

PROGRAM PLANNING COMMITTEE
OF THE
NEW YORK STATE
ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

Minutes of the 59th Meeting
Held on April 3, 2006

Pursuant to a Notice and Agenda dated March 21, 2006, a copy of which is attached as Exhibit A, the fifty-ninth (59th) meeting of the Program Planning Committee of the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY ("NYSERDA") was convened at the Authority's Board Room at 17 Columbia Circle, Albany, New York, and by video conference in the Authority's New York City office, 485 7th Avenue, 10th Floor, Suite 1006, New York, New York, and by video conference in the Authority's Buffalo Office, 617 Main Street, Suite 105, Buffalo, New York, commencing at 10:00 a.m.

The following members of the Committee were present:

Vincent A. DeIorio, Esq., *ex officio*
Parker D. Mathusa, Committee Chair
Robert B. Catell

Also in attendance were Peter R. Smith, President; Robert G. Callender, Vice President for Programs; Wendy M. Shave, Vice President for Administration and Secretary to the Board; Jeffrey J. Pitkin, Treasurer; Roger D. Avent, General Counsel; Mitchell Khosrova, Associate Counsel and Secretary to the Program Planning Committee; John Osinski from the New York Power Authority; and various members of Authority staff.

Committee Chair Mathusa called the meeting to order and noted the presence of a quorum. The meeting commenced with the first agenda item which concerned the approval of the minutes of the fifty-eighth (58th) meeting of the Committee, held on January 9, 2006. Mr. Mathusa noted that, at his request, a draft of these minutes was previously mailed to all the Board Members due to the informative summary description of the Authority programs it contains. Whereafter, upon motion duly made and seconded, and by unanimous voice vote, the minutes were approved.

Mr. Mathusa then called on President Peter R. Smith to give an overview of the status of the extended Systems Benefit Charge Program ("SBC III") and the Demand Management Action Plan resulting from the Consolidated Edison Electric Rate case.

Mr. Smith explained that in December 2005, the Public Service Commission ("PSC") issued an order approving the continuation of the SBC Program for another five-year period to run through June 30, 2011, and that pursuant to the requirements of the Order, NYSERDA's staff had to prepare the SBC III Operating Plan ("Plan") for submission to the PSC for approval. The SBC III Program will be funded at \$175 million dollars annually, a \$25 million dollar increase from SBC II. The Plan sets forth the goals and strategies of SBC III, describes the individual programs

and summarizes how NYSERDA will administer, evaluate and report on the program. The Operating Plan was filed with the PSC and approved by the PSC on March 3, 2006. The SBC III Program will commence on July 1, 2006.

With respect to the SBC III Program and the Renewable Portfolio Program ("RPS"), Mr. Smith reported that the Legislature, under its 2006-2007 budget, has included language to have the SBC III Program and RPS program funds appropriated through the state legislative process. It was noted that last year the Legislature made a similar attempt to appropriate these program funds, which the Governor vetoed and the veto was not overrode by the Legislature. The Legislature passed the budget on March 31, 2006 and Governor has 10 days to negotiate with the Legislature on changes to the budget.

Mr. Smith further explained that for a litany of reasons, the SBC III and RPS program funds should not be appropriated by the Legislature. The Authority will continue to work with the Governor's Office as well as its customers and constituents to strongly advocate that the SBC III and RPS funds not be subject to an annual appropriation by the Legislature.

After a subsequent discussion, it was agreed that this topic should be raised at the full Board meeting with the expectation that the Board Members will adopt a resolution expressing its opposition to the Legislative effort to appropriate such funds.

In respect to the Consolidated Edison Electric Rate Case Program, Mr. Smith recalled that at the January meeting, the Consolidated Edison Rate Plan Order issued last Spring authorized the funding of a System-Wide demand management program, to be implemented by NYSERDA in the Consolidated Edison service territory.

The PSC recently issued an Order in mid- March 2006 approving the collaborative Action Plan developed by Staff, and authorizing NYSERDA to go forward with implementation of the program. The goal of the program is to achieve 150 MW of demand reduction measures by the end of the rate plan in March of 2008, through energy efficiency, distributed generation, and load management. The 150 MW goal is intended to be in addition to the NYSERDA's other efforts under the SBC Program.

Con Ed will fund this program at an amount up to \$112 million dollars, plus 9% for administration and evaluation activities. The Authority is now finalizing an amendment to the funding agreement with Consolidated Edison, which will allow NYSERDA to run the program continuously throughout the duration of the rate plan.

In response to a question regarding the Consolidated Edison Gas program, Mr. Smith stated that the study for the Consolidated Edison territory was just completed and showed that gas savings through efficiency measures would be less costly than the purchase of new gas. The statewide gas study should be completed by the end of April 2006 and the Board Members will be provided with a summary of the findings at the June meeting.

Mr. Mathusa then called upon Robert G. Callender, Vice President for Programs, to report to the Committee on the Saratoga Technology + Energy Park (“STEP”). Mr. Callender provided the Committee a brief update on some of the Authority’s current activities at STEP and requested that the Members act upon the resolution that was contained in the Meeting package that recommends approval of NYSERDA’s Ground Lease with the United Group of Companies, Inc. (“United”) for the development and management of Site One at STEP. A copy of the resolution is attached as Exhibit B.

By way of some background information Mr. Callender noted that, at the January 2004 Board Meeting, the Members adopted a resolution approving the Master Plan for STEP. The resolution provided that staff would seek the approval of the Members for any sale or long-term lease of property at STEP, with the understanding that the development of STEP would be a market-driven and a public-private partnership with all future developers.

Starfire Systems, Inc. moved to the existing building at STEP in 2002. As a small research and development (“R&D”) start-up company that grew out of the Rensselaer Polytechnic Institute incubator, Starfire leased space from NYSERDA in its existing building to establish its silicon carbide R&D operation and more importantly, its silicon carbide ceramic forming polymer and material systems manufacturing process. Four years later, Starfire has grown from two people to 32 people and is ready to move into a new building that will include manufacturing, lab, and office space.

Mr. Callender reminded the Members that Idea Partnerships was previously competitively selected to develop, build, and manage Site One at STEP which will include the space for Starfire, and the Members approved a ground lease with Idea at the September 2004 Board Meeting to support this effort. As previously reported, Idea was unable to develop sufficient financial resources to accomplish the project without a level of financial participation from the Authority that staff concluded not to be prudent. Accordingly, the parties mutually agreed to part ways and terminate Idea’s participation in the project.

In February 2006, to help meet Starfire’s needs and after consultation with the Board, NYSERDA issued a new Request for Proposals (“RFP”) seeking proposals for the development of Site One at STEP. The Site One design currently envisions a LEED- rated, two-story building with office, laboratory and production space constructed to Starfire’s specifications.

NYSERDA received one proposal in response to the RFP. The proposal was evaluated by a Technical Evaluation Panel (“TEP”) consisting of NYSERDA staff and outside members with relevant expertise. Based on the proposal, the TEP recommended that NYSERDA proceed to execute a ground lease with United.

United is located in Troy, NY and was formed in 1978. United is experienced in real estate development, financing, acquisitions, and property management. United’s proposed development team includes: Turner Construction (construction); Einhorn, Yaffee, Prescott

(architectural and engineering); Saratoga Associates (site planning and engineering); Millenium Credit Markets (financing); and United Realty Management Corp. (property management).

United had previously been selected to develop Site Two at STEP to house DayStar Technologies, Inc. Mr. Callender further reported that United has delivered the final design plan of the building to DayStar and that, to date, staff has been very happy with United's work and more importantly, United has been very quick to respond to any of DayStar's requests.

The Ground Lease that is included in the Meeting package is similar in structure and terms to the Ground Lease approved by the Members for Site Two. Under this Ground Lease, NYSERDA will lease approximately four acres at STEP to United for a 49-year term. United will obtain financing for, and will construct and manage a building with Starfire as its principal tenant.

United will pay NYSERDA base rent of \$21,000 annually, with escalations every five years ending with \$79,000 for years 46 to 49, totaling payments in excess of \$2,000,000 in base rent. United will also pay to the Authority 10% of the Net Proceeds from any Refinance and of annual Net Cash Flows (rental income less operating expenses and debt service payments) achieved from leasing the building and 5% of net proceeds for any sale of the building. The terms of the aforementioned additional rent are more advantageous to the Authority than under the Site Two Ground Lease.

The Ground Lease will also require United to pay a percentage of any common- area expenses incurred by the Authority and will require payment of \$6 per square foot as a "hook-up" fee, upon completion of construction, to reimburse the Authority for Site One's allocable share of certain infrastructure costs incurred by the Authority for STEP. The Ground Lease will require United to enter into an agreement with the appropriate municipalities to make Payments in Lieu of Taxes.

Additionally, an independent appraisal was conducted which confirmed that United's proposal exceeded fair market value.

The Ground Lease may be terminated at specified milestone dates, the latest date being May 13, 2006 if the developer is unable to execute a lease agreement with a tenant for at least 37,500 square feet or if financing is not secured. Under the proposed agreement, the Authority will not be providing any guaranty or collateral. If the developer is unable to obtain financing, the Authority may be asked to consider providing some financial assistance. Any such arrangement would be submitted to the Members for approval.

In response to Members' questions, Mr. Callender stated that Starfire is expected to rent between 22,000 and 37,000 square foot of the building which will not exceed 100,000 square feet and that any and all potential tenants at STEP must meet the Tenant Criteria to support NYSERDA's mission at STEP.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote, the Committee agreed to recommend that the Board adopt the resolution attached as Exhibit B.

The next item on the agenda was a request for the Committee Members to recommend the adoption of a resolution by the Board to approve a revised Budget for fiscal year 2006-07, a copy of the resolution is attached as Exhibit C. The preliminary budget was reviewed and approved by the Members at the September 2005 meeting. The revised Budget includes formatting changes to comply with regulations recently announced by the State Comptroller suggesting certain changes in public authority budgeting and disclosure practices. Specifically, these formatting changes include providing: a certification by the President and Treasurer that the budget materials are based on reasonable assumptions and methods of estimation; a description of the Authority's budget process, a description of principle budget assumptions, and a self-assessment of budgetary risks; a Financial Plan to show projections of revenues and expenditures for the three years following the Budget period; a detailed capital budget; and a copy of the budget materials on the Authority's website, and submitting a copy of the approved Budget to the State Comptroller upon approval by the Members.

Overall, the revised Budget is estimated at approximately \$352 million in revenues and \$330.3 million in expenditures. Mr. Pitkin explained that a detailed schedule is included in the Meeting package but some of the highlights are as follows:

- State appropriation funding increased \$29.7 million primarily for additional funding proposed in the Executive Budget, including \$700,000 in Petroleum Overcharge Restitutionary ("POCR") funds for energy technical assistance projects and \$30 million in funds for various transportation R&D programs; these increases were offset by a \$952,000 in state appropriation funding for West Valley bond debt service to reflect debt service reserve funds available for the Series 1998A bonds which mature on April 1, 2007.
- Third party reimbursement funding decreased \$3.36 million, primarily due to a change in the presentation for funds administered by NYSERDA which were collected in a prior year – the original budget had shown revenues equal to projected expenditures, but the revised presentation is consistent with the accounting treatment for these funds. This decrease is offset by the addition of \$734,000 in funding anticipated to be received from the Governor's Office of Small Cities for a grant to reimburse the NYSERDA in part for certain STEP infrastructure costs.
- SBC revenue increased \$10.9 million to reflect the increased SBC funding available during next fiscal year based on the SBC renewal.
- An increase of \$60.3 million in Consolidated Edison Rate revenue for the Demand Management programs. The preliminary budget approved by the Members in September assumed that the Consolidated Edison funds, which total up to \$122 million through March 2008, were expected to not be available upon renewal of the SBC program

funding. However, an agreement reached among DPS staff, Consolidated Edison, and members of the collaborative for the Consolidated Edison rate plan determined that the funds will be available to fund in full demand reduction programs through October 2006. Therefore, the revised Budget reflects inclusion of \$61 million in funding anticipated to be collected through a funding agreement with Consolidated Edison.

Mr. Pitkin further reported that interest income increased \$3.1 million to reflect higher investment yields and investment balances anticipated and fees and other income was increased \$1 million to include hookup fees anticipated from its developer for Sites One and Two at STEP, which recover a portion of NYSERDA's infrastructure costs. Additionally, salaries and benefits increased \$386,000 primarily due to the addition of five positions and program expenditures increased \$77.4 million for the additional funds previously discussed. Lastly, capital asset additions increased about \$2.5 million to reflect infrastructure improvements anticipated at STEP necessary to support further development.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote, and by unanimous voice vote, the Committee agreed to recommend that the Board adopt the resolution attached as Exhibit C.

Mr. Mathusa asked if there was any other business before the Committee. There being none, upon motion duly made and seconded, and by unanimous voice vote of the members, the fifty-fifth meeting of the Program Planning Committee was adjourned.

Respectfully submitted,



Mitchell Khosrova
Secretary to the Program Planning Committee