

MINUTES OF THE THIRTY-FIFTH MEETING OF THE
WASTE AND FACILITIES MANAGEMENT COMMITTEE
HELD ON SEPTEMBER 8, 2008

Pursuant to a notice and agenda dated September 2, 2008, a copy of which is annexed hereto as Exhibit A, the thirty-fifth (35th) meeting of the Waste and Facilities Management Committee of the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY was convened at 11:30 a.m. on Monday, September 8, 2008, at the Authority's Albany Office at 17 Columbia Circle, Albany, New York, and by video-conference from the Authority's New York City office, at 485 Seventh Avenue, 10th floor, New York, New York.

The following members of the Committee were present in Albany:

Elizabeth W. Thorndike, Ph. D., Chair

Vincent A. DeLorio

Parker D. Mathusa

Robert G. Callender, Vice President for Programs; Jeffrey J. Pitkin, Treasurer; Hal Brodie, Secretary and General Counsel; Paul Bembia, Director, West Valley Site Management Program; John P. Spath, Program Manager, Energy Analysis Program; and Peter R. Keane, Associate Counsel; all of the Authority, were present, as were various members of the Authority's Staff.

Ms. Thorndike called the meeting to order, stated that notice of the meeting had been forwarded to the Committee Members and the press on September 2, 2008, and noted the presence of a quorum. Ms. Thorndike stated that the first item on the agenda concerned approval of the minutes of the thirty-fourth meeting, held on January 16, 2008.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote, the minutes of the thirty-fourth meeting were approved.

Dr. Thorndike called upon Mr. Brodie to provide an update on the status of the West Valley litigation. Mr. Brodie stated that an Executive Session regarding this matter had been scheduled for the September 15, 2008 meeting of the Board. According to Mr. Brodie, the Authority has made substantial progress in the negotiations, and it was expected that the Board will be asked, at the September 15 meeting, to approve key terms of the settlement and to authorize the negotiation and execution of the final settlement documents.

Dr. Thorndike next called upon Paul Bembia, Director of the West Valley Site Management Program, to provide a status report on West Valley Site Management Program activities.

Mr. Bembia stated that Authority staff recently completed a review of a revised draft of the West Valley Decommissioning Environmental Impact Statement (EIS). Staff was assisted in this effort by an Independent Expert Review Team (IERT), which is composed of ten internationally recognized experts in erosion, groundwater, seismic hazards, engineering, and risk assessment. Mr. Bembia recalled that a Peer Review Group, convened by the Authority to assess the 2005 draft of the EIS, identified significant issues with the long-term predictions of dose to future human receptors, and concluded that the calculated doses were flawed and should not be used to determine whether the alternatives meet the decommissioning criteria or to rank the performance of the alternatives.

The Department of Energy (DOE) then convened a multi-agency Core Team, which was tasked with working to resolve the many technical issues that were identified during the review of the 2005 draft of the EIS. Core Team agencies include the Authority, DOE, the New York State Department of Environmental Conservation (DEC), the Nuclear Regulatory Commission (NRC), the Environmental Protection Agency (EPA), and the New York State Department of Health (DOH). The Core Team worked for about 18 months, but was unable to agree upon or resolve many of the difficult technical issues. According to Mr. Bembia, it is the position of Authority staff that the long-term performance assessment is not technically defensible, and should not be

used in long-term decision making. While DOE maintains that the 2005 long-term analysis was defensible, it agreed to make improvements in the analysis before the document was issued for public review. NRC's position has been that, while there is uncertainty in the results, they are accustomed to making decisions in the face of uncertainty.

Mr. Bembia advised that, while no agreement was reached on the significance of the technical issues, the Core Team was able to agree on a path forward for the EIS. The Core Team identified a preferred alternative that would include significant near-term removal actions that are not dependent on the long-term analysis. Those removal actions include demolition and off-site disposal of the Main Plant Process Building, excavation and offsite disposal of the source area of the plume, and excavation and offsite disposal of the water treatment lagoon system. For the facilities that DOE would like to close in place, decisions would be deferred for up to 30 years to allow for improvements in the technical basis of the analysis. Under this alternative the Authority would make an affirmative decision to manage the State-licensed Disposal Area (SDA) in place for up to an additional 30 years.

Mr. Bembia advised that the revised chapters, appendices, and support documents of a new, 2008 preliminary draft EIS (PDEIS) have been provided to Authority staff and the other Core Team Agencies for review, one section at a time, over the last eight months. Review of these documents by Authority staff, assisted by the IERT, has identified a number of very significant issues. First, the erosion modeling is not supported by an adequate scientific basis. The groundwater flow modeling analysis has been improved, but the contaminant transport modeling used in the dose analysis is not adequately supported. In addition, the assumptions for the performance of the engineered barriers that are proposed to be used for the containment of radionuclides are not well documented or supported. Finally, the PDEIS does not provide a useful estimate of uncertainty in long-term performance associated with any of the proposed

actions identified in the 2008 PDEIS. Overall, the IERT concluded that the LTPA does not provide defensible estimates of potential long-term risks of the West Valley site after the time of decommissioning.

Mr. Bembia reported that DOE plans to issue the PDEIS for public review by the end of December 2008. A revised draft will be provided to the Authority in October; Mr. Bembia did not expect that our substantive technical concerns will be resolved at that time. In order to allow the important near term removal actions to move forward, the Authority has agreed that the EIS process may go forward, with the stipulation that DOE will include the Authority's view on the EIS analyses and results as a "Foreword" to the EIS. The DOE has stated its intention to publish a record of decision by the end of 2009.

Mr. Bembia next advised the Committee that laboratory analysis of deer meat samples collected in 2007 revealed concentrations of Cesium 137 above the historical levels. This information was reviewed by DOH, which found no public health hazard. Mr. Bembia advised that the Authority will be informing hunters and the community of this issue through, among other means, a press release and the inclusion of information in the 2008 deer hunting application. Additional venison samples will be obtained and analyzed.

Chair Thorndike next called on Jack Spath, for a report on issues relating to nuclear waste and nuclear coordination.

Mr. Spath reported that the annual Low-level Radioactive Waste (LLRW) Status Report for calendar year 2007 was provided to the Governor and Legislature by July 1, as is required by the State Low-Level Radioactive Waste Management Act. Copies were also mailed to NYSERDA Board members and the report has been made available on the Authority's Web Site. In summary, 51 facilities reported shipping waste to out-of-state disposal facilities, including all 6

of the State's nuclear power plants. Shipments totaled approximately 75,000 cubic feet and 50,000 curies of radioactivity. According to Mr. Spath, 98% of the volume went to the Clive, Utah, disposal facility, while 99% of the curies went to Barnwell, South Carolina. As was anticipated, access to the Barnwell facility, the only disposal facility accepting Class B and C LLRW from New York generators, ceased on July 1, 2008. Nuclear power plants will now have to store such waste until a new option becomes available. Staff will continue to monitor the progress of a licensing proceeding for new disposal facility to be constructed in Texas.

Mr. Spath next advised that UniStar Nuclear, a joint venture of Constellation Nuclear and a French reactor manufacturer (AREVA) announced its intention to apply, in September of 2008, to NRC for a license to construct and operate a new nuclear power plant at the Nine Mile Point site. The proposed unit would use AREVA's 1,600 MW Evolutionary Power Reactor, one of a new generation of reactors which Mr. Spath described as superior to current technology employed in the U.S. The Authority hosted an informational meeting in August with UniStar Nuclear and various State agencies, at which UniStar gave a presentation outlining the proposal and the associated regulatory requirements.

Mr. Spath reported that Authority staff continues to monitor the progress of operating license renewals at the FitzPatrick and Indian Point facilities. Finally, Mr. Spath reported that an Independent Safety Evaluation (ISE) Panel, funded by Entergy, released a report evaluating safety, security, and emergency preparedness at Indian Point. The panel was comprised of two co-chairs and 8 other members. According to the Panel Chairs, the members of the panel had no professional relationship with Entergy or Indian Point, and combined significant industry, academic, legal, and regulatory expertise. As a part of this effort, the Panel requested the State's input on the evaluation. At the request of Deputy Secretary of Energy Paul DeCotis, the Authority arranged for a meeting of the ISE, the appropriate State agencies, and the Governor's staff for that purpose. While the Panel found that Indian Point is a safe plant, it made a series of

strong recommendations to Entergy for actions needed to maintain and enhance plant safety and security. Entergy has since publicly stated that it accepts and will act on all of the Panel's recommendations.

Following Mr. Spath's report, Ms. Thorndike asked Treasurer Jeff Pitkin to report on the Authority's revised Fiscal Year (FY) 2008-09 Budget for the West Valley Site Management Program and radioactive waste policy and nuclear coordination activities.

Mr. Pitkin reported on revisions to the Authority's Budget for FY 2008-09, which was approved at the January 2007 meeting of the Board. Overall, as explained by Mr. Pitkin, the revisions increase the budgeted expenditures from \$456.7 million to \$479.0 million. Mr. Pitkin pointed out that the majority of the revisions to the Budget are in program areas reviewed by the Program Planning Committee, which had met earlier in the day, and which was attended by all of the Waste and Facilities Committee Members.

Mr. Pitkin advised that, for the West Valley program, the revised Budget does not reflect any change in total program expenditures, which remain at \$13,500,000. Minor changes among the expenditure categories were identified. In addition, the revised Budget reflects a reduction in the appropriation funding for the program by \$3.87 million to reflect funds received from the State which had not been expended through the end of the prior fiscal year.

With regard to Radioactive Waste and Nuclear Coordination activities, Mr. Pitkin reported that the total budgeted expenditures decreased by \$8,000 to \$301,000 due to changes in indirect expense allocations. In addition, the State appropriation funding for the Low-Level Radioactive Waste program responsibilities was reduced by \$5,000 to \$145,000 due to across-the-board budget cuts enacted by the Governor and State Legislature. The Budget anticipates that the Authority will end fiscal year 2008-09 with a balance of unrestricted net assets of \$2 million.

According to Mr. Pitkin, this amount, representing about .4% of budgeted expenditures, is in line with the Authority's historical, fiscally prudent level of reserve funds.

Based upon the reports and discussions, upon motion duly made and seconded, and by unanimous voice vote, the Committee unanimously recommended that the Board adopt the resolution approving the budget for the West Valley Site Management Program and Radioactive Waste Policy and Nuclear Coordination activities as presented. A copy of this Resolution is attached hereto as Exhibit B.

Ms. Thorndike next asked Mr. Pitkin to provide a report regarding the State Appropriation Request for Fiscal Year 2009-10.

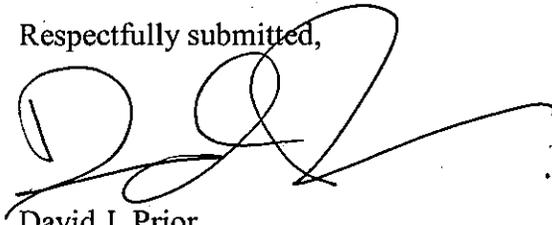
Mr. Pitkin advised that the State Appropriation Request is submitted annually to the Division of the Budget and sets forth the Authority's requests for state appropriations. In total, for FY 2009-10 the Authority is requesting appropriations totaling \$30.6 million, a decrease of \$1.3 million from the FY 2008-09 State Budget. No change is requested for the West Valley program, which seeks an appropriation of \$13,500,000. For the Low-Level Radioactive Waste program, the funding request of \$145,000 is expected to be provided from an appropriation which is funded from an assessment on operating nuclear power plant licensees, as in prior years.

Mr. Pitkin also requested that the Members review and comment on the Preliminary Spending Plan for FY 2009-10, which was also included in the materials provided on September 2, in anticipation of the Budget to be presented to the Members for approval at the January 2009 meeting. The Preliminary Spending Plan projects the balance of unrestricted net assets at the end of the fiscal year will be approximately \$2.7 million, or about .5% of budgeted expenditures. According to Mr. Pitkin, staff believes that this amount is both fiscally prudent and reasonable.

Based upon the reports and discussions, upon motion duly made and seconded, and by unanimous voice vote, the Committee unanimously recommended that the Board adopt the resolution approving the proposed State Appropriation Request for Fiscal Year 2009-10 as presented. A copy of this Resolution is attached hereto as Exhibit C.

The last item on the agenda concerned other business. There being none, upon motion duly made and seconded and upon unanimous voice vote, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Prior', with a long horizontal flourish extending to the right.

David J. Prior
Secretary to the Committee

EXHIBIT ANOTICE OF MEETING AND AGENDA

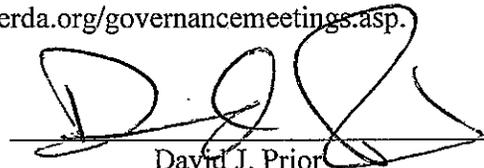
September 2, 2008

TO THE MEMBERS OF THE WASTE AND FACILITIES MANAGEMENT COMMITTEE:

PLEASE TAKE NOTICE that the thirty-fifth (35th) meeting of the WASTE AND FACILITIES MANAGEMENT COMMITTEE 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, September 8, 2008, commencing at 11:30 a.m., for the following purposes:

1. To consider the Minutes of the thirty-fourth (34th) meeting of the Committee held on January 16, 2008.
2. To receive a status report on West Valley Site Management Program activities.
3. To receive a status report on radioactive waste policy and nuclear coordination activities.
4. To receive a report from the Treasurer and to consider and act upon recommending approval of a resolution approving revisions to the Authority's Fiscal Year 2008-09 budget.
5. To receive a report from the Treasurer regarding the Authority's Fiscal Year 2009-10 Preliminary Spending Plan and to consider and act upon a resolution recommending approval of the Authority's State Appropriation Request For Fiscal Year 2009-10.
6. To transact such other business as may properly come before the Committee.

Members of the public may attend the meeting at either of the above locations. The meeting is also available through webcast at <http://www.nyserdera.org/governancemeetings.asp>.



David J. Prior

Secretary to the Waste and Facilities
Management Committee

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EXHIBIT B

Resolution No. _____

RESOLVED, that the Fiscal Year 2008-09 Budget and Financial Plan (Revised September 2008) submitted to the Members for consideration at this meeting, with such non-material, editorial changes and supplementary schedules as the President and CEO, in his discretion, may deem necessary or appropriate, be and it hereby is approved.

EXHIBIT C

Resolution No. _____

RESOLVED, that the proposed State Appropriation Request for Fiscal Year 2009-10 submitted to the Members for consideration at this meeting, with such non-material, editorial changes and supplementary schedules as the President, in his discretion, may deem necessary or appropriate, be and it hereby is approved for submission to, and at the request of, the New York State Division of the Budget.