the Annual Confidential Board Member Performance Evaluation of the Authority.

Mr. Murray did not participate in the private session. The Board took no action during the private session. At the conclusion of the private session, Mr. Murray reconvened the meeting in open session. Whereafter, upon motion duly made and seconded, and by unanimous voice

vote, the Members adopted the following resolution.

Resolution No. 1332

RESOLVED, that the Authority's Annual Confidential Board Member Performance Evaluation Report as presented at this June 18, 2012 meeting, is adopted and approved to be submitted pursuant to Section 2800 of the Public Authorities Law.

Mr. Murray stated that the next agenda item was to consider and act upon a resolution approving an amendment to the Authority's By-laws. He asked David Elliman to report on this item. Mr. Elliman stated that at the GC meeting, Mr. Murray explained that the proposed amendment would add Section 4 to Article VI of the By-laws, providing the Director of Contract Management with the authority to execute contracts encumbering Authority funds up to \$25,000, which would streamline the Authority's contracting process. The majority of these contracts are for incentives that are issued as part of the Authority's energy efficiency open-enrollment programs. Mr. Elliman stated that the GC unanimously recommended approval by the Members of the amendment to the By-laws.

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

Resolution No. 1333

RESOLVED, that the amendment to the Authority's By-laws, as presented at this June 18, 2012 meeting, is approved and adopted.

Kevin Burke suggested that NYSERDA consider raising the amount to higher than \$25,000, so that the Treasurer did not have to review and approve as many contracts in the future. Mr. Murray said the Authority would consider this.

Mr. Murray stated that the next several agenda items pertained to matters addressed by the Audit and Finance Committee ("A&F Committee") earlier that day, and he asked Committee Chair Bob Catell for a report. Mr. Catell stated that the A&F Committee reviewed the Annual Investment Report for the fiscal year that ended March 31, 2012, and the proposed 2012 Investment Guidelines. The Investment Report was reviewed in both open session and in

executive session with only the independent auditors present. The Report indicates that the Authority's overall investments increased from \$937.8 million to \$1.017 billion, principally due to funds received from the sale of auction allowances under the Regional Greenhouse Gas Initiative program and scheduled collections from the Energy Efficiency Portfolio Standard and the Renewable Portfolio Standard programs. As a result of gains realized on the sale of investments to meet cash flow needs and higher average investment balances, total interest earnings for the fiscal year ended March 31, 2012 were \$11.7 million, compared to \$8.6 million for the prior year. The rate of return increased to 1.2%, compared to 1.0%, in the prior year.

Mr. Catell stated that the Authority's independent auditors reviewed the Investment Report and said that nothing came to their attention that indicated that the Authority was not in compliance with the Investment Guidelines. Consequently, no changes to the Investment Guidelines for the upcoming fiscal year are recommended. Mr. Catell stated that the A&F Committee unanimously recommended that the Board approve the Annual Investment Report and Investment Guidelines.

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

#### Resolution No. 1334

RESOLVED, that the "Investment Guidelines, Operative Policy and Instructions (June 2012)," as presented at this June 18, 2012 meeting, are approved and adopted; and

BE IT FURTHER RESOLVED, that the Authority's "2011-12 Annual Investment Report," for the year ended March 31, 2012, as presented at this June 18, 2012 meeting, is approved and adopted as the annual investment report of the Authority required by Section 2800 and Section 2925(6) of the Public Authorities Law.

Mr. Murray next asked Mr. Catell to report on the Annual Investment Report for the NYSERDA Other Post-Employment Benefits (OPEB) Trust for the year ended March 31, 2012 and the "Investment Policy Statement for the NYSERDA OPEB Trust (June 2012)." Mr. Catell stated that the A&F Committee reviewed the Annual Investment Report for the year that ended March 31, 2012, and the proposed 2012 Investment Policy Statement for the NYSERDA OPEB

Trust. The Investment Report was reviewed in both open session and in executive session with only the independent auditors present. The Authority has contributed \$18 million to the Trust, has earned about \$842,000 in investment income, has expended about \$1.2 million in benefit payments, and has incurred about \$40,000 in administrative expenses, leaving a balance of \$17.7 million in the Trust as of March 31, 2012. The market value of the Trust's assets on March 31, 2012 was \$19.9 million, reflecting an appreciation of \$4.7 million in the Trust's assets and resulting in a 12.7% total return on the Authority's contributions for the year. Mr. Catell stated that no changes are recommended to the Investment Policy Statement.

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

Resolution No. 1335

RESOLVED, that the "NYSERDA OPEB Trust Investment Report" for the year ended March 31, 2012, as presented at this June 18, 2012 meeting, is approved and adopted as the annual investment report of the NYSERDA OPEB Trust required by Section 2800 and Section 2925(6) of the Public Authorities Law; and

BE IT FURTHER RESOLVED, that the "Policy Statement for the NYSERDA OPEB Trust (Retiree Health Insurance Benefits Trust)" as presented at this June 18, 2012 meeting, is approved and adopted.

Mr. Murray stated that the next agenda item was a review of the Financial Statements of the Authority for fiscal year 2011-12, and he asked Mr. Catell to present this item. Mr. Catell stated that the A&F Committee reviewed the Financial Statements for the recently completed fiscal year. Peter Mahar, Controller and Assistant Treasurer, summarized significant changes compared to last year's financial statements. After Peter's presentation, the Committee met in Executive Session with the independent auditors, where there was ample and detailed review of the Authority's investments and financial condition. No substantive problems were identified.

Mr. Catell stated that the independent auditors will issue an unqualified opinion on the Financial Statements, and that the A&F Committee unanimously recommended approval of the Financial Statements.

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

Resolution No. 1336

RESOLVED, that the Authority's Financial Statements as of March 31, 2012, as presented at this June 18, 2012 meeting, are adopted and approved as the financial reports required by Sections 1867(1) and 2800 of the Public Authorities Law.

Mr. Catell thanked NYSERDA's staff for its hard work that resulted in issuance of a clean audit report by KPMG.

Mr. Murray stated that the next agenda item was approving the appointment of the Authority's independent auditors for fiscal year 2012-13, and he asked Mr. Catell to address this item. Mr. Catell stated that the Members are asked to approve a resolution appointing KPMG, LLP as the independent auditors of the Authority for the fiscal year ending March 31, 2013 and for the independent audit of the NYSERDA OPEB Trust. KPMG was competitively selected under an RFP issued in 2011. NYSERDA may renew the agreement annually for four, one-year extensions, with annual adjustments to the fees. This will be the first annual renewal. Mr. Catell stated that the engagement letter from the auditors indicating the services they will provide in conjunction with the audit was provided to Members and is consistent with the prior independent auditor's services. The proposed fee for both audits for fiscal year 2012-13 will not exceed \$62,500. Mr. Catell stated that the Committee unanimously recommended that the Members continue to retain KPMG, LLP.

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

Resolution No. 1337

RESOLVED, that the Chair is authorized to retain the firm of KPMG, LLP as independent auditors for the Authority and for the NYSERDA OPEB (Other Post-Employment Benefits) Trust for the fiscal year ending March 31, 2013.

Mr. Murray stated that the Board would next consider approval of the annual bond sale report, and he asked Mr. Catell to address this item. Mr. Catell stated that the report indicates that, during fiscal year 2011-12, the Authority participated in the process for refunding three series of bonds, the details of which are contained in the report. In addition, the report includes a schedule of Authority bonds that are outstanding as of March 31, 2012, which totals about \$3.4 billion. He stated that the A&F Committee unanimously recommended approval by the Members of the Annual Bond Sale Report.

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

Resolution No. 1338

RESOLVED, that the Authority's Annual Bond Sales Report for the fiscal year April 1, 2011 through March 31, 2012, and the information contained therein, as presented at this June 18, 2012 meeting, is adopted and approved for submission pursuant to Section 2800 of the Public Authorities Law.

Mr. Murray stated that the next item concerns the text of the Annual Report for 2011-12, entitled *The Power of Partnerships*. NYSERDA's progress is outlined in four major focus areas: Shaping New York's Energy Future; Transforming the Market; Saving Energy, Cutting Costs; and Reducing Energy's Environmental Impact. The Report also features the strategic partnerships- with business, academia, energy market participants, the environmental community, and all levels of government- that are critical to the Authority's successes. Mr. Murray stated that the Annual Report demonstrates the real-world impact of NYSERDA's programs on New York's residents and businesses, as the Authority and its partners work to shape New York's energy future, transform the markets for energy efficiency and renewable energy, stimulate new investment in innovation and clean technology, improve environmental quality, and promote economic development and opportunity.

Mr. Murray also stated that while the version of the annual Report provided to the Members in advance of the meeting did not include a letter from Governor Cuomo, the Governor had since provided a letter, which will be included in the final version of the Annual Report.

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

Resolution No. 1339

RESOLVED, that the text of the Annual Report of the Authority, as presented at this meeting, with such non-substantive, editorial changes and supplementary schedules as the President and Chief Executive Officer, in his discretion, may deem necessary or appropriate, is adopted and approved.

Kevin Burke stated that he had previously asked for a report from staff on emissions from ReEnergy Holdings, a biomass plant. Mr. Murray responded that he would have to check with Vice President Janet Joseph, who was not at the meeting.

Mr. Murray stated that the next agenda item concerned the Authority's Annual Report on the Disposition of Real and Personal Property, as well as the Authority's Guidelines for disposal of property. Jeff Pitkin, the Authority's Treasurer, explained that Title 5-A of the Public Authorities Law (established by the Public Authorities Accountability Act of 2005 and amended by the Public Authorities Reform Act of 2009) sets forth requirements for the disposition of property by public authorities. Pursuant to these new requirements, the Members approved the Authority's *Guidelines, Operative Policy and Instructions for the Disposal of Real and Personal Property* at the April 2010 meeting. The Guidelines require an annual report to be prepared listing: all real property of the Authority; all Property (real property and personal property with a value in excess of \$5,000) disposed of during the year, including a description of the Property, the name of the purchaser, and the price received; and an explanatory statement if the disposals are not pursuant to competitive bidding or are purchased for more than or disposed of for less than, fair market value. The Guidelines also require the Members to annually review and approve the Guidelines.

Mr. Pitkin continued, stating that Section 1 of the report lists four parcels of real property owned by the Authority: its main offices at 17 Columbia Circle (Albany); the Western New York Nuclear Service Center (West Valley); the Saratoga Technology + Energy Park (STEP); and a parcel of underwater land at the Indian Point Nuclear Generating Station upon which an

outfall structure for the release of cooling water is located. Section 2 of the report lists any dispositions of real property and dispositions of personal property with a value in excess of \$5,000 during the period. There were three real property dispositions during the reporting period, all of which were approved by the Members at the April 2011 Board meeting. The first was an amendment of the ground lease with United STEP I, LLC for the 107 Hermes Road to add a 20-year renewal term. The second was a ground lease agreement with STEP Tech, LLC for approximately 3.08 acres at STEP for the construction of a building of approximately 59,000 square feet. The last was a Deed of Dedication, Permanent Right of Way and Easement, and Guaranty with Saratoga County Sewer District No. 1 to transfer title for ancillary equipment to grant easement rights to extend the existing sewer line located at STEP.

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

Resolution No. 1340

RESOLVED, that the “Guidelines, Operative Policy and Instructions for the Disposal of Real and Personal Property (June 2012),” as presented at this meeting, are approved and adopted; and

BE IT FURTHER RESOLVED, that the Annual Report on Disposition of Real and Personal Property (June 2012), as presented at this meeting, is adopted and approved as the Annual Report on Disposition of Real and Personal Property required by Section 2800 of the Public Authorities Law.

Mr. Murray stated that the next agenda item concerned the Authority's Annual Procurement Report and the Guidelines on Procurement Contracts. He asked Cheryl Earley, Director of Contract Management, to provide a summary of this item. Ms. Earley stated that New York Public Authorities Law Section 2879 requires the Authority to annually review and approve its Procurement Contract Guidelines, Operating Policy and Instructions and its Annual Report on Procurement Contracts. The Guidelines set forth NYSERDA's policy and procedures on the use, awarding, monitoring, and reporting of our procurement contracts. Ms. Earley stated that the June 2012 Guidelines provided to the Members for review and approval contain no changes from the Guidelines approved by the Members in June 2011.

Ms. Earley stated that the Members have also been provided with a copy of the Annual Report on Procurement Contracts. The annual report lists all contract actions exceeding \$5,000 that were executed or modified by the Authority between April 1, 2011 and March 31, 2012, and details all contracts involving contractor performance extending beyond a one-year period that are open. Section 1 of the report indicates that during the period covered by this Annual Report, the Authority initiated or modified a total of 3,709 contract actions. Over 97% of these actions were competitively selected, and 99% of the dollar amount committed this period resulted from competitive procurement. Section 2 of the report lists 4,534 procurement contracts extending beyond a one-year period that are open. Ms. Earley stated that NYSERDA is in compliance with the Guidelines in its selection of contractors.

Ms. Earley stated that the Members have also been provided with an annual report on Authority compliance with Article 15-a of the Executive Law. Of the 23 contracts subject to Article 15-a which were initiated or modified during the reporting period, 36% of the total number of contracts were awarded to certified Minority and Women-Owned Businesses (MWBEs), representing 25% of the total contract amounts.

Mr. Murray stated that at the Board's April 2012 meeting, Mark Willis requested that staff explain to the Members the efforts the Authority makes with regard to contracting with MWBEs. Mr. Murray emphasized that establishment and achievement of MWBE goals is a very high priority of the Governor. Mr. Murray asked Cheryl Earley to discuss the MWBE goals established by NYSERDA as well as the steps being taken to achieve those goals. Ms. Earley explained that Executive Law Article 15-a applies to NYSERDA only to the extent of contracts entered into for its own account or for the benefit of any other State department. This includes contracts in excess of \$25,000 that are entered into for NYSERDA's own use to support the internal administration and management of its staff and offices; or for NYSERDA's development or maintenance of facilities it operates or manages for use by its own staff; or for contracts in excess of \$100,000 that are entered into for NYSERDA's own acquisition, construction, demolition, replacement, major repair or renovation and improvements of real property ("applicable contracts"). It is the policy of the Authority to foster and promote participation of MWBEs in its procurements and the development of such enterprises and to facilitate a fair share

of the awarding of Procurement Contracts to such enterprises. NYSERDA's efforts to implement the MWBE policy include: (i) soliciting participation by NYS certified MWBEs in qualified Procurement Contracts; (ii) utilizing NYS certified MWBEs to the greatest extent possible in applicable contracts either through direct contract or as subcontractors; and (iii) fostering partnerships, joint ventures or other similar arrangements between NYS certified MWBEs and other entities having qualified Procurement Contracts with the Authority.

Ms. Earley stated that pursuant to Article 15-a, NYSERDA is required to submit to the NYS Division of Minority and Women-Owned Business Development an Annual Goal Plan setting forth the percentage of aggregate Article 15-a qualified expenditures that will be targeted for the participation of NYS certified MWBEs ("goals"). The Authority is also required to submit quarterly compliance reports to the NYS Division of Minority and Women-Owned Business Development setting forth the applicable contracts awarded, the total expenditures pursuant to each contract, the number of contracts awarded to NYS-certified MWBEs, and the expenditures made to such MWBEs. Regarding the Authority's Annual Goal Plan, NYSERDA has adopted the goals referenced in the Executive Law. The overall MBE/WBE goal is 28.92%. For the fiscal year ending March 31, 2011, for those contracts that were 15-a Qualified Contracts, NYSERDA achieved an overall MWBE expenditure rate of just over 29%, exceeding the goal established in the Authority's Annual Goal Plan.

Mr. Willis thanked Ms. Earley for the explanation, and stated that outreach efforts are very important in attracting MWBEs. Ms. Earley replied that in the past year, NYSERDA had assisted two women-owned contractors in obtaining the necessary certifications. She also stated that the Division of Minority and Women-Owned Business Development sponsors job fairs every year, and that this year's fair will be held in Albany. Mr. Willis suggested that since NYSERDA contracts with entities across New York State, the Authority should consider holding MWBE information sessions in different parts of the State.

Mr. Murray stated that NYSERDA's Counsel's office had compared the lists provided by Members of entities with which each Member is associated and which he or she believes may enter into contracts with NYSERDA to the list of contracts in the Annual Procurement Report.

Counsel's office reported just a few potential conflicts. Specifically, the Authority has entered into or anticipates entering into contracts with Central Hudson Gas & Electric, Consolidated Edison, National Grid and Orange and Rockland Utilities, identified by Garry Brown; Consolidated Edison, ConEdison Solutions, Honeywell International Inc., and Orange and Rockland Utilities, identified by Kevin Burke; various SUNY campuses and affiliates, identified by Bob Catell; the Center for Environmental Information, Cornell University, Paul Smith's College and the University of Rochester, identified by Liz Thorndike; and JP Morgan Chase and New York University, identified by Mark Willis.

Whereafter, upon motion duly made and seconded, and by voice vote of the Members present, the following resolution was adopted. Mr. Brown, Mr. Burke, Mr. Catell, Dr. Thorndike, and Mr. Willis each abstained from the vote solely with regard to contracts involving the respective entities identified by each of them above.

#### Resolution No. 1341

RESOLVED, that the "Procurement Contract Guidelines, Operative Policy and Instructions (June 2012)" as presented at this meeting, are approved and adopted; and

BE IT FURTHER RESOLVED, that the Authority's 2011-2012 Annual Procurement Contracts Report, as presented at this meeting, is adopted and approved as the annual report of the Authority required by Section 2800(1)(a)(6) and Section 2879 of the Public Authorities Law.

Mr. Murray stated that the next item to be considered is the periodic procurement contracts report and he asked Cheryl Earley to provide a brief summary of this item. Ms. Earley stated that pursuant to Public Authorities Law Section 2879, the Members are requested to adopt a resolution approving the Periodic Procurement Contracts Report. The Periodic Report covers the period April 1, 2012 through May 15, 2012. The report summarizes 537 procurement contracts exceeding \$5000 that were initiated or modified during the period. Over 95% of the procurement contracts were competitively selected and 98% of the dollars committed resulted from competitive procurement. All of the actions were in compliance with the procurement contract guidelines. The report also summarizes an additional 1,347 procurement contracts that are expected to be executed by the Authority, that have a period of expected performance in

excess of one year. These contract actions total approximately \$322 million. Ms. Earley stated that the Members have also been provided with a periodic report on Authority compliance with Article 15-a of the Executive Law. Of the six contracts subject to Article 15-a which were initiated or modified during the reporting period, 50% of the total number of contracts were awarded to certified M/WBEs, representing 44% of the total contract amounts.

Mr. Murray stated that once again, Counsel's office had compared the list of entities provided by Members to the list of contracts in the Periodic Procurement Report, and reported the same potential conflicts as those he identified with regard to the Annual Procurement Report.

Whereafter, upon motion duly made and seconded, and by voice vote of the Members present, the following resolution was adopted. Mr. Brown, Mr. Burke, Mr. Catell, Dr. Thorndike, and Mr. Willis each abstained from the vote solely with regard to contracts involving the respective entities identified by each of them above.

#### Resolution No. 1342

RESOLVED, that the Periodic Procurement Contracts Report, covering the period April 1, 2012 through May 15, 2012, 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).

Mr. Murray stated that the next item on the agenda was a report on Operations and Accomplishments. He explained that the Public Authorities Reform Act of 2009 requires the Authority to submit a listing of major changes in the Authority's operations, details on the Authority's accomplishments, and descriptions of the Authority's major operational units as part of the Section 2800 Annual Report to the Governor, the Legislature, and others. Mr. Murray stated that during fiscal year 2011-2012 no significant organization changes were made at NYSERDA. However, the report discusses five new initiatives, including:

- On Bill Recovery Financing Program - NYSERDA began implementation of the most comprehensive statewide on-bill recovery financing program in the nation.

- Transportation and Climate Initiative (TCI) - NYSERDA was awarded \$1 million in DOE funding, on behalf of a 12-state regional collaborative, to create planning documents and conduct outreach and education for region-wide implementation of electric vehicle infrastructure projects and to support development of a Northeast Regional Electric Vehicle Network.
- Cleaner, Green Communities Program - NYSERDA launched the Cleaner, Greener Communities program to help regions plan for a sustainable future with funding for the development of comprehensive regional sustainability plans offered through New York State's consolidated funding application (CFA) grant application process.
- Storm Relief Programs - NYSERDA reached out to those affected by Hurricane Irene and Tropical Storm Lee, providing \$6.7 million to help homeowners in 45 counties replace appliances damaged or lost during the storms and \$3 million to help farms replace electric and natural gas equipment damaged or lost during the storms.
- Technology and Market Development Program - In January 2012, NYSERDA launched a five-year, \$93.8 million Technology and Market Development suite of rate-payer funded programs as a means for testing, developing and introducing new technologies, strategies and practices that build the statewide market infrastructure to reliably deliver clean energy to New York residents.

Mr. Murray also listed a number of NYSERDA program accomplishments. NYSERDA's programs improved the energy efficiency of New York's buildings and facilities saving over 1,100 GWh of electricity and 1.7 million MMBtu of fossil fuels, allowing participating customers to achieve over \$200 million in direct energy bill savings. NYSERDA helped diversify New York's energy resources by incentivizing nearly 300 GWh in electricity production from renewable sources and 65 GWh from combined heat and power sources. NYSERDA's technology and business development investments assisted 180 businesses and resulted in 15 new products being introduced to the market in 2011 with nearly 100 additional products under development. In addition, 2010 annual product sales as a result of previous NYSERDA investments were nearly \$200 million with over \$6 in Gross State Product resulting from each dollar invested by NYSERDA in R&D product development. NYSERDA's investments in energy efficiency and renewable and diverse energy programs have reduced the

impact of energy production and use by reducing CO2 emissions by 670,000 annual tons, NOx emissions by 650 annual tons and SO2 emission by 1,300 annual tons. NYSERDA improved its responsiveness to customer needs in 2011 by processing 55% of the nearly 6,500 contract actions with an improved processing time as compared to 2010. In addition, NYSERDA paid over 63,000 invoices in 2011 with 99.99% of these payments made within 30 days.

Dr. Thorndike stated that the Operations and Accomplishments report is one of the best documents she has read during her long tenure on NYSERDA's board. She suggested that staff consider distilling the key accomplishments into a short 3-4 page report that could be more widely distributed to the Legislature, stakeholders and the public in general.

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

#### Resolution No. 1343

RESOLVED, that the Authority's Operations and Accomplishments Annual Report as presented at this June 18, 2012 meeting is adopted and approved for submission under Section 2800 of the Public Authorities Law.

The Annual Prompt Payment Policy Report was next on the agenda, and Mr. Murray called on Authority Treasurer Jeff Pitkin. Mr. Pitkin explained that Section 2880 of the Public Authorities Law and the Authority's implementing regulations require preparation of an annual report on the implementation of the Authority's prompt payment policy. Under its policy, the Authority is required to make payment to contractors and vendors within 30 days of the receipt of a valid invoice. If payment is not made within 30 days, interest is to be computed at the rate prescribed by Section 2880. When the amount of interest computed equals or exceeds ten dollars, that amount of interest must be paid to the contractor. Mr. Pitkin reported that during the fiscal year ending March 31, 2012, over 66,500 vendor invoices were paid within 30 days as required by the prompt payment policy. Two violations occurred and they were due to staff oversight in entering the invoice timely. Mr. Pitkin stated that staff will be reminded of the importance of complying with the Prompt Payment Law, and they will strive to eliminate future oversights.

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

Resolution No. 1344

RESOLVED, that the Annual Prompt Payment Policy Report presented to the Members of the Authority at this June 18, 2012 meeting is adopted and approved as the annual report required by Section 2880 of the Public Authorities Law.

Next was consideration of a resolution approving inclusion of additional items in the Section 2800 Annual Report, and Mr. Murray asked Deputy General Counsel Dave Munro to discuss this item. Mr. Munro stated that the Members are requested to adopt a resolution approving the submission of additional items in the Authority's Annual Report required by Section 2800 of the Public Authorities Law as amended by the Public Authorities Reform Act of 2009. NYSERDA staff actually produce two separate documents called "Annual Report." One is the Annual Report for public distribution that the Board had approved earlier in the meeting. The other is the Annual Report that NYSERDA is required to submit to the Governor, the State legislature, and the Authorities Budget Office pursuant to section 2800 of the Public Authorities Law. Section 2800 contains a list of documents that are to be included in the Annual Reports of public authorities. The Members have previously approved the Annual Confidential Board Performance Evaluation, the Annual Procurement Report, the Annual Report on the Disposal of Real and Personal Property, the Annual Report on Operations and Accomplishments, the Annual Bond Sales Report, the Compensations Schedule, the Audited Financial Statements, and the Mission Statement and Measurements Report.

Mr. Munro stated that this agenda item seeks approval to submit several documents that have either been previously approved by the Members or do not require substantive approval. These items include a copy of the Authority's By-laws, which includes a description of the Authority and its Board structure; a copy of the Authority's enabling legislation including the Green Jobs – Green New York Program legislation; a list of all current Members and their Committee assignments; a list of the Board and Committee Meetings including attendance; the Authority's Code of Conduct for Employees and the Code of Conduct for Authority Contractors; the Assessment of Internal Controls; the Authority's Four Year Financial Plan, which includes a

current and projected capital budget as well as the Operating Budget Report; and a description of pending litigation.

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

Resolution No. 1345

RESOLVED, that the Authority's By-laws, the Authority's enabling legislation, a list of all current Members and their Committee assignments, a list of the Board and Committee Meetings including attendance, the Authority's Code of Conduct for Employees and the Code of Conduct for Authority Contractors, an assessment of the Authority's internal controls, the Authority's Four Year Financial Plan, and a description of pending litigation, as presented at this June 18, 2012 meeting, are approved for submission pursuant to Section 2800 of the Public Authorities Law.

Mr. Murray then stated that he wished to raise two items under New Business. First, the State Senate unanimously confirmed the nomination of John Koelmel as a trustee of the New York Power Authority (NYPA), and Governor Cuomo has recommended to the trustees that Mr. Koelmel be elected to serve as Chairman of NYPA. Assuming he is elected, Mr. Koelmel will become the newest member of NYSERDA's Board. Mr. Murray also introduced Patrick O'Shei, who Mr. Murray had earlier in the meeting advised would be heading the Authority's new Office of Performance Management and Evaluation Services.

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



---

Hal Brodie  
Secretary

June 6, 2012

**NOTICE OF MEETING AND AGENDA**

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

PLEASE TAKE NOTICE that the Annual Meeting (the 214<sup>th</sup> meeting) of the New York State Energy Research and Development Authority will be held in the Authority's Albany Office at 17 Columbia Circle, Albany, New York, and by video conference in the Authority's New York City Office at 485 Seventh Avenue, 10th Floor, New York, New York on Monday, June 18, 2012, commencing at 12:30 p.m., for the following purposes:

1. To receive information from the Program Planning Committee and:
  - (a) to consider and act upon a resolution approving NYSERDA's multi-year strategic program plan entitled *Toward a Clean Energy Future - A Three Year Strategic Outlook 2012-2015*;
  - (b) to consider and act upon a resolution approving revisions to the plan entitled *Operating Plan for Investments in New York Under the CO<sub>2</sub> Budget Trading Program and the CO<sub>2</sub> Allowance Auction Program*; and
  - (c) to consider and act upon a resolution recommending approval of amendments to the *Clean Air Interstate Rule (CAIR)/New York Battery and Energy Storage Technology Consortium™ (NY-BEST) Program Plan*.
2. To receive information from the Governance Committee and:
  - (a) to consider and act upon a resolution approving a compensation schedule;
  - (b) to consider and act upon a resolution approving the Annual Confidential Board Member Performance Evaluation Report; and
  - (c) to consider and act upon a resolution approving an amendment to the Authority's By-laws.
3. To receive information from the Audit and Finance Committee and:
  - (a) to consider and act upon a resolution approving the Annual Investment Report of the Authority and the "Investment Guidelines, Operative Policy and Instructions (June 2012);"

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

**Albany**

17 Columbia Circle, Albany, NY 12203-6399  
(P) 1 (866) NYSERDA | (F) (518) 862-1091  
nysesda.ny.gov | info@nysesda.org

Francis J. Murray, Jr., President and CEO

**Buffalo**

726 Exchange Street  
Suite 821  
Buffalo, NY  
14210-1484  
(P) (716) 842-1522  
(F) (716) 842-0156

**New York City**

485 Seventh Avenue  
Suite 1006  
New York, NY  
10018-6815  
(P) (212) 971-5342  
(F) (518) 862-1091

**West Valley Site**

**Management Program**  
9030-B Route 219  
West Valley, NY  
14171-9500  
(P) (716) 942-9960  
(F) (716) 942-9961

- (b) to consider and act upon a resolution approving the Annual Investment Report for the NYSERDA OPEB (Other Post-Employment Benefits) Trust for the year ended March 31, 2012 and the “Investment Policy Statement for the NYSERDA OPEB Trust (June 2012);”
  - (c) to consider and act upon a resolution approving Financial Statements of the Authority for fiscal year 2011-12;
  - (d) to consider and act upon a resolution approving the appointment of the Authority’s independent auditors for fiscal year 2012-13; and
  - (e) to consider and act upon a resolution approving an annual bond sale report.
4. To consider and act upon a resolution approving the text of the Annual Report of the Authority for 2011-12.
  5. To consider and act upon a resolution approving the Annual Report on Disposition of Real and Personal Property and the “Guidelines, Operative Policy and Instructions for the Disposal of Real and Personal Property (June 2012).”
  6. To consider and act upon a resolution approving the Annual Report on Procurement Contracts and the “Procurement Contracts Guidelines, Operative Policy and Instructions (June 2012).”
  7. To consider and act upon a resolution approving the periodic procurement contract report.
  8. To consider and act upon a resolution approving the Annual Report on Operations and Accomplishments – March 31, 2012.
  9. To consider and act upon a resolution approving the annual report on the implementation of the Authority’s prompt payment policy.
  10. To consider and act upon a resolution approving the inclusion of additional items in the annual report required by Section 2800 of the Public Authorities Law.
  11. To transact such other business as may properly come before the meeting.

Members of the public may attend the meeting at either of the above locations. The Authority will be posting a video of the meeting to the web within two business days of the meeting. The video will be posted at <http://www.nyserda.ny.gov/en/About/Board-Governance/Board-and-Committee-Meetings.aspx>.



---

Hal Brodie  
Secretary