

MINUTES OF THE TWENTY-THIRD MEETING OF THE
GOVERNANCE COMMITTEE
HELD ON APRIL 27, 2017

Pursuant to notice dated April 4, 2017 the twenty-third (23rd) meeting of the Governance Committee (“Committee”) of the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY (“Authority”) was convened in the Authority’s New York City Office at 1359 Broadway, 19th floor, New York, New York, and in the Authority’s Albany Office at 17 Columbia Circle, Albany, New York, on Thursday, April 27, 2017, commencing at 10:00 a.m.

The following members of the Committee were present:

Sherburne Abbott, Chair

Richard Kauffman

Chuck Bell

Jay Koh

Mark Willis

Also present were John Rhodes, President and CEO; Janet Joseph, Vice President for Innovation and Strategy; Jeffrey J. Pitkin, Treasurer; Noah Shaw, Esq., General Counsel; Laura Rowe, Esq., Assistant Counsel and Secretary to the Governance Committee; and various other staff of the Authority.

Ms. Abbott called the meeting to order and noted the presence of a quorum.

The first item on the agenda concerned the approval of the minutes of the twenty-second (22nd) meeting of the Governance Committee held on June 21, 2016.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote, the minutes of the twenty-second (22nd) meeting of the Governance Committee were approved.

The Chair indicated that the next item on the agenda concerned a resolution to convene in private session to discuss the results of the Annual Confidential Board Member Performance Evaluation. 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; therefore, it may be discussed by the Members in private session.

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

Resolution No. 37

RESOLVED, that pursuant to Section 108 of the Public Officers Law and Section 2800 of the Public Authorities Law, the Members of the Governance Committee shall convene in private session on April 27, 2017 for the purpose of reviewing the Annual Confidential Board Member Performance Evaluation of the Authority.

At the conclusion of the private session, Ms. Abbott reconvened the meeting in open session. Ms. Abbott announced that no formal action was taken during the private session. Ms. Abbott stated that the results of the Confidential Board Member Performance Evaluation will be discussed with the full Board at the June meeting.

Ms. Abbott indicated that the next item on the agenda concerns an updated conflict of interest policy for Authority Board Members and employees. General Counsel Noah Shaw presented this item.

Mr. Shaw stated that the Members are requested to recommend that the full Board adopt a resolution approving an updated conflict of interest policy and code of conduct for Authority employees. A copy of the draft policy was included with the board materials.

The proposed modification adds language to the policy specifically addressing the treatment of information that is labeled confidential or proprietary/trade secret as well as information that is in the Authority's possession under a non-disclosure agreement.

In response to an inquiry from Mr. Kauffman, Mr. Shaw stated that the impetus for this change was a lack of clarity in our conflict of interest policy, in terms of consistency with the foil regulations and statutes. The intent of the change is to make sure that everybody understands that when there is a non-disclosure agreement that the Authority signs, each of the employees of the Authority are subject to that NDA in the same way as if they signed it themselves, and to make sure it is clear in the conflict of interest and code of conduct what the restrictions are and treatment of information that is labeled by third parties as confidential. Mr. Shaw stated this is not a change in policy for the Authority, it's just a clarification of what the policy is in the written code of conduct.

In response to an inquiry from Mr. Kauffman, Mr. Shaw stated that there have not been any disclosures of information that should not have been made, but there have been questions and some confusion among staff around what the rules are especially regarding NDA's. This policy is a clarification of those rules to make sure everybody understands what their obligations are.

Member Koh stated, so it's not change in status as of a legal matter, because you are already bound, but now you have an employment component within NYSERDA internally and if you break the contract it is a code of conduct violation.

Mr. Shaw responded correct.

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

Resolution No. 38

RESOLVED, that the revised conflict of interest policy and code of conduct for Authority employees, as presented at this April 27, 2017 meeting, is recommended to be adopted and approved by the Board.

Ms. Abbott stated that the next item on the agenda is a salary increase for Officers, and asked the Authority's Chair Richard Kauffman to discuss this item.

Mr. Kauffman stated that, in accordance with the Public Authorities Law, Members are required to approve the compensation of Officers, including salary increases.

Historically the Authority has provided its employees with benefits comparable to those provided to Management Confidential employees of the State.

Recently, the New York State Division of Budget released a budget bulletin providing guidelines for the payment of a 2% General Salary increase to Management Confidential employees and other unrepresented employees in the Executive Branch, retroactive to April 1, 2016, as well as a 2% Parity Increase and a 2% General Salary increase for those same employees effective April 1, 2017.

The Members are asked to approve the same percentage salary increase for the President and CEO, Vice President for Innovation and Strategy, the Treasurer, and the General Counsel.

The fiscal year 2017-18 Budget approved by the Members in January 2017 did not include funding for these salary increases, as they were not known at that time. A revised Budget for Fiscal Year 2017-18 will be presented to Members for consideration at the September 2017 meeting and will include the salary increases for staff and Officers authorized through these actions.

Mr. Koh stated, to clarify and make it explicit, that this is a general recommendation that is released by the state budget; it is in accordance with the other state entities across the state; that is what is pushing it forward.

Mr. Kauffman added that there is a memo under tab 4 of the materials which gives the information.

Mr. Willis asked, does it dictate to which level of staff it applies? And are we making a decision of what the cut off is or are we not?

Mr. Shaw responded that this resolution only applies to Officers because Members are only required to approve salary compensations for Officers.

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

Resolution No. 39

RESOLVED, that the proposed 2% salary increase retroactive to April 1, 2016 and the 4% salary increase effective April 1, 2017, payable as appropriate to the President and CEO, the Vice President for Innovation and Strategy, the Treasurer and Internal Control Officer, and the General Counsel and Secretary is hereby recommended for approval by the Board, subject to the issuance of a Budget Bulletin by the New York State Division of the Budget.

The next item on the agenda is the review and approval of the Governance Committee Charter. This item will be presented by Noah Shaw.

Pursuant to the Public Authorities Accountability Act of 2005, each of the Authority's Committees adopted Charters setting forth each Committee's responsibilities. Each Committee is responsible for periodically reviewing its Charter and determining what, if any, amendments need to be made.

These recommendations will then be presented to the full Board for approval at its June 2017 meeting. A copy of the current Governance Committee Charter was included in the meeting package.

Management is not recommending any changes to the Governance Charter at this time. The recommendation being made to the full board is simply reaffirming the current Charter.

Ms. Abbott stated that the last agenda item concerned other business. There being no further business, upon motion duly made and seconded, and by unanimous voice vote of the Committee members, the meeting was adjourned.

Respectfully submitted,



Laura B. Rowe
Secretary to the Committee



NYSERDA

ANDREW M. CUOMO
Governor

RICHARD L. KAUFFMAN
Chair

JOHN B. RHODES
President and CEO

NOTICE OF MEETING AND AGENDA

April 4, 2017

TO THE MEMBERS OF THE GOVERNANCE COMMITTEE:

PLEASE TAKE NOTICE that the twenty-third (23rd) meeting of the GOVERNANCE COMMITTEE of the New York State Energy Research and Development Authority (“Authority”) will be held in the Authority’s New York City Office at 1359 Broadway, 19th floor, New York, New York, and in the Authority’s Albany Office at 17 Columbia Circle, Albany, New York, on Thursday, April 27, 2017, commencing at 10:00 a.m., for the following purposes:

1. To consider the Minutes of the 22nd meeting held on June 21, 2016.
2. To consider and act upon a motion to enter into private session for the purpose of reviewing the results of the Annual Confidential Board Member Performance Evaluation.
3. To consider and act upon a resolution recommending approval of an updated conflict of interest policy for Authority employees.
4. To consider and act upon a resolution recommending approval of a salary increase for Officers.
5. To consider and act upon a resolution recommending approval of the Governance Committee Charter.
6. 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. Video conferencing will be used at both locations and the Authority will be posting a video of the meeting to the web within a reasonable time after the meeting. The video will be posted at <http://www.nyserdera.ny.gov/About/Board-Governance/Board-and-Committee-Meetings>.

Laura B. Rowe
Secretary to the Committee

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