

MINUTES OF THE ONE HUNDRED TWENTIETH MEETING OF THE  
AUDIT AND FINANCE COMMITTEE  
HELD ON MAY 5, 2014

Pursuant to a notice dated April 28, 2014, a copy of which is annexed hereto, the one hundred twentieth (120<sup>th</sup>) meeting of the Audit and Finance Committee (“Committee”) of the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY (“Authority”) was convened at 11:30 a.m. on Monday, May 5, 2014, in the Authority’s Albany Office at 17 Columbia Circle, Albany, New York, and by video conference at the office of the New York State Division of Housing & Community Renewal at 641 Lexington Avenue, 4<sup>th</sup> Floor (conference rooms B and C), New York, New York, and by video conference in the Authority’s West Valley Office at 9030-B Route 219, West Valley, New York.

The following members of the Committee were present in New York City, unless otherwise indicated:

Robert B. Catell, Chair

George F. Akel, Jr. (by video conference from Albany)

David D. Elliman

Richard L. Kauffman (by video conference from Albany)

Mark A. Willis

Also present were John B. Rhodes, President and CEO; Thomas Barone, Acting Vice President for Operations and Energy Services; David Margalit, Chief Operating Officer; Jeffrey J. Pitkin, Treasurer; Hal Brodie, Esq., General Counsel; Sara L. LeCain, Esq., Senior Counsel and Secretary to the Audit and Finance Committee; Mark B. Mitchell, Director of Internal Audit; and various other staff of the Authority.

Mr. Catell called the meeting to order, and stated that the meeting notice and agenda were mailed to the members and the press on April 28, 2014. The first item on the agenda concerned

the approval of the minutes of the one hundred nineteenth (119<sup>th</sup>) meeting of the Committee held on March 7, 2014.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Committee members, the minutes of the one hundred nineteenth (119<sup>th</sup>) meeting of the Committee held on March 7, 2014, were approved.

Mr. Catell indicated that the next item on the agenda was the Annual Internal Audit Report and the Internal Audit Plan for fiscal year 2014-15 from Mark Mitchell, the director of Internal Audit. Mr. Mitchell began his report with a brief overview of last year's activities.

During the fiscal year from April 1, 2013, through March 31, 2014, Internal Audit issued four audit reports. They were (1) an audit of the Data Quality of the Existing Facilities program; (2) an audit of the Internal Controls of the FlexTech Program; (3) a contract oversight audit of agreements with a large implementation services contractor; and (4) a follow up audit of the Solar Photovoltaic ("PV") Incentive Program.

The results of those audits were provided to the Committee in writing as they were completed, discussed with the Committee throughout the year during Committee meetings, and are summarized in the Annual Internal Audit Report that was provided to the members in a recent mailing. Therefore, Mr. Mitchell did not go over them again during the meeting. Mr. Mitchell added that, in addition to the audits just referred to, Internal Audit conducted two formal investigations, with one of these investigations being presented later in the meeting.

Mr. Mitchell stated that Internal Audit provided advice and assistance to program staff as they prepared to launch the Gas Station Back-Up Power Program, which was a new, important initiative requested by Governor Andrew M. Cuomo. Internal Audit assisted the program team with identifying and managing program risks.

Mr. Mitchell then concluded his report on activities conducted during the last fiscal year. Before discussing the proposed Internal Audit Plan, Mr. Catell asked if the Committee had any questions about the Internal Audit reports.

In response to an inquiry from Mr. Kauffman, Mr. Mitchell indicated that an investigation has a different scope from the other activities of Internal Audit. Specifically, investigations allow Internal Audit to make inquiries, ask questions, and obtain records in a prescribed manner that is different than the approach taken towards audits. Also in an investigation, Internal Audit gathers the information required first and then subsequently goes to the individual. Lastly, investigations tend to be more labor-intensive than audits.

In response to an inquiry from Mr. Catell, Mr. Mitchell indicated that an investigation is usually triggered based upon requests by management, complaints received either through the Authority's hotline or individuals in the Counsel's Office, Human Resources, or directly to Internal Audit.

Mr. Mitchell then presented the Internal Audit Plan. Mr. Mitchell stated that although Internal Audit completed four audits during fiscal year 2013-14, the completion of other audits in the plan was impacted by the investigations, audit consulting activities, and the complexity of auditing invoices from Lockheed Martin. As such, Mr. Mitchell stated that the activities for fiscal year 2014-15 have been structured and organized with a focus on initiating three new audits, finalizing the uncompleted audits already authorized and, in keeping with internal auditing standards, sequencing the work to provide audit reports on a timely basis.

Therefore, Mr. Mitchell stated that the fiscal year 2014-15 Internal Audit Plan proposes that Internal Audit complete the five audits previously authorized by the members and adds three audits to the schedule of activities: (1) a project quality assurance audit of Phases II through IV of the Authority's Data Warehouse project; (2) a project quality assurance audit of an anticipated upgrade to the Authority's PeopleSoft Enterprise Resource Planning ("ERP") system; and (3) a Contract Management and Compliance audit of various contracts with a university located in New York State.

Mr. Mitchell stated that these three additional audits are described in greater detail in the Committee packets provided to the members, but pointed out two additional items. The first item that Mr. Mitchell noted was that the two quality assurance audits are subject to changes made to

project timelines or timetables. For example, if the completion of either the PeopleSoft upgrade or the Data Warehouse is extended in order to ensure the success of the project, then it will naturally extend the completion date of the quality assurance work.

The second item raised was in relation to whether or not Internal Audit should perform a comprehensive business risk assessment for fiscal year 2014-15, considering that the Authority is undergoing a Comprehensive Strategic Assessment. Mr. Mitchell stated that, since management will be focused on transforming the Authority's operations to fit strategies and goals, management will factor "minimizing risk" during its discussions about program design. Therefore, Internal Audit will defer performing a comprehensive business risk assessment for fiscal year 2014-15, and will perform it next year instead.

Mr. Mitchell then asked the Committee to approve the proposed Internal Audit Plan, which was developed using a risk-based methodology. Mr. Mitchell added that, if approved, the proposed Internal Audit Plan will add three audits to the activities currently planned and will result in the completion of eight audits in fiscal year 2014-15, ending March 31, 2015.

In response to an inquiry from Mr. Kauffman, Mr. Mitchell stated that a risk-based methodology is based on a combination of activities. Specifically, Mr. Mitchell indicated that Internal Audit has previously and periodically performed entity-wide assessments and also had ongoing discussions with officers, senior management, and staff throughout the year. In addition, a risk-based methodology is informed by the audit and investigative work performed which indicates risks that are incidental and isolated or are systematic in nature.

In response to an inquiry from Mr. Kauffman, Mr. Mitchell indicated that it is an ambitious internal audit plan, raising the question of how much room is left for potential deviations from the plan. For example, if there was another significant complaint that was handled by a department such as the Counsel's Office, then it would not affect the proposed plan. If that complaint was handled by Internal Audit, then it might have an impact on the plan. Mr. Mitchell stated that these deviations are not uncommon occurrences and that, since the plan is

meant as a direction forward, it may need to be modified with the agreement of the Committee should other audits or investigations arise.

Mr. Mitchell also stated that he has kept the Committee Chair apprised of changes in the Internal Audit Plan, but also intends to bring such changes to the full Committee as well. Mr. Kauffman suggested that Mr. Mitchell should bring changes to the Committee Chair and that the Chair should then determine whether a Committee meeting should be held to approve a formal change to the plan. Mr. Kauffman also stressed that Mr. Mitchell should have the opportunity to discuss potential changes or constraints with the Committee Chair.

In response to an inquiry from Mr. Elliman, Mr. Mitchell indicated that the schedule of audits is based upon an order of priority. Mr. Mitchell added that the intention for the two quality assurance audits is to have them done by consultants, introducing consulting resources that can supplement Internal Audit resources.

Mr. Rhodes then brought up two items, the first being that some of the audits, such as the Data Warehouse project and the PeopleSoft upgrade, are focused on work that is going to be taking place during the year such that, if the underlying work slips or changes, then the accompanying audit will also slip or change. Second, Mr. Rhodes emphasized that there is a strong commitment aspect to the proposed internal audit plan; Mr. Mitchell then reaffirmed his commitment to the plan and added that the intent is to produce Internal Audit Plans that are meaningful to the Authority and management that address risks and can match resources to needs.

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

#### Resolution No. 399

RESOLVED, that the Audit and Finance Committee approves the Internal Audit Plan for Fiscal Year 2014-15, as presented at this May 5, 2014 meeting, in the form submitted to the Committee.

Mr. Catell then indicated that the next item on the agenda was a report from Mr. Mitchell on recent internal audit activities.

Mr. Mitchell reported that, consistent with the approved fiscal year 2013-14 Internal Audit Plan, Internal Audit recently issued a final draft of the contract management audit of Lockheed Martin. Mr. Mitchell stated that once Internal Audit receives a formal response from management, which is anticipated in the next couple of weeks, a final report will be provided to the members of the Committee and an oral report will be provided during the next Committee meeting.

Also consistent with the approved fiscal year 2013-14 Internal Audit Plan, Internal Audit is in the process of issuing a preliminary draft of the audit of the Authority's recoupment process, which is relied upon to collect royalty payments from sales of products and services the Authority has funded. Mr. Mitchell stated that the final report should be issued no later than this July.

Mr. Mitchell then moved to a discussion of the matter investigated by Internal Audit, noting that during the last Committee meeting Internal Audit was involved in an investigation regarding a complaint it had received. In keeping with the Committee's request, Mr. Mitchell then advised the members about the matter.

The complaint was received in October 2013, and alleged that the recipient of a 2010 energy efficiency grant, which was a nonprofit, was in fact ineligible to receive the grant. This complaint was based on the Authority's Request for Proposals ("RFP") limitation on proposers, including nonprofits, and the proposer, ostensibly a nonprofit, was alleged to be "merely a front" for a for-profit corporation.

Based upon its investigation, Internal Audit developed a recitation of the facts of the case and provided those facts to management. At the suggestion of management the facts were provided to independent outside counsel so that the Authority would obtain an objective opinion on the matter. Outside counsel provided an opinion stating that, based upon their thorough

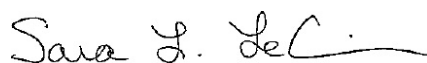
review of the facts, there is no merit to the complaint. In their opinion, the recipient was a bona fide nonprofit and thus an eligible proposer, meaning the award of the grant was within the permitted purposes for which the recipient was formed.

Mr. Mitchell is satisfied that the complaint was taken seriously. In addition, he is satisfied that Internal Audit was able to independently develop pertinent facts, that management accepted the facts, that the decision to obtain an opinion from independent, outside counsel is commendable, and that the complaint was not substantiated. He also wished to inform the Committee that the matter has been closed.

In response to an inquiry from Mr. Elliman, Mr. Mitchell indicated that reports from investigations have typically not been shared with the Committee in the past. Mr. Rhodes indicated that management has no issue sharing those reports. Mr. Elliman suggested that all reports that are shared with outside counsel should be reviewed by the Committee before the investigation is closed. Mr. Catell suggested that, for this investigation, the investigation should remain closed because no issues were found. However, should any of the Committee members have any issues after reading the report, the investigation may be reopened.

Mr. Catell 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, the meeting was adjourned.

Respectfully submitted,



Sara L. LeCain  
Secretary to the Committee

**NOTICE OF MEETING AND AGENDA**

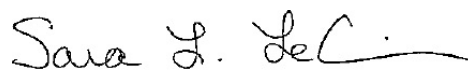
April 28, 2014

TO THE MEMBERS OF THE AUDIT AND FINANCE COMMITTEE:

PLEASE TAKE NOTICE that the one hundred twentieth (120<sup>th</sup>) meeting of the AUDIT AND FINANCE 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 at the office of the New York State Division of Housing & Community Renewal at 641 Lexington Avenue, 4<sup>th</sup> Floor (conference rooms B and C), New York, New York, and by video conference in the Authority's West Valley Office at 9030-B Route 219, West Valley, New York, on Monday, May 5, 2014, commencing at 11:30 a.m., for the following purposes:

1. To consider the Minutes of the 119<sup>th</sup> meeting held on March 7, 2014.
2. To receive an Annual Internal Audit Report from the Director of Internal Audit and to consider and act upon a resolution approving an Internal Audit Plan for fiscal year 2014-15.
3. To receive a report from the Director of Internal Audit on recent internal audit activities.
4. To transact such other business as may properly come before the meeting.

Members of the public may attend the meeting at any of the above locations. The 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.nyszerda.ny.gov/About/Board-Governance/Board-and-Committee-Meetings.aspx>.



Sara L. LeCain  
Secretary to the Committee

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